REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

CITIBANK N. A. - Philippine Branch,
Petitioner,

-versus- C. T. A. CASE NO. 4258

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - - x

4/11/94

D E C I S I O N

This is a petition for review filed by petitioner, Citibank, N. A., Philippine Branch, praying that it be granted and issued in its favor by respondent, Commissioner of Internal Reveneue, the tax credit and the corresponding tax credit certificate in the amount of P1,563,959.47 representing overpaid gross receipts tax for taxable year ended December 31, 1986.

For the year ended December 31, 1986, petitioner filed its gross receipts tax return reporting total gross receipts in the amount of P1,595,148,048.84. Petitioner paid the corresponding gross receipts tax totalling

P77,272,558.02. Subsequently, petitioner filed an amended consolidated gross receipts tax return with the Bureau of Internal Revenue reporting only P1,563,868,895.00, for which the former alleged that it should have paid only gross receipts tax of P75,708,578.55. Thus, petitioner claims to have overpaid the amount of P1,563,959.47.

On March 15, 1988, petitioner, through its tax counsel, filed with respondent a claim for refund or tax credit for overpaid gross receipts tax (GRT) for the taxable year ended December 31, 1986, computed as follows:

Total Gross Receipts	P 1,563,868,895.00
Total Tax Due	P 75,708,598.55
Total Amount Paid	77,272,558.02
Overpayment of GRT	P 1,563,959.47

Respondent has not acted upon petitioner's claim for refund or tax credit. Hence, the present Petition for Review.

Respondent, in answer to the Petition averred, among others, that petitioner's payment is even deficient by P920,886.73 and as part of its special and affirmative defenses stated that (1) petitioner failed to fully substantiate its entitlement to a tax refund or tax credit on

gross receipts paid; (2) that based on respondent's computation, the five (5) percent gross receipts tax of P1,563,868,895.00 (par. 5 of Petition) is P78,193,444.75 pursuant to Section 220 of the Tax Code as implemented by Revenue Regulations No. 12-80, dated November 7, 1980, and not P75,708,598.55 as alleged by Petitioner, consequently, the total amount of P77,272,558.02 paid by the petitioner is short by P920,886.73 (P78,193,444.75 less P77,272,558.02) and therefore, no refund or tax credit is due to the petitioner; and, (3) in an action for tax refund or tax credit, the taxpayer has the burden of showing that taxes paid were erroneously collected which claims are construed strictly against claimant/taxpayer.

During the trial of this case, petitioner moved for the identification and comparison with the originals of its exhibits before a court-appointed Commissioner which motion was granted by the Court (hearing of August 15, 1989). Thereafter, that is, on November 7, 1989, petitioner manifested that since the records it intends to "identify" are in the vault of the petitioner at its place of business in Makati, Metro Manila, it requested that the comparison

and identification be done and conducted at the petitioner's premises which manifestation was acceded to by the Court. The Commissioner's hearing was conducted on November 15, 1989 at the Citibank Center Building, Paseo de Roxas, Makati, before Mrs. D. M. Angeles, deputized Commissioner, assisted by Atty. A. B. Cambaliza. Both parties were represented by their respective counsel at said Commissioner's hearing.

Mrs. Julia Pua, Tax Compliance Officer of Citibank, N. A., Philippine Branch, declared for the petitioner at the Commissioner's hearing. She identified a photocopy of a two-page letter by one C. C. Gison of SGV and Co. for Citibank, N.A., Philippine Branch (Exh. A & A-1). Counsel for petitioner reserved the right to present the original of the document.

A consolidated and amended return showing the amount of P1,563,868,895.00 previously marked as Exhibit B was identified by Ms. Pua and compared with the original and duly confirmed by respondent.

Statement of quarterly gross receipts from its FCDU for the quarter ended December 31, 1986 (Exh. C); BIR Payment Order No. C9484719, dated January 20, 1987 for the amount of P431,652.55

(Exh. C-1); CB Confirmation Receipt No. 8162168, dated January 20, 1987 for the amount of P431,652.55 (Exh. C-2) which were all identified and compared with the originals, duly confirmed by respondent as faithful reproductions thereof.

Statement of Quarterly Gross Receipts from its FCDU for the quarter ended September 30, 1986 (Exh. D); BIR Payment Order No. B8809350, dated October 20, 1986 for the amount of P176,506.90 (Exh. D-2), which were identified and compared with the originals, duly confirmed by respondent as faithful reproductions thereof.

Statement of Quarterly Gross Receipts from its FCDU for the quarter ending June 30, 1986 (Exh. E); BIR Payment Order No. B8343649, dated July 21, 1986 for the amount of P643,039.02 (Exh. E-1); CB Confirmation Receipt No. 81660468 for the amount of P643,039.02, dated July 21, 1986 (Exh. E-2) which were identified and compared with the originals and confirmed by respondent to be faithful reproductions thereof.

Statement of Quarterly Gross Receipts from its FCDU for the quarter ended, March 26, 1986, which was identified by Ms. Pua showing a zero amount (Exh. F), duly compared with the original thereof and confirmed by respondent.

