REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5914

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 28 2000

x - x

DECISION

This is a Petition for Review seeking for the refund or issuance of a tax credit certificate in the amount of P2,719,297.89 allegedly representing excess gross receipts tax paid for the quarter ending June 30, 1997.

The facts, as adduced from the "Joint Stipulation of Facts and Issues" dated October 26, 1999 and admitted by the parties are as follows:

1. "That Petitioner is a banking institution duly organized and existing under the laws of the Philippines.

2. That in C.T.A. Case No. 4720 entitled *Asian Bank Corporation v. Commissioner of Internal Revenue*, the Honorable Court of Tax Appeals ruled that the twenty (20%) final withholding tax on a bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing the bank's gross receipts tax.

3. That the decision in *Asian Bank Corporation v. Commissioner of Internal Revenue* under C.T.A. Case No. 4720 was appealed to the Court of Appeals.

4. That on December 29, 1997, on the strength of said decision, EBC through a letter of even date (Annexes "C" and "C-1" of Petition) requested of the respondent through the Revenue District Office No. 30, Revenue Region

No. 6, Binondo, Manila (the Office having area jurisdiction over the petitioner) the refund or issuance of a tax credit certificate for the June 30, 1997 Quarter in the amount of PHILIPPINE PESOS: TWO MILLION SEVEN HUNDRED NINETEEN THOUSAND TWO HUNDRED NINETY SEVEN PESOS and 89/100 (P2,719,297.89).

5. That the petition for tax refund was filed within the two-year prescriptive period as the petitioner's GRT –tax for the quarter ended June 30, 1997 was paid on July 21, 1997 and the present petition was filed on July 21, 1999.

6. That the claim for refund is pending administrative investigation.

7. That the petitioner and the authorized agent bank are one and the same person." (Joint Stipulation of Facts and Issues dated October 26, 1999, CTA docket pp. 41-42).

Records would reveal that on July 21, 1997, Petitioner filed with herein Respondent its various quarterly percentage tax returns and paid a total amount of gross receipts tax of P69,365,082.12 (Exh. A-2) as evidenced by the machine validation on the Transmittal Sheet of Percentage Tax of Head Office and Branches for the period ending June 30, 1997.

Of the total gross receipts tax payment of P69,365,082.12, the amount of P40,864,768.03 (Exhs. A-1, B-2) pertains to the total GRT paid by Petitioner's Head Office. Said GRT is computed based on the accumulated total gross receipts of P990,175,420.55 (Exh. C-3).

On the strength of the ruling of this Court in the case of *Asian Bank Corp. vs. CIR, CTA Case No. 4720 dated January 30, 1996*, where We held that the 20% final withholding tax on a bank as financial institution's passive income should not form part of its gross receipts tax base, Petitioner filed with the BIR on January 6, 1998 an administrative claim for refund of P2,719,297.89 corresponding to the difference between the GRT paid and the adjusted gross receipts tax of P38,145,470.14 (Exh. C-7), computed as follows:

Gross Receipts Subjected to Tax	P990,175,420.55
Less: 20% Portion of Tax	
Paid Income (Annex B1 of 2)	5,972,707.46
Investment Income subject to 20% final tax booked at gross (Annex B2 of 2)	48,413,250.14
Adjusted Gross Receipts Tax Base	P935,789,462.95

Computation of Adjusted Gross Receipt Tax:

	Gross Receipts	Tax Due
0%	P143,530,508.27	P 0.00
1%	20,513,662.19	205,136.62
3%	32,346,554.91	970,396.65
5%	739,398,737.58	36,969,936.87
	P935,789,462.95	P38,145,470.14

Gross Receipts Tax Paid	P 40,864,768.03
Adjusted Gross Receipts Tax	38,145,470.14
Tax Refund	P 2,719,297.89

Petitioner alleges that in arriving at the adjusted gross receipts tax base, it deducted from the original gross receipts of P990,175,420.55, the amount of P5,972,707.46 representing the 20% tax withheld on income received and booked net of 20% final tax (Exhs. C-9 and C-9-a) and the P48,413,250.14 representing the 20% final tax withheld on tax paid income booked at gross (Exhs. C-5, C-10 and D-1). This in effect lowers the Gross Receipts Tax base to P935,789,462.95. Using this as basis, Petitioner claims that the adjusted Gross Receipts tax due should be P38,145,470.14. Thus, from the Gross Receipts Tax paid of P40,864,768.03, Petitioner has a refundable Gross Receipts Tax amounting to P2,719,297.89.

As the claim for Refund was not acted upon by Respondent, Petitioner elevated the matter before this Court by way of Petition for Review on July 21, 1999.

In his Answer filed on February 20, 1998 Respondent raised the following Special and Affirmative Defenses, to wit:

"11. The decision in **Asian Bank Corporation vs. Commissioner of Internal Revenue** (CTA Case No. 4720) is pending appeal with the Court of Tax Appeals. (should be Court of Appeals). Hence, invocation thereof at this point in time is premature.

12. There is no provision in the Tax Code or any Special Law which excludes the 20% final income tax withholding under Section 50 (a) of the Tax Code, as no longer forming part of the gross receipts for the purpose of computation of gross receipt tax under Section 119 of the Tax Code.

13. The Petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue and that the 20% final withholding tax on income was actually remitted by its withholding agents in accordance with the provisions of the Tax Code.

14. The claim for refund is pending administrative investigation.

15. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.

16. The non inclusion of the 20% final withholding tax on income from the gross income for purposes of the gross receipts tax operates as an exemption from tax. Hence, the same must be construed strictly against the one who asserts the claim of exemption, considering that the tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception.

17. Claims for refund of taxes are to be construed strictly against claimants, the same being in the nature of an exemption from taxation (*Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351*).

