REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK -
MANILA BRANCH,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

C.T.A. CASE NO. 5435

Promulgated:
JUL 12 1999

x - x

DECISION

This is a Petition for Review filed by STANDARD CHARTERED BANK - MANILA BRANCH, 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 ₱796,267.51, allegedly representing its overpaid gross receipts taxes for the second semester of 1994 up to and including the first semester of 1996.

As represented, Petitioner is a resident foreign banking institution duly organized and registered under the laws of England and authorized by our Securities and Exchange Commission to engage in business in the Philippines, with principal office located at 6756 Ayala Avenue, Makati City.

For the third and fourth quarters of 1994, the four quarters of 1995 and the first and second 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 includes the passive income which was subjected to twenty percent (20%) final taxes.

Period Covered	GRT	Date Paid	Exh.
3rd Qtr. (July to Sept., 1994)	P5,716,270.00	10-20-94	A
4th Qtr. (Oct. to Dec., 1994)	4,772,985.00	1-20-95	B
1st Qtr. (Jan. to March, 1995)	5,459,179.00	4-20-95	C
2nd Qtr. (Apr. to June, 1995)	6,542,752.00	7-19-95	D
3rd Qtr. (July to Sept., 1995)	7,173,616.00	10-20-95	E
4th Qtr. (Oct. to Dec., 1995)	7,692,265.00	1-19-96	F
1st Qtr. (Jan. to March, 1996)	10,166,974.00	4-19-96	G
2nd Qtr. (Apr. to June, 1996)	11,108,506.00	7-19-96	H

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 filed with the respondent on October 15, 1996 a claim for refund of the alleged overpaid GRT for the last two quarters of 1994 up to the second quarter of 1996 in the aggregate amount of P796,267.51 (Exh. AAA).

On October 18, 1996, Petitioner filed with this Court the instant Petition for Review because Respondent did not act upon the aforementioned claim for refund.

Petitioner presents the proposition as rationale of the Petition for Review that the gross receipts tax paid by it for the last two quarters of 1994, the four quarters of 1995 and the first two 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 has actually overpaid the amount legally due from it insofar as its GRT obligations are concerned, hence, a refund is, therefore, in order.

Respondent on the other hand, in his Answer stressed that Petitioner's claim for refund of alleged overpaid gross receipts taxes for the second semester of 1994 up to the first semester of 1996 was filed only on October 15, 1996 and is still under administrative investigation by the BIR. Further, Respondent raised the usual token of a defense that (1) in a claim for refund, it is incumbent upon petitioner to prove that he is entitled to it x x x, (2) claim for refund of taxes are construed strictly against claimant, the same being in the nature of exemption from taxes, and (3) it is incumbent upon petitioner to show that he has complied with the provisions of Section 230 of the Tax Code.

The issue to be resolved by the Court is whether or not the 20% final withholding tax on certain passive income of the Petitioner be excluded in the total gross receipts of said Petitioner, for GRT purposes, hence, it is entitled to the amount sought to be refunded.

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 the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue,** ***supra***, which is anchored on similar factual circumstances and on all fours with the case at bar. Hence, we find no cogent justification to depart from Our decision which is now ruling case law. Said decision states in part:

> "The assessment for GRT is based on Section 119 of the Tax Code, quoted hereunder thus:
>
> > **SEC. 119.** ***Tax on banks and non-bank financial intermediaries.*** - There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:
> >
> > (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.
> >
> > Short-term maturity not in excess of two (2) years 5%

Medium-term maturity-over two years but not exceeding four (4) years 3%

Long-term maturity:
(i) Over four (4) years but not exceeding seven (7) years 1%

(ii) Over seven (7) years 0%

(b) On dividends 0%

(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 28 of this Code 5%

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long term and the correct rate of tax shall be applied accordingly.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

The aforequoted provision of the law speaks of gross receipts as the basis of the 5% bank tax or GRT, and it is petitioner's contention that the interest income included as part of such gross receipts should be computed minus the final tax already withheld by various withholding agents for the reason that such amount did not actually go to its funds, hence was not actually received by them.

We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.

Revenue Regulations No. 12-80 dated November 7, 1980 on Taxation of Certain income Derived from Banking Activities provides that the rates of tax to be imposed on the gross receipts of such financial institution; shall be based on all items of income actually received, thus:

SEC. 4. xxx xxx xxx

(e) *Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities.* — The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder. (Underscoring supplied)

From the foregoing, it is but logical to infer that the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for the purpose of computing the GRT. 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, 1966, 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:

"xx xx. The government could not have meant to tax as gross receipt of the Manila Jockey Club the 1/2 % 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, to winning horses and Jockeys-admited 5%. It is true that the law says that out of the total wager funds 12 1/2 % 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 prizes and bonuses of jockeys, which portion is admittedly 5% out of the 12 1/2 % 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.

"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 & 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*."

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

A careful study of the evidence adduced by Petitioner (Exhibits A to AAA) has led this Court to conclude that Petitioner is entitled to the amount sought to be refunded. Petitioner's evidence clearly shows that it filed its claimed refund within the two (2) year prescriptive period. Furthermore, records show that Petitioner paid GRT to the Respondent which is over or in excess of the GRT required by law because it erroneously included the 20% final withholding taxes on interest income in the computation of its gross receipts tax for the period July 1, 1994 to June 30, 1996. These facts were never controverted by Respondent. As a matter of fact, Respondent presented evidence that even strengthen the claim of Petitioner when the Respondent's witness, Mrs. Elenita Quimosing, Revenue Officer IV of the Bureau of Internal Revenue, testified on February 4, 1998 that Petitioner's claimed refundable amount of ₱796,267.51 formed part of the gross receipts tax of the Petitioner. Exhibit 2 of Respondent also points to the fact that the revenue officers who investigated/examined the claimed refund of Petitioner concluded that indeed the gross receipts tax that Petitioner paid for the period under consideration was based on the gross receipts which included the total final withholding tax from Petitioner's passive interest income. The revenue officers however recommended that the alleged overpaid gross receipts tax of ₱796,267.51 claimed as refund should not be given due course as the legal basis of Petitioner was erroneous. It insisted that the 20% withholding tax should form part of the gross receipts to be subjected to the GRT.

As earlier adverted to, a similar legal issue has already been settled by this Court in the Asian Bank case, *supra*, thus in consideration of the same, the Court was persuaded to extend the relief sought by the Petitioner.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition is **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE to herein Petitioner in the amount of ₱796,267.51, representing the latter's overpaid gross receipts taxes for the last two quarters of 1994, the four quarters of 1995 and the first two quarters of 1996. No costs.

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

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DISSENTING OPINION

The opinion of the majority of my esteemed colleagues is to grant the claim for refund representing alleged overpaid gross receipts taxes.

I humbly disagree with the conclusion of the majority primarily because it is based on the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 30, 1996,** which I believe to be erroneous.

A more fundamental reason which prevents me from agreeing with the majority opinion is that there is no provision in the Tax Code or any special laws which excludes the 20% final income tax withholding under Section 50(a), as no longer forming part of the gross receipts for purpose of the 5% gross receipts tax. On the other hand, Section 8(c) of Revenue Regulations No. 12-80, dated November 7, 1980, as amended by Section 7(c) of Revenue Regulations No. 17-84, dated October 12, 1984 have the same provisions, thus:

> "If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed." (Underscoring supplied)

Clearly, there is no doubt that the 20% final withholding tax is legally includible as part of the gross receipts for purposes of computing the gross receipts tax.

The petitioner in the instant case cited the Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996, where this Court has upheld the petitioner's contention that the interest income included as part of such gross receipts should be computed minus the 20% final tax already withheld and deducted by various withholding agents for the reason that the amount did not go to its funds, hence, was not actually received by them. And the Court approved the petitioner's citation of Section 4(e) of Revenue Regulations No. 12-80, dated November 7, 1980, thus:

> "Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities. - The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually

> received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of overpayment then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder."

This Court concluded that from the aforestated provisions it can logically be inferred that the amount representing the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for purposes of computing the gross receipts tax. Such conclusion in law is legally objectionable for two (2) reasons, to wit:

> 1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts as basis of the gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions (**Consolidated Mines, Inc. vs. CTA, L-18843, August 29, 1974**). The two principal accounting methods expressly and impliedly recognized by the Tax Code and the Income Tax Regulations are:
>
> > (a) Cash receipts and disbursement method or cash basis. - Income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year; and
> >
> > (b) Accrual basis. - Income is included in gross income when earned, whether received or not, and expenses are

allowed as deductions when incurred although not yet paid within the year.

