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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FAR EAST BANK & TRUST COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 5592

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
NOV 21 2000

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DECISION

The case at bar seeks for the refund or the issuance of a tax credit certificate in the amount of P15,591,724.38 allegedly representing Petitioner's overpaid/erroneously paid gross receipts taxes for the four quarters of 1996.

As represented, Petitioner is a banking institution, duly organized and existing under the laws of the Republic of the Philippines, with principal office located at Far East Bank Center, Sen. Gil Puyat Avenue, Makati City.

For the four 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 include the passive income which were subjected to twenty percent (20%) final withholding taxes (FWT).

1996	Date of Filing Return/ Payment of Tax to the BIR	Taxable Gross Receipts	GRT Paid	Exhibit
1st Qtr	April 22, 1996	P1,872,688,186.32	P 84,227,257.38	A
2nd Qtr	July 22, 1996	1,915,952,342.99	87,666,200.49	B
3rd Qtr	October 21, 1996	2,132,729,197.61	95,892,346.93	C

4th Qtr	January 20, 1996	2,098,921,298.09	91,265,113.69	D
		P8,020,291,025.01	P359,050,918.49	

After taking into consideration the decision of this Court in *CTA Case No. 4720* entitled *Asian Bank Corporation vs. Commissioner of Internal Revenue promulgated on January 30, 1996*, which ruled that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner, on March 27, 1998, filed with Respondent a written claim for refund of its alleged overpaid GRT for the four quarters of 1996 in the total amount of P15,591,724.38 (Exh. E), broken down as follows:

Quarter	Interest Income Subjected to 20% Final Tax	GRT Rate	For Refund
1st	P 56,716,914.65	5%	P 2,835,845.73
2nd	78,421,740.29	5%	3,921,087.02
3rd	82,011,831.06	5%	4,100,591.55
4th	94,684,001.50	5%	4,734,200.08
TOTAL	P311,834,487.50		P15,591,724.38

(Exhibit F).

On March 31, 1998, Petitioner filed with this Court the instant Petition for Review for failure of the Respondent to act on the claim for refund.

Petitioner presents the proposition that the gross receipts tax it paid for the four 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 actually overpaid the amount legally due from it, insofar as its GRT obligations are concerned, hence, a refund is in order.

Respondent on the other hand, raises in the usual token of a defense that (1) Petitioner's claim for refund is subject to and is still under administrative investigation; (2) in an action for tax refund, the taxpayer has the burden of showing that the taxes paid were erroneously collected and failure to sustain said burden is fatal to the action; and (3) claims for refund are construed strictly against claimants since they are in the nature of tax exemption. x x x.

The legal issue to be resolved by the Court is whether or not the 20% final withholding tax on certain passive income of the Petitioner should be excluded in the total gross receipts of said Petitioner for GRT purposes, and the factual issue is whether or not Petitioner has adduced sufficient evidence for the entitlement of the amount sought to be refunded.

With regard to the legal issue, there is no squabble that Petitioner is entitled to the claimed refund. This is not a case of first impression. As correctly stated by the Petitioner, this Court has resolved the same issue in favor of the Petitioner in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, *supra*,** which is anchored on similar factual circumstances and is on all fours with the case at bar. Said decision states in part:

> "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 x x x x x
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> 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, 1996, 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.

Moreover, the Court of Appeals in the case of **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA G.R. Sp No. 52707, August 17, 1999,** affirmed our stand that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, when it ruled, thus:

> "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. 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."

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

In the case of *Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5640, promulgated on June 7, 2000,* and in a litany of cases, this Court ruled that "aside from proving that the petition for review was timely filed within the two-year reglamentary period, Petitioner must also prove its compliance with the following requisites:

1. That it paid the gross receipts tax;
2. That it erroneously overpaid its gross receipts tax by including the 20% final withholding tax derived on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the period involved; and

3. That the withholding agent certifies that the 20% final withholding tax was paid on such passive income (*Bank of Philippine Islands vs. CIR, CTA Case No. 5458, Feb. 15, 1999*; and *BPI Capital vs. CIR, CTA Case No. 5457, March 1, 1999*; cited in *SolidBank Corp. vs. CIR, CTA Case No. 5408, April 14, 1999*)".

Evidence on record shows that the administrative claim for refund which was filed with the Respondent's Bureau on March 27, 1998 and the instant petition for review which was filed with this Court on March 31, 1998 were within the two-year prescriptive period commencing on April 22, 1996, the date when the gross receipts tax for the first quarter of 1996 was paid, hence, there is no doubt as to the timeliness of the instant petition.

