REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CHINA BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3889

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - x

8/3/89

# D E C I S I O N

The case simply addresses the question of whether petitioner has established a valid claim to the refund of alleged erroneously paid 5% gross receipt tax on interest income/dividends earned and derived from placements and deposits with foreign banks and foreign-based affiliate for the taxable years 1982 and 1983.

The undisputed facts before Us are relevantly summarized as follows:

As it appears petitioner is a commercial banking corporation organized and existing under Philippine laws.

Petitioner has some placements and deposits with foreign banks and its foreign-based affiliate in Singapore, the Asean Finance Corporation *(Exhs.*

*I and I-1)*, as evidenced by the Confirmation Advices *(Exhs. A to A-463)*.

In 1982 and 1983, petitioner earned and derived (i) income from its placements/deposits with foreign banks as evidenced by the various Bank Statements *(Exhs. B to B-29, C to C-16, D to D-102, E to E-2, F to F-136)* and Credit Entry Tickets *(Exhs. G to G-263, H to H-193)* and (ii) dividends from its foreign-based affiliate in Singapore, the Asean Finance Corporation, as evidenced by the Remittance Letter dated June 30, 1983 *(Exh. J)*.

For the taxable year 1982, the gross receipts tax due on interest income from petitioner's placements/deposits with foreign banks amounted to P390,592.84 while for the taxable year 1983, the gross receipts tax due on interest income and dividends from petitioner's placements/deposits with foreign banks and its foreign-based affiliate in Singapore, the Asean Finance Corporation, amounted to P214,367.05 and P25,640.00, respectively, *(Exh. M)*.

On January 20, 1983, petitioner paid the respondent the amount of P390,592.84 representing the 5% gross receipts tax on interest income from placements or deposits with foreign banks earned and derived by petitioner for the taxable year 1982 as evidenced by Confirmation Receipts Nos. 0236530, 10411027, 10251211 and 9779387 *(Exhs. N, N-2, N-4, and N-6, respectively)* and Payment Order No. 0025339, Revenue Tax Receipt No. 10113242, Revenue Tax Receipt No. 3609310 and Revenue Tax Receipt No. 9359015 *(Exhs. N-1, N-3, N-5 and N-7, respectively)*.

On January 20, 1984, petitioner paid the respondent the amount of (i) P214,367.05 representing the 5% gross receipts tax on interest income from placements or deposits with foreign banks earned and derived by petitioner for the taxable year 1983 and (ii) P25,640.00 representing the 5% gross receipts tax on dividends received from petitioner's foreign-based affiliate (Asean Finance Corporation - Singapore) for the taxable year 1983 as evidenced by Confirmation Receipts Nos. 2075358, 0958380, 952520, 0945555 *(Exhs. O, O-2, O-4, and O-6, respectively)* and Payment Order No. 2176501, 1736625, 1315180, 0800872 *(Exhs. O-1, O-3, O-5 and O-7, respectively)*.

The payments of the gross receipts tax in the amounts of P390,592.84, P214,367.05 and P25,640.00 were all included in the payments evidenced by

Exhibits "N" to "N-7" and "O" to "O-7" *(Exhs. K, K-1, K-1-a and Exhs. L, L-1, and L-1-a)*.

Petitioner realized that the aforesaid payments of the gross receipts tax to the respondent were erroneous considering that under Section 260 of the National Internal Revenue Code gross receipts tax shall be imposed on income derived within the Philippines and not on income from placements, deposits and dividends from abroad or outside the Philippines.

On January 11, 1985, well within the two-year period from the respective dates of the aforesaid payments of the 5% gross receipts tax for the taxable years 1982 and 1983, petitioner filed with the respondent the mandatory formal claim for refund or tax credit dated January 7, 1985 *(Exh. P)*.

On January 18, 1985, petitioner without waiting for the resolution or decision of the respondent on its formal claim for refund and/or tax credit, as none has been issued to date, filed the instant petition for review.

As thus invoked, Section 260 (now Sec. 220) of the Tax Code, insofar as pertinent, provides:

> SEC. 260. - ***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 x x x (Underscoring supplied)

Pursuant to the cited provision, the imposition is directly addressed on gross receipts derived from sources within the Philippines. Brought to bear upon the circumstances obtaining in the case at bar, the record makes it clear that the interest income and dividends from money placements and deposits upon which tacked the 5% tax burden were earned and derived by the petitioner from sources abroad and out of the operative ambit of the statutory proscription. Moreover, the basis for the claim is not short of specific support in terms of tractable data openly laid and fully disclosed. It needs therefore neither argument nor citation of authorities to establish the validity of the claimed refund as the law is clear and the language used amply sufficient to dispel any pall of uncertainty cast over the same.

Suffice it therefore, both circumstances obtaining and relevant legal standards compel the conclusion that petitioner has proved entitlement to a favorable determination of the desired relief.

WHEREFORE, the refund of the amount sought by petitioner is hereby ordered the respondent. No pronouncement as to costs.

SO ORDERED.

Quezon City, Metro Manila, August 31, 1989.

ALEX Z. REYES
Associate Judge

WE CONCUR:

AMANTE FILLER
Presiding Judge

CONSTANTE C. ROAQUIN
Associate Judge

**C E R T I F I C A T I O N**

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals