REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5402

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 20 2000

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P866,509.19, allegedly representing overpaid gross receipts tax for the calendar year ended December 31, 1994.

The facts of the case are simple.

Petitioner, Citytrust Finance Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at 10th Floor Stock Exchange Building, Exchange Road, Ortigas Center, Pasig City.

For the calendar year 1994, Petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts (pertaining to 5% GRT rate) in the total amount of P230,565,352.30 with corresponding gross receipts tax payments in the sum of P11,528,267.61, broken down as follows:

Period Covered	Exh.	Gross Receipts	Gross Receipts Tax
January to March 1994	A	P 68,390,939.08	P 3,419,546.95
April to June 1994	B	48,217,132.69	2,410,856.63
July to September 1994	C	61,687,170.61	3,084,358.53
October to December 1994	D	52,270,110.08	2,613,505.50
Total		P230,565,352.30	P11,528,267.61

Petitioner alleges that the gross receipts in the amount of P230,565,352.30 included the sum of P17,330,183.76, representing final withholding taxes derived from passive income.

On January 30, 1996, this Court rendered a decision in **CTA Case No. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue** wherein it was held that the 20% final withholding tax on a bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

On July 19, 1996, on the strength of the aforementioned decision, Petitioner filed with the Bureau of Internal Revenue a letter-request for the refund or issuance of tax credit certificate in the aggregate amount of P866,509.19, allegedly representing overpaid gross receipts tax for the year 1994.

Without waiting for an action from the Respondent, Petitioner on the same day filed the instant petition for review in order to toll the running of the two-year prescriptive period to judicially claim for the refund of overpaid internal revenue tax pursuant to Section 230 of the Tax Code, as amended.

By way of Special and Affirmative Defenses, Respondent avers that Petitioner's right to file a judicial action for refund of all taxes paid before July 19, 1994 has already prescribed; Petitioner's claim for refund is still undergoing administrative routinary investigation; the amount claimed by Petitioner as alleged overpaid gross receipts tax for the year 1994 is not properly documented; the alleged refundable gross receipts tax was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, the same is not refundable; Petitioner's allegation that it excessively paid gross receipts tax during the period under review does not ipso facto warrant the tax refund; Petitioner must prove that the exclusion being claimed from its gross receipts are allowed under the Tax Code and its implementing regulations; claims for refund are construed in *strictissimi juris* against the taxpayer; and Petitioner must prove that it has complied with the provisions of Section 230 of the Tax Code, as amended.

In order to support its claim for refund, Petitioner presented the following evidence:

1. The Quarterly Percentage Tax Returns for the year 1994 and the 1994 Amended Fourth Quarter Percentage Tax Return (Exhs. A to E, Inclusive of sub-markings);
2. The administrative claim for refund with the Bureau of Internal Revenue (Exh. F);
3. Computation of Petitioner's gross receipts for each quarter of 1994 (Exhs. G, H, I and J);
4. Letter from Bangko Sentral ng Pilipinas dated November 6, 1991 (Exh. L);
5. Certifications from SGV and Co. signed by Mr. Renato J. Galve, the commissioned independent CPA, who conducted the examination on Petitioner's documents relative to the instant claim for refund (Exhs. P and Q, inclusive of sub-markings);

6. 1994 Audited financial statement and the 1994 corporate annual income tax return (Exhs. R and S, inclusive of sub-markings);

7. Certifications from the Treasury Department and Government Securities Department of Bangko Sentral ng Pilipinas with respect to final taxes withheld on treasury bills and remittances to the Bureau of Internal Revenue for the years 1994 and 1995 (Exhs. T and V); and

8. Schedule of treasury bills purchased by Petitioner in 1994 from the secondary market with various outright purchase documents (Exhs. U, U-1 to U-15).

Respondent, on the other hand, elected not to submit controverting evidence. This case was submitted for decision after both parties presented their respective memorandum.

The Court is now confronted with the following issues:

a. Whether or not the 20% final withholding tax on bank's interest income should form part of the taxable receipts for purposes of computing the gross receipts tax; and

b. Whether or not Petitioner has proven its claim with sufficient evidence.

Anent the first issue, this Court finds Petitioner's cause to be meritorious. The final taxes derived by Petitioner on its passive income should no longer form part of the gross receipts for purposes of computing the gross receipts tax, as we have already ruled in the case entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996,** pertinent portions of which read as follows:

"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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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:

> 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.
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> > "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."

In fact Our ruling in the above decision has already been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Investment Phils., Inc. CA-G.R. SP No. 52707, dated August 17, 1999** when it ruled, 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."

The legal issue having been settled, We now delve on the factual aspect of this case which is the second issue at bar.