2) That the non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of the gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. 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, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statutes are to receive a reasonable construction with a view to carrying out their purpose and intent **(51 Am Jur 361)**. It should not be construed as to permit the taxpayer to easily evade the payment of the tax **(Cabon Steel Co. vs. Lewelyn, 251 U.S. 501)**. Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law **(Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970)**. A tax statute should be construed to avoid the possibilities of tax evasion **(Lorenzo vs. Posadas, 64 Phils. 353)**.

The High Court's decision in the case of Commissioner of Internal Revenue vs. The Manila Jockey Club, Inc. 108 Phils. 821, June 30, 1960, which was reaffirmed by the said Court in the case of **Visayan-Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, February 27, 1965** cannot be considered as precedent cases, hence, inapplicable to the two cases decided by this Honorable Court in the cases of Compania

Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426 dated November 14, 1966 and Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 dated January 30, 1996, for the following reasons:

> 1) In the Manila Jockey Club, Inc. case, the Club was authorized to operate horse races in which betting was made through the sale of tickets to the public. The total amount of bets called "wager fund" were distributed pursuant to Executive Order No. 320 and Republic Act No. 309, as follows:
>
> 87½% as dividends to holders of winning tickets
>
> 12½% as "commissions" of the Manila Jockey Club, of which ½% was assigned to the Board on Races and 5% was distributed as prizes for owners of winning horses and authorized bonus for jockeys.

According to the above-mentioned distribution of the "wager fund", the then Collector of Internal Revenue assessed the Club on the whole amount of its "commission" of 12½%. But since the Club had already paid the amusement tax based on its 7% share of the "commission", the amount assessable pertains only to the 5½% for the period from November 1946 to October 1950. On various instances, the Club protested the proposed assessments and was sustained by the opinions of the Secretary of Justice rendered on three different occasions (Opinion

No. 345, series of 1941; Opinion No. 249, series of 1952 and Opinion No. 340, series of 1955).

Notwithstanding the opinions of the Secretary of Justice to the effect that the amount corresponding to the 5½% was held only by the Club in trust for the owners of winning horses and authorized bonuses of jockeys, the then Collector of Internal Revenue demanded payment of amusement taxes for the period November 1946 to October 1950. Said demand letter was timely appealed to the Court of Appeals wherein a unanimous judgment was obtained reversing the Collector's stand on the matter. In the High Court, the position of the Secretary of Justice was sustained thereby upholding the Court of Tax Appeals' decision.

Accordingly, gross receipts of the proprietor of the amusement place should not include any money which, although delivered to the amusement place was "<u>especially earmarked</u>" by law or legal rule or regulations for some persons other than the proprietor. Undeniably, they are money received by the racing club but they are moneys earmarked by law or regulations for winning horse owners and jockeys and never for a minute become the property of the race track. The same is true in the case of the ½% which the law directs the club to deliver to the Board on Races. The High Court therefore agrees with the stand of the Court of Tax Appeals that such funds representing 5½%

of the 12½% "commissions" of the race track do not form part of the gross receipts, hence not subject to the amusement tax of 20%.

The above-mentioned decision of the High Court was also applied in the case of Visayan Cebu Terminal Co., Inc. vs. Commissioner of Internal Revenue, 13 SCRA 357, Nos. L-19530 and L-19444, February 27, 1965. The legal issue involved in this case is the interpretation of the management contract entered into by and between the Bureau of Customs and Visayan Cebu Terminal Co., Inc. whereby the latter as contractor was appointed the sole manager of the Arrastre Service at the Port of Cebu City. In the said Management Contract, it was further agreed and understood that in consideration of the rights and privileges granted the Contractor for the management of the Arrastre Service, the Bureau of Customs shall receive twenty eight (28%) percent of the total monthly gross income derived from whatever source in connection with the operations of the Arrastre Service, payable within ten (10) days of the succeeding month. The main legal issue involved in this case is whether or not the gross receipts corresponding to the 28% of the total gross income of the Service Contractor delivered to the Bureau of Customs within ten (10) days of the following month should form part of the gross receipts subject to 3% contractor's tax under Section 191 of the Tax Code. The

Court of Tax Appeals ruled in favor of the petitioner, holding the view that the said 28% payment by the Arrastre Contractor based on its monthly gross income should not form part of the gross receipts subject to 3% contractors tax and that paragraph 23 of the said Management Contract can legally be construed as a "regulation". As the learned trial court has aptly observed: "x x x the government could not have intended to consider as gross receipts the 28% that went to one of its institutions, the Bureau of Customs, and thereby collect percentage tax on it from petitioner. To hold petitioner liable for the payment of percentage tax is unquestionably unjust and not contemplated by Section 191 of the Tax Code."

All the above-mentioned decisions of the High Court made specific reference to gross receipts which are especially "earmarked by law or legal rule or regulation" as not forming part of the taxable gross receipts for purposes of the gross receipts tax under the Tax Code. For this purpose, it is pertinent to define the word "earmark" as a mark put upon a thing to distinguish it from another. Originally and literally, a mark upon the ear, a mode of marking sheep and other animals. Property is said to be earmarked when it can be identified or distinguished from other property of the same nature. To set apart from others (Black's Law Dictionary, 6th

Edition, p. 508). In the case of the Manila Jockey Club, Inc. Executive Order No. 320 and Republic Act No. 309 made the specific "earmarking" for distribution of the total wager fund to different persons other than the proprietor. The same is true in the case of Visayan Cebu Terminal Co., Inc. where the specific earmarking of the 28% of the total monthly gross income to be delivered to the Bureau of Customs by the Contractor was provided in paragraph 23 of the Management Contract. Such specific earmarking of the twenty (20%) percent final income tax as not includible in the gross receipts for purposes of the gross receipts tax was not provided by any law or legal rule or regulations, hence the non-applicability of the above-cited High Court decisions to the Asian Bank Corporation case. This legal observation is also in point in the case of Compania Maritima case where the non-inclusion of the 10% reserve from the total cash collection to avoid claim for refund on freight and passengers tickets not taken is not provided by any law or legal rule or regulations.

In the Asian Bank Corporation case, petitioner bank alleges that subjecting the gross receipts to the 20% final withholding income tax and later to the 5% gross receipts tax is not only oppressive and obnoxious but even a confiscatory form of double taxation. Double taxation has been defined "as the taxing of the same item or piece of property twice to the same person, or taxing it as the property of one person and again as the property of another, <u>but this does not include the imposition of different</u> taxes concurrently on the same property or income (e.g. federal and state income taxes), nor the taxation of the same piece of property to different persons when they hold different interests in it or when it represents different values in their hands, as when both the mortgagor and mortgagee of property are taxed in respect to their interests in it, or when a tax is laid upon the profits of the corporation and also upon the dividends paid to its stockholders" (Black's Law Dictionary, 6th Edition, p. 491). This acceptable form of double taxation is reflected in BIR Ruling No. 223 dated November 2, 1989, thus:

> "The 5% gross receipts tax under Section 120 of the Tax Code is collectible on all finance companies doing business in the Philippines from interests, discounts, and all other items treated as gross income under the Tax Code. Accordingly, your income derived from investing the excess funds in short-term market placements through commercial banks constitutes income hence, subject to the 5% gross receipts tax under said Section. The fact that it has been subjected to the 20% final withholding income tax under Section 50(a) is immaterial. Besides, the withholding tax is imposed under Title II of the Tax Code while the finance tax is provided under Title V thereof." (BIR Ruling No. 223, November 2, 1989)

For as long as the basis for the claim for refund or tax credit certificate is based on the non-inclusion of the amount representing the final withholding income tax under Section 50(a) as part of the gross income subject to gross receipts tax, this dissenting opinion will stand. The fact that petitioner-claimant is able to establish by competent documentary and testimonial evidence is of no moment. For purposes of the amusement tax under Section 260 of the Tax Code, the term 'gross receipts' embraces 'all the receipts' of the proprietor, lessee, or operator of the amusement place. The words 'all the receipts' refer to the total amount of cash received which becomes part of the funds of the taxpayer and does not include any money which has been specially earmarked by any law or legal rule or regulation for some other person other than the proprietor, lessee or operator of the amusement place. Receipts means actually received (**Philippine Long Distance Telephone Co. vs. Collector of Internal Revenue, G.R. No. L-3222, January 21, 1952**) for itself and not for others, for otherwise they would not be receipts (**Manila Jockey Club, Inc. vs. Collector of Internal Revenue, CTA Case No. 205, April 15, 1958; Jai Alai Corporation of the Philippines vs. Araneta, CTA Case No. 108, July 31, 1956** (Annotated, NIRC by Commissioner Jose Arañas, 1988 Edition, p. 687).

In view of all the foregoing, I register my dissent to the majority opinion and vote to **DENY** the claim for refund for lack of legal basis.

AMANCIO Q. SAGA
Associate Judge