L10.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5683

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 0 1 2000

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P164,339.62, allegedly representing overpaid gross receipts tax for the 4th quarter of taxable year 1996.

The facts of the case are as follows:

Petitioner is a universal banking institution duly organized and existing in accordance with the laws of the Philippines with principal office located at corner Paseo de Roxas and Villar Streets, Makati City.

On January 20, 1997, Petitioner filed its Quarterly Percentage Tax Return (Exhibit A) reflecting gross receipts in the total amount of P7,834,209.30 with corresponding gross receipts tax payments of P391,903.69 (Exhibit A-2). It was alleged in the Petition for Review that said gross receipts pertain to income it earned on its loan investments, commissions, service and collection charges, foreign exchange profits and other operating earnings.

After the aforesaid payment was made, Petitioner, through its Ortigas Center Branch, discovered some erroneous computations relating to additions to and deductions from Gross Earnings to arrive at the Gross Receipts Tax payable for the subject quarter. As a consequence, an overpayment was made in the amount of P164,339.62. Accordingly, on December 15, 1997, Petitioner filed an amended Quarterly Percentage Tax Return (Exhibit C) with an allegedly corrected Gross Receipts Tax due of P227,564.07 (Exhibit C-2).

On account of said erroneous computation, Petitioner, on January 22, 1998, seasonably filed with the Bureau of Internal Revenue a formal letter-claim for refund (Exhibit D) of the overpaid gross receipts tax for the 4th quarter of 1996 in the total amount of P164,339.62, representing the difference between what was originally paid and the amount indicated in the amended return.

Without waiting for an action from the Respondent, Petitioner, on October 15, 1998, filed the instant Petition for Review in order to toll the running of the two-year prescriptive period pursuant to Section 230 of the Tax Code, as amended.

Respondent, by way of an Answer presented the following Special and Affirmative Defenses, to wit:

> "4. Petitioner's claim for refund or tax credit in the amount of P164,339.62 allegedly representing excess Gross Receipts Tax payment for the last quarter of 1996 is yet under administrative investigation;

> 5. In an action for tax refund, the taxpayer has the burden of showing that the tax/es paid were erroneously collected and failure to sustain the burden is fatal to the action;
>
> 6. Claims for refund are construed strictly against claimants since they are in the nature of exemption thus cannot be allowed unless granted in the most explicit and categorical language (Manila Electric Co. vs. CIR, 47 SCRA 351);
>
> (Respondent's Answer, CTA docket, pp. 13-14)

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

1. Petitioner's Quarterly Percentage Tax Return for the 4th Quarter of 1996 and the 1996 Amended Fourth Quarter Percentage Tax Return (Exhibits A and C, inclusive of sub-markings);

2. Tax Returns/ATAPS Batch Control Sheet with date of Collection on January 20, 1997 (Exhibits B, B-1 to B-8);

3. Petitioner's letter-claim for refund with the BIR dated October 23, 1997 (Exhibit D);

4. Schedule showing comparative computations of the Gross Receipts Tax of Petitioner for the 4th Quarter of 1996 (Exhibit E);

5. Consolidated Report of Daily Collection of Internal Revenue Taxes (Exhibits F, F-1 to F-8);

6. Ticket Register stating the Internal Revenue Taxes Collected, as prepared by the Deposit, Liab. and Recon Division of the Bangko Sentral ng Pilipinas (Photocopy and Certified True Copy) (Exhibits G, H and I).

Respondent, on the other hand, opted not to submit any controverting evidence. This case was submitted for decision without the Respondent filing its memorandum.

The lone issue to be resolved in the case at bar is WHETHER OR NOT THE PETITIONER IS ENTITLED TO A REFUND ON ITS OVERPAYMENT OF THE GROSS RECEIPTS TAX PERTAINING TO THE 4TH QUARTER OF TAXABLE YEAR 1996.

We rule in the negative.

In going over the records of the case, this Court cannot initially fathom the nature of Petitioner's claim for refund. Petitioner's sweeping statement that there was an erroneous computation in the gross receipts tax due has no legal anchor on which to stand on. Petitioner failed to allege in its pleading the legal basis of his Petition other than the assertion that gross receipts taxes were erroneously paid to the government. Petitioner did not even cite explicitly or by implication the pertinent statute and jurisprudence applicable to his cause of action.

Suffice it to state, Petitioner's case is likewise wanting in evidence. While it is true that Petitioner was able to establish the fact of Payment of the Gross Receipts tax due as evidenced by the machine validation found in the Quarterly Percentage return (Exhibit A) this does not necessarily follow that a refund is in order considering that the significance or relevance of the other documentary evidence accompanying it cannot be determined.

A review of Petitioner's documentary and testimonial evidence reveals that petitioner failed to satisfactorily prove its claim for refund. The Court could not find any vital or convincing evidence that supports Petitioner's allegation of overpayment.

First, the accuracy of the transaction figures which makes up the aggregate gross amount of Petitioner's Income (Exhibits A and C) cannot be ascertained since Petitioner failed to present any source document from which the said amounts could be based. Petitioner did not even indicate the basic component of its income items that were subjected to 1%, 3% and 5% Gross Receipts tax rate as per the quarterly percentage tax returns. The manner as to how Petitioner arrived at the amended Gross Receipts Tax Due and how it was computed was likewise not shown.

The document purportedly showing the comparative layout of the GRT "as computed" and the "should be" GRT (Exhibit E) is nothing but an enumeration of numerical figures whose significance cannot be discerned even from the testimonial evidence offered by Petitioner. This comparative illustration of the alleged overpayment is inadequate and incomplete as to details and contents. The skeletal outline of the said document leaves the Court guessing as to the significance of the figures contained therein.

The ticket register (Exhibits I and I-1), on the other hand, was prepared by the Bangko Sentral ng Pilipinas in reply to Petitioner's request to debit said amount as its internal revenue taxes collection. Said document cannot likewise be given credence. Being made at the instance of the Petitioner, We cannot entirely rely on the authenticity and accuracy of the amounts reflected therein as no source document was presented to support it.

To merely rely on the data given by the Petitioner, and accepting the contents of each of the documentary evidence as gospel truth would be to upset the scales of justice to the prejudice of the taxing authority. Fairness dictates that the allegation of overpayment of tax must be substantiated by convincing evidence, after all Court decisions are based on incontrovertible evidence on record and not on good faith, speculations or unsupported allegations.

It must be stressed at this point that tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, thus, it should be construed *strictissimi juris* against the claimant and in favor of the government **(Commissioner of Internal Revenue vs. Procter and Gamble Phil., Mfg. Corp., 204 SCRA 377).**

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
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