A return filed for the quarter ending December 31, 1986 under the Regular Banking Unit with gross receipts tax payment of P18,376,030.80 with the corresponding Payment Order No. C9494715 and Confirmation Receipt No. B8162167 both for P18,376,030.80, marked as Exhs. G, G-1 and G-2, compared with the originals and duly confirmed by respondent as faithful reproductions thereof.

Tax return filed for the quarter ending September 30, 1986 under the Regular Banking Unit in the amount of P4,227,365.90 as evidenced by BIR Payment Order No. 8809349 and Confirmation Receipt No. B8161436 for the same amount correspondingly marked as Exhs. H, H-1 and H-2, duly compared with the originals and confirmed by respondent as faithful reproductions thereof.

Return for the quarter ending June 30, 1986 showing a tax due in the amount of P24,180,450.11 under its Regular Banking Unit evidenced by Payment Order No. B8343650 and Confirmation Receipt No. 8160467 for the same amount and correspondingly marked as Exhibits I, I-1 and I-2, duly compared with the originals and confirmed by respondent as faithful reproductions thereof.

Return for the quarter ending March 31, 1986 showing gross receipts tax payment of P29,309,512.74, together with its corresponding Payment Order No. B7776469 and Confirmation Receipt No. 6039586 both for the same amount, correspondingly marked as Exhibits J, J-1 and J-2, compared with the originals and duly confirmed by respondent as faithful reproductions thereof.

Petitioner presented Ms. Annabelle Yap, Auditor-in-charge of Sycip, Gorres and Velayo, before the Court en-banc, and she stated that her primary function basically involves the examination of financial statements. She prepares audit programs outlining the necessary audit procedures to be performed in the conduct of audit. She also supervises assistants by instructing them what procedures are to be done so as to ascertain that financial statements are fairly stated. She is responsible for several clients among which is Citibank and of which she is in-charge. She identified the Statement of Annual Gross Receipts for Citibank for the year ended December 31, 1986 (Exh. B) which she said she is familiar "through verification and checkings" (tsn, August 8, 1991, p. 133, CTA records).

She further stated that in the course of the audit, she found that there was an error in reporting the original gross receipts tax return resulting to overpayment in the gross receipts tax. She said the cause of the error was "misclassification of accounts." She said there were income accounts which were classified as unremitted profits and commission (retained earnings) which were not considered in the original return filed by Citibank with the BIR, thus, an overstatement of the total gross receipts declared and, consequently, overpayment of GRT amounting to P1,563,959.47. The auditor proposed adjustments in the books of account of petitioner.

Respondent did not present any evidence. Instead, he submitted his case on the basis of the records and pleadings. He did submit a memorandum in support of his case.

The only issue to be resolved in this case is whether or not petitioner was able to fully substantiate and prove that it is entitled to a tax credit of P1,563,959.47 representing alleged overpaid gross receipts tax for taxable year ended December 31, 1986.

We find that petitioner failed to do so in this regard. The basic proof of facts required for the Court to be able to decide the case on the merits has not been met. It may not be amiss to point out at this stage that in an action for tax refund/credit, the taxpayer has the burden of showing that taxes paid were erroneously collected and that failure to meet such burden is fatal to its cause as such claims for refund are strictly construed against the claimant.

The only witness presented by the petitioner before the Court en banc was Ms. Annabelle Yap, an auditor of Sycip, Gorres, Velayo and Co. Parenthetically, there was even a manifestation of counsel for petitioner that they were about ready to formally offer their evidence but they realized that they needed to present <u>one more witness</u> (hearing of August 8, 1991, p. 129-130, CTA records).

Ms. Yap is obviously not a company official of the petitioner but its external auditor. Among others, she stated in her examination-in-chief that in the course of the audit, it was "discovered" that the actual gross receipts that should have been reported in the original return was P1,563,868,895.00 instead of

P1,595,148,048.84 and therefore should have paid only P75,708,598.55 instead of P77,272,558.02, thus concluding that petitioner, Citibank, overpaid the amount of P1,563,959.47.

We find the evidence submitted by petitioner wanting in several respects for the Court to make a judicious decision in the case. In the first place, Ms. Yap is not even an official of the petitioner and her competency to testify on matters pertaining to the accounts of the petitioner is grossly flawed and incomplete. Even the document she identified (Exh. B) was obviously not prepared by her. Exhibit "B" was duly certified as "true and correct" by Vice-President Teodoro M. Panganiban for the Citibank, N.A. As an auditor, she merely verified and checked said statements.

If an error was indeed committed by petitioner in its gross receipts tax return for the year ended December 31, 1986, where was the original return declaring total gross receipts of P1,595,048.84 with the total tax due of P77,272,558.02? Petitioner failed to present this material evidence for proper identification, evaluation and determination as to where such alleged errors lay.

