REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5823

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 08 2000

x - x

DECISION

This is a Petition for Review which seeks for the refund or issuance of a tax credit certificate in the amount of P2,266,391.36 representing overpaid gross receipts tax for the quarter ended March 31,1997.

The facts as adduced from the "Joint Stipulation of Facts and Issues" entered into by the parties on July 26,1999 (pages 36 to 37, CTA records), are as follows:

> 1. That Petitioner is a banking institution duly organized and existing under the laws of the Philippines with principle office at 262 Juan Luna Street, Binondo, Manila;
>
> 2. That in C.T.A. Case no. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue, the Honorable Court of Tax Appeals ruled that the twenty percent (20%) final withholding tax on a bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing the bank's gross receipts tax.
>
> 3. That the decision in Asian Bank Corporation vs. Commissioner of Internal Revenue under C.T.A. Case No. 4720 was appealed to the Court of Appeals;

4. That on March 25,1999, on the strength of said decision, EBC through a letter of even date (Annexes "C" and "C-1" of Petition) requested of the Respondent through the Revenue District Office No. 30, Revenue Region No.6, Binondo, Manila (the office having area jurisdiction over the Petitioner) the refund or issuance of a tax credit certificate for the March 31,1997 Quarter in the amount of PHILIPPINE PESOS: TWO MILLION TWO HUNDRED SIXTY SIX THOUSAND THREE HUNDRED NINETY ONE PESOS and 36/100 (P2,266,391.36);

5. That the Petition for tax refund was filed within the two-year prescriptive period as the Petitioner's GRT tax for the quarter ended March 31,1997 was paid on April 21,1997 and the present petition was filed on April 21,1999;

6. That the claim for refund is pending administrative investigation;

7. That the Petitioner and the authorized agent bank is one and the same person.

Records of the case show that on April 21,1997, Petitioner seasonably filed with the Bureau of Internal Revenue (BIR) its various quarterly percentage tax returns, covering those of its Head Office and branches, and paid the BIR a total amount of P57,804,954.75 as gross receipts tax. Of the said amount, the Gross Receipts Tax (GRT) paid by EBC Head Office was P32,334,361.88 as shown by the Transmittal Sheet of Quarterly Withholding Tax Returns for the quarter ended March 31, 1997 (Exh. A-1). The GRT was computed based on the accumulated total gross receipts of P769,902,611.00 (Exh. C-3).

On the strength of the ruling of this Court in the case of ***Asian Bank Corporation vs. CIR, CTA Case No. 4720 dated January 30, 1996,*** where we held that the 20% final withholding tax on a bank as financial institution's passive income should not form part of its gross receipts tax base, Petitioner filed with the BIR on March 25, 1999 an administrative claim for refund or issuance of a tax credit certificate for, among other sums, P2,266,391.36 corresponding to the difference between the Gross Receipts Tax paid of P32,334,361.88 pertaining to EBC Head Office and the Adjusted Gross Receipts Tax in the amount of P30,067,970.52, computed as follows:

Gross Receipts Subjected to Tax	P769,902,611.98
Less: 20% Portion of Tax	
Paid Income (Annex B1 of 2)	5,037,709.09
Investment Income subject to 20% final tax booked at gross (Annex B2 of 2)	40,290,118.10
Adjusted Gross Receipts Tax Base	P724,574,784.79

Computation of Adjusted Gross Receipt Tax:

	Gross Receipts	Tax Due
0%	P104,229,864.45	P 0.00
1%	9,919,192.26	99,191.92
3%	27,625,390.10	828,761.70
5%	582,800,337.98	29,140,016.90
	P724,574,784.79	P30,067,970.52

Gross Receipts Tax Paid	P32,334,361.88
Adjusted Gross Receipts Tax	30,067,970.52
Tax Refund	P 2,266,391.36

Petitioner alleged that in arriving at the adjusted gross receipts tax base of P724,574,784.79, it deducted from the original gross receipts of P769,902,611.98 the amount of P5,037,709.09 representing the 20% tax withheld on income received and booked net of final tax and P40,290,118.10 representing the 20% final tax withheld on tax paid income booked at gross. Petitioner is now claiming the excess GRT paid amounting to P2,266,391.36.

As there was no action on the part of herein Respondent, the instant Petition was filed on April 21, 1999 to toll the running of the two-year prescriptive period.

