REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA,
(MANILA BRANCH),
Petitioner,

- versus -

C.T.A. CASES NOS. 2948 & 3001

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

11/28/86

D E C I S I O N

Both cases involve the same factual circumstance which basic issue is nothing more than a question of petitioner's entitlement to the refund of overpaid gross receipts tax for the first quarter of 1976 and income tax for the year 1976 consequenced by alleged overstatement of interest income.

Petitioner Bank of America National Trust and Savings Association, a foreign corporation organized under the laws of the United States of America and licensed to engage in banking business in the Philippines filed with the respondent Commissioner of Internal Revenue on April 20, 1976 its gross receipts tax return for the first quarter of 1976 for a total amount of ₱53,217,303.41 and paid the 5% bank gross receipts tax in the amount of ₱2,660,865.17; and, on April 14, 1977, the corporate annual income tax return for the calendar year ended December 31, 1976 with a declared gross income of ₱168,355,024.00 and paid a total of ₱11,433,715.00 income taxes.

Incorporated as part of both returns were receipts of interest incomes from offshore loans directly granted by the petitioner's foreign head office and other foreign branches in favor of Philippine borrowers. The case at bar has particular reference to the remittance of interest payments on the dollar loan extended to the Philippine based Standard Fruit Corporation prior to 1976 by the Hongkong branch of the petitioner. As disclosed, every quarter of the year Standard Fruit remits its interest payments to the Hongkong Branch which remittances being Philippine sourced income are in turn reported thru telex to the petitioner for Philippine tax purpose, and the amount indicated in the advice is what is returned for the 5% bank gross receipts tax and income tax for the applicable year.

As further presented, sometime in April 1976 the Hongkong Branch advised the petitioner that the amount of interest on the Standard Fruit Corporation loan received during the first quarter of 1976 was US$494,791.64. Accordingly, petitioner included the peso equivalent of such amount in computing its gross receipts tax return for the first quarter of 1976 and paid 5% bank gross receipts tax thereon; likewise, reported the same amount as part of its interest income from dollar denominated loans granted to Philippine borrowers for the year 1976 in the corporate annual income tax return for the year ended December 1976.

Sometime in October 1977 petitioner was advised by the Hongkong branch of an error in the telex message of April 1976 in that instead of US$494,791.64, the correct interest income for Standard Fruit Corporation loan should have been only US$94,791.64 thus resulting in an overstatement in the amount of US$400,000.00, or ₱3,000,000.00 at the prevailing conversion rate of ₱7.50 to $1.00. The consequence thereof was an overpayment of the corresponding tax liabilities.

On April 20, 1978 petitioner filed with the respondent Commissioner of Internal Revenue a claim for the refund of the amount of ₱150,000.00, i.e., 5% of ₱3,000,000.00 as the overpaid gross receipts tax for the first quarter of 1976; and, on April 10, 1979 another claim for the refund of ₱1,050,000.00 or 35% of ₱3,000,000.00 representing the overpayment of income tax for the year 1976. To hedge against the running of the statutory period of limitations petitioner had these petitions for review docketed in CTA Case No. 2948 dated April 20, 1978 and CTA Case No. 3001 dated April 11, 1979.

What We have in the case at bar is an alleged erroneously reported interest income essentially addressed and directly brought to bear upon the petitioner which just knew what there was to be known being party to the error sought to be rectified. Going by the records, it appears that the factual findings are not short of specific support in terms of tractable data openly laid and fully disclosed, as such, deserves the credence normally accorded in the absence of contrary evidence. Respondent has not disputed the relatively simple material facts nor presented any evidence of the relevance and competence required to bash that patina of legality over the petitioner's claim.

Suffice it to state, the petitioner's own Mr. Nilo Chincuanco testified that "they relied upon the telex message of their Hongkong branch in preparing their gross receipts tax return for the first quarter of 1976 and for their income tax return for the year 1976. Hence, they reported an interest income of US$494,794.61 in both instances. They only learned that there was a mistake when sometime in October 1977 Petitioner's Hongkong branch, thru telex message informed them that the telex report of April 1976 was incorrect and that the actual interest income of Standard Fruit Corporation was only US$94,724.61."

In adding to a more logical reasoning, Mr. K.C. Wong of the Bank of America Hongkong Branch likewise testified on the Standard Fruit loan and presented the Loan Agreement in Exhibit "F", as well as the telex messages sent the petitioner. From the tenor of the Loan Agreement the Standard Fruit Corporation was to pay quarterly amortizations on its US$8,000,000.00 loan in the amount of US$400,000.00 per quarter.

Articles 1.2 and 1.5 of the Loan Agreement, Exhibit "F" provides as follows:

> "1.2 The notes of the Maker shall bear interest at the rate of 8% per annum on the aggregate unpaid principal balance and interest thereon shall be paid by the Maker quarterly beginning September 30, 1971 and thereafter. On each interest payment date,

C & C will pay the Bank the amount, if any, which may be necessary so that the total of such amount and the interest paid by the Maker shall equal, on a cumulative basis, interest on the outstanding principal balance of the notes at a rate per annum 1 1/2% in excess of the interbank offering rate for Eurodollars at the Bank's London branch (said interbank offering rate herein called the "LIOR"). For the period ending September 30, 1971, the LIOR shall be the six-month rate. Not less than five days prior to September 30, 1971, C & C shall inform the Bank whether it elects that the LIOR be determined for a three-month period, thereafter elect the period for which such rate shall be determined thereafter. Each such expiration date is hereinafter called on Interest Adjustment Date. The Bank shall, two days before each Interest Adjustment Date, determine the rate to be applicable until the next succeeding Interest Adjustment Date and shall notify C & C thereof."

"1.5 The principal on the notes purchased by the Bank shall be repaid in quarterly payments of US$400,000 each, with the first payment due March 31, 1974, with payments quarterly thereafter on June 30, September 30 and December 31 of each year (except the year 1977, March 31, June 30 quarterly payments of 1978) and continuing thereafter until September 30, 1980, on which date the entire balance of principal and interest shall be due and payable."

It may suffice to state that having said what needs to be said the testimonies bore the imprint of plausibility, and not a few cannot fail to make heads and tails of the innocuous *faux pas*. A correction must lie. Whatever pall of uncertainty hanged over the specific purpose of the controverted remittance of Standard Fruit Corporation the amount of US$400,000.00 could not have formed part of the interest payment contemplated by the terms of the Agreement as understood and applied. It will be too much of stretch therefore to hold petitioner accountable for such amount more than what was called upon it by law to declare for tax purpose. And, respondent Commissioner of Internal Revenue cannot remain unperturbed in not infusing valid cognizance to the overpaid taxes as consequenced by the overstated interest income.

WHEREFORE, finding the petitions to be well taken, the same are granted and the refund of the amounts sought is hereby ordered. No costs.

SO ORDERED.

Quezon City, Metro Manila, November 28, 1986.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge