REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5589

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 16 2000

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DECISION

Before Us for consideration is a Petition for Review filed on March 31, 1998, seeking for a refund of the amount of P2,038,257.46, representing alleged erroneously paid gross receipts tax for taxable year 1996.

The facts are simple.

Petitioner is a corporation organized and existing under and by virtue of the laws of the Philippines. It is primarily engaged in financing activities.

For the four quarters of taxable year 1996, petitioner reported gross receipts in the total amount of P346,027,897.77 for which it allegedly paid P14,973,087.41 as gross receipts tax detailed as follows:

QUARTER	EXHIBIT	GROSS RECEIPTS	GROSS RECEIPTS TAX
1st	A/A-1	P 64,735,851.80	P3,236,792.59
2nd	B/B-1	131,021,901.70	5,642,578.28
3rd	C/C-1	89,271,120.46	3,554,016.23
4th	D/D-1	60,999,023.81	2,539,700.31
	Total	P346,027,897.77	P14,973,087.41

Petitioner asseverates that of the total gross receipts of P346,027,897.77, the amount of P40,765,149.04 corresponds to the 20% final tax withheld on passive income and which was further subjected to the 5% gross receipts tax amounting to P2,038,257.46, detailed as follows:

SECURITY	FINAL TAX	GROSS RECEIPTS TAX
Long term commercial papers	P17,703,717.74	P 885,185.89
Fixed rate treasury notes	10,598,196.31	529,909.82
Treasury bills	8,414,760.79	420,738.04
Investment in savings deposit	2,535,236.12	126,761.81
Floating rate treasury notes	899,131.07	44,956.55
Blue fund	595,000.00	29,750.00
Savings deposit	19,107.02	955.35
Total	P40,765,149.05	P2,038,257.46

Relying on this Court's ruling in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, promulgated on January 30, 1996,** where this Court ruled that the 20% final tax should be excluded in the computation of the 5 % gross receipts tax , petitioner filed its administrative claim for refund with the respondent on September 5, 1997 (Exh. E) and on March 27, 1998 (Exh. F).

Failing to obtain relief from the respondent Bureau, petitioner elevated its grievance to this Court on March 31, 1998 to toll the running of the two-year prescriptive period provided under Section 230 of the Tax Code.

On May 20, 1998, respondent filed his Answer to the Petition for Review and maintained his stance that petitioner is not entitled to the refund sought there being no basis in fact and in law. In addition thereto, respondent advanced the following Special and Affirmative Defenses, to wit:

8. In computing the gross receipts tax (GRT) of financial institutions, such as the petitioner in the above-entitled case, the interest on deposits and yield on deposit substitutes shall be included as part of the tax base upon which the GRT is imposed as provided in Section 8(c) of Revenue Regulations No. 12-80, as amended, which reads:

> "Sec. 8. Nature and treatment of interest on deposits and yield on deposit substitutes. –
>
> x x x   x x x   x x x
>
> (c) 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 receipt tax is imposed."

9. The definition of the term "gross receipts" in Section 123(b) of the National Internal Revenue Code is intended "for the purpose of the amusement tax" while the interpretation given by the Supreme Court to the said term in the case of Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821, to mean "all receipts of a taxpayer excluding those which have been especially earmarked by law or regulations for the government or some person other than the taxpayer" is tailor-made for the Manila Jockey Club (MJC) and other companies similarly situated since the money sought to be taxed from the MJC never really belonged to the club but went to the Board of Races, the owner of horses and jockey, thus, the exclusion thereof from its gross receipts is justified unlike in the instant case of the petitioner where the 20% final tax excluded in the computation of the gross receipts tax actually belongs to the petitioner even if not actually received by the petitioner, in the strict sense of the word, since the same is withheld by the payees.

10. The imposition of the gross receipts tax based on all items of income actually received, if interpreted to mean the net of the 20% final withholding tax, will be contrary to law since this will result to an unauthorized reduction of the tax which is fixed by law or regulations or, worst, its effect will result to a subtle amendment of the law or regulations;

11. The petition states no cause of action since it does not alleged (sic) the date/s when the taxes sought to be refunded were actually paid;

12. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund;

13. Well-settled is the rule that claims for refund are construed in *strictissimi juris* against the claimants since it partakes of the nature of an exemption from taxation.

On January 10, 2000, this case was considered submitted for decision sans the memorandum of the respondent.

In its Memorandum, petitioner reiterates its stance *a quo* that it is entitled to the refund sought based on Section 24 (now Section 27), Section 50 (now Section 57), Sections 119 and 120 of the Tax Code, as amended, as implemented by Revenue Regulations No. 12-80, and as interpreted by this Court in the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, promulgated on January 30, 1996.

