REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI CAPITAL CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5457

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 01 1999

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DECISION

The issue which is presented for our consideration is whether or not Petitioner is entitled to the refund/tax credit in the amount of ₱1,763,523.84, allegedly representing its excess or erroneously paid gross receipts taxes for the fourth quarter of 1994 and the four quarters of 1995.

As represented, Petitioner is a domestic investment house or non-bank financial intermediary duly organized and existing under the laws of the Philippines with head office at the BPI Bldg., Ayala Avenue corner Paseo de Roxas Streets, Makati City.

For the calendar years 1994 and 1995, Petitioner filed with Respondent its quarterly percentage tax returns for the particular quarter of each year (fourth quarter, 1994/four quarters, 1995) and paid the corresponding gross receipts tax (GRT) thereon, hereunder summarized, the tax base of which includes the passive income which were subjected to twenty percent (20%) final taxes, already withheld and paid to Respondent by the various clients of Petitioner.

	Period Covered	GRT	Date Paid/ filed	Exh.
1994				
4th Quarter	(Oct.-Dec.)	₱ 975,995.88	01-20-95	B
1995				
1st Quarter	(Jan.-Mar.)	₱2,626,547.94	04-20-95	D
2nd Quarter	(April-June)	5,883,122.60	07-20-95	E
3rd Quarter	(July-Sept.)	3,795,004.82	10-20-95	F
4th Quarter	(Oct.-Dec.)	5,269,616.43	01-22-96	G

After taking into consideration the Decision of this Court, dated January 30, 1996, in the case of *Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720*, which ruled that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner filed with the Respondent on September 24, 1996, a claim for refund in the amounts of ₱559,033.00 and ₱1,930,187.00, totalling ₱2,489,220.00, allegedly representing its excess/overpaid gross receipts tax for the years 1994 and 1995, respectively.

The same was not acted upon by Respondent, hence, on January 17, 1997, Petitioner filed with this Court the instant Petition for Review, with the claimed refund reduced to only ₱2,076,422.28.

Petitioner presents as *raison d'etre* for its Petition for Review that the gross receipts tax paid by it in the particular quarters pertaining to 1994 and 1995 were based on total gross receipts, inclusive of the passive income which were subjected to the 20% final withholding tax at source. thus, it stressed, that in the light of the aforementioned ruling of this Court in the Asian Bank case, ***supra***, which states that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner has actually overpaid the amount legally due from it insofar as its GRT obligations are concerned, hence, a refund is, therefore, in order.

Respondent on the other hand, by way of special and affirmative defenses, alleged that (1) Petitioner's claim for refund of alleged erroneously paid gross receipt taxes for the fourth quarter of 1994 and calendar year 1995 in the aggregate amount of ₱2,076,422.28 is still under administrative investigation by the BIR; (2) taxes paid are presumed collected in accordance with law and regulations. hence, not refundable; (3) it is incumbent upon Petitioner to show that it has complied with the provisions of Section 230 of the Tax Code; and (4) well-settled is the rule that claims for refund are construed strictly against claimants, since they partake of the nature of exemptions from taxation.

In its Memorandum, Petitioner pointed out that it is entitled to a refund of the amount of ₱1,763,523.84 representing its excess GRT payments for the fourth quarter of 1994 and the whole of 1995 (Exh. J) in lieu of the amounts previously mentioned in its claim for refund with Respondent and in the instant Petition for Review, on the ground it erroneously used the flat rate of 5% in computing for excess GRT payments instead of using the applicable rates of 1%, 3% and 5% depending on the term of the investments on which the tax paid interest income was earned, thus, as adverted at the onset, the issue to be resolved by the Court is whether or not Petitioner is entitled to the refund/tax credit in the amount of ₱1,763,523.84, allegedly representing its excess or erroneously paid gross receipts taxes for the fourth quarter of 1994 and the four quarters of 1995.

There is no dispute as to the legal issue of this case as this is not the first time that this Court has been confronted with such issue. As correctly pointed out by the Petitioner, this Court has resolved the same issue in the case of ***Asian Bank Corporation vs. Commissioner of Internal Revenue, supra***, which is anchored on similar factual circumstances and on all fours with the case at bar. Hence, we find no cogent justification to deviate from our Decision in said case, which states in part, to wit:

"The assessment for GRT is based on Section 119 of the Tax Code, quoted hereunder thus:

SEC. 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 discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.

