REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION
Petitioner,

- versus -

C.T.A. CASE NO. 5411

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated: JUN 15 1998

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D E C I S I O N

This case involves a claim for refund of the amount of ₱645,180.53, allegedly representing overpaid gross receipts tax for the calendar quarter ended June 30, 1994.

Petitioner, Equitable Banking Corporation, is a commercial banking corporation duly organized and existing under the laws of the Philippines with principal office at 262 Juan Luna Street, Binondo, Manila.

On July 20, 1994, petitioner filed its Quarterly Percentage Tax Return reflecting a gross earning in the amount of ₱316,993,318.64 and an aggregate payment of ₱13,127,707.96 as gross receipts tax. Petitioner alleges that the amount of ₱316,993,318.64 included the sum of ₱4,497,475.22 representing the 20% portion of tax-paid income (Exh. E and E-1) and the amount of ₱8,406,135.31

representing income subjected to 20% final tax booked at gross (Exh. F and F-1).

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 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 for the second quarter of 1994 in the amount of ₱645,180.53, representing overpaid gross receipts tax, computed as follows:

Gross receipts subjected to tax	₱316,993,318.64
Less: 1) 20% portion of tax paid income	₱ 4,497,475.22
2) Investment income subject to 20% final tax booked at gross	8,406,135.31
Total	₱ 12,903,610.53
Adjusted gross receipts tax base	₱304,089,708.11

Computation of Adjusted Gross Receipts Tax:

Gross Receipts	*Tax Rate*	*Tax Due*
₱ 14,830,998.42	0%	₱ 0.00
41,130,567.77	1%	411,305.68
16,759,267.05	3%	502,778.01
231,368,874.87	5%	11,568,443.74
₱304,089,708.11		₱ 12,482,527.43

Gross Receipts Tax Paid	₱ 13,127,707.96
Less: Adjusted Gross Receipts Tax	12,482,527.43
Tax Refund	₱ 645,180.53

133

Petitioner also attached therein the amended quarterly percentage return for the quarter ended June 30, 1994.

On July 20, 1996, a day after the claim for refund was filed with the Bureau of Internal Revenue, petitioner 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 alleges that, petitioner's claim for tax refund or tax credit is still undergoing administrative investigation; the 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 that 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 evidence:

1. Quarterly Percentage Tax Return for the second quarter of calendar year 1994 (Exh. A);

2. Statement of quarterly gross receipts derived by the bank from interests, discounts, dividends, commissions, profits from exchange, rentals of properties, real and personal and all other items treated as gross receipts under Section 29 of Commonwealth Act No. 466 (Exh. B);

3. Computation Sheet of the Gross Receipts Tax paid for EBC-Head Office and its five branches (Exh. C);

4. Transmittal Sheet of Percentage Tax for the Head Office and all the branches (Exh. D, D-1 and D-2);

5. Computation sheet of gross income for the head office for the year 1994 (Exh. E and E-1);

6. EBC Head Office income statement for the month ended June 30, 1994 (Exh. F and F-1); and

7. Demand letter dated July 19, 1996 (Exh. G, G-1, G-3, G-3-A, G-4 and G-5).

This Court is now confronted with the following issues:

a. Whether or not petitioner is entitled to the claim for refund; and

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

Anent the first issue, this Court stands firm on its ruling that the 20% final withholding tax on bank's

135

interest income should not form part of taxable gross receipts for purposes of computing gross receipts tax. As ably held by this Court in **Asian Bank Corporation vs. Commissioner of Internal Revenue,** *CTA Case No. 4720, dated January 30, 1996* thus:

> "We agree with the petitioner that the 20% final withholding tax on it's 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 income actually received, 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 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. (Underscoring 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

137

> 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**__."

Having resolved the legal issue involved, We now delve on the factual aspect of this case.

Petitioner in computing for its overpaid gross receipts tax, deducted the amounts of ₱4,497,475.22 and ₱8,406,135.31, representing 20% portion of tax-paid income and income subjected to 20% final tax booked at gross, respectively (Exh. G-3). A careful scrutiny of the composition of said amounts reveals that the

₱4,497,475.22 (Exh. G-4) represents interest income which are net of final tax and the sum of ₱8,406,135.31 represents petitioner's provision for final tax (Exh. G-5).

It should be noted that what the **Asian Bank** case excluded in the computation of gross receipts tax was the 20% final withholding tax on interest income derived by the bank and not the 20% portion of tax-paid income net of final withholding tax nor a bank's provision for final tax.

Petitioner failed to prove that the amounts of ₱4,497,475.22 and ₱8,406,135.31 were payments for 20% final withholding tax on its interest income as what the **Asian Bank** case excluded in the computation of gross receipts tax. Obviously, petitioner seems to have a wrong basis in its computation of overpaid gross receipts tax, and it is highly possible that this is due to its wrong interpretation of Our decision in the aforequoted Asian Bank case. Since it appears that petitioner has no other evidence to show how much final withholding tax was paid on interest income it received during the calendar quarter ended June 30, 1994, we are constrained not to grant petitioner's prayer.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DISMISSED,** and the claim

139

for refund or issuance of a tax credit certificate is accordingly **DENIED**.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

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