REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK – MANILA BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 6285

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 17 2003

x - x

DECISION

This case involves a claim for refund or a tax credit certificate in the amount of ONE MILLION SIX HUNDRED EIGHTY SIX THOUSAND SIX HUNDRED THIRTY NINE AND 58/100 PESOS (P1,686,639.58) allegedly representing overpaid gross receipts tax for the taxable year 1999.

Petitioner is a resident foreign banking institution duly organized and registered under the laws of England and authorized by the Securities and Exchange Commission to engage in business in the Philippines. It holds office at the 10th Floor, Skyplaza Building, Ayala Avenue, Makati City, Philippines (*par. 1, Petition for Review*).

On various dates in 1999 and 2000, more specifically on April 23, 1999, July 26, 1999, October 25, 1999 and January 25, 2000, petitioner filed its quarterly percentage returns with the Bureau of Internal Revenue relative to gross receipts tax (GRT) from its banking operations (*par. 1, Joint Stipulation of Facts, CTA Records, p. 41*), detailed as follows:

Exhibit	Period Covered		GRT	Date of Payment
A	1st Qtr. Jan.-March 1999	P	28,764,382.45	April 23, 1999
B	2nd Qtr. April-June 1999		24,077,254.03	July 26, 1999
C	3rd Qtr. July-Sept. 1999		23,767,078.21	October 25, 1999
D	4th Qtr. Oct.-Dec. 1999		22,310,965.01	January 25, 2000
	TOTAL	P	98,919,679.70	

Petitioner alleged that for the taxable year 1999, it had paid its GRT based on its gross receipts, inclusive of the amount of P33,732,791.53 representing 20% final tax that was withheld from its passive interest income of P168,663,957.64. According to petitioner, the 20% final withholding tax (FWT) on passive interest income should not form part of the taxable amount for GRT purposes as this was not actually received by petitioner nor did it redound to its benefit but was clearly earmarked as taxes payable to the government. Thus, it had overpaid its GRT for the taxable year 1999 and should therefore be refunded the amount of P1,686,639.58, computed as follows:

20% Final Withholding Tax		
Amortization of Discount on:		
T-Bills held for Reserves	P	74,620,374.22
T-Bills Trading		30,730,330.95
T-Bills Investment		-
Amortization of T-Bills Discount	P	105,350,705.17
Balance with Local Banks		118,442.01
Interest on BSP Loans subjected to FWT		6,696,180.56
Interest on Special Deposit with BSP		6,387,500.01
Interest on GS		50,111,129.89
TOTAL INCOME SUBJECT TO 20% FWT	P	168,663,957.64
20% FWT on the above income	P	33,732,791.53
		5%
5% GRT		1,686,639.58
OVERPAID GRT		**1,686,639.58**

On April 17, 2001, petitioner filed with the Bureau of Internal Revenue an administrative claim for refund of overpaid GRT for the taxable year 1999 in the total amount of P1,686,639.58 (*par. 2, Joint Stipulation of Facts, CTA Records, p. 41, Exhibit "F"*) pursuant to Section 204(c) of the 1997 Tax Code, in relation to Section 229 of the same Code.

On April 23, 2001, without waiting for any action on the part of herein respondent, petitioner filed this suit to us for proper action.

On May 22, 2001, respondent filed his answer, claiming the following as Special and Affirmative Defenses:

4. The 20% final withholding tax on bank's interest income forms part of the taxable gross receipts in computing 5% gross receipts tax (Commissioner of Internal Revenue vs. AsianBank Corporation, CA-GR Sp No. 51248, November 22, 1999).

5. The alleged claim for refund/tax credit is subject to administrative investigation by the Bureau of Internal Revenue.

6. Petitioner must show compliance with the provisions of Sections 204(c) and 229 of the Tax Code.

7. Petitioner must prove that it is entitled to the refund sought.

8. Claims for tax refund are strictly construed for they partake the nature of an exemption from tax.

Both parties jointly stipulated the following as the issues to be resolved in this case:

1. Whether or not the 20% final withholding tax (FWT) on petitioner's interest income should form part of its taxable gross receipts for purposes of computing the 5% GRT;

2. Whether or not the 20% FWT was withheld from petitioner's interest income for 1999;

3. Whether or not petitioner included as part of its total gross receipts for 1999 the amount equivalent to said 20% FWT on passive income;

4. Whether or not petitioner is entitled to the refund of P1,686,639.58 representing overpaid GRT for taxable year 1999.

With reference to the first issue, petitioner argues that the 20% final withholding tax on passive interest income should not form part of the taxable amount for GRT purposes as this was not actually received by it but only the amount net of the said final tax. Considering that the 20% FWT was withheld from the petitioner, the latter concludes that the amount which corresponds to the FWT should be excluded from the tax base in the computation of the 5% GRT. To support its position, petitioner cited Section 4 of Revenue Regulations No. 12-80, which implements Section 119 (now Section121) of the Tax Code, as amended, which states in part:

> **SECTION 4.** ***Manner of Computation of Tax Base.***-For purposes of Section 3 above, tax bases of the following taxes shall be computed in the following manner:
>
> 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." (Emphasis supplied)

Petitioner likewise cited the case of *Asian Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, promulgated on January 30, 1996,* where this court ruled that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts. According to petitioner, said decision has been upheld in several Court of Appeals decisions (*Commissioner of Internal Revenue vs. Citytrust Investment Phils., Inc., CA-GR No. SP No. 52707, dated August 17, 1999;Commissioner of Internal Revenue vs. Solidbank Corporation, CA-G.R. SP No. 54599, dated July 18, 2000; Commissioner of Internal vs. China Banking Corporation, CA-G.R. SP No. 50790, dated October 16, 2000; China Banking Corporation vs. The Commissioner of Internal Revenue, CA-G.R. SP No. 51637, dated December 11, 2000; Commissioner of Internal Revenue vs. Bank of the Philippines Islands, CA-G.R. SP No. 59483, dated February 28, 2001; Commissioner of Internal Revenue vs. Bank of Commerce, CA-G.R. SP No. 52706, dated August 14, 2001)* and the issue of whether or not the 20% FWT should form part of the taxable base for purposes of computing the 5% GRT is pending with the Supreme Court.

Respondent, for his part, maintained that the 20% final withholding tax on bank's interest income forms part of the taxable gross receipts in computing the 5% gross tax receipts, as ruled by the Court of Appeals in the case of Commissioner of Internal Revenue vs. Asianbank Corporation, CA-GR Sp. No. 51248, November 22, 1999 (par. 4, Answer, May 22, 2001, CTA Records, p. 24).

After a careful study of the attending facts, the contentions of the parties and the laws and jurisprudence applicable to the case, we resolve to deny petitioner's claim.

The issue of whether or not the 20% final withholding tax on petitioner's interest income should form part of its taxable gross receipts for purposes of computing the 5% gross tax receipts had been resolved by the court in the affirmative in a number of similar cases, most recent of which is the case of ***Solidbank Corporation vs. Commissioner of***

Internal Revenue, CTA Case No. 6096, promulgated March 10, 2003, where we ruled in this wise:

"We find petitioner's arguments legally objectionable for two (2) reasons, to state:

(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-18846, 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) The non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of 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).*"

Our conclusion finds support in the most recent ruling of the Court of Appeals in the case entitled ***Commissioner of Internal Revenue vs. Philippine National Bank*, C.A.-G.R. SP No. 59402, promulgated on January 28, 2003**, excerpts of which are quoted hereunder:

