REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK – MANILA BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6097

Promulgated:

APR 04 2002

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DECISION

The instant petition seeks the refund or issuance of a tax credit certificate in the amount of P1,367,447.85, allegedly representing overpaid gross receipts tax for the taxable year 1998.

The antecedent facts follow.

Petitioner is a resident foreign banking institution duly organized and registered under the laws of England and authorized by the Securities and Exchange Commission to engage in business in the Philippines. Its office address is located at the 10th Floor, Skyplaza Building, Ayala Avenue, Makati City.

In 1998, Petitioner filed its Quarterly Percentage Tax Returns and paid its gross receipts tax (GRT, for brevity) for each quarter as follows (par. 1, Joint Stipulation of Facts and Issues):

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Exhibit	Date Filed	Period Covered	GRT Paid
A	April 20, 1998	1st Quarter	P34,743,003.00
B	July 27, 1998	2nd Quarter	25,266,375.00
C	October 26, 1998	3rd Quarter	28,396,310.00
D	January 25, 1999	4th Quarter	23,421,132.51

For the four quarters of 1998, Petitioner alleged that its GRT payment was based on gross income which included an amount equal to the 20% final withholding tax (FWT) of P27,348,957.00 that was withheld from its passive interest income of P136,744,785.00. Thus, according to Petitioner, since the FWT on passive interest income should not form part of the taxable amount for GRT purposes, it has a refundable amount of P1,367,447.85, computed as follows:

20% Final Withholding tax	
Amortization of Discount on:	
T-Bills Held for Reserves	P 106,933,024.02
T-Bills Trading	16,122,951.52
T-Bills Investment	221,898.66
Amortization of T-Bills Discount	P 123,277,874.20
Interest on BSP Loans subjected to FWT	13,260,138.89
Interest on GS	206,771.91
Total Income Subjected to 20% FWT	**P 136,744,785.00**
20% FWT on the Above Income	27,348,957.00
	5%
5% GRT	**P 1,367,447.85**
Overpaid GRT	**P 1,367,447.85**

On February 18, 2000, Petitioner filed with the Large Taxpayers Assistance Division of the Bureau of Internal Revenue a letter-claim for the refund of the amount of P1,367,447.85 pursuant to Section 204, in relation to Section 229 of the National Internal Revenue Code (NIRC) of 1997 (par. 2, Joint Stipulation of Facts and Issues, Annex E,

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Petition for Review). Petitioner cited as basis for its claim, the decision of the **Court of Appeals in the case of Commissioner of Internal Revenue vs. Citytrust Investment Phils., Inc., docketed as CA-G.R. SP No. 52707 dated August 17, 1999.** In the said case, the Court of Appeals affirmed this Court's decision in CTA Case No. 5403, promulgated on April 19, 1999, which declared that the 20% final taxes already withheld by various withholding agents on the passive income of banks and non-banking intermediaries are to be excluded in the computation of the latter's obligation on the payment of gross receipts tax.

As there was no action on the part of herein Respondent and the two-year prescriptive period was about to expire, Petitioner filed the present case on April 19, 2000.

Respondent filed his Answer on May 31, 2000, claiming by way of Special and Affirmative Defenses that:

> "4. Petitioner's alleged claim for tax credit is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 5. The tax sought to be refunded was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, not refundable;
>
> 6. Petitioner's allegation that it has an (sic) overpaid Gross Receipts Taxes for 1998 in the amount of P1,367,447.85 does not *ipso facto* warrant the credit. Petitioner has the burden of proving that it is indeed entitled to the credit sought as it is a well-settled rule that claims for tax refund/tax credit are construed in *"strictissimi juris"* against the taxpayer *(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31 SCRA 95)*. This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the petitioner to prove that it is indeed entitled to the refund/credit sought. Failure on the part of the petitioner to prove the

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same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. *(Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466);*

7. There is no provision of law which excludes the 20% final income tax withheld under Section 57(A) of the Tax Code in the computation of the 5% gross receipts tax;

