REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK & TRUST COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 5439

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 30 1998

x - x

DECISION

This is a judicial claim for refund or issuance of tax credit certificate in the amount of P14,816,373.00 allegedly representing overpaid gross receipts taxes paid for the 3rd and 4th quarters of year 1994 and the 1st up to the 4th quarters of the year 1995.

Petitioner is a domestic banking corporation duly organized and existing under the laws of the Republic of the Philippines, with head office located at Far East Bank Center, Sen. Gil Puyat Avenue, Makati City.

The facts are simple.

For the abovesaid quarters of years 1994 and 1995, petitioner allegedly paid the total amount of P244,016,142.01 representing gross receipts tax which was arrived at by including from the tax base the twenty percent (20%) final taxes on passive income.

On October 16, 1996, petitioner filed with respondent a written claim for tax credit/tax refund of its alleged overpaid gross receipts tax pursuant to this Court's decision in CTA Case No. 4720 entitled, **"Asian Bank Corporation vs. Commissioner of Internal Revenue"** dated January 30, 1996 wherein it was ruled that the

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basis for determining the gross receipts tax on banks and non-bank financial intermediaries should be the gross receipts of said institutions *minus* the twenty percent (20%) final taxes already withheld by various withholding agents on interest and other passive income of said institutions.

Two days later, on October 18, 1996, petitioner filed the instant petition for review.

At bar, petitioner reasserts its stance *a quo*. On the other hand, respondent contends, *inter alia*, the following special and affirmative defenses, to wit:

> x-x-x x-x-x x-x-x
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> 7. Interest from deposits and yield on any other monetary benefit from deposit substitutes and from trust fund and similar arrangement earned by a domestic corporation is subject to a 20% tax in accordance with Section 24(e) (1) of the National Internal Revenue code, which is the law applicable on this matter;.
>
> x-x-x x-x-x x-x-x
>
> 9. In claiming for refunds, it is incumbent upon petitioner to prove that it is indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

Records show that petitioner made several non-appearances and failed to file its formal offer of evidence while respondent submitted her case for decision without presenting evidence and without submitting a

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memorandum. In the same manner, petitioner failed to submit its memorandum despite notice.

The issue in this case is whether petitioner is entitled to its claim for refund.

After a careful review of the attending facts, the arguments and evidence of the parties and the applicable laws and jurisprudence in the case at bar, We peremptorily rule in favor of the respondent.

We bewail the lack of interest of the petitioner to prosecute its case with vigor and candor. Its repeated non-appearance and failure to comply with court procedures such as the filing of a formal offer of evidence and memorandum only serve to weaken, if not put a death knell, to its claim for refund.

The Rules of Court is strict in considering no evidence which has not been formally offered. (Section 34, Rule 132) Without any formal offer of evidence, thus, we could only blame the petitioner for its lost cause. Simply put, it has not proven anything.

Even the case of Oñate vs. The Court of Appeals and Taguba, G.R. No. 116149, promulgated on November 23, 1995, which relaxed the foregoing rule and allowed evidence not formally offered to be admitted and considered by the court provided that such evidence must have been duly identified by testimony duly recorded and that it must have been incorporated in the records of the case, fails to save petitioner's case. This is due to the fact that its duly marked and identified exhibits have not been incorporated in the records of the instant case. They are nowhere to be found.

As it stands, petitioner has only its petition for review and the documents annexed to it to prove its case. Respondent has properly denied all of petitioner's material allegations except as regards the parties and the existence of the laws and jurisprudence cited therein as well as the existence, likewise, of its written claim for refund. No admission was made as to the alleged facts contained in the petition. In effect, thus, the veracity of the alleged facts surrounding the claim for refund has been squarely put into issue by the respondent and in the absence of petitioner's duly offered evidence, this court is constrained not to grant herein claim for refund on the ground of lack of evidence to support the same.

In the same vein, the annexes to the petition cannot be considered by this Court because they have not been duly marked and identified by testimony duly recorded following the rule enunciated in the Oñate case, supra.

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It must be stressed at this point that a refund of taxes partakes the nature of a tax exemption and are construed in strictissimi juris against the taxpayer and in favor of the taxing authority. (**Insular Lumber Co. vs. CTA, 104 SCRA 710; CIR vs. Rio Tuba Nickel Mining Corp., 207 SCRA 549**)

WHEREFORE, in view of the foregoing, herein Petition for Review is hereby **DENIED** due to lack of evidence. No pronouncement as to costs.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this 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
Court of Tax Appeals

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