> "Unlike the 5 1/2% commission in the Manila Jockey Club case, the 20% withholding tax on PNB's interest income is money which actually belongs to respondent bank but paid to the government to satisfy the bank's obligation. The withholding of the tax and its payment to the government redounds to the benefit of PNB. Clearly, the money which went into paying the 20% withholding tax forms part of PNB's gross receipts. xxx
>
> We cannot give credence to PNB's argument that "since the 20% final tax on respondent's income has been earmarked in favor of the government, the 20% final tax should be excluded from respondent's gross receipts in the computation of the gross receipts tax. Taxes are, by law, always "earmarked in favour of the government." Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Section 51 [g] of the National Internal Revenue Code and Section 7 of Revenue Regulation No. 12-80, both cited by respondent bank, simply explain what the government intends to do with the 20% final withholding tax paid by the taxpayer.
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> Neither can we adopt the Tax Court's view that the imposition of the 20% final withholding tax and the 5% gross receipts tax on respondent bank's income constitutes double taxation. Double taxation means taxing the same property twice when it should be taxed only once. That is, "x x x taxing the same person twice by the same jurisdiction for the same thing." This is not the case here."

Moreover, in the case entitled ***Commissioner of Internal Revenue vs. Asianbank Corporation***, *CA-G.R. SP No. 51248, promulgated on November 22, 1999*, the Court of Appeals had the occasion to explain the meaning of the phrase 'all items of income actually received' under Revenue Regulations No. 12-80, relied upon by petitioner, thus:

> "It is true that Revenue Regulations No. 12-80 provides that the gross receipts tax on banks and other financial institutions should be based on all items of income actually received. Actual receipt here is used in opposition to mere accrual *(Rep. vs. Lim Tian Teng sons & Co., 16 SCRA 584)*.
>
> But receipt may be actual or constructive. Article 531 of the Civil Code provides that possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of one will, or by the proper acts and legal formalities established for acquiring such right. Moreover, taxation income may be received by the taxpayer himself or by someone authorized to received it for him (Art. 532, Civil Code). The 20% final tax withheld from interest income of banks and other similar institutions is not income that they have not received, it is simply withheld from them and paid to the government, for their benefit. Thus, the 20% income tax withheld from the interest income is, in fact, money of the taxpayer bank but paid by the payor to the government in satisfaction of the bank's obligation to pay the tax on interest earned. It is the bank's obligation to pay the tax. Hence the withholding of the said tax and its payment to the government is for its benefit."

In his ***Annotations and Jurisprudence on the National Internal Revenue Code, as amended***, former Commissioner of Internal Revenue Jose Arañas defined gross receipts under then Section 260 (previously Section 249 and now Section 121) of the Tax Code as follows:

> **260(3). *Meaning of "gross receipts".*** - The term "gross receipts" provided for in Section 249 of the Tax Code should be interpreted to mean "as the whole amount received without deductions," otherwise, it will be considered as "net receipts" *(National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952)*.

> Profits derived from the sale of miscellaneous accounts, whether it is in connection with the banking business of the banking institution or not, so long as they were earned or derived from its fund, as a banking institution, should be included in gross receipts *(ibid)*. Arañas, *Annotations and Jurisprudence on the National Internal Revenue Code as amended,* 6th ed. (1983), Vol. II, p. 479.

Likewise, in his ***Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines***, Jose N. Nolledo draws the same conclusion:

> "No deductions are allowed from gross income before the 5% tax is imposed as otherwise, the tax is based on net receipts *(See National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952).* Nolledo, *Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,* 1976 Revised Edition, p. 1127."

In the United States, whose jurisprudence has persuasive effect in this jurisdiction, the term "gross receipts" has long had this established meaning:

> "Gross income," "gross proceeds" and "gross receipts" all mean the same, it has been held, although "gross earnings" are sometimes distinguished from "gross receipts". Gross receipts ordinarily mean the total receipts before anything is deducted for the expenses of management." Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, pp. 1789-1790, citing State v. Illinois Cent. R. Co., 246 Ill. 188, 92. N.E. 814.
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> "Gross earnings means entire earnings from all operations and not earnings less operating expenses, taxes and bad debts. Stae v. United Electric Light & Water Co., 90 Conn. 452, 97 Atl. 857" Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, p. 1790.

