REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 5409

Promulgated:
JAN 04 2000

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DECISION

Before us for consideration is a Petition for Review filed by petitioner on July 19, 1996 seeking for a refund or issuance of tax credit certificate in the aggregate amount of ₱3,329,306.50 allegedly representing the overpaid gross receipts tax for the first, second, third and fourth quarters of 1994.

The antecedent facts of this case are as follows:

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in the general banking business.

Records show that Petitioner filed its Quarterly Percentage Tax Return for the first, second, third and fourth quarters of taxable year 1994 on April 20, 1994, July 20, 1994, October 20, 1994 and January 20, 1995 respectively. (Exhibits A, B, C, D). Said Tax Return reflected petitioner's gross receipts in the form of interest, commissions, and discounts from its lending activities, as well as the gross receipts tax payable in the following amounts:

	GROSS RECEIPTS	**GRT PAYABLE**
First Qtr.	₱ 657,667,019.61 (Exh. A-1)	₱ 30,183,544.26 (Exh. A-2)
Second Qtr.	640,402,167.57 (Exh. B-1)	28,462,590.00 (Exh. B-2)
Third Qtr.	700,764,725.98 (Exh. C-1)	32,531,976.44 (Exh. C-2)
Fourth Qtr.	524,790,714.38 (Exh. D-1)	23,640,820.79 (Exh. D-2)
Total	₱2,523,624,627.54	₱114,318,931.49

Petitioner alleges that in the computation of its total gross receipts for each of the quarters of the taxable year 1994, it included the 20% final tax withheld at source on its passive income which amount to ₱332,930,650.11 (Exh. F). Claiming that it had overpaid its gross receipts tax for 1994 to the extent of the GRT imposed on its final withholding tax on its passive income, petitioner through its counsel, filed on July 19, 1996 with the BIR, an administrative claim for refund (Exh. E) of overpaid GRT for 1994 in the total amount of ₱3,329,306.50 computed as follows:

Gross Receipts Subjected to Final Tax Derived from Passive Investments	₱332,930,650.11
Final Withholding Tax Rate	x 20%
20% Final Tax Withheld at Source	₱ 66,586,130.02
GRT Rate	x 5%
Overpaid GRT	₱ 3,329,306.50

On the same day it filed its administrative claim for refund on July 19, 1996, petitioner filed the instant Petition for Review before this Court lest it be barred by the mandatory two (2) year prescriptive period under Section 230 of the Tax Code (now Section 229 of the NIRC of 1997).

In his Answer filed through registered mail on August 26, 1996, the respondent raised the following Special and Affirmative Defenses:

"5. Petitioner's claim for tax refund/credit is still undergoing administrative routinary investigation/examination by respondent Bureau;

6. The alleged refundable/creditable gross receipts taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, the same are not refundable. Petitioner must prove that the income from which the refundable/creditable taxes were paid from, were declared and included in its gross income during the year under review;

7. Petitioner's allegation that it erroneously and excessively paid its gross receipts during the year under review does not ipso facto warrant the refund/credit. Petitioner must prove that the exclusions claimed by it from its gross receipts must be an allowable exclusion under the Tax Code and its pertinent implementing rules and regulations. Moreover, it must be supported by evidence;

8. Petitioner must likewise prove that the alleged refundable/creditable gross receipts taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s;

9. Claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of petitioner to prove the same is fatal to its claim for tax refund/credit;

10. Furthermore, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

Upon the other hand, to prove its entitlement for refund, petitioner anchored its argument in the decision of this Court, in the recent case of **Philam Savings Bank, Inc. vs. CIR (CTA Case No. 5407, Aug. 18, 1998)** reiterating the landmark ruling of **Asian Bank Corporation case (CTA Case No. 4720, Jan. 20, 1996)** where this Court declared that the final withholding tax on certain passive income of a bank is excluded from its gross receipts for purposes of computing its GRT. Petitioner, to substantiate its claim, likewise submitted the following pertinent documents:

1.) Percentage Tax Return of Petitioner for first, second, third and fourth quarters of 1994 (Exh. A, B, C, D).

2.) Letter claim for refund filed with the BIR (Exh. E)

3.) Summary of Tax-Paid Income properly reported by petitioner for the taxable year 1994 (Exh. F)

4.) Various Debit and Credit Advices, as well as Certificates of Final Tax Withheld issued by the Central Bank for the year 1994 to petitioner. (Exh. G to HT)

5.) Schedule of the 20% final tax withheld on petitioner's interest income from Treasury Bills for 1994 (Exh. L)

6.) Certified copy of petitioner's General Ledger Trial Balance as of December 31, 1994 (Exh. NN)

7.) A summary of the actual computation per books of the gross income declared by petitioner for GRT purposes for the 1st, 2nd, 3rd and 4th quarters of 1994 (Exh. JJ, KK, LL and MM)

The aforementioned documents were formally offered by petitioner and admitted by this Court in its resolution dated July 8, 1998. On February 5, 1999, petitioner then filed a supplemental Formal Offer of Evidence consisting of the following exhibits:

1.) Letter-report submitted by the duly commissioned independent CPA including all schedules appended thereon. (Exh. QQ)

2.) Various Domestic Trading Sheets (Exh. RR-1 to WW-3; YY-1 to ZZ-1)

3.) Final consolidated letter-report submitted by the duly commissioned independent CPA including all schedules appended thereon (Exh. XX-1)

In its memorandum filed on August 14, 1998, respondent stresses that the inclusion of the final withholding tax from the gross receipts in computing the GRT is bereft of legal basis. Respondent contends, *inter alia*, that the case of **Collector of**

Internal Revenue vs. Manila Jockey Club 108 Phil. 821 cited in the Asian Bank Corporation case, *supra*, is not applicable because it dealt on gross receipts of a proprietor of an amusement place and not to a banking institution such as the Petitioner in the instant case; and that, the term "gross earnings" which is synonymous to the term "gross receipts" is defined as the "entire earnings, receipts or the like, under consideration, without any deduction."

Respondent further states that it is erroneous to infer that the questioned items of income (20% final taxes) were not actually received by the Petitioner because in the first place, no final tax can be withheld therefrom if such items of income were not actually received by it. Respondent likewise observes that no double taxation exists in imposing gross receipts tax on petitioner's interest income after the same was subjected to the final withholding tax. According to Respondent, the two taxes in question are neither imposed on the same property or subject matter nor are they of the same kind or character. Final withholding tax is a tax on income withheld at source while GRT is an excise tax levied upon licenses to pursue certain occupations or upon certain corporate privileges.

The issues presented to this Court for adjudication are as follows:

> 1.) Whether or not the interest income from passive investments, for the purpose of computing the GRT, shall be reported net or exclusive of the 20% final withholding tax; and
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> 2.) Whether or not petitioner is entitled to the amount of ₱3,329,306.50 representing the alleged overpaid GRT for calendar year 1994 based on the evidence submitted.

The issue of whether or not the gross receipts, for purposes of computing the GRT, shall be net or exclusive of 20% final withholding tax is well-settled. Thus, in focus once again is the decision of this Court in the case of **Asian Bank Corporation vs. CIR, CTA Case No. 4720 dated January 30, 1996** answering in the affirmative the first issue involved in the case at bar. We do not intend to depart from the wisdom of said case which is hereunder quoted, to wit:

> **"We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.**
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> x x x x x x x x x
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> This conclusion is in accord with the interpretation of the Supreme Court in the case entitled Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821, as quoted by this Court in disposing of a similar issue in the case entitled Compania Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426 dated November 14, 1996, thus:
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>> In the second place, the highest tribunal of the land interpreted the term: "gross receipts" to mean all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer. Thus, it was held:
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>>> "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the ½% which it directs same Club to turn over to the Board of Races. The latter being a Government institution, there would be double taxation, which should be avoided unless the statute admits of no other interpretation. In the same manner, the Government could not have intended to consider as gross receipt the portion of the funds which it directed the Club to give, or know the Club would give, to winning horses and Jockeys — admitted 5%. It is true that the law says that out of the total wager funds 12½% shall be set aside as the `commission' of the track owners but the law itself takes official notice, and virtually approves or directs payment of the portion that goes to owners of horses as prized and bonuses of jockeys, which portion is admittedly 5% out of the 12½% commission. As it did not at that time contemplate the application of `gross receipts' revenue principle, the law in making a distribution of the total wager funds, took no trouble of separating one item from the other; and for convenience, grouped three items under one common denomination.

> "Needless to say, gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor." (The Commissioner of Internal Revenue vs. Manila Jockey Club, Inc. G.R. Nos. L-13890 and L-13887, June 30, 1960)

> It is to be noted that, under Section 260 of the Tax Code, a race-track is subject to an amusement tax of 20% of its gross receipts and the term `gross receipts' embraces all the receipts of the proprietor, lessee, or operator of the amusement place." Notwithstanding the broad and all-embracing definition of the term "gross receipts" found in our amusement tax law, our Supreme Court did not adopt a literal interpretation of the said term in the case of the Manila Jockey Club, Inc., supra."

The aforementioned ruling was affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA-G.R. SP No. 52707, promulgated on August 17, 1999.** Portions of said decision are quoted hereunder, thus:

> "Accordingly, the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue for the corresponding year that the same was actually withheld and considered final withholding taxes under Section 50 of the same Code. Indubitably, to include the same to the Respondent's gross receipts for the year 1994 would be to tax twice the passive income derived by the Respondent for the said year, which would constitute double taxation anathema to our taxation laws."

To sum it all, the 20% final withholding tax on banks' interest income should not form part of taxable gross receipts for purposes of computing gross receipts tax.

Having resolved the legal issue involved in this case, we now dwell on the amount to which petitioner is entitled to refund on the basis of the evidence presented.

After a minutiose scrutiny of the petitioner's evidence, this Court is convinced that petitioner is entitled only to a partial refund amounting to ₱257,318.94 as this represents the claim which was filed within the two (2) year mandatory period of prescription and the claim which is duly substantiated by material and relevant evidence.

Petitioner's claim for refund pertaining to the first quarter of 1994 had already been barred by prescription. Records show that petitioner's Quarterly Percentage Tax Return for the first quarter ending March 31, 1994 was filed on April 20, 1994 (Exh. A) while the instant petition was filed only on July 19, 1996. It is evident that more than two (2) years had elapsed from the date of payment of the tax until the time of filing of this petition. Thus, petitioner failed to meet the two-year period prescribed under Section 230 in relation to Section 125 of the Tax Code insofar as its claim for refund for the first quarter of 1994 is concerned, hence, can no longer be considered in the final analysis.

But as regards the claim for refund of Petitioner relating to the other quarters of 1994, the Court finds that said claims have been filed within the two-year prescriptive period provided for by law.

It is to be noted that petitioner engaged the services of Sycip, Gorres, Velayo and Co., an independent auditing firm, to verify the accuracy of its 1994 quarterly gross receipts tax paid on the 20% final tax on passive interest income. The letter-report dated January 26, 1999 of the said independent CPA, clearly and concisely stated that only the amount of ₱8,234,574.39 out of the total claim of ₱66,586,130.02 in final withholding taxes was verified to have been included in petitioner's gross receipts subjected to the 5% GRT for the year 1994. Thus, the report shows that only ₱411,728.72 out of the total claim of ₱3,329,306.50 represents overpayment of gross receipts tax for the year 1994 summarized as follows:

1994	Index	Per Bank's Claim FWT	GRT	Per SGV Verification FWT	GRT	Difference FWT	GRT
1st Qtr.	XX-3	9,759,222.77	487,961.14	62,285.64	3,114.28	9,696,937.13	484,846.86
2nd Qtr.	XX-4	12,089,822.08	604,491.10	22,796.60	1,139.83	12,067,025.49	603,351.27
3rd Qtr.	XX-5	22,859,291.26	1,142,964.56	4,209,057.37	210,452.87	18,650,233.89	932,511.89
4th Qtr.	XX-6	21,877,793.91	1,093,889.70	3,940,434.78	197,021.74	17,937,359.13	896,867.96
TOTAL		66,586,130.02	3,329,306.50	8,234,574.39	411,728.72	58,351,555.64	2,917,577.98

It must be emphasized that the income earned by petitioner on its passive investments consists of interest income from government securities (which consists of fixed Rate Treasury Notes, Floating rate treasury rates, treasury bills, CB Bills) and commercial papers.