18. Petitioner must show that it has complied with the provisions of Section 204(3) and Section 230 of the Tax Code, as amended."

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

Exhibits	Description
A	Petitioner's Transmittal Sheet of Quarterly Withholding Tax Returns
B	Petitioner's Quarterly Percentage Tax Return for the quarter ended June 30, 1997
C	Written Claim for Refund dated Dec. 29, 1997
D	Petitioner's Income and Expense Statement for the period June 1997
E to G-6-a	Subsidiary Ledger Transaction on Expense Account

H to K-1-a Subsidiary Ledger Transaction on Income Account

The issues, as stipulated by the parties are as follows:

"1. Whether or not EBC Head Office actually included in the computation of its GRT Base for the quarter ended June 30, 1997 the amounts of [a] P5,972,707.46 (representing 20% tax withheld on income received and booked net of 20% final tax during the quarter ended June 30, 1997, and [b] P48,413,250.14 (representing 20% final tax withheld on tax paid income booked at gross (100%) subjected to gross receipts tax for the quarter ended June 30, 1997).

2. Whether or not the said amounts represented the twenty percent (20%) final tax on certain passive income of EBC for the said quarter.

3. Whether or not the said amounts were received by EBC as part of its gross receipts for the said quarter.

4. Whether or not the respective withholding agents of EBC have paid the said amounts to the BIR.

5. Whether or not EBC is entitled to its claim for refund covering the said quarter and for how much.

6. Whether or not there is a provision in the Tax Code or any Special law which excludes the 20% final income tax withheld under Section 50 (a) of the Tax Code from the gross receipts for the purpose of computing gross receipts tax under Section 119 of the Tax Code.

7. Whether or not the non-inclusion of the said 20% final withholding tax in the computation of gross receipts subject to tax, operates as an exemption from tax."

As the aforementioned issues are interrelated, we deem it best to streamline and simplify them in one main issue, thus,

WHETHER OR NOT PETITIONER IS ENTITLED TO THE AMOUNT OF P2,719,297.89 ALLEGEDLY REPRESENTING THE EXCESS GRT PAID.

To begin with, the legal controversy at bar is not one of first impression. This Court has already settled the issue in the case of *Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 30, 1996* wherein it ruled that the 20% final withholding tax on a bank or financial institution's passive income should not form part of its gross receipts' tax base for purposes of computing the gross receipts tax.

True enough, in order to be entitled to the refund of overpaid gross receipts tax based on the *Asian Bank* decision *(supra)*, Petitioner must sufficiently prove the following:

1. that it actually paid the 20% final withholding taxes on its gross receipts from passive income.
2. that the 20% final withholding tax on passive income formed part of its gross receipts subjected to the gross receipts tax; and
3. that it actually paid the GRT due on its gross receipts from passive income inclusive of the 20% final withholding taxes.

   (see Equitable Banking Corporation vs. CIR, CTA Case No. 5661, March 30, 2000)

A painstaking scrutiny of Petitioner's documentary evidence reveals that Petitioner has not satisfactorily met the quantum of proof necessary in order for its claim for refund to be granted.

Based on the evidence on record, Petitioner failed to present proof of actual withholding of the 20% final taxes of P5,972,707.46 and P48,413,250.14. The documents presented do not show that the alleged 20% final tax on its interest income was actually withheld and remitted to the BIR. It should have presented copies of Certificates of Final Taxes Withheld issued by the withholding agents or issues of the investment securities showing the amount of interest income payment and the corresponding 20% final withholding tax.

Petitioner likewise failed to substantiate that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax. The accuracy of the figures making up the total gross amount of passive income indicated in the subsidiary ledger of income statement can only be ascertained through the source documents from which the said amounts were based. The amount of passive income indicated therein cannot be verified as to whether these were recorded at gross or net of the 20% withholding taxes, without any supporting documents. Petitioner should have adduced as evidence the detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advises, accounting tickets or certificates of final taxes withheld to show the actual receipt of income and the withholding of the corresponding 20% final tax.

The contention of the Petitioner that the entries in the general and subsidiary ledgers should be given highest probative value pursuant to Section 43 of Rule 130 of the Rules of Court holds no water. While it is true that entries in the ledger are made by a bank personnel in his professional capacity or in the performance of a duty in the ordinary or regular course of business, it is still necessary that the source document be presented to verify the contents. Absent this pertinent document, a serious doubt would be created as to the veracity, accuracy and truthfulness of the entries made. Contrary to Petitioner's assertion, the ledger balances and the working papers bearing the data of each of the transaction are not sufficient proof of Petitioner's claim for refund. Entries in the general ledger are already the results or summation of Petitioner's detailed transaction on passive investments. Thus, the raw data entered in the ledger should be corroborated by the production of the best evidence obtainable such as the above-mentioned source documents. As public interest is involved in tax refunds, this Court should be cautious of litigants presenting its case without any supporting documents that would attest to the accuracy of the amount it claimed for refund.

As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, it should be construed *strictissimi juris* against the *claimant (CIR vs. Procter and Gamble Phil., Mfg. Corp., 204 SCRA 377)*. This strict construction of tax refunds necessitates upon the claimant to create a prima facie case in his favor. Thus, he must justify his claim by showing covering proofs and introducing strong evidence to satisfactorily sustain his point of contention. Failure on his part to adduce evidence pertinent and substantial to his case is fatal to his claim.

Inasmuch as Petitioner failed to prove the inclusion, withholding and remittance of the 20% final withholding taxes of P5,972,707.46 and P48,413,250.14 in its 1997 quarterly gross receipts from passive income subjected to 5% GRT, it then follows that it failed to show that the corresponding 5% GRT of P2,719,297.89 was included in its 1997 total quarterly GRT payment of P40,864,768.03.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

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