8. The case of Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821, is inapplicable to the instant case as the circumstances of the two cases are not the same;

9. The Honorable Court of Appeals, in Commissioner of Internal Revenue vs. Asianbank Corporation, CA-G.R. No. 51248 promulgated November 22, 1999, held that the 20% final withholding tax on the bank's interest income forms part of taxable gross receipts for purposes of computing the gross receipts tax;

10. Petitioner must show compliance with the provisions of Section 204(c) and 229 of the Tax Code."

The issues we are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not the 20% final withholding tax on Petitioner's interest income should form part of its taxable gross receipts for computing the 5% gross receipts tax (GRT).
2. Whether or not Petitioner is entitled to the refund of P1,367,447.85 representing overpaid GRT for taxable year 1998.
3. Whether or not Petitioner's claim for refund of alleged overpaid GRT for 1998 is substantiated by documentary evidence.

We dwell on the legal issue.

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Petitioner asserts that its overpaid GRT resulted from the erroneous inclusion of the 20% FWT on the interest income derived from its passive investments, such as investments in T-bills, government securities and BSP loans. Citing Section 4 of Revenue Regulations No. 12-80 which implements Section 119 (now Section 121) of the Tax Code, as amended, as well as this Court's previous ruling in the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated on January 30, 1996, Petitioner concludes that it is clear from our tax laws and jurisprudence that the term "gross receipts" should refer to those items which are actually received by the taxpayer. And since it did not actually receive the 20% FWT on the interest income derived from its passive investments as the same was withheld from it and ultimately remitted to the BIR, Petitioner believes that it was error on its part to have included the 20% FWT on interest income as part of its gross receipts for purposes of computing its GRT liability for 1998.

Respondent, on the other hand, maintains that there is no provision of law which excludes the 20% final tax withheld on passive income earned by financial institutions in the computation of the 5% gross receipts.

We find Petitioner's argument legally objectionable for two (2) reasons, to state:

> (1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts as basis of the gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions *(Consolidated Mines, Inc. vs. CTA, L-18846, August 29, 1974)*. The two principal accounting methods expressly

and impliedly recognized by the Tax Code and the Income Tax Regulations are:

(a) Cash receipts and disbursement method or cash basis. - Income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year, and

(b) Accrual basis. - Income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not yet paid within the year.

(2) The non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. 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, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statutes are to receive a reasonable construction with a view to carrying out their purpose and intent (51 Am Jur 361). It should not be construed as to permit the taxpayer to easily evade the payment of the tax *(Cabon Steel Co. vs. Lewelyn, 251 U.S. 501).* Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law *(Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970)* A tax statute should be construed to avoid the possibilities of tax evasion *(Lorenzo vs. Posadas, 64 Phils. 353).*

Section 4(e) of Revenue Regulations No. 12-80, relied upon by Petitioner provides:

Section 4. ***Manner of Computation of Tax Base.*** - x x x

(e) *Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities.* - The rates of taxes to be imposed

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> on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount **actually received** shall be included in the tax base of such financial institutions, as provided hereunder: x x x

It is significant to note, however, that Section 8(c) of the same revenue regulations, as well as Section 7(c) of Revenue Regulations No. 17-84 which repealed the former insofar as inconsistent portions are concerned, both contain this provision:

> **Section 7.** ***Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes.***
>
> (c) If the recipient of the above-mentioned items of income are financial institutions, the same shall be **included as part of the tax base** upon which the gross receipts tax is imposed.