In his Answer filed on February 20, 1998, Respondent raised the following Special and Affirmative Defenses, to wit:

x x x x x x x x x

> 11. The decision in Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720) is pending appeal with the Court of Tax Appeals. Hence, invocation thereof at this point in time is premature.
>
> 12. There is no provision in the Tax Code or any Special Law which excludes the 20% final income tax withholding under Section 50(a) of the Tax Code, as no longer forming part of the gross receipts for the purpose of the computation of gross receipt tax under Section 119 of the Tax Code.
>
> 13. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue and that the 20% final withholding tax on income was actually remitted by its withholding agents in accordance with the provisions of the Tax Code.
>
> 14. The claim for refund is pending administrative investigation.
>
> 15. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that taxes sought to be refunded were erroneously or illegally collected.
>
> 16. The non-inclusion of the 20% final withholding tax on income from the gross income for purposes of the gross receipts tax operates as an exemption from tax. Hence, the same must be construed strictly against the one who asserts the claim of exemption, considering that tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception.
>
> 17. Claims for refund of taxes are to be construed strictly against the claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).
>
> 18. Petitioner must show that it has complied with the provisions of Sections 204(3) and Section 230 of the Tax Code, as amended.

In order to substantiate its claim for refund, Petitioner presented the following documentary evidence, to wit:

Exhibits	Description
A	Petitioner's Transmittal Sheet of Quarterly Withholding Tax Returns for Quarter Ended March 31, 1997
B	Petitioner's Head Office Quarterly Percentage Tax Return
C	Written claim for refund dated December 29, 1997
D	Petitioner's Head Office Income and Expense Statement
E to F-2	Petitioner's Subsidiary Ledger Transactions on Expense Account

In the Joint Stipulation of Facts and Issues approved by the Court in its Resolution of July 28, 1999, the parties agreed to limit the issues to be resolved on the following:

1. Whether or not EBC Head Office actually included in the computation of its GRT Base for the quarter ended March 31, 1997 the amounts of [a] P5,037,709.09 (representing 20% tax withheld on income received and booked net of 20% final tax during the quarter ended March 31, 1997), and [b] P40,290,118.10 (representing 20% final tax withheld on tax paid income booked at gross [100%] subjected to gross receipts tax for the quarter ended March 31, 1997).

2. Whether or not the said amounts represented the twenty percent (20%) final tax on certain passive income of EBC for the said quarter.

3. Whether or not the said amounts were received by EBC as part of its gross receipts for the said quarter.

4. Whether or not the respective withholding agents of EBC have paid the said amounts to the BIR.

5. Whether or not EBC is entitled to its claim for refund covering the said quarter and for how much.

As the aforementioned issues are interrelated, We deem it best to streamline and simplify them to one main issue: whether or not Petitioner is entitled to the refund of the amount of P2,266,391.00 allegedly representing the excess gross receipts tax paid.

To begin with, the legal controversy at bar is not one of first impression. This Court has already settled the legal aspect of this case in **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated on January 30, 1996** wherein it ruled that the 20% final withholding tax on a bank or a financial institution's passive income should not form part of its gross receipts tax base for purposes of computing the gross receipts tax.

However, even if the law entitles Petitioner to a refund of overpaid gross receipts taxes, it does not necessarily follow that there shall be an automatic grant of the claim in the absence of sufficient and convincing factual evidence to prove its entitlement thereto. Thus, in order to be entitled to the refund of overpaid gross receipts tax based on the Asian Bank decision *(supra)*, Petitioner must sufficiently prove the following:

1. That it actually paid the 20% final withholding taxes on its gross receipts from passive income;
2. That the 20% final withholding tax on passive income formed part of its gross receipts subjected to the gross receipts tax; and
3. That it actually paid the GRT due on its gross receipts from passive income inclusive of the 20% final withholding taxes ***(see Equitable Banking Corporation vs. CIR, CTA Case No. 5661, March 30, 2000; Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No.***

5458, February 15,1999; Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14,1999)

After a thorough examination of the evidence adduced by Petitioner, this Court finds that the above requirements were not satisfactorily met.

Petitioner's Quarterly Percentage Tax Return and the Transmittal Sheet of Percentage Tax of Head Office and Branches/Units of Large Taxpayers showed that Petitioner's head office paid a gross receipts tax of P32,334,361.88 on taxable gross receipts of P769,902,611.98 (Exh. C-3). Petitioner allegedly included in its taxable gross receipts of P769,902,611.98 the amounts of P5,037,709.09 (Exh. C-4) representing 20% final tax withheld on income received and booked net of 20% final tax and P40,290,118.10 (Exh. C-5) representing 20% final tax withheld on tax paid income booked at gross for which 5% gross receipts tax of P2,266,391.36 (Exh. C-8) was allegedly paid.