Short-term maturity not in excess of two (2) years	5%
Medium-term maturity-over two years but not exceeding four (4) years	3%
Long-term maturity:	
(i) Over four (4) years but not exceeding seven (7) years	1%
(ii) Over seven (7) years	0%
(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 referred to in paragraph (a) 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 banking activities.

The aforequoted provision of the law speaks of gross receipts as the basis of the 5% bank tax or GRT, and it is Petitioner's contention that the interest income included as part of such gross receipts should be computed minus the final tax already withheld by various withholding agents for the reason that such amount did not actually go to its funds, hence was not actually received by them.

We agree with the Petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.

Revenue Regulations No. 12-80 dated November 7, 1980 on Taxation of Certain income Derived from Banking Activities provides that the rates of tax to be imposed on the gross receipts of such financial institution; shall be based on all items of <u>income actually received</u>, thus:

> SEC. 4. xxx xxx xxx
>
> (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 on the gross receipts of such financial institutions <u>shall be based on all items of income actually received</u>. 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. (Underscoring supplied)

From the foregoing, it is but logical to infer that the final tax, not having been received by the Petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for the purpose of computing the GRI. 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, 1966, 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:

> "xx xx. The government could not have meant to tax as gross receipt of the Manila Jockey Club the 1/2 % 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, to winning horses and Jockeys-admitted 5%. It is true that the law says that out of the total wager funds 12 1/2 % 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 prizes and bonuses of jockeys, which portion is admittedly 5% out of the 12 1/2 % 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.

> "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 & 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*."

The legal issue having been settled, what remains to be resolved are factual matters, particularly as to whether or not Petitioner has established by evidence its claim for refund.

After a careful examination of the Petitioner's evidence, the Court finds that Petitioner did not clearly establish with exactitude the amount of its claim for refund. The Court was not properly guided by the Petitioner as to how much of its gross sales/ receipts/earnings were subjected to 5% tax rate, how much were subjected to 3% tax rate and how much were subjected to 1% and zero percent rate. Even though there was an auditor's report (Exh. J) which states that Petitioner erroneously used the flat rate of 5%, thus, finds a lesser amount as excess GRT for the said period after applying the correct rates of 1%, 3% and 5%, the Court nevertheless disregarded the same as it failed to show to this Court how the amount was arrived at and for its failure to present the source documents as basis thereof. In other words, there was no way by which this Court can determine how much Petitioner is legally entitled to.

Furthermore, to be entitled to the refund sought, Petitioner is bound to prove to this Court that (1) it paid GRT to the Respondent; (2) that the same is over or in excess of the GRT required by law; and (3) that it complied with Section 230 (now 229) of the Tax Code on the filing of the claim for refund. Moreover, it is also the responsibility of Petitioner to show to this Court that the total amount of the 20% final withholding taxes on interest income (which were allegedly deducted from gross receipts/sales/earnings of Petitioner for the period in question as a result of the Asian Bank ruling to arrive at the correct GRT and the claimed refundable amount) were withheld and remitted by its withholding agents, i.e. the Bangko Sentral ng Pilipinas (BSP), to the herein Respondent. To comply with these evidentiary requirements, Petitioner must present the Statements or Certificates of Tax Withheld at Source issued by its withholding agents, together with a summary of the same, as these documents will clearly show how much final taxes were withheld and remitted by the withholding agents to the Respondent, for the account of the Petitioner. The total of these 20% final taxes withheld from Petitioner's interest income will be the basis of the amount which will be deducted from the total gross receipts of the Petitioner for the period in question, before the same will be subjected to the 5%, 3%, 1%, 0% GRT rate as required by Sec. 119, ***supra***, and as discussed in the Asian Bank case. In the case at bar Petitioner presented no evidence to this effect. Furthermore, this Court finds that Petitioner failed to prove to this Court how much of the total gross receipts derived from passive income were subjected to final withholding tax at source at the rate of 20%.

While it is true that Petitioner submitted some documents to substantiate its claim for refund, the Court finds the same insufficient to grant the desired relief. Plainly stated, Petitioner falls short in its obligation to submit the evidence desired to prove its case.

Settled is the rule in this jurisdiction 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 Co., Ltd., 244 SCRA 332***). We rule therefore against the Petitioner.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition is **DISMISSED** for insufficiency of evidence, with costs against Petitioner.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

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