The testimony of the independent accountant during the hearing held on January 27, 1999, could well explain how he arrived at his findings (shown in the table above) and the evident discrepancy between the amount prayed for by the petitioner and the amount that has been verified.

Witness for petitioner explained that they verified each type of security by tracing to the general ledger the interest income that was subjected to final tax which was compared to the summaries and schedules submitted by the bank and they checked on the existence of the security, its series number, the face amount, the interest and the domestic trading sheet evidencing the purchase. And lastly, they checked on the mathematical accuracy of accrual of interest income as reflected in the schedule and the computation of final tax using the formula-interest income multiplied by 20% (see TSN, January 27, 1999, pp. 6-10).

Such that, if the schedules and summaries submitted by the petitioner cannot be traced to the source or original document (the domestic trading sheet, etc.), they automatically treat it as disallowances. This, explains the reason why there is a discrepancy in the amount as claimed by petitioner in the instant petition and the amount as verified by SGV. Thus, after the audit procedure, only the amount of P411,728.72

represents overpayment of gross receipts tax for the year 1994 since said amount was found out to be the one duly supported by pertinent records and documents.

Although We admit of the adequacy of the audit procedures undertaken by SGV and Co. and its systematic examination of all petitioner's records for its claim for refund, this Court, upon our own review of the pertinent documents and supporting papers presented, found some amounts which should be deducted from the total amount as per SGV's findings.

After going over the documents submitted by petitioner such as the GRT returns (Exhs. A, B, C, D), summary of the Tax Paid Income (Exh. F), summary of gross income declared by Petitioner for GRT purposes (Exhs. JJ, KK, LL, MM), various Debit and Credit Advices as well as Certificates of Final Tax Withheld as Issued (Exhs. G to Z, AA to HT, including sub-markings), various trading sheets, and other pertinent documents, We are inclined to disallow the amount of P3,114.28 and P151,295.50 for the following reasons:

As stated earlier, the amount of P3,114.28 corresponding to the first quarter ending March 31, 1994 should be deducted from the total allowable refund of P411,728.72 per SGV's recommendation, as this amount is already barred by prescription. The two-year prescriptive period has already set in between the time when the GRT return for first quarter of 1994 was filed (April 20, 1994) and the time when this petition for review was submitted to this Court (July 19, 1996). Hence, the amount of P3,114.28 pertaining to petitioner's claim for the first quarter of 1994 should be disallowed.

As regards the disallowance of the amount of P151,295.50, petitioner failed to prove its actual payment of the 20% final withholding taxes on its interest income from treasury bills and commercial papers as specifically enumerated in the attached schedule (see Annex A). Petitioner should have presented certificates from the issuers of the said securities as to the actual amount of taxes withheld on its interest income from the same securities for 1994 to confirm the amounts of withholding taxes reflected in its domestic trading sheets and books of accounts. Generally, the Court could not rely on the veracity of the trading sheets and other trading account securities since the contents thereof could easily be entered into the pro-forma documents usually prepared by the claimants. The issuer should verify that the 20% final withholding taxes on interest on securities were actually paid and duly remitted by the payor. The final taxes withheld on passive interest income which do not have corresponding certificates of final taxes withheld amounting to P151,295.50, are broken down as follows:

Treasury bills -		
3rd Quarter of 1994	P99,247.27	
4th Quarter of 1994	46,722.56	P145,969.83
Commercial Papers -		
4th Quarter of 1994		5,325.67
DISALLOWED AMOUNT		P151,295.50

Thus, from the total amount of P3,329,306.50 which petitioner claimed in the instant petition, only the amount of P257,318.94 was properly substantiated and legally refundable, thus: (See Annex "A" — Forming part of this decision)

Total Amount Per Claim		₱3,329,306.50
Less: Difference (After SGV Verification)		2,917,577.78
1994 Overpaid GRT (Per SGV Report)		411,728.72
Less:		
(a) Prescribed claim - 1st qtr. 1994	3,114.28	
(b) No certificates of final taxes withheld	151,295.50	154,409.78
TOTAL AMOUNT REFUNDABLE		₱ 257,318.94

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to **REFUND** or **ISSUE** a Tax Credit Certificate in the reduced amount of ₱257,318.94 representing overpaid GRT payments for the 2nd, 3rd and 4th quarters of 1994.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge