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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5638

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 08 2000

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DECISION

This is a Petition for Review filed by Petitioner CHINA BANKING CORPORATION, against Respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's failure to act on the former's claim for refund/tax credit in the amount of P6,646,829.67, plus interest, allegedly representing its overpaid gross receipts taxes for the four quarters of 1996.

As represented, Petitioner is a universal banking institution duly organized and existing under the laws of the Philippines, with principal office located at 8745 Paseo de Roxas cor. Villar St., Makati City.

For the four quarters of 1996, Petitioner filed with Respondent its Quarterly Percentage Tax Returns and paid the corresponding gross receipts tax (GRT) for each of the said quarters, hereunder summarized, the tax bases of which include the passive income which was subjected to twenty percent (20%) final taxes.

1996	Exhs.	Date of Filing Return /Payment of Tax to the BIR	Taxable Gross Receipts	Gross Receipts Tax Paid
1st qtr.	A	22-Apr-96	P 534,500,491.61	P 24,055,944.08
2nd qtr.	A-1	22-Jul-96	582,985,457.89	26,394,956.47
3rd qtr.	A-2	21-Oct-96	427,801,196.81	18,427,999.31
4th qtr.	A-3	20-Jan-97	552,378,276.18	24,240,533.64
		Total:	P2,097,665,422.49	P 93,119,433.50

After taking into account 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 amended its 1996 quarterly percentage tax returns on April 16, 1998 and filed the same with the Respondent's authorized agent bank, China Banking Corporation, likewise summarized below:

1996	Exh.	Taxable Gross Receipts	Gross Receipts Tax Paid
1st qtr.	E	P 495,672,571.89	P 22,114,548.10
2nd qtr.	E-1	556,690,777.78	25,050,429.40
3rd qtr.	E-2	400,388,128.91	17,087,138.98
4th qtr.	E-3	511,957,350.64	22,219,487.36
		P1,964,708,829.22	P 86,471,603.84

On April 20, 1998, Petitioner filed with Respondent a claim for refund of the alleged overpaid GRT for the four (4) quarters of 1996 in the aggregate amount of P6,646,,829.67 (Exh. H), detailed as follows:

1996	Gross Receipts Tax Paid	Corrected Gross Receipts Tax	Excess GRT Payment
1st qtr.	P 24,055,944.08	P 22,114,548.10	P 1,941,395.99
2nd qtr.	26,394,956.45	25,050,429.40	1,344,527.06
3rd qtr.	18,427,999.33	17,087,138.98	1,340,860.34
4th qtr.	24,240,533.64	22,219,487.36	2,021,046.28
Total:	P 93,119,433.50	P 86,471,603.84	P 6,646,829.67

On the same date, that is, April 20, 1998, Petitioner filed with this Court the instant Petition for Review.

Petitioner presents the proposition as rationale of the Petition for Review that the gross receipts tax it paid for the four quarters of 1996 were based on the total gross receipts, inclusive of the passive income, which were subjected to the 20% final withholding tax at source thus, it argued, that in the light of this Court's ruling 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 actually overpaid the amount legally due from it, insofar as its GRT obligations are concerned, hence, a refund therefore, is in order.

Respondent in his Answer pointed out that Petitioner's claim for refund of alleged overpaid gross receipts taxes for the four (4) quarters of 1996 should be denied on the following grounds: (1) the ruling in the case of Collector of Internal Revenue 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 Tax Code; (2) 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; (3) 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 year 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 year which was claimed as deduction in computing the taxpayer's income tax liability in accordance with Section 7(c) of the said regulations; (4) 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; (5) 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 (6) 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.

The legal issue to be resolved by the Court is whether or not the 20% final withholding tax on certain passive income of the Petitioner should be excluded in the total gross receipts of said Petitioner for GRT purposes, and the factual issue is whether or not Petitioner has adduced sufficient evidence to the entitlement of the amount sought to be refunded.

With regard to the legal issue, We rule in the affirmative. This is not a case of first impression. As correctly stated by the Petitioner, this Court has resolved the same issue in favor of the Petitioner in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue,** ***supra,*** which is anchored on similar factual circumstances and is on all fours with the case at bar. Said decision states in part:

> "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:
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> > 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 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)
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> 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."

Moreover, the Court of Appeals in the case of **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA G.R. Sp No. 52707, August 17, 1999,** affirmed our stand that the 20% final withholding tax on interest income should not form part of the taxable gross receipts. Hence, we find no cogent reason nor justification to depart from the wisdom of our decision in the Asian Bank case, *supra.*

The legal issue having been settled, what remains to be resolved by the Court is the factual issue, that is, whether or not Petitioner has established by evidence its claim for refund.

This Court had ruled time and again that to be entitled to a refund of excess/overpaid GRT, Petitioner taxpayer must show compliance with the following requisites:

1. that its claim for refund was filed within the two (2) year period prescribed under Section 230 (now 229) of the Tax Code;

2. that it actually paid the 20% final withholding taxes on its passive income;
3. that said 20% final withholding tax formed part of its taxable gross receipts – passive income;
4. that it actually paid the gross receipts tax (GRT) on said taxable gross receipts – passive income.

Evidence on record clearly shows that the administrative claim for refund and the filing of the instant petition are within two years from the date of payment of the tax, hence, there is no question as to the timeliness of the instant petition. Petitioner has complied with the first requirement aforestated.

Petitioner likewise presented documents in an effort to prove that it complied with the second, third and fourth requisites above-mentioned, and to support its allegations that its 1996 total gross receipts – passive income of P664,782,966.43 included the 20% final withholding taxes of P132,956,593.29 for which 5% gross receipts taxes of P6,647,829.66 (subject of this petition) were allegedly paid. Exhibits I to L were presented by Petitioner to show that its passive income, namely (1) Interest Income from Taxable Investments, (2) Interest Income from Trading Account Securities, (3) Trading Gain(Loss) from Government Securities, and (4) Interest Income from Deposit with Local Banks for the four (4) quarters of 1996 were subjected to 20% Final Withholding Tax and were further subjected to Gross Receipts Tax. Exhibit M was offered to show how the excess/overpaid GRT for 1996 in the total amount of P6,647,829.66 was arrived at.

After a careful study of the aforementioned evidence, the Court finds that while the Petitioner complied partially with the second requirement, it totally failed to comply with the third and fourth requirements aforestated.

The evidence adduced by Petitioner only established the fact that it actually paid the 20% withholding tax on the interest income it earned from the original purchase of Treasury Notes and Treasury Bills from the Bangko Sentral ng Pilipinas (BSP) but failed to establish that there was an actual withholding of the 20% final tax on interest income from commercial papers and deposits with local banks. It failed to submit to the Court the Certificates of Final Taxes Withheld to be issued by the issuers of the said commercial papers and the depository banks. These documents are indispensable in proving that Petitioner actually paid the 20% final withholding tax on its passive income; thus, requirement number two was not complied with.

As regards requirement number three, the Court likewise find that Petitioner failed to comply with the same. It failed to substantiate that the 20% final withholding tax formed part of its gross receipts tax base for the year 1996. The accuracy of the transaction figures making up the total gross amounts of passive income (inclusive of the 20% final withholding taxes) indicated in each schedule of passive income account (Exhs. I to M) can only be ascertained through the source documents from which the said amounts were based, such as BSP certificates of final taxes withheld and credit advices, BSP agreement with herein Petitioner, accounting tickets, order slips, detailed transaction records, confirmations of purchase, confirmations of sales, trading orders/sheets, computation sheets for interest accruals, passbook, certificates of final taxes withheld on interest income from commercial papers and deposits with local banks, among others.

In the case at bar, the source documents that were presented by Petitioner as evidence consist only of BSP Credit Advices and BSP Certificates of final taxes withheld (Exhs. I-3 to I-103a, J-3-a and J-3-b). The said source document is insufficient to vouch for the accuracy of Petitioner's gross interest income and trading gain from purchase and sale of Treasury Notes and Treasury Bills and the corresponding 20% final taxes as indicated in the schedules of Interest Income – Taxable Investment, Interest Income – Trading Account Securities and Trading Gain – Government Securities (Exhs. I, J and K). Inasmuch as Petitioner sold part of its original purchases of Treasury Notes and Treasury Bills, not all income accruing to the originally purchased Treasury Notes and Treasury Bills and the corresponding 20% final taxes were actually earned/incurred by Petitioner. There was therefore, the need for Petitioner to submit other source documents on its T-Notes and T-Bills sales transactions, such as confirmations of sale, trading order/sheets and computation sheets for interest accruals on outstanding T-Notes and T-Bills which it failed to do.

Lastly, since Petitioner failed to prove the inclusion of the 20% final withholding taxes as part of its 1996 taxable gross receipts (passive income) or gross receipts (passive income) that were subjected to 5% GRT, it follows that proof was wanting that it paid the claimed excess GRT, subject of this petition.

Thus, applying the settled rule in this jurisdiction that a claim for refund is in the nature of a claim for tax exemption which should be construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332),** We rule to deny the instant claim for refund.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **DISMISSED** for 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