REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5636

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 16 2000

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P8,703,440.43, allegedly representing overpaid gross receipts tax for the calendar years ended December 31, 1996 and December 31, 1997.

The facts can be briefly stated as follows:

Petitioner is a banking institution organized and existing under the laws of the Philippines with principal office located at No. 333 Sen. Gil J. Puyat Avenue, Makati City.

For each calendar quarter of taxable years 1996 and 1997, petitioner seasonably filed its Quarterly Percentage Tax Returns, declaring all income subject to percentage tax in the amount of P6,335,606,848.99 and paid the corresponding gross receipts tax due thereon in the sum of P159,941,600.95, broken down as follows:

Quarter/Year	Gross Receipts	GRT Paid
1st Qtr. 1996	P 844,973,478.92	P 38,512,345.78
2nd Qtr. 1996	726,644,506.26	29,256,840.59
3rd Qtr. 1996	794,687,887.17	35,038,019.86
4th Qtr. 1996	648,228,412.80	28,940,257.14
Total	P3,014,534,285.15	P131,747,463.37
1st Qtr. 1997	P 898,677,221.74	P 40,271,782.69
2nd Qtr. 1997	783,462,070.75	35,341,735.91
3rd Qtr. 1997	856,749,984.57	36,577,352.47
4th Qtr. 1997	782,183,286.78	34,575,986.51
Total	P3,321,072,563.84	P146,766,857.58
Grand Total	P6,335,606,848.99	P278,514,320.95

Petitioner alleged that the aforementioned gross receipts in the amounts of P3,014,534,285.15 and P3,321,072,563.84, for the year 1996 and 1997, respectively, included some interest income derived from purchase of government securities and commercial papers in the amounts of P362,734,559.60 for 1996 and P508,514,033.00 for 1997. The latter sums were declared by petitioner as part of the taxable gross receipts inclusive of the 20% final tax withheld at source.

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

On April 17, 1998, on the strength of the aforesaid decision, petitioner filed a letter-request for the refund or issuance of a tax credit certificate with the BIR Revenue Region No. 8 in the amount of P8,703,440.43, representing the overpaid gross receipts tax for the years 1996 and 1997, computed as follows:

1996

Rate of Final Tax	Gross Receipts	Final Tax Withheld by BSP
20% rate of tax	P360,925,459.53	P72,185,091.91
15% rate of tax	1,809,100.07	271,365.01
Total	P362,734,559.60	P72,456,456.92

1997

Rate of Final Tax	Gross Receipts	Final Tax Withheld by BSP
20% rate of tax	P506,704,933.48	P101,340,986.70
15% rate of tax	1,809,100.07	271,365.01
Total	P508,514,033.55	P101,612,351.71
Grand Total	P871,248,593.15	P174,068,808.63
Multiply by GRT Rate		5%
Excess GRT Payment		P 8,703,440.43

On April 20, 1998, petitioner lodged its appeal in this Court 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.

Respondent, in his Answer, raised the following special and affirmative defenses:

> 7. The ruling in the case of Collector vs. Manila Jockey Club, 108 Phil. 821, is not applicable in the instant case on the ground that the definition of the term "gross receipts" as interpreted by the Supreme Court in said case, is intended "for the purpose of the amusement tax" as provided in Section 123(b) of the National Internal Revenue Code (NIRC), hence, not applicable to the gross receipts tax (GRT) under Section 119 of the Code;
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> 8. Applying the total gross receipts minus the 20% final taxes on passive income as the basis in computing the 5% GRT will result in the unlawful reduction of the amount of tax fixed by law or regulations, or worst, a subtle amendment of the said law or regulations;
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> 9. Petitioner failed to present its final annual percentage tax return as required under Section 6(b) of Revenue Regulations No. 12-80, as well as, its Annual Income Tax Returns for the years in question in order to appraise the Honorable Court of the actual amount of percentage taxes and tax on

gross receipts paid or accrued in said years which were claimed as deduction in computing the taxpayer's income tax liability in accordance with Section 7(c) of the said regulations;

10. The petition states no cause of action since it does not alleged (sic) the date/s when the tax/es sought to be refunded were actually paid;

11. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; and

12. Well-settled is the rule that claims for refund are construed in strictissimi juris against the claimants since it partakes of the nature of an exemption from taxation.

