REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BANK OF COMMERCE,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A CASE No. 5415

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

SEP 21 2007; 1:05PM

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AMENDED DECISION

ACOSTA, *P.J.*:

This case involves a claim for refund or issuance of tax credit certificate representing gross receipts taxes alleged to have been paid erroneously by petitioner for the years 1994 and 1995 in the total amount of EIGHT HUNDRED FIFTY THREE THOUSAND EIGHT HUNDRED FORTY TWO PESOS (P853,842.00).

Petitioner is a banking institution duly organized and existing by virtue of the laws of the Philippines, with principal office located at 6764 Ayala Ave., Makati City. In the years 1994 and 1995, petitioner allegedly earned/derived passive income in the form of interest or discount from its investments in government securities (such as treasury bills/notes) as well as from private commercial papers.

Records show that petitioner paid in different occasions from the period 1994 and 1995, the amount representing the 5% gross receipts tax on income earned/derived during the taxable year 1994 and 1995, as evidenced by its Quarterly Percentage Tax Returns (*Exhibits "A" to "I"*).

For the taxable years covered in this case, petitioner paid the 5% tax on the reported gross receipts as reflected in the aforementioned Quarterly Percentage Tax Returns which allegedly included its gross receipts from passive investments amounting to P85,384,254.51. This amount according to petitioner, had already been subjected to 20% final tax.

On July 19, 1996, petitioner filed an administrative claim for refund with respondent Commissioner for its alleged overpaid gross receipts tax covering the years 1994 and 1995 in the aggregate amount of P853,842.00 computed as follows:

Gross receipts subjected to Final Tax Derived from Passive Investment	P85,384,254.51
	x 20%
20% Final Tax Withheld at Source	P17,070,850.90
	x 5%
	P 853,842.54

On its claim for refund, petitioner relied heavily on the Decision rendered by this Court in the case of *Asia Bank Corporation vs. Commissioner of Internal Revenue,* CTA Case No. 4720, January 30, 1996, where We categorically ruled that the 20% final tax on interest income withheld from the bank should not form part of its taxable gross receipts for Gross Receipts Tax (GRT) purposes.

On April 27, 1999, the Court of Tax Appeal's Interim Division rendered a Decision[1] partially granting the instant Petition for Review and ordering respondent to refund to petitioner the reduced amount of P355,258.99, representing validly proven erroneously withheld taxes from petitioner's interest income derived from its investments in government securities for the years 1994 and 1995; the dispositive portion of which reads:

> "**WHEREFORE**, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner Bank of Commerce the amount of P355,258.99 representing validly proven erroneously withheld taxes from interest income derived from its investments in government securities for the years 1994 and 1995.
>
> **SO ORDERED.**"

This Court relied on the provisions of Revenue Regulations No. 12-80 dated November 7, 1980 in its Decision. It ratiocinated that, under the said provision of law, more particularly, Section 4, "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 GRT. 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 similar issue in the case entitled *Compania Maritima vs. Acting Commissioner of Internal Revenue,* CTA Case No. 1426, dated November 14, 1966." Moreover, as interpreted by the Highest Tribunal, the term "gross receipts" means "all receipts of a taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than that of the taxpayer." On the basis of these discussions, this Court reiterated that the 20% final withholding tax no longer formed part of the gross receipts of petitioner for purposes of the 5% gross receipts tax.

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[1] *Rollo*, pages 163-183.

This Court likewise disallowed certain amounts of petitioner's claim on the grounds that a portion was claimed beyond the prescriptive period allowed by law; that there was want of supporting documents; and that petitioner failed to present evidence that its 1995 branch income subject to final tax was included in its 1995 quarterly payments.

On May 11, 1999, petitioner filed its Motion For Reconsideration[2] seeking the reconsideration of the April 27, 1999 Decision disallowing the amount of P181,153.57, representing its overpaid 5% gross receipts tax on the 20% final tax withheld on passive income during the second quarter of 1994 on the ground of prescription. Consequently, this Court rendered its Resolution[3] dated June 28, 1999 partially granting petitioner's Motion for Reconsideration and effectively modifying the assailed Decision, thus:

> "**WHEREFORE**, in view of all the foregoing, the assailed decision promulgated on April 27, 1999 is hereby **MODIFIED** and respondent is hereby ordered to **REFUND** to petitioner the amount of P536,310.63 representing validly proven erroneously withheld taxes from interest income derived from its investment in government securities for the years 1994 and 1995.
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> **SO ORDERED."**

Respondent, through a Petition for Review, a copy of which was received by this Court on June 14, 1999, elevated his appeal to the Court of Appeals entitled "Commissioner of Internal Revenue vs. Bank of Commerce"[4] and raised the following errors:

a. There is no provision of law which excludes the 20% final income tax withheld under Section 50(a) of the Tax Code in the computation of the 50% gross receipts tax.

b. The Tax Court erred in applying the ruling in Collector of Internal Revenue vs. Manila Jockey Club (108 Phil. 821) in the resolution of the legal issues involved in the instant case.

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[2] *Rollo*, pages. 185-187.
[3] *Rollo*, pp. 190-193.
[4] CA-G.R. SP No. 52706.

On August 14, 2001, the Court of Appeals rendered its Decision[5] affirming this Court's Decision and thus, dismissed herein respondent's Petition for Review for lack of merit.

Upon receipt of the Court of Appeals' Decision, and within the reglementary period allowed by law, respondent then elevated his appeal to the Supreme Court[6]. In his Petition for Review[7], respondent raised the sole error that "the Court of Appeals erred in holding that the 20% final withholding tax on bank's interest income does not form part of the taxable gross receipts in computing the 5% gross receipts tax."

On June 8, 2005, the Honorable Supreme Court rendered its Decision[8] reversing and setting aside the Decisions rendered by the Court of Appeals and this Court, and effectively, ordering this Court to dismiss this instant Petition for Review; the dispositive portion of which reads:

> "**IN LIGHT OF THE FOREGOING**, the petition is **GRANTED**. The decision of the Court of Appeals in CA-G.R. SP No. 52706 and that of the Court of Tax Appeals in CTA Case No. 5415 are **SET ASIDE and REVERSED**. The CTA is hereby **ORDERED** to **DISMISS** the petition of respondent Bank of Commerce. No costs.
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> **SO ORDERED**."

The Honorable Supreme Court agreed with petitioner (herein respondent) that the Court of Appeals' reliance on Rev. Reg. No. 12-80, the ruling of this Court in the case of *Asia Bank*[9], and that of their findings in the case of *Manila Jockey Club*[10], have no legal and factual bases. To quote:

> "The Court agrees with the contention of the petitioner that the appellate court's reliance on Rev. Reg. No. 12-80, the rulings of the CTA in *Asia Bank*, and of this Court in *Manila Jockey Club* has no legal and factual bases. Indeed, the Court ruled in *China Banking Corporation v. Court of Appeals* that:

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[5] *Rollo*, pages 306-314.
[6] *Commissioner of Internal Revenue vs. Bank of Commerce*, G.R. No. 149636.
[7] *Rollo*, pages 316-327.
[8] *Rollo*, pages 587-605.
[9] CTA Case No. 4720, January 30, 1996.
[10] 108 Phil 821 (1960).

> . . . In *Far East Bank & Trust Co. v. Commissioner and Standard Chartered Bank v. Commissioner*, both promulgated on 16 November 2001, the tax court ruled that the final withholding tax forms part of the bank's gross receipts in computing the gross receipts tax. The tax court held that Section 4(e) of Revenue Regulations No. 12-80 did not prescribe the computation of the amount of gross receipts but merely authorized 'the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer.'

The word 'gross' must be used in its plain and ordinary meaning. It is defined as 'whole, entire, total, without deduction.' A common definition is 'without deduction.' 'Gross' is also defined as 'taking in the whole; having no deduction or abatement; whole, total as opposed to a sum consisting of separate or specified parts.' Gross is the antithesis of net. Indeed, in *China Banking Corporation v. Court of Appeals*, the Court defined the term in this wise:

> As commonly understood, the term 'gross receipts' means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in *Commonwealth of Pennsylvania v. Koppers Company, Inc.*, —
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>> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. *Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions, xxx* [Citations omitted] (Emphasis supplied)'
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> Likewise, in *Laclede Gas Co. v. City of St. Louis*, the Supreme Court of Missouri held:
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>> The word 'gross' appearing in the term 'gross receipts,' as used in the ordinance, must

> have been and was there used as the direct antithesis of the word 'net.' *In its usual and ordinary meaning 'gross receipts" of a business is the whole and entire amount of the receipts without deduction, xxx* On the contrary, 'net receipts' usually are the receipts which remain after deductions are made from the gross amount thereof of the expenses and cost of doing business, including fixed charges and depreciation. Gross receipts become net receipts after certain proper deductions are made from the gross. And in the use of the words 'gross receipts,' the instant ordinance, of course, precluded plaintiff from first deducting its costs and expenses of doing business, etc., in arriving at the higher base figure upon which it must pay the 5% tax under this ordinance. (Emphasis supplied)

Absent a statutory definition, the term 'gross receipts' is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use. The Supreme Court of Hawaii held in *Bishop Trust Company v. Burns* that —

> xxx It is fundamental that in construing or interpreting a statute, in order to ascertain the intent of the legislature, the language used therein is to be taken in the generally accepted and usual sense. Courts will presume that the words in a statute were used to express their meaning in common usage. *This principle is equally applicable to a tax statute.* [Citations omitted] (Emphasis supplied)

xxx xxx xxx

In this case, there is no law which allows the deduction of 20% final tax from the respondent bank's interest income for the computation of the 5% gross receipts tax. On the other hand, Section 8(a)(c), Rev. Reg. No. 17-84 provides that interest earned on Philippine bank deposits and yield from deposit substitutes are included as part of the tax base upon which the gross receipts tax is imposed. Such earned interest refers to the gross interest without deduction since the regulations do not provide for any such deduction. The gross interest, without deduction, is the amount the borrower pays, and the income the lender earns, for the use by the borrower of the lender's money. The amount of the final tax plainly covers for the interest earned and is consequently part of the taxable gross receipt of the lender.

The bare fact that the final withholding tax is a special trust fund belonging to the government and that the respondent bank did not benefit

> from it while in custody of the borrower does not justify its exclusion from the computation of interest income. Such final withholding tax covers for the respondent bank's income and is the amount to be used to pay its tax liability to the government. This tax, along with the creditable withholding tax, constitutes payment which would extinguish the respondent bank's obligation to the government. The bank can only pay the money it owns, or the money it is authorized to pay.
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> xxx xxx xxx
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> Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax."

In the light of the afore-quoted Decision of the Honorable Supreme Court, We amend Our Decision to comply with said Decision and order of the High Tribunal.

WHEREFORE, the Decision rendered by this Court's Interim Division dated April 27, 1999 is hereby **SET ASIDE and REVERSED**. Accordingly, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division