To substantiate its allegations that there was indeed overpayment of GRT for the taxable year 1996 in the total amount P15,591,724.38, Petitioner engaged the services of Sycip Gorres Velayo & Co., an independent auditing firm, represented by Mr. Ruben Rubio, one of its partners, and duly commissioned by the Court, pursuant to CTA Circular No. 1-95 as amended by CTA Circular No. 10-97. In his report dated February 16, 1999 (Exh. G), Mr. Rubio informed the Court that out of the total amount of P311,834,487.60, alleged by Petitioner to be the 20% final tax on its passive income which have been included in its gross receipts for the year 1996 (Exhs. E & F), only the amount of P216,492,600.18 was verified to have been included in the gross receipts for the year 1996 (Exhs. G & G-1). He said that the difference of P4,767,094.38 was not verified for failure of the Petitioner to submit the supporting documents relative to its investments in debts and other debt securities (TSN, dated February 17, 1999, p. 24). Thus, Mr. Rubio recommended to the Court the refund of the amount of P10,824,630.00, allegedly representing Petitioner's overpaid GRT for the year 1996.

A detailed review and verification of the aforesaid report of Mr. Rubio, together with the evidence presented, discloses that not all of Petitioner's interest income from Treasury Bills (Exh. G-2), Floating Rate Treasury Notes (Exh. G-3), Fixed Rate Treasury Notes (Exh. G-4) and Interbank Loans (Exh. G-5) were properly substantiated. Petitioner failed to submit the Certificate of Final Tax Withheld corresponding to the income mentioned, therefore an obvious non-compliance of requisite No. 3 abovestated which provide "that the withholding agent certifies that the 20% final withholding tax was paid on such passive income". The Court has no other recourse but to disallow the income allegedly subjected to 20% FWT without the corresponding certificates of final tax withheld, tabulated below:

1. TREASURY BILLS

(a) Court's Disallowances of Income from Sale

PERIOD	EXHIBIT		TRADING GAIN		INTEREST INCOME		TOTAL (Net of 20%)		FINAL W/HOLDING TAX
January	G-3-a-1	P	(583,007.86)	P	4,980,115.38	P	4,397,107.52	P	1,099,276.88
February	G-3-a-2		1,785,345.12		3,841,470.84		5,626,815.96		1,406,703.99
March	G-3-a-3		346,028.25		3,266,846.46		3,612,874.71		903,218.68
April	G-3-a-4		716,544.42		3,159,744.87		3,876,289.29		969,072.32
May	G-3-a-5		577,255.46		2,813,086.27		3,390,341.73		847,585.43
June	G-3-a-6		(338,944.92)		3,043,471.58		2,704,526.66		676,131.67
July	G-3-a-7		569,236.04		3,430,250.89		3,999,486.93		999,871.73
August	G-3-a-8		1,587,244.45		4,814,973.38		6,402,217.83		1,600,554.46
September	G-3-a-9		(201,493.68)		3,707,322.19		3,505,828.51		876,457.13
October	G-3-a-10		211,566.04		3,287,226.20		3,498,792.24		874,698.06
November	G-3-a-11		897,862.60		3,674,593.46		4,572,456.06		1,143,114.02
December	G-3-a-12		1,758,833.87		29,162,465.13		30,921,299.00		7,730,324.75
	Total	**P**	**7,326,469.79**	**P**	**69,181,566.65**	**P**	**76,508,036.44**	**P**	**19,127,009.11**

(b) Court's Disallowances of Income from Monthly Accruals

PERIOD	EXHIBIT	INTEREST INCOME (Net of 20%)		FINAL WITHHOLDING TAX
January	G-2-b-1	2,734,195.27	P	683,548.82
February	G-2-b-1	9,383,450.99		2,345,862.75
March	G-2-b-1	11,456,229.65		2,864,057.41
April	G-2-b-2	4,884,443.23		1,221,110.81
May	G-2-b-2	4,085,076.94		1,021,269.24
June	G-2-b-2	9,240,450.39		2,310,112.60
July	G-2-b-3	9,485,784.27		2,371,446.07
August	G-2-b-3	6,444,525.36		1,611,131.34
September	G-2-b-3	7,883,644.21		1,970,911.05
October	G-2-b-4	10,119,763.40		2,529,940.85
November	G-2-b-4	10,119,763.40		2,529,940.85
December	G-2-b-4	15,266,819.50		3,816,704.88
	Total	**101,104,146.61**	**P**	**25,276,036.65**

(See Annex A)