Excise tax has not been allowed as a deduction for purposes of determining gross receipts. In interpreting the term "gross receipts", Mertens, *Law of Federal Income Taxation,* has this to say:

&3.37. Construction of Specific Words

x x x

Gross Receipts

In determining "gross receipts" such descriptions as "the total amount received or accrued" have been applied. That gross receipts represent the total amount received or accrued is plain; with respect to inventory, it is the amount the customer paid and not such amount reduced by any excise tax for which the seller is responsible. This definition of gross receipts – not subtracting the excise payments – has been applied in formulas for DISC's. Mertens Law of Federal Income Taxation, 1995 edition, Chapter 3, page 54, Section 3.37, citing Lucky Lager Brewing Co. v. Comm., 26 TC 836 (1956), affd 246 F 2d 621 (CA9 1957) and Brown-Forman Corp. v. Comm., 94 TC 419 (1990).

In the aforecited **Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, 246 F 2d 621 (CA9 1957),** the United States Court of Appeals ruled:

"The contention of petitioner is that the word "gross" in the term "gross receipts" means what the buyer paid for the beer less what the manufacturer paid to the government prior to its sale under the excise tax, enacted in 1939. x x x.

We do not agree. The language of paragraph (5) of Section 435(e) that "gross receipts" are "the total amount received or accrued ***from the sale*** of stock in trade" [emphasis supplied] is irrefutably plain. It is a logical absurdity to contend that the "total amount received" from the sales is not what the customer paid but a lesser amount determined by a deduction of a particular tax paid, here required to be paid and in fact paid by the seller, before the delivery of the beer. *Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, United States Court of Appeals, Ninth Circuit, June 24, 1957, 246 F 2d 621 (CA9 1957).*

At this point, it is significant to emphasize that the inclusion of the 20% final tax withheld at source from petitioner's interest income in determining the tax base for computing the 5% gross receipts tax would not result to double taxation, contrary to the ruling in the *Asianbank* case relied upon by petitioner. It bears stressing that the 20% final withholding tax is payment of income tax, interests being one of the items of gross income specified under Section 32, Chapter VI, Title II-TAX ON INCOME of the Tax Reform Act of 1997, to state:

> **Section 32.** ***Gross Income.*** –
>
> "(A) *General Definition.* - Except when otherwise provided in this Title, **gross income means all income derived from whatever source**, including (but not limited to) the following items:
>
> " (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
> " (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
> " (3) Gains derived from dealings in property;
> " (4) **Interests**;
> " (5) Rents;
> " (6) Royalties;
> " (7) Dividends;
> " (8) Annuities;
> " (9) Prizes and winnings;
> "(10) Pensions; and
> "(11) Partner's distributive share from the net income of the general professional partnership. *(Emphasis supplied)*

On the other hand, gross receipts tax is not a tax on income. It is a percentage tax imposed under Section 121, Title V-OTHER PERCENTAGE TAXES of the same Code, which provides:

> **Section 121.** ***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 (2) years but not exceeding four (4) years) 3%

"Long-term maturity –

"(1) Over four (4) years but not exceeding seven (7) years 1%
"(2) 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 32 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."

Since double taxation in the objectionable or prohibited sense (also known as obnoxious) means that the same property is taxed twice when it should be taxed only once; and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and covering the same kind or character of tax (*Villanueva v. City of Iloilo, L-26521, Dec. 28, 1968, cited on page 72, Law of Basic Taxation, Aban, 1994 Ed.),* and considering that the 20% final withholding tax and the 5% gross receipts tax imposed on the passive interest income are not of the same kind or character, there exists no double taxation in this case.

The exclusion of the 20% FWT would seriously erode the GRT base. In effect, it would reduce by 20% the tax on gross receipts under Sections 121 (Tax on Banks and Non-bank Financial Intermediaries) and 122 (Tax on Finance Companies). Tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law excluding the 20% FWT from the tax base for GRT purposes, we cannot conclude that such 20% FWT should be excluded for purposes of GRT computation.

Finding petitioner not to be legally entitled to the refund sought, we find it no longer necessary to delve into the factual issues raised.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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