Petitioner claims that it has an overpaid gross receipts tax resulting from its erroneous inclusion of the 20% final withholding tax on interest income derived from its passive investment, such as T-bills investments purchased from different sellers, and interest income from savings account from local banks in its gross receipts. Petitioner asserts that the 20% final withholding tax should have been excluded in its gross receipts since this was not actually received by the petitioner as part of its interest income. Instead, according to the petitioner, what it has received was the net amount of the 20% final withholding tax.

The issues are two-fold:

1. Whether or not the 20% final withholding tax should be excluded in the computation of the Gross Receipts Tax; and

2. Whether or not petitioner was able to present relevant documents sufficient enough to establish its entitlement to a refund.

Anent the first issue, We held, in a litany of cases, that the 20% final withholding tax should not form part of the gross receipts of the taxpayer for purposes of the 5% gross receipts tax **(China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5433, October 7, 1998; Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 20, 1996).** This is in accord with the thrust of Our decision in the Asian Bank case, *supra*, where this Court emphatically ruled, thus:

> "We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.
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> x x x x. 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:
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>> 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:
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>>> "x x x x. 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-admitted 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."**

Parallel to this, the Court of Appeals, in the case of **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc. CA-GR SP. No. 52707, promulgated on August 17, 1999,** ruled on the same subject matter in this wise:

> "Accordingly, the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue for the corresponding year that the same was actually withheld and considered final withholding taxes under Section 50 of the same code.
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> Indubitably to include the same to the Respondent's gross receipts for the year 1994 would be to tax twice the passive income derived by the Respondent for the said year which would constitute double taxation anathema to our Taxation Laws."

Having settled the legal issue, We now proceed to the factual basis of petitioner's cause.

On the basis of the report of Mr. Ruben Rubio, an independent certified public accountant duly commissioned by this Court to examine petitioner's books of accounts and other pertinent documents, and who testified that petitioner made an overstatement of its final withholding tax in the amount of P 3,203,958.95, this Court was initially inclined to grant petitioner's claim but in a reduced amount.

However, despite the certification of the independent certified public accountant, a meticulous examination of the evidence in this case does not sustain the petitioner's position; accordingly, for insufficiency of evidence, the petition must fail.

Petitioner alleged that it purchased the treasury bills from lead underwriter as evidenced by confirmation receipts. However, upon this Court's examination of the said documents, We found out that the exhibits supporting such purchases were not confirmation of purchase but rather confirmation of sale, hence, it could be safely inferred that petitioner is the seller and not the purchaser of the securities. While it is true that petitioner has presented, as proof of its purchase, the treasury bills' Certificate of Final Tax Withheld at Source issued by Far East Bank and Trust Co., We find the same insufficient for there is no way by which this Court could ascertain petitioner's interest income and the corresponding 20% final withholding tax.

The same holds true with petitioner's documents supporting its withholding tax on floating rate treasury notes since this Court could not decipher with accuracy, petitioner's income from the detailed transaction of sales alone. Instead, petitioner should have offered in evidence the confirmation of purchase receipts aside from the confirmation of sales to prove the interest income and the 20% final withholding tax.

In the same breath, We found the Schedule of Interest Income and Trading Gain Certification of the 20% final withholding tax and the manual entries and computation submitted by the petitioner as wanting in probative value for there are no supporting documents for these schedules, hence, violative of Court of Tax Appeals Circular No. 1-95, as amended which provides in part, thus:

> x x x x x x x x x
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> 1. The party who desires to introduce as evidence such voluminous documents must present: (a) Summary containing the total amount/s of the tax account or tax paid for the period involved and a chronological or numerical list of the numbers, dates and amounts covered by the invoices or receipts; x x x
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> 2. The method of individual presentation of each and every receipt or invoice or other documents for marking, identification and comparison with the originals thereof need not be done before the Court of the Commissioner anymore after the introduction of the summary and CPA certification. It is <u>enough that the receipts, invoices and other documents covering the said accounts or payments must be pre-marked by the party concerned</u> and <u>submitted to the Court in order to be made accessible to the adverse party whenever she/he desires to check and verify the correctness of the summary and CPA certification. x x x</u>
>
> (Underscoring Ours)

Clearly from the aforequoted provision, petitioner should have presented in evidence, at the very least, its passbook to aid Us in verifying the correctness of the summary. Absence of such document is for a long time considered, in cases bearing the same factual milieu, as fatal to a taxpayer's cause.

With regard to petitioner's claim on its investments in long term commercial papers, this Court likewise rule for its denial on the ground that it was petitioner which certified its own final withholding tax, hence, self-serving.

Having failed to overcome the burden of proof in substantiating its claim and considering further that tax refunds are in the nature of tax exemptions and therefore must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authorities **(Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351),** conformably, We hold that the instant petition must be denied

WHEREFORE, in the light of all the foregoing, the 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