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REPUBLIC OF THE Philippines
COURT OF TAX APPEALS
QUEZON CITY

CITIBANK, N.A. - PHILIPPINE BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 4503

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x - - - - - - - - - - - - - x

7/21/93

D E C I S I O N

This is a simple claim for refund by petitioner covering the amount of P312,114.85 representing alleged overpayment of tax on gross receipts of its foreign currency deposit unit (FCDU) for the quarter ending September 30, 1988.

Petitioner, Citibank, NA - Philippine Branch, is a corporation engaged in banking business. On October 20, 1988, petitioner filed with he respondent, Commissioner of Internal Revenue, "statement(s) of quarterly gross receipts derived by banks from interests, discounts, dividends, commissions, profits from exchange, royalties, rentals of properties, real and personal and all other items treated as gross income" under Sec. 28

of the National Internal Revenue Code for the third quarter of 1988 with the following information:

Nature	Gross Receipts	Tax Rate	Gross Receipts Tax
FCDU account (Exh. "A")	P 1,040,383.00	5%	P 364,134.00
Regular account (Exh. "B")	P 5,498,847.25	0%	nil
	5,044,022.50	1%	P 50,440.22
	13,384,088.32	3%	401,522.65
	366,103,427.83	5%	18,305,171.39
	P377,802,689.17*		P18,757,134.26
Consolidated (Exh. "C")	P 5,498,847.25	0%	nil
	5,044,022.50	1%	P 50,440.22
	13,384,088.32	3%	401,522.65
	367,143,810.83	5%	18,669,305.39
	P378,843,072.17**		P19,121,268.26

* should be P390,030,385.90
** should be P391,070,768.90

The aggregate amount of P19,121,268.26 was paid by the petitioner as evidenced by Confirmation Receipt No. B-13245309 (Exhibit "D") and Payment Order No. 4036590 (Exhibit "E").

Petitioner, through SGV and Co., CPAs, filed on June 9, 1989 a letter-claim for refund dated June 7, 1989 with the respondent of the amount of P312,114.85 representing alleged overpaid gross receipts tax for the period from July 1 to September 30, 1988. As stated in the letter, the alleged overpayment "arose from the application of the wrong GRT rate., i.e., instead of 5%, the rate of 35% was inadvertently applied." (Exhibit "G")

In the same claim for refund, petitioner contended:

> "We submit that the appropriate GRT rate is 5% as indicated in Section 119(c) of the Tax Code because the FCDU other income represents miscellaneous items treated as gross income under Section 28 of the Tax Code. The use of the 35% as GRT rate is clearly erroneous. The amount of the overpayment is P312,114.85, computed as follows:

Per return (P1,040,383 x 35%)	P364,134.00
Should be (P1,040,383 x 5%)	52,019.15
Overpayment	P312,114.85"

On October 16, 1990, petitioner filed this petition.

The sole issue before this Court is whether or not petitioner is entitled to the refund in the amount of P312,114.85 representing an alleged overpayment of tax on gross receipts of its FCDU account.

The provision of law involved is Sec. 119 of the Tax Code, quoted as follows:

> "Sec. 119. *Tax on banks and non-bank financial intermediaries.* - There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:
>
> xxx xxx xxx
>
> (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 28 of this Code 5%

xxx xxx xxx."

Respondent, in his Memorandum, stated, among others, that taxes are presumed to have been collected in accordance with law; that it is incumbent upon petitioner to prove that it is entitled for a refund of gross receipts tax erroneously paid; and that petitioner failed to support its claim by sufficient evidence since:

> "There is no evidence showing that the FCDU's other income represents miscellaneous items treated as gross income under Section 28 of the Tax Code on which the 5% gross receipts tax is based. It is for this reason that Mr. Jose Sunga, Jr., the Revenue Officer who investigated the claim for refund requested from an audited statement of income and expenses for the quarter ending September 30, 1988 but which petitioner failed to comply xxx. Neither did petitioner present said document in evidence.
>
> The only evidence on hand showing the FCDU's gross receipts for the quarter ending September 30, 1988 is petitioner's statement of quarterly gross receipts tax for FCDU for the third quarter of 1988 in the amount of P1,040,383.00 xxx. Said evidence is insufficient to show the correct tax base for the 5% gross receipts tax xxx." (Memorandum for Respondent, C.T.A. Records, pp. 75-76)

There is no dispute as to the applicable tax provision and the corresponding tax rate. Respondent's argument is based on the premise that petitioner failed to prove that the amount of P1,040,383.00 is the correct amount subject to tax.

This Court is not convinced.

In a resolution dated September 10,1992, this Court admitted all exhibits formally offered by the petitioner for failure on the part of respondent to submit his comment or objection evidencing lack of opposition thereto.

Respondent cannot now claim that the tax base amounting to P1,040,383.00 is not supported by sufficient evidence. The tax returns (Exhibits "A" and "C") which were duly received (Exhibits "A-1" and "C-1") by the respondent are sufficient enough on the part of the petitioner to destroy the presumption in favor of the respondent and to prove that petitioner is entitled for a refund.

Respondent alleged that petitioner failed to respond to the request the revenue officer who investigated the claim to submit an audited statement of income and expenses for the quarter ending September 30, 1988; thus, the amount of P1,040,383.00 as tax base is incorrect.

It is ironic that while the respondent claimed that the tax base is incorrect, he did not advance before this Court any amount which in his opinion is the correct tax base. He who alleges a fact has the burden of proving it, **(Imperial Victory Shipping Agency v. National Labor Relations**

Commission, 200 SCRA 178). Mere allegation is not evidence (**Gatmaitan v. Court of Appeals**, 200 SCRA 37). The presumption of correctness of the statements was not overturned by the respondent.

In fact, respondent had authority to examine the books and records of petitioner and to issue assessment as to the correct tax base within the prescriptive period. His failure to do so should not, in any way, prejudice taxpayer like the petitioner in this case.

This Court, as sanctuary of taxpayers, grants the petition pursuant to Sec. 230 of the Tax Code which provides:

> "**Sec. 230.** *Recovery of tax erroneously or illegally collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit

<u>any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid</u>. (Underscoring supplied.)

xxx xxx xxx."

It can easily be adduced from the returns filed by the petitioner that indeed, there was an overpayment of the gross receipts tax.

WHEREFORE, in view of the foregoing, respondent is hereby ordered to issue a tax credit certificate amounting to P312,114.85 in favor of the petitioner representing gross receipts tax erroneously paid.

SO ORDERED.

Quezon City, Metro Manila, July 21,1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals