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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5518

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 18 2000

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P543,469.85 allegedly representing overpaid gross receipts tax for the calendar year ended December 31, 1995.

The facts of the case are simple.

Petitioner, Citytrust Finance Corporation, is a domestic corporation duly organized and existing under the laws of the Philippines with principal office located at 1071 Philippine Stock Exchange Road, corner Pearl Drive, Ortigas Center, Pasig City.

For the calendar year 1995, Petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts in the total amount of P205,893,400.63 with corresponding gross receipts tax payment in the sum of P82,271,704.93, broken down as follows:

Period Covered	Exh.	Gross Receipts	Gross Receipts Tax
January to March 1995	A	P 52,676,548.55	P 2,368,199.24
April to June 1995	B	64,160,425.73	2,925,458.59

July to September 1995	C	40,913,155.18	1,819,457.54
October to December 1995	D	48,143,271.17	2,129,279.42
Total		P205,893,400.63	P 9,242,394.79

Petitioner alleges that the gross receipts in the amount of P205,893,400.63 included the sum of P51,255,326.69 representing gross receipts derived from passive income which was already subjected to 20% final withholding tax in the amount of P10,869,397.04.

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, 1997, on the strength of the aforementioned decision, Petitioner filed with the Bureau of Internal Revenue a letter-request for the refund or issuance of tax credit certificate in the aggregate amount of P543,469.85 representing allegedly overpaid gross receipts tax for the year 1995, computed as follows: (Exhs. F and F-1).

Total Income Subject to Final Withholding Tax	P51,255,326.69
Less Total Final Taxes Paid	10,869,397.04
Income Net of Final Withholding Tax	40,385,929.65
5% GRT Should Be	P 2,019,296.48
Less GRT Paid	2,562,766.33
GRT Overpayment	P 543,469.85

Without waiting for action from the Respondent, Petitioner filed the instant Petition for Review the next day, i.e., April 18, 1997, 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.

By way of special and affirmative defenses, Respondent avers that Petitioner's claim for refund is still undergoing administrative routinary investigation, the claim of Petitioner that it made an erroneous and excessive payment of gross receipt tax does not *ipso facto* warrant a tax refund or tax credit; Petitioner must prove that the exclusion being claimed from its gross receipts are allowed under the Tax Code and its implementing regulations; the claim for refund must be supported by evidence and are construed in *strictissimi juris* against the taxpayer; and Petitioner must prove that it has complied with the provisions of Section 230 of the Tax Code, as amended,

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

1. The Quarterly Percentage Tax Returns for the year 1995 (Exhs. A to D, inclusive of submarkings);

2. Summary of gross receipts/income subjected to percentage tax (Exhs. E and E-1);

3. The administrative claim for refund with the Bureau of Internal Revenue (Exhs. F and F-1)

4. Certifications from SGV and Co signed by Mr. Renato Galve, the commissioned independent CPA, who conducted the examination of the Petitioner's documents relative to the instant claim for refund (Exhs. H, H-1 to H-4, I, and I-3-a);

5. Audited financial statements and income tax return of Petitioner for the year 1995 (Exhs. J, J-9-a, and K);

6. Certifications from the Treasury Department and Government Securities Department of Bangko Sentral ng Pilipinas with respect to final taxes withheld on

treasury bills and remittances to the Bureau of Internal Revenue for the years 1994, 1995 and 1996 (Exhs. L, and N to N-5); and

7. Schedule of treasury bills purchased by Petitioner in 1995 from secondary markets with various outright purchase documents (Exhs. M, M-1 and M-3 to M-36).

Respondent, on the other hand, elected not to submit controverting evidence. Eventually, this case was submitted for decision after both parties presented their respective memorandums.

The Court is now confronted with the following issues:

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

b. Whether or not Petitioner has proven its claim with sufficient evidence.

As regards the first issue, this Court finds Petitioner's cause to be meritorious. The final taxes derived by Petitioner on its passive income should no longer form part of the gross receipts for purposes of computing the gross receipts tax, as We have already ruled on this matter in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996,** 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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> x x x x x x x x x
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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:
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> > "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 prize 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."

In fact Our ruling in the aforesaid decision has already been affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Investment Phils., Inc. CA-G.R. SP No. 52707, dated August 17, 1999.**

> "Accordingly, the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue for the correspondent 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."

The legal issue having been settled, We now delve on the factual aspect of this case which is the second issue at bar.

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. Furthermore, in computing for 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).** The records show that Petitioner's claim for refund was timely filed within the two-year reglementary period, considering that the 1995 first quarter percentage tax return was filed on April 19, 1995, while the instant petition was filed on April 18, 1997.

What is now left for the Petitioner to prove is 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 on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the year 1995; and

3. that the withholding agent certifies that there is 20% final withholding tax onsuch 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 5457, March 1, 1999;** *cited in* **Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999, supra).**

A meticulous examination of all the evidence at hand reveals that Petitioner was able to show that it paid gross receipts tax for the year 1995 as evidenced by the machine validations appearing on the lower portion of Petitioner's quarterly percentage tax returns (Exhs. A to D, inclusive of submarkings). The evidence also established that the 20% final withholding taxes on interest income was included in the gross receipts reflected in Petitioner's quarterly percentage tax returns. This was attested to by the commissioned independent Auditor, Mr. Renato Galve, and as verified by the Court (Exhs. H, H-1 to H-4, I-1 to I-3). From among the passive income which Petitioner alleges to have been subjected to 20% final withholding tax, only the interest income on treasury bills purchased from Bangko Sentral ng Pilipinas and from Citytrust Banking Corporation have certifications of withholding and remittance (Exhs. I-3 and I-3-a). The other listed passive income such as interest income on deposit with banks and interbank call loans receivables, trading gain, and from other sources have no certification of payment of final tax. It would appear then that Petitioner is only entitled to a partial refund of overpaid gross receipts tax pertaining to 20% final taxes paid on interest income arising from Petitioner's purchase of treasury bills since this type of investment satisfies all the requirements aforementioned.

However, from among the documents supporting the payments of withholding tax on treasury bills, namely: Comparison of Provision for Income Tax (Per FS and Per Return) (Exhs. I-3 and I-3-a), Certifications from Bangko Sentral ng Pilipinas (Exhs. L and N to N-5), Schedule of Treasury Bills Purchased From Secondary Market (Exhs. M to M-2), and the various Outright Purchase documents (Exhs. M-3 to M-36), Petitioner failed to prove how much final taxes on treasury bills was subjected to gross receipts tax. The Court finds no evidence where it can base the computation of overpaid gross receipts tax. The amounts of withholding tax reflected in the certificates issued by the Bangko Sentral ng Pilipinas in the amount of P3,245,910.99 and those reflected in the outright purchase documents in the sum of P21,712,433.25 are still in their original values. If We base the refund on these figures, it will lead to an erroneous amount because treasury bills are bearer securities which can be passed on to subsequent buyers and it is probable that final taxes initially paid by Petitioner were also shifted.

Petitioner may argue that final tax in the amount of P8,047,785.00 arising from interest income from trading account securities (TAS) and government securities (GS) reflected in Exh. I-3 can be the basis of the partial refund. However, such possible argument will fail because TAS and GS are not all treasury bills. Trading accounts securities may include commercial paper while government securities may include treasury notes.

Without the details as to how much interest income was earned from treasury bills and how much 20% final withholding taxes were included in the 1995 quarterly percentage tax returns, Petitioner's prayer for refund or issuance of tax credit certificate can not be granted.

In sum, We find the agreed upon procedure taken by the auditing firm, SGV & Co., and Petitioner to be insufficient to come up with the desired result of ascertaining the correctness of Petitioner's claim for refund. The procedures merely limited the examination and verification of the amounts of passive income and final taxes for the year 1995 by comparison and reconciliation of amounts reflected in the financial statements and returns (Exh. I-1 to I-3). The agreed upon procedures failed to include the performance of an audit with respect to the interest income accounts and quarterly gross receipts tax (Exh. H-3). This procedure is vital in determining the accuracy of Petitioner's claim for refund and the independence of the auditing firm. It should be stressed that reconciliation of income per audited financial statement and per GRT returns and comparison of provision for income tax per audited financial statements and income tax returns are not sufficient procedures in determining the correctness of Petitioner's claim for refund. The procedures therein adopted only guided the Court in determining whether or not the income tallies with the provision for income tax per financial statements and per GRT returns. It failed to guide the Court how much overpaid gross receipts tax was rightfully due to Petitioner.

Well-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**).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to 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