In the course of Ms. Yap's testimony, she did make some allegations on what she termed as "misclassification of accounts" to explain the alleged overpayment but failed to present even from her end as auditor the necessary proof, like working papers and the like, on how she arrived at such conclusions. She further mentioned that she submitted "proposals" to agency management for the corresponding adjustments in the company's book of accounts. Again, no evidence was submitted by her as to the details of these proposals and the rationale for her recommendations. As the court records show, no competent witness from the side of the petitioner was ever presented to confirm the allegations of its external auditor regarding her proposal and recommendation in order to effect the necessary adjustments on the company's book of accounts, the actual adjustments made, if any, and such other details to justify or effect the alleged errors committed which, in their totality, would have proved its case.

Is it any wonder therefore that respondent did not even bother to cross-examine the witness, Ms. Annabelle Yap?

The other so-called witness of petitioner was Ms. Julie Pua, Tax Compliance Officer of Citibank, N. A., Philippine Branch. We may ask, was Ms. Pua a witness in the true sense of the word? We have earlier stated that only one witness in the person of Ms. Annabelle Yap was presented by the petitioner before the Court en banc.

Ms. Pua was presented by petitioner before a deputized Commissioner of this Court. The principal purpose of the hearing of November 15, 1989 (tsn, pp. 100-127, CTA records) was merely for the comparison with the originals of the documents marked as exhibits. The Commissioner's hearing was even conducted in the company premises of the petitioner.

Attempts were made, as reflected in the records, to "identify" the exhibits so marked and compared with the originals (Exhs. A-1, b, C, C-1, and C-2, D, D-1, D-2, E, E-1 E-2, F, G, G-1, G-2, H, H-1, H-2, I, I-1, I-2, J, J-1, and J-2), but such "identification" of said documents cannot be given the credence it deserves by this Court as they were made before a deputized Commissioner whose authority is limited to the marking of exhibits and their comparison with the

originals to show that they are faithful reproductions thereof. The deputized Commissioner has no authority to receive evidence and none was given. The Court could not have given such authority as it would be contrary to its Rules. Identification of documents as part of the evidence has specific meaning and correlation to the rules of procedure and evidence in general. It would go into the competency of the witness, the materiality, admissibility and relevancy of the evidence so presented and the manner of their presentation. The very declaration of Ms. Pua before the deputized Commissioner cannot be equated to testimonial evidence-as if she testified before the Court en banc-where her competency as a witness can be tested as well as the materiality, relevancy and admissibility of her testimony, as well as the documents she would be presenting as part of her testimony, can be evaluated by the Court. No cross-examination was conducted by respondent counsel notwithstanding his presence during the commissioner's hearing and rightly so. There was no such provision for him to do so as it was not the proper forum for it. More so, the deputized Commissioner has no

authority to rule on any matter submitted before him.

As an aside, the Commissioner's hearing is different from the taking of evidence provided for in Section 12, R. A. 1125 (An Act creating the Court of Tax Appeals) which is hereunder quoted:

> "Sec. 12. **Taking of Evidence.** - The Court may, upon proper motion or on its initiative, direct that a case, or any issue thereof, be assigned to one of its members for the taking of evidence, when the determination of a question of fact arises upon motion or otherwise in any stage of the proceedings, or when the taking of an account is necessary, or when the determination of an issue of fact requires the examination of a long account. The hearing before such member, shall proceed in all respects as though the same had been made before the Court.
>
> Upon completion of such hearing before such member, he shall promptly submit to the Court his report in writing, stating his findings and conclusions; and thereafter, the Court shall render its decision on the case, adopting, modifying, or rejecting the report in whole or in part, as the case may be, or, the Court may, in its discretion recommit it with instructions, or receive further evidence."

The exhibits already properly marked as petitioner's exhibits and even identified at the Commissioner's hearing were never presented and truly identified by a competent witness or witnesses before the Court en banc. It was as if no proof or evidence was adduced by petitioner, except Exhibit B, which was identified by the one

and only witness of the petitioner before the Court.

We can also cite Section 20, Rule 132 of the Revised Rules of Court to further emphasize our point:

> "Section 20. Proof of private document. Before any private document offered as authentic is received in evidence, its due execution and authenticiy must be proved either:
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> a) By anyone who saw the document executed or written; or
>
> b) By evidence of the genuineness or handwriting of the maker.
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> Any other private document need only be identified as that which it is claimed to be." [underscoring supplied]
>
> "Authenticity" means that the document is what it purports to be, "due execution" is a matter of law, i.e., whether the document is valid or not. (Paras, Rules of Court, annotated, 1991 Ed., p. 583).

Petitioner may be emboldened to state that it formally offered all its exhibits, including the transcript of stenographic notes of the testimony of witnesses, for admission by the Court and that respondent admitted all the documentary exhibits including the purposes for which they were being offered. The Court did resolve to admit all the exhibits including the transcript of stenographic notes of the petitioner's witnesses. But then,

it made the reservation and resolved with finality that the admission of documentary as well as testimonial evidence is without prejudice to the final determination of their probative value (Resolution, dated July 13, 1992, p. 143, CTA records).

For the reason already stated, it will be an exercise in futility to delve on other matters raised in the pleadings which may be related to the case.

WHEREFORE, premises considered, the case is hereby dismissed. No pronouncement as to cost.

SO ORDERED.

Quezon City, Metro Manila, 11 April 1994.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

INHIBITED
(Being one of the counsels on record before)

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals