REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

STANDARD CHARTERED BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 5679

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 16 2001

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P6,177,457.21, allegedly representing overpaid gross receipts tax for the third and fourth quarters of 1996 and for the four calendar quarters of 1997.

The facts can be briefly stated as follows:

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

For the third and fourth quarters of 1996 and the four calendar quarters of 1997, Petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts tax payments in the sum of P107,998,781.00, detailed as follows:

Quarter Ended	Exh.	Gross Receipts	Gross Receipts Tax
September 30,1996	A, A-1	P 262,444,904.00	P 13,107,622.00
December 31, 1996	B, B-1	313,446,768.00	15,610,163.00

March 31, 1997	C, C-1	318,649,480.00	15,829,048.00
June 30, 1997	D, D-1	328,875,122.00	16,336,175.00
September 30, 1997	E, E-1	432,035,770.00	21,446,693.00
December 31, 1997	F, F-1	524,642,785.00	25,669,080.00
T o t a l		P2,180,094,829.00	P107,998,781.00

In arriving at the computation of the gross receipts tax, Petitioner alleged that it erroneously included in the taxable gross receipts the final withholding taxes of P123,549,144.20 derived from its passive income in the total amount of P617,745,720.99, broken down as follows:

Period Covered	Passive Income	20%Final Tax
April to December 1996	P226,399,661.35	P 45,279,932.27
January to December 1997	391,346,059.64	78,269,211.93
T o t a l	P617,745,720.99	P123,549,144.20

On the strength of this Court's ruling in the case entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, promulgated on January 30, 1996**, Petitioner filed with the Bureau of Internal Revenue a letter-request for the refund of its overpaid gross receipts tax on October 7, 1998, covering the third quarter of 1996 to the fourth quarter of 1997 in the aggregate amount of P6,177,457.21, computed as follows:

20% Final Tax Withheld At Source on Passive Income	P123,549,144.20
Multiply by GRT Rate	5%
Overpaid GRT	P 6,177,457.21

Without waiting for an action from the Respondent, Petitioner lodged an appeal with this Court on October 9, 1998 in order to toll the running of the two-year prescriptive period.

Respondent, in his Answer, raised the following Special and Affirmative defenses:

> 5. Petitioner's claim for refund is yet subject to and still is under administrative investigation;
>
> 6. In an action for tax refund, the taxpayer has the burden of showing that the taxes paid were erroneously collected and failure to sustain the burden is fatal to the action;
>
> 7. Claims for refund are construed strictly against claimants since they are in the nature of exemption. They cannot be allowed unless granted in the most explicit and categorical language. (*Manila Electric Co. vs. Commissioner of Internal Revenue, 47 SCRA 351*)

In order to support its claim for refund, Petitioner presented the following evidence:

1. The Quarterly Percentage Tax Returns for the third calendar quarter of 1996 to the fourth calendar quarter of 1997 together with their corresponding attachments of computation of gross receipts tax (Exhibits A, A-1, B, B-1, C, C-1, D, D-1, E, E-1, F, and F-1);

2. Report of SGV and Co. signed by its Partner, Ms. Feliza A. Peralta (with the signature of concurring Partner Ruben Rubio), the commissioned independent CPA, who conducted the examination on Petitioner's documents relative to the instant claim for refund (Exhibit G);

3. Various supporting documents of treasury bills, government securities for reserve requirements, interbank call loans, and BSP call loan transactions (Exhibits H-1 to H-550, I-1 to I-21, J-1 to J-89, and K-1 to K-32);

4. Petitioner's various schedules verified by the independent CPA against the supporting documents (Exhibits L-1 to L-60);

5. Schedules of income subjected to 20% final withholding tax and 5% gross receipts tax (Exhibits M and N);

6. Certifications of withholding of final tax issued by different banks pertaining to Petitioner's interbank loan transactions (Exhibits O-1 to O-22); and

7. Certification issued by the Bangko Sentral ng Pilipinas with respect to BSP loans (reverse repurchase transactions) (Exhibit P).

Respondent, on the other hand, was not able to present his evidence because the BIR records of the case cannot be located and the special team which examined the present claim was dissolved. (Minutes of February 19, 2001 session, CTA records, p. 111). Respondent also failed to file his memorandum.

The Court is now tasked to resolve the following issues jointly stipulated by the parties, thus:

1. Whether the case is within the scope of the Asian Bank case or decision; and

2. Whether or not the amount being claimed as refundable has actually been remitted to the Bureau of Internal Revenue.

We rule in favor of the Respondent.

The Petitioner anchored its claim on the ruling of this Court in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 promulgated on January 30, 1996** where this Court stated that the interest income included as part of the gross receipts should be computed minus the 20% final tax already withheld and deducted by various withholding agents. We are however in total agreement with the decision of the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. AsianBank Corporation CA-G.R. SP No. 51248 promulgated on November 22, 1999** which reversed earlier rulings by this Court and categorically maintained that the 20% final withholding tax (FWT) on interest income should form part of the gross receipts subject to the gross receipts tax (GRT). In making such a conclusion, the Court of Appeals put it simply, thus:

> "If the 20% final withholding tax on interest income is part of the gross receipts by the respondent bank, then it should be subject to the 5% gross receipts tax. Otherwise, it is not subject to said tax."

More importantly, it is worth stressing that Section 4(c) of Revenue Regulations No. 12-80 relied upon by the Petitioner has already been superseded and omitted in the amendatory Revenue Regulations No. 17-84 dated October 12, 1984 particularly 7(c) which provides:

7.

> (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 receipts tax is imposed."

Besides Section 4(e) of Revenue Regulations No. 12-80, as worded, is not a computation which is determinative of the amount to be used as basis of the 5% gross receipts tax. Rather said Section is reflective of the method of accounting being adopted by the taxpayer, such as the cash receipts and disbursement method or the accrual method of accounting. Said methods of accounting comprise a set of rules for determining when and how to report income and deduction.

The 5% gross receipts tax under Section 119 of the Tax Code (now Section 121) is collectible from all finance companies doing business in the Philippines from interests, discounts and all other items treated as gross income under the Tax Code. Accordingly, its income derived from investing the excess funds in short term market placements through commercial banks constitute income, hence, subject to the 5% gross receipts tax under said section.

Additionally, the following jurisprudence should be taken into account:

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.* [Emphasis supplied]

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. State 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 DISCs. 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 F2d 621 (CA9 1957) and *Brown-Forman Corp. v. Comm.*, 94 TC 419 (1990).

In the aforecited *Lucky Lager Brewing Co. v. Commissioner of Internal Revenue*, 246 F2d 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. v. Commissioner of Internal Revenue*, United States Court of Appeals, Ninth Circuit, June 24, 1957, 246 F2d 621 (CA9 1957).

The exclusion of 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.

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

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

WE CONCUR:

(with Dissenting Opinion)
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