Based on the evidence on record, Petitioner failed to present proof of actual withholding of the 20% final taxes of P5,037,709.09 and P40,290,118.10. The certificates of final taxes withheld issued by the withholding agents or issuers of the investment securities showing the amount of interest income payment and the corresponding final withholding tax were not presented. Nowhere from among the documents presented would show that the alleged 20% final tax on its interest income was actually withheld and remitted to the BIR. In the case entitled **China Banking Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5433, dated October 7, 1998,** this Court has the occasion to rule on the importance of presenting the certificates of final income tax withheld in cases where the Petitioner is claiming refund of gross receipts tax. In this case, the Court found Petitioner legally entitled to the refund but denied the petition for review for failure of Petitioner to produce the said document, thus:

> A thorough and careful examination of all the documentary evidence presented by the Petitioner reveals that Petitioner has failed to substantially prove its entitlement to the refund/credit sought. Even though, Petitioner in the case at bar had satisfactorily proved through various documentary evidence that it actually paid its gross receipts taxes which was computed based on its gross receipts inclusive of the 20% final withholding tax on the bank's interest income, it however failed to [prove that the said 20% final withholding taxes were actually paid and remitted to the Bureau of Internal Revenue, thus entitling the same to be excluded from the computation of Petitioner's gross receipt's tax. Petitioner is reminded that in the case of Asian Bank Corporation (supra) from which it based its claim for refund, a disputable presumption exists that the final tax excluded from the computation of gross receipts tax already "went to the coffers of the government", and therefore, should no longer form part of its gross receipts for the purpose of computing the GRT. This Court in deciding on the Asian Bank case sought to avoid the unfavored existence of double taxation. In the instant case, Petitioner showed no convincing proof that it suffered from being erroneously taxed twice thus entitling it to the refund sought.
>
> It is our opinion that for the Petitioner to substantially prove its entitlement to the refund/ credit sought, it should have presented as evidence copies of Certificates of Final Tax Withheld issued by the withholding agents, x x x or any proof whatsoever that would show payment of the 20% final withholding tax and which would necessarily justify its exclusion from Petitioner's gross receipts.

Petitioner likewise failed to substantiate that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax. While Petitioner's 1997 first quarter taxable gross receipts (passive and non-passive) and the corresponding gross receipts tax appearing in its 1997 first quarterly percentage tax return (Exh. B) tally with those appearing in its computation sheet and subsidiary ledger (Exhs. C-3 to C-8; E to I-8-a), however the amounts of passive income shown in the computation sheet and subsidiary ledger cannot be verified as to whether these were recorded at gross or net of the 20% withholding taxes. The amount indicated therein could only be ascertained through the source documents which could support and establish the accuracy of the figures as declared by the Petitioner. Petitioner should have adduced as evidence supporting documents such as detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advises accounting tickets, certificates of final taxes withheld, etc., to show the actual receipt of income and the withholding of the corresponding 20% final tax.

The contention of the Petitioner that the entries in the general and subsidiary ledgers should be given highest probative value, pursuant to Section 43 of Rule 130 of the Rules of Court, holds no water. While it is true that entries in the ledger are made by a bank personnel in his professional capacity or in the performance of a duty in the ordinary or regular course of business, it is still necessary that the source document be presented to verify the contents. Absent this pertinent document, a serious doubt would be created as to the veracity, accuracy and truthfulness of the entries made. Contrary to Petitioner's assertion, the ledger balances and the working papers bearing the data of each of the transaction are not sufficient proof of Petitioner's claim for refund. Entries in the general ledger are already the results or summation of Petitioner's detailed transaction on passive investments. Thus, the raw data entered in the ledger should be corroborated by the production of the best evidence obtainable, such as the above-mentioned source documents. As public interest is involved in tax refunds, this Court should be cautious of litigants presenting its case without any supporting documents that would attest to the accuracy of the amount it claimed for refund **(Equitable Banking Corporation vs. CIR CTA Case No. 5914, June 28, 2000).**

As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, it should be construed *strictissimi juris* against the claimant **(CIR vs. Procter and Gamble Phils., Mfg., Corp., 204 SCRA 377).** This strict construction of tax refunds necessitates upon the claimant to create a prima facie case in his favor. Thus, he must justify his claim by showing covering proofs and introducing strong evidence to satisfactorily sustain his point of contention. Failure on his part to adduce evidence pertinent and substantial to his case is fatal to his claim (*ibid.*).

Finally, we are not swayed by Petitioner's ratiocination that in the Asian Bank case what is essential to prove is that a financial institution did not receive the amount of 20% final tax for it not to include the same in the computation of gross receipts tax. Petitioner failed to analyze that the Asian Bank case involves an assessment case that presupposes an audit from Respondent's examiners and requires only a ruling from the Court regarding exclusion of final taxes in the base of gross receipts. It does not involve a refund case wherein petitioner should adduce evidence to show payment of final tax in order to be entitled to a refund **(Equitable Banking Corporation vs. CIR, CTA Case No. 5640, June 7, 2000).**

Inasmuch as Petitioner failed to prove the inclusion of the 20% final withholding taxes of P5,037,709.09 and P40,290,118.10 in its 1997 quarterly gross receipts from passive income subjected to 5% GRT, it then follows that it failed to show that the corresponding 5% GRT of P2,266,391.36 was included in its 1997 total quarterly GRT payment of P32,334,361.88.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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