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

1. Quarterly Percentage Tax Returns for the years 1996 and 1997 (Exhs. A, B, C, D, E, F, G, and H, inclusive of submarkings);

2. Written claim for refund with the Bureau of Internal Revenue (Exhs. I and I-1);

3. Summary of Tax Paid Income for the years 1996 and 1997 together with the schedules/computations of the respective gross receipts tax (Exhs. J, K, L, M, N, O, P, Q, R, S, T, and U, inclusive of submarkings);

4. Letter-certification dated November 3, 1998 of the Bureau of Treasury with attached schedule of investments of petitioner in treasury bills for the years 1996 and 1997 (Exhs. V, V-1, and V-2);

5. Letter request of petitioner addressed to the Bureau of Treasury for the issuance of certification of final taxes withheld on petitioner's investments in government securities (Exh. W);

6. Letter-reports, dated February 24, 1999 and May 11, 1999, of the commissioned independent auditor regarding verification of petitioner's claim (Exhs. X and DD);

7. Various domestic trading sheets of fixed rate treasury notes, commercial papers, and CB/treasury bills (Exhs. Y-1, Y-2, AA-1 to AA-6, BB-1 to BB-184 and EE-1 to EE-223); and

8. Various certificates of final income tax withheld for the years 1996 and 1997 issued by the Bangko Sentral ng Pilipinas.

Respondent, on the other hand, submitted his case for decision sans the presentation of evidence. Eventually this case was submitted for decision after both parties presented their respective memoranda.

The Court is now tasked to resolve the following issues:

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

2. Whether or not petitioner adduced sufficient evidence to support its cause.

Anent the first issue, this Court in a long line of cases has already ruled that the 20% final taxes on interest income should no longer form part of taxable gross receipts for purposes of computing the gross receipts tax. This is the maxim behind Our decision in the case of *Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996, supra*, 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:
>
> "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."

Our ruling in the aforementioned decision has already been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Philippines, CA G.R. SP No. 52707, August 17, 1999**, which involves a similar issue, 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 Respondent's (Citytrust) 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." (Underlining supplied).

The legal issue having been settled, what remains to be resolved is the factual aspect of the case.

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. In counting 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). Applying the above ruling to the case at bar reveals that petitioner timely filed its claim for refund with the Bureau of Internal Revenue (April 17, 1998), and the Petition for Review with this Court (on April 20, 1998) reckoned, at the earliest, from April 22, 1996, the date when the1996 first Quarterly Percentage Tax Return was filed (Exh. A).

Aside from proving that the petition for review was timely filed within the two-year reglementary period, petitioner must also prove 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 derived on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the period involved; and

3. That the withholding agent certifies that 20% final withholding tax was paid 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.)**

A meticulous examination of all the evidence on record reveals that petitioner was able to show that it paid gross receipts tax for calendar quarters of taxable years 1996 and 1997 as evidenced by the machine validations appearing on the lower portion of the respective quarterly percentage tax returns (Exhs. A to H, inclusive of submarkings). It was also established that the alleged 20% final withholding taxes on interest income derived from investments in securities were included in the gross receipts reflected in petitioner's 1996 and 1997 quarterly percentage tax returns. This was attested to by the commissioned independent auditor, Mr. Ruben R. Rubio and as verified by the Court through petitioner's various schedules and computations of gross receipts tax and the summary of tax paid income for the years 1996 and 1997 (Exhs. J to U, inclusive of submarkings). Lastly, petitioner was able to present certifications from Bangko Sentral ng Pilipinas that 20% final taxes were withheld from petitioner's investments in various government securities (Exhs. V, V-1, V-2, Z-1, Z-2, and CC-1 to CC-39).

However, out of the total alleged payment of 20% final taxes in the amount of P174,068,808.63, only the sum of P31,084,282.15 was verified by the auditor to have been included in the gross receipts. Hence, only the amount of P1,554,215.31 represents overpaid gross receipts tax for the years 1996 and 1997, computed as follows:

1996

	1st	2nd	3rd	4th	Annual
Fixed Rate Treasury Notes	P 139,170.84	P 139,170.84	P 69,585.42	P 25,418.75	P 373,345.85
Floating Rate Treasury Notes	915,162.52	132,014.41	-	-	1,047,176.93
Commercial Papers	169,958.43	-	-	-	169,958.43
Treasury Bonds	-	-	-	-	-
CB/Treasury Bills	1,204,016.71	827,719.69	5,266,714.03	4,603,959.56	11,902,409.99
Total	P2,428,308.50	P1,098,904.94	P 5,336,299.45	P 4,629,378.31	P 13,492,891.20
Multiply by GRT Rate	5%	5%	5%	5%	5%
Refundable	P 121,415.43	P 54,945.25	P 266,814.97	P 231,468.92	P 674,644.56

1997

	1st	2nd	3rd	4th	Annual
Fixed Rate Treasury Notes	P -	P -	P	P -	P -
Floating Rate Treasury Notes	-	-	-	-	-

Commercial Papers	96,531.49	-	-	-	96,531.49
Treasury Bonds	-	-	-	-	-
CB/Treasury Bills	3,356,842.73	5,299,729.67	4,830,225.15	4,008,085.82	17,494,883.37
Total	P3,453,374.22	P5,299,729.67	P 4,830,225.15	P 4,008,085.82	P 17,591,414.86
Multiply by GRT Rate	5%	5%	5%	5%	5%
Refundable	P 172,668.71	P 264,986.48	P 241,511.26	P 200,404.29	P 879,570.74

A further verification of the report of the independent auditor and scrutiny of the evidence on record reveals that petitioner's investments in commercial papers are not supported by certificates of final withholding tax. Hence, a total amount of final tax in the amount of P266,489.92 on commercial papers should not be excluded from the computation of the total gross receipts for the purpose of payment of GRT. There are also some treasury bills whose series numbers were not included in the certification issued by the Bangko Sentral ng Pilipinas. Therefore, an additional disallowance on the amount claimed by petitioner is inevitable, to wit:

1996

	TAS	Liquidity Floor	Trust	Total
January	P 292,467.73	P 231,130.58	P -	P 523,598.31
February	-	-	-	-
March	106,820.37	567,669.70	-	674,490.07
April	108,229.50	615,452.90	-	723,682.40
May	-	-	-	-
June	-	-	-	-
July	261,110.72	-	515,690.64	776,801.36
August	70,934.16	392,360.01	367,520.61	830,814.78
September	274,651.57	223,802.47	266,302.79	764,756.83
October	148,063.69	-	-	148,063.69
November	193,418.49	-	-	193,418.49
December	69,301.28	-	-	69,301.28
Annual	P 1,524,997.51	P 2,030,415.66	P 1,149,514.04	P 4,704,927.21
Multiply by GRT Rate				5%
Disallowance				P 235,246.36

1997

	TAS	Liquidity Floor	Trust	Total
January	P 282,950.41	P 170,834.83	P -	P 453,785.24
February	13,307.09	-	-	13,307.09
March	241,867.73	159,548.94	-	401,416.67
April	27,902.43	95,223.73	-	123,126.16
May	205,520.90	257,667.83	-	463,188.73
June	499,660.06	539,468.06	-	1,039,128.12
July	84,733.40	895,228.17	-	979,961.57
August	10,305.43	925,069.09	-	935,374.52
September	48,862.80	818,964.79	-	867,827.59
October	9,017.62	-	-	9,017.62
November	64,924.25	550,236.84	-	615,161.09
December	62,112.81	875,874.18	-	937,986.99
Annual	P 1,551,164.93	P 5,288,116.46	P -	P 6,839,281.39
Multiply by GRT Rate				5%
Disallowance				P 341,964.07

It should be emphasized that only those 20% final withholding taxes which were proven to have been paid or withheld on passive income should be excluded in the computation of gross receipts tax (**Philam Savings Bank, Inc. vs. The Commissioner, Bureau of Internal Revenue, CTA Case No. 5407, August 18, 1998**).

In conclusion, petitioner is only entitled to the amount of P963,680.35 computed as follows:

Total Amount Verified by SGV		
1996	P 674,644.56	
1997	879,570.74	P 1,554,215.30
Less: Final Taxes Without Certificates		
a. Commercial Papers		
1996 (P169,958.93 x 5%)	P 8,497.95	
1997 (P96,531.49 X 5%)	4,826.57	
Total	P 13,324.52	
b. CB/Treasury Bills		
1996	P 235,246.36	
1997	341,964.07	
Total	P 577,210.43	590,534.95
Amount Refundable		P 963,680.35

WHEREFORE, in view of the foregoing, the instant petition for review is hereby *partially* **GRANTED.** Respondent is ORDERED to REFUND in favor of petitioner the sum of P963,680.35, representing overpaid gross receipts tax for the years 1996 and 1997.

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