2. FLOATING RATE TREASURY NOTES

(a) Court's Disallowances of Income from Sale

PERIOD	EXHIBIT		TRADING GAIN		INTEREST INCOME		TOTAL (Net of 20%)		FINAL WITHHOLDING TAX
October	G-2-a-10	P	12,471.92	P	449,678.36	P	462,150.28	P	115,537.57
November	G-2-a-11		70,293.85		1,061,097.17		1,131,391.02		282,847.76
December	G-2-a-12		(341,535.39)		2,867,856.75		2,526,321.36		631,580.34
	Total	**P**	**(258,769.62)**	**P**	**4,378,632.28**	**P**	**4,119,862.66**	**P**	**1,029,965.67**

(b) Court's Disallowances of Interest Income from Monthly Accruals

PERIOD	EXHIBIT		INTEREST INCOME (Net of 20%)		FINAL WITHHOLDING TAX
October	G-3-b-2-35 to 43	P	1,143,943.96	P	285,985.99
November	G-3-b-2-44 to 50		1,395,745.41		348,936.35
December	G-3-b-2-51 to 56		1,649,552.99		412,388.[illegible]
	Total	**P**	**4,189,242.36**	**P**	**1,047,310.59**

(See Annex B)

3. FIXED RATE TREASURY NOTES

(a) Court's Disallowances of Income from Sale

PERIOD	EXHIBIT		INTEREST INCOME		FINAL W/HOLDING TAX
May	G-4-a-5	P	48,368.51	P	12,092.13
June	G-4-a-6		47,249.46		11,812.37
July	G-4-a-7		465,418.33		116,354.58
August	G-4-a-8		2,705,644.74		676,411.19
September	G-4-a-9		4,084,375.43		1,021,093.86
October	G-4-a-10		2,744,322.15		686,080.54
November	G-4-a-11		1,342,537.40		335,634.35
December	G-4-a-12		8,789,377.70		2,197,344.43
	Total	**P**	**20,227,293.72**	**P**	**5,056,823.43**

(b) Court's Disallowances of Interest Income from Monthly Accruals

PERIOD	EXHIBIT		DISCOUNT		COUPON		TOTAL		FINAL WITHHOLDING TAX
January	G-4-b-1	P	378,388.93	P	84,352.73	P	462,741.66	P	115,685.42
February			551,239.70		116,766.28		668,005.98		167,001.50
March			53,791.43		124,925.57		178,717.00		44,679.25
April			14,458.88		59,288.27		73,747.15		18,436.79
May			36,381.67		149,182.09		185,563.76		46,390.94
June			1,086,530.87		2,406,971.93		3,493,502.80		873,375.70
July			2,898,643.05		5,150,610.83		8,049,253.88		2,012,313.47
August			2,271,697.40		5,938,297.06		8,209,994.46		2,052,498.62
September			2,034,315.90		4,366,407.52		6,400,723.42		1,600,180.86
October			5,937,498.13		11,222,362.29		17,159,860.42		4,289,965.11
November			14,679,994.26		21,922,002.22		36,601,996.48		9,150,499.12
December			14,621,776.05		29,784,178.90		44,405,954.95		11,101,488.74
	Total	**P**	**44,564,716.27**	**P**	**81,325,345.69**	**P**	**125,890,061.96**	**P**	**31,472,515.49**

(See Annexes C & D)

Likewise, the Court disallowed the amount of P4,324,131.99 pertaining to the gross receipts tax on Interbank Loans (Exh. G-5) for the same reasons aforestated, that is, the failure to present in evidence the Certificates of Final Tax Withheld on the said income.

In sum, after consideration of the above-mentioned disallowances, the Court finds that Petitioner is entitled to the relief sought, but only in the amount of P2,350,014.96, computed as follows:

		GOVERNMENT SECURITIES		FLOATING RATE TREASURY		FIXED RATE TREASURY		INTERBANK LOANS		TOTAL
PER SGV VERIFICATION										
Final withholding tax	P	45,777,572.68	P	32,573,698.69	P	51,658,689.05	P	86,482,639.76	P	216,492,600.18
Gross receipts tax (FWT x 5%)		2,288,878.63		1,628,684.93		2,582,934.45		4,324,131.99		10,824,630.01
LESS: COURT'S DISALLOWANCE										
Final withholding tax		44,403,045.76		2,077,276.26		36,529,338.92		86,482,639.76		169,492,300.70
Gross receipts tax (FWT x 5%)		2,220,152.29		103,863.81		1,826,466.95		4,324,131.99		8,474,615.04
AMOUNT REFUNDABLE										
Final withholding tax	P	1,374,526.92	P	30,496,422.43	P	15,129,350.13	P	-	P	**47,000,299.48**
Gross receipts tax (FWT x 5%)		68,726.34		1,524,821.12		756,467.50		-	P	**2,350,014.96**

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is partially **GRANTED**. Respondent is hereby **ORDERED** to **REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to herein Petitioner the amount of P2,350,014.96 representing its proven overpaid GRT for the four quarters of 1996.

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