Clearly from the above, the basis of the GRT is inclusive of the final withholding tax. In this Court's recently decided cases of ***Equitable PCI Bank (formerly Equitable Banking Corporation) vs. Commissioner of Internal Revenue,*** **CTA Case No. 6000, November 23, 2001;** ***FEB Investments, Inc. vs. The Commissioner of Internal Revenue*****, CTA Case No. 5758, November 20, 2001;** ***Far East Bank and Trust Company vs. Commissioner of Internal Revenue*****, CTA Case No. 5763, November 16, 2001; and** ***Standard Chartered Bank vs. Commissioner of Internal Revenue*****, CTA Case No. 5679, November 16, 2001,** this Court already ruled that for purposes of computing the GRT of banks and other financial institutions, the 20% final withholding tax on certain passive income shall form part of their gross receipts. Our conclusion finds support in the ruling of the Court of Appeals in the case entitled **Commissioner of**

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Internal Revenue vs. Asianbank Corporation, CA-G.R. SP No. 51248 promulgated on November 22, 1999, excerpts of which are quoted hereunder:

> "It is true that Revenue Regulations No. 12-80 provides that the gross receipts tax on banks and other financial institutions should be based on all items of income actually received. Actual receipt here is used in opposition to mere accrual *(Rep. vs. Lim Tian Teng sons & Co., 16 SCRA 584).*
>
> But receipt may be actual or constructive. Article 531 of the Civil Code provides that possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of one's will, or by the proper acts and legal formalities established for acquiring such right. Moreover, taxation income may be received by the taxpayer himself or by someone authorized to receive it for him (Art. 532, Civil Code). The 20% final tax withheld from interest income of banks and other similar institutions is not income that they have not received, it is simply withheld from them and paid to the government, for their benefit. Thus, the 20% income tax withheld from the interest income is, in fact, money of the taxpayer bank but paid by the payor to the government in satisfaction of the bank's obligation to pay the tax on interest earned. It is the bank's obligation to pay the tax. Hence the withholding of the said tax and its payment to the government is for its benefit."

In his *Annotations and Jurisprudence on the National Internal Revenue Code as amended*, former Commissioner of Internal Revenue Jose Arañas defined gross receipts under then Section 260 (previously Section 249 and now Section 121) of the Tax Code as follows:

> **260(3).** ***Meaning of "gross receipts".*** - The term "gross receipts" provided for in Section 249 of the Tax Code should be interpreted to mean "as the whole amount received without deductions," otherwise, it will be considered as "net receipts" *(National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952).*
>
> Profits derived from the sale of miscellaneous accounts, whether it is in connection with the banking business of the banking institution or not, so long as they were earned or derived from its fund, as a banking

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institution, should be included in gross receipts *(ibid)*. Arañas, *Annotations and Jurisprudence on the National Internal Revenue Code as amended,* 6th ed. (1983), Vol. II, p. 479.

In his *Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,* Jose N. Nolledo draws the same conclusion:

> "No deductions are allowed from gross income before the 5% tax is imposed as otherwise, the tax is based on net receipts *(See National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952).* Nolledo, *Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,* 1976 Revised Edition, p. 1127."

In the United States, whose jurisprudence has persuasive effect in this jurisdiction, the term "gross receipts" has long had this established meaning:

> "Gross income," "gross proceeds" and "gross receipts" all mean the same, it has been held, although "gross earnings" are sometimes distinguished from "gross receipts". Gross receipts ordinarily mean the total receipts before anything is deducted for the expenses of management." Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, pp. 1789-1790, citing State v. Illinois Cent. R. Co., 246 Ill. 188, 92. N.E. 814.
>
> "Gross earnings means entire earnings from all operations and not earnings less operating expenses, taxes and bad debts. State v. United Electric Light & Water Co., 90 Conn. 452, 97 Atl. 857" Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, p. 1790.

Excise tax has not been allowed as a deduction for purposes of determining gross receipts. In interpreting the term "gross receipts", Mertens, *Law of Federal Income Taxation,* has this to say:

&3.37. Construction of Specific Words

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x x x

Gross Receipts

In determining "gross receipts" such descriptions as "the total amount received or accrued" have been applied. That gross receipts represent the total amount received or accrued is plain; with respect to inventory, it is the amount the customer paid and not such amount reduced by any excise tax for which the seller is responsible. This definition of gross receipts – not subtracting the excise payments – has been applied in formulas for DISC's. Mertens Law of Federal Income Taxation, 1995 edition, Chapter 3, page 54, Section 3.37, citing Lucky Lager Brewing Co. v. Comm., 26 TC 836 (1956), affd 246 F 2d 621 (CA9 1957) and Brown-Forman Corp. v. Comm., 94 TC 419 (1990).

