REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING
CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5401

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
AUG 23 1999

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DECISION

This case involves a claim for refund in the amount of P4,148,880.65, allegedly representing overpaid gross receipts tax for the calendar year ended December 31, 1994.

Petitioner, Citytrust Banking Corporation, is a domestic banking institution duly organized and existing under the laws of the Philippines with principal office located at 379 Senator Gil J. Puyat Avenue, Makati City.

For the calendar year 1994, petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts in the total amount of P1,985,794,590.87 with corresponding gross receipts tax payments in the sum of P82,271,704.93, broken down as follows:

Period Covered	Gross Receipts	Gross Receipts Tax
January to March 1994	P 485,797,544.33	P20,651,145.17
April to June 1994	477,958,741.57	19,804,604.93
July to September 1994	496,239,749.57	20,552,578.23
October to December 1994	525,798,555.40	21,263,376.60
Total	**P1,985,794,590.87**	**P82,271,704.93**

Petitioner alleges that in arriving at the gross receipts tax in the amount of P82,271,704.93, it included the sum of P89,856,644.25, representing 20% final taxes derived on passive income, as part of the total gross receipts.

On January 30, 1996, this Court rendered a decision in C.T.A. Case No. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue wherein it was held that the 20% final withholding tax on bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

On July 19, 1996, on the strength of the aforementioned decision, petitioner filed with the Bureau of Internal Revenue a letter-request for the refund or issuance of tax credit certificate in the aggregate amount of P4,148,880.65, representing allegedly overpaid gross receipts tax for the year 1994, computed as follows:

Total Income Subject to GRT per GRT Returns - 1994	P1,985,794,590.87
Less: Final Taxes on Passive Income	89,856,644.25
Net Tax Base	**P1,895,937,946.62**
GRT per return - 1994	P 82,271,704.65
Correct GRT	78,122,704.92
Overpaid GRT	**P 4,148,880.65**

Without waiting for an action from the respondent, petitioner on the same day filed the instant petition for review in order to toll the running of the two-year prescriptive period to judicially claim for the refund of overpaid internal revenue tax pursuant to Section 230 of the Tax Code, as amended.

By way of special and affirmative defenses, respondent avers that, petitioner's right to file a judicial action for refund of all taxes paid before July 19, 1994 has already prescribed; petitioner's claim for refund is still undergoing administrative investigation;

the total amount of P4,148,880.65 claimed by petitioner as overpaid gross receipts tax for the year 1994 is not properly documented; alleged refundable gross receipts tax were collected and paid pursuant to law and pertinent BIR implementing rules and regulations; petitioner's allegation that it erroneously paid gross receipts tax does not *ipso facto* warrant tax refund or credit; claims for refund are construed in *strictissimi juris* against the taxpayer as they partake the nature of an exemption from tax; and petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended.

In order to support its claim for refund, petitioner presented the following evidences:

1. Quarterly Percentage Tax Returns for the year 1994 (Exhs. A to D, inclusive of submarkings);

2. Certification issued by the Central Bank on taxes withheld and remitted to the Bureau of Internal Revenue (Exhs. F to F-1-a)

3. Certification from SGV and Co. signed by Mr. R. J. Galve, the commissioned independent CPA, who conducted an examination on petitioner's documents relative to the instant claim for refund (Exhs. G, G-1 to G-9);

4. Audited financial statements of petitioner for the year 1994 (Exhs. H, H-1, H-2 and I); and

5. The administrative claim for refund with the Bureau of Internal Revenue (Exhs. J and J-1).

Respondent, on the other hand, elects not to submit controverting evidence. And eventually, this case was submitted for decision after both parties presented their respective memoranda.

The Court is now confronted with the following issues:

a. Whether or not the 20% final withholding tax on bank's interest income should form part of the taxable receipts for purposes of computing the gross receipts tax;

b. Whether or not petitioner has proven its claim with sufficient evidence.

Anent the first issue, this Court finds petitioner's cause to be meritorious. The final taxes derived by petitioner on its passive income should no longer form part of the gross receipts for purposes of computing the gross receipts tax, as We have already ruled in the case entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996,** pertinent portion of which reads as follows:

> "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 Nov. 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 <u>income actually received</u>, 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 <u>institutions shall be based on all items of income actually received</u>. 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)

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 ½% 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, or know the Club would give, to winning horses and Jockeys — admitted 5%. It is true that the law says that out of the total wager funds 12½% 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 12½% 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.
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>> "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, We now delve on the factual aspect of this case which is the second issue at bar.

Section 230 of the Tax Code, as amended, provides that a claim for refund, both with the Bureau of Internal Revenue and with this Court, must be filed within two years from the date of payment of the tax. Furthermore, in counting for the two-year prescriptive period, the filing of the quarterly percentage tax return should be considered as the "date of payment of the tax" (**Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999**; and **Citytrust Investment Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5403, April 19, 1999**). The records show that petitioner filed its Quarterly Percentage Tax Return for the first quarter of 1994 on April 20, 1994, while the instant petition for review was filed on July 19, 1996. Considering that GRT return is required to be filed and paid on or before the 20th day after the end of each quarter, clearly, it can be concluded that only the portion of the claim for refund of overpaid gross receipts tax for the first quarter of 1994 can no longer be considered due to prescription. The remaining claim for refund of petitioner for the three quarters of 1994 is well within the two-year period.

What is now left for the petitioner to prove is 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 on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the year 1994; and

3. that the withholding agent certifies that there is 20% final withholding tax on such passive income. **(Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 5458, February 15, 1999;** and **BPI Capital vs. Commissioner of Internal Revenue, CTA Case No. 5457, March 1, 1999**; *cited in* **Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999, *supra*)**.

A careful examination of all the evidence at hand reveals that petitioner only complied with requirement number one. Petitioner was able to show that it paid gross receipts tax for the year 1994 as evidenced by the quarterly percentage tax returns (Exhs. A to D, inclusive of submarkings). However, it failed to comply with the second and third requirements.

Petitioner failed to submit documents which can lead this Court to conclude that the amount of P89,856,644.25, alleged by petitioner to be payments for final tax, was included as part of gross receipts declared in the quarterly percentage tax returns. There is no detail summary of gross receipts attached to the quarterly percentage tax return in order for the Court to determine if indeed the 20% final taxes on passive income formed part of the gross receipts. It is also not clear how much final taxes for each quarter of 1994 was included in the gross receipt subjected to final tax which is necessary for the Court to properly compute for the correct amount of tax refund especially when the claim for refund for the first quarter has already prescribed.

It cannot be denied that petitioner was able to present a certification from the Bangko Sentral ng Pilipinas that final withholding taxes on treasury bills in the total amount of P463,777,509.02 were paid and remitted to the Bureau of Internal Revenue. However, the same cannot be given much credit. The alleged final taxes in the amount of P89,856,644.25 were derived by petitioner from different kinds of passive income, to wit: (Exh. G-9)

	Amount
Interest income	
TAS/GS	P74,816.440.00
Interbank Call Loans Receivables	6,345,044.00
Trading gain	8,695,122.00
Others	37.00
Total	**P89,856,644.00**

Thus, it is not right to conclude that the total amount of P89,856,644.00 was included as part of the conglomerate amount of P463,777,509.02 as final taxes withheld by the Bangko Sentral ng Pilipinas as the said taxes pertain only to *treasury bills* (Exhs. F-1 and F-1-a). Furthermore, the Court was not guided by petitioner on how it computed the alleged correct gross receipts tax for 1994 in the amount of P78,122,704.92. It should be emphasized that in computing for the gross receipts tax, different rates of 5%, 3% and 1% are applied on gross receipts depending on the remaining maturity of the instrument. In addition, We find the agreed upon procedures taken by the auditing firm SGV & Co. and petitioner to be insufficient to come up with the desired result of ascertaining the correctness of petitioner's claim for refund. The certification merely limited its examination and verification on the amount of P89,856,644.25 as final taxes paid on passive income for 1994. It failed to compute and verify the accuracy of the computation of the correct GRT for 1994.

Settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer (**Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332**).

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** due to 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

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DISSENTING OPINION

The majority opinion denied the claim for refund of gross receipts taxes due to insufficiency of evidence but upheld 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.

With due respect to the opinion of the majority, I humbly express my dissent to the aforesaid ruling that the 20% final withholding tax on certain passive income should no longer form part of the taxable base of the bank's gross receipts for purposes of the 5% gross receipts tax.

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. 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."

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 cited the case of **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 in said case 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:

> 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:
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> 87% as dividends to holders of winning tickets
>
> $12^1/_2$ as "commissions" of the Manila Jockey Club, of which $^1/_2$ % 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 $12^1/_2$. 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 $5^1/_2$%

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 $5^1/_2$% 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 "especially earmarked" by law or legal rule and 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 $^1/_2$% 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 $5^1/_2$% of the $12^1/_2$% "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 "<u>regulation</u>". 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 percent (20%) 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, 6^{th} 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. 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 THE FOREGOING, I hereby register my dissent to the majority opinion and vote for the denial of the entire claim for refund not because of insufficiency of evidence but for lack of legal bases.

AMANCIO Q. SAGA
Associate Judge