Section 230 of the Tax Code, as amended, provides that a claim for refund, both with the Bureau of Internal Revenue and with this Court, must be filed within two years from the date of payment of the tax. Furthermore, in counting for the two-year prescriptive period, the filing of the quarterly percentage tax return should be considered as the "date of payment of the tax" **(Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999; and Citytrust Investment Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5403, April**

19, 1999). The records show that Petitioner filed its Quarterly Percentage Tax Return for the first quarter of 1994 on April 20, 1994, while the instant petition for review was filed on July 19, 1996. Considering that the quarterly percentage tax return is required to be filed and paid on or before the 20th day after the end of each quarter, clearly, it can be concluded that the portion of the claim for refund of overpaid gross receipts tax for the first quarter of 1994 can no longer be considered due to prescription as it was filed beyond the two year period provided by law. The remaining claim for refund of Petitioner for the three quarters of 1994 is well within the two-year period.

What is now left for the Petitioner to prove is its compliance with the following requisites:

1. that it paid the gross receipts tax;
2. that it erroneously overpaid its gross receipts tax by including the 20% final withholding tax on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the year 1994; and
3. that the withholding agent certifies that there is 20% final withholding tax remitted on such passive income. (Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 5458, February 15, 1999; and BPI Capital vs. Commissioner of Internal Revenue, CTA Case No. 5457, March 1, 1999, cited in Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999, supra).

A meticulous examination of all the evidence at hand reveals that Petitioner was able to show that it paid gross receipts tax for the year 1994 as evidenced by the machine validations appearing on the lower portion of Petitioner's quarterly percentage tax returns (Exhs. "A" to "D", inclusive of sub-markings). The evidence also established that the 20% final withholding taxes in the total amount of P17,324,469.00 on the following passive income were included in the gross receipts reflected in Petitioner's quarterly percentage tax returns, to wit:

	Income	Final Tax
Interest Income –		
TAS/GS	P78,242,865.00	P15,648,573.00
Deposit of Banks	22,861.00	4,572.00
Interbank Call Loans Receivable	1,366,500.00	273,300.00
Trading Gain	6,147,749.00	1,229,550.00
Others	842,370.00	168,474.00
Total	P86,622,345.00	P17,324,469.00

This was attested to by the commissioned independent CPA, Mr. Renato J. Galve, and verified by the Court (Exhs. P and Q, inclusive of sub-markings).

From the above passive income, only the interest income on treasury bills were supported by certifications of withholding and remittance of 20% final taxes by Bangko Sentral ng Pilipinas (Exhs. T and V). The rest of the passive income were not similarly substantiated by evidence. Thus, Petitioner appears to be entitled to a partial refund of overpaid gross receipts tax on treasury bills. However, the documents presented by Petitioner are not sufficient to enable us to compute the amount of final taxes on treasury bills that was subjected to gross receipts tax.

It is evident from the records of the case that Petitioner purchased treasury bills direct from Bangko Sentral ng Pilipinas and from secondary market, Citytrust Banking

Corporation (Exhs. T, U, U-1 to U-15) in the total amount of P109,431,921.34 with corresponding withholding tax of P21,885,785.26. This total final tax of P21,885,785.26 is greater than the amount reflected in the quarterly percentage tax returns in the sum of P15,648,573.00 (Exhs. Q-4 and Q-5) which is composed of interest income on trading account securities (TAS) and government securities (GS).

We would like to emphasize the Trading Account Securities (TAS) include not only treasury bills but also other commercial papers while Government Securities (GS) are of two kinds, namely: treasury bills and treasury notes. These treasury bills are bearer securities that can be passed on to subsequent buyers.

In charging the documents submitted by Petitioner, this Court mulls over the possibility that a portion of these treasury bills are included in the claim that is already barred by prescription (as discussed earlier). We therefore cannot rely on the figures presented by Petitioner (P75,072,935.00 representing TAS and P3,169,930.00 representing GS) (Exh. G-4) as the bases of the interest income on treasury bills without knowing the said amounts' detailed composition. The failure of the Petitioner to show how much 20% final withholding taxes were withheld on treasury bills prevents this Court from granting the claim for refund.

Finally, We find the procedures followed by the auditing firm, SGV and Co., insufficient in so far as ascertaining the correctness of Petitioner's claim for refund is concerned because their report merely concentrated on the amount of P17,324,469.00 representing the final taxes paid on passive income for 1994. No information was given by said auditing firm on the amount of final taxes remitted to the BIR which will correspond with this amount of P17,324,469.00. The Central Bank Certifications on the remittance of final withholding taxes (Exhs. T and V) contained the totality of remittances made by Central Bank for all purchases of Treasury bills, by petitioner from 1994 to 1995 which turned out to be bigger. However, the amount of P17,324,469.00 includes not only treasury bills but also interest income on deposits with banks, interbank call loans, receivables, trading gain and others (Exh. Q-4). No evidence of remittance were introduced to prove payment of the above final withholding taxes to the BIR, the only evidence presented is that of the Central Bank Certification which failed to prove the amount being claimed on the present case for reasons explained above.

Well-settled is the rule that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Company, Ltd., 244 SCRA 332).**

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** due to prescription and insufficiency of evidence.

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