In the aforecited **Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, 246 F 2d 621 (CA9 1957),** the United States Court of Appeals ruled:

"The contention of petitioner is that the word "gross" in the term "gross receipts" means what the buyer paid for the beer less what the manufacturer paid to the government prior to its sale under the excise tax, enacted in 1939. x x x.

We do not agree. The language of paragraph (5) of Section 435(e) that "gross receipts" are "the total amount received or accrued ***from the sale*** of stock in trade" [emphasis supplied] is irrefutably plain. It is a logical absurdity to contend that the "total amount received" from the sales is not what the customer paid but a lesser amount determined by a deduction of a particular tax paid, here requited to be paid and in fact paid by the seller, before the delivery of the beer. *Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, United States Court of Appeals, Ninth Circuit, June 24, 1957, 246 F 2d 621 (CA9 1957).*

The exclusion of 20% FWT would seriously erode the GRT base. In effect it would reduce by 20% the tax on gross receipts under Sections 121 (Tax on Banks and Non-bank Financial Intermediaries) and 122 (Tax on Finance Companies). Tax exemptions are strictly construed against the taxpayer. In the absence of any clear

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provision of law excluding the 20% FWT from the tax base for GRT purposes, we cannot conclude that such 20% FWT should be excluded for purposes of GRT computation.

Finding Petitioner not to be legally entitled to the refund sought, We find it no longer necessary to delve into the factual issues raised.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(Dissenting)
ERNESTO D. ACOSTA
Presiding Judge

JUANITO C. CASTAÑEDA, JR.
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

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DISSENTING OPINION

The majority opinion found petitioner's argument legally objectionable and consequently denied the claim for refund on their firm belief that since there is no clear provision of law excluding the 20% final withholding tax (FWT) from the tax base for gross receipts tax (GRT) purposes, there is no valid reason why said 20% should not be included in the gross receipts tax computation.

This has been the position of this Court in the case entitled **Asianbank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated on January 30, 1996** where it was held that the 20% FWT on a bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing the GRT.

The Court of Appeals agreed with this ruling in the case of **Commissioner of Internal Revenue vs. Citytrust Philippines, CA G.R. SP No. 52707 promulgated on August 17, 1999,** in this manner:

> "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."

This conclusion was arrived at by the Court of Appeals in consonance with the ruling of the Supreme Court in the case of **Commissioner of Internal Revenue vs. Tours Specialists, Inc., 183 SCRA 402.**

Additionally, the Court of Appeals again ruled in favor of my position in the case of **Commissioner of Internal Revenue vs. China Banking Corporation, CA G.R. SP No. 50790 promulgated on October 16, 2000** where it categorically stated, thus:

> The imposition of the 5% gross receipts tax is based on the following provision of the National Internal Revenue Code:
>
>> "Section 119. *Tax on banks and non-bank financial intermediaries.* - There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:
>>
>> (a) On interest, commissions and discount from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.

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Short-term maturity
not in excess of two (2) years 5%

Medium-term maturity – over two (2) years
but not exceeding four (4) years 3%

Long-term maturity –
(i) over four (4) years but not
exceeding seven (7) years 1%

(b) On dividends 0%

(c) On royalties rentals of property real or personal profits from exchange and all other items treated as gross income under Section 28 of this Code 5%

Provided, however, That in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short medium or long-term and the correct rate of tax shall be applied accordingly.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financial activities."

The tax imposed on the aforequoted provision of law is based on the gross receipts whether derived from banking or non-banking operations. "Gross receipts" is not the same as "gross earnings." **"Receipts" means amount actually received.** x x x. (Underscoring supplied)

WHEREFORE, I vote to grant the claim for refund in the amount of P1,367,447.85.

ERNESTO D. ACOSTA
Presiding Judge

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