REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT AND SA
MANILA BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 4129

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

3/30/92

D E C I S I O N

This petition for review involves a claim of petitioner Bank of America NT and SA, Manila Branch for the refund of alleged overpaid 5% gross receipts tax for the fourth quarter of 1984 amounting to P478,437.46. The sole issue presented is whether or not the additional 1% tax imposed on every sale or purchase of foreign exchange should be included in the gross receipts for purposes of computing the 5% bank tax pursuant to Section 260 (c) [now 119 (c)] of the National Internal Revenue Code.

Petitioner is a resident foreign corporation authorized to engage in the banking business in the Philippines. On October 12, 1984, Revenue Regulations No. 16-84 was passed imposing an additional 1% tax on the gross peso value of every sale or purchase of foreign exchange by banks which We quote in full, as follows:

"Republic of the Philippines
Ministry of Finance
BUREAU OF INTERNAL REVENUE
Quezon City

October 12, 1984

REVENUE REGULATIONS NO. 16-84

SUBJECT: Imposition of Additional One Per Cent (1%) Tax on the Gross Value Received by Banks, Non-Bank Financial Intermediaries and Authorized Foreign Exchange Dealers.

T O : All Internal Revenue Officers and Others Concerned.

- -

Pursuant to the provision of Section 326, in relation to Section 4 of the National Internal Revenue Code of 1977, as amended, these Regulations are hereby promulgated to govern the manner of imposition of the additional tax of one per cent (1%) on the sale or purchase of foreign exchange by banks, non-bank financial intermediaries and other authorized foreign exchange dealers.

SECTION 1. Tax on foreign exchange transactions. - An additional tax of one per cent (1%) shall be imposed on the gross value of every sale or purchase of foreign exchange by all banks, non-bank financial intermediaries and other authorized foreign exchange dealers.

SECTION 2. Manner of computation of tax base. - For purposes of determining the gross peso value of every sale or purchase of foreign exchange such value shall be computed by applying the official rate of exchange between the Philippine peso and the foreign currency that is prevailing on the date of the actual consummation of the sale or purchase.

In the case of sale of foreign exchange arising from export proceeds and other inward remittances, the gross value shall not be diminished by commissions paid, documentary stamps and other charges incurred on such transactions. Similarly, in the case of foreign exchange licenses to cover imports and other outward remittances, the gross value shall not be increased by commissions paid, documentary stamps and other charges incurred on such transactions.

SECTION 3. Time of declaration and payment of taxes. - The tax imposed on the foreign exchange, transacted within one week, shall be payable on the first banking day of the succeeding week and it shall be the duty of every bank and non-bank financial intermediary and authorized foreign exchange dealer to make a true and complete return (B.I.R. Form No. ____) of the value of foreign exchange sold or purchased during the week and pay the tax due thereon.

SECTION 4. Penalties. -

(1) Failure to file and pay the tax. - If the required return is not filed or the tax not paid within the time specified by law, the amount of the tax shall be increased by twenty-five per cent (25%), the increment to form part of the tax and the entire unpaid amount shall be collected in the same manner as the tax.

(2) Willful neglect to file, or false or fraudulent return. - In case of willful neglect to file the returns within the period specified by law, or in case of false or fraudulent return is willfully filed, there shall be added to the tax or to the deficiency tax in case any payment has been made on the basis of such return before the discovery of the falsity or fraud, a surcharge of fifty (50%) of the amount. The amount so added to

> any tax shall be collected in the same manner and as part fo the tax unless the tax has been paid before the discovery of the falsity or fraud, in which case, the amount so added shall be collected in the same manner as the tax.
>
> In addition to the above administrative penalties, the criminal and civil penalties as provided for under Section 337 of the Tax Code of 1977 shall be imposed.
>
> SECTION 5. Repealing clause. — All regulations, rules, orders or portions thereof which are inconsistent with the provisions of these Regulations are hereby revoked.
>
> SECTION 6. Effectivity. — These Regulations shall take effect on foreign exchange transactions effected beginning October 15, 1984.
>
> (SGD.)
> ALFREDO PIO DE RODA
> Acting Minister of Finance
>
> **RECOMMENDED BY:**
>
> **(SGD.)**
> **RUBEN B. ANCHETA**
> **Acting Commissioner"**

For the period from October 22, 1984 to January 2, 1985, petitioner paid a total of P9,568,749.28 representing the additional 1% tax on gross value received from the sale or purchase of foreign exchange. Aside from the additional 1% tax, banks like the petitioner were also required to pay the percentage tax on gross receipts pursuant to Section 260 (now 119) of the National Internal Revenue Code, as amended by

Presidential Decree No. 1739, effective September 17, 1980. Section 260 (c) imposes a tax of 5% on the gross receipts derived by all banks on profits from exchange transactions within the Philippines.

On January 21, 1985, petitioner paid its gross receipts tax for the fourth quarter of 1984 amounting to P16,408,162.93 pursuant to Section 260 (Exhs.V, V-1 and V-2). On February 20, 1985, petitioner paid additional gross receipts tax for the year ending December 31, 1984 amounting to P47,899.66 (Exhs. T, T-1 and T-2).

On September 16, 1985, the Bureau of Internal Revenue thru Revenue Memorandum Circular No. 39-85 published additional questions and answers on the interpretation of the provisions of the Tax Code as implemented by Revenue Regulations No. 16-84. The pertinent interpretation of Rev. Reg. No. 16-84 insofar as applicable provides:

> Question 31. - Without charging grossed-up rates, can financial institutions be allowed to report for gross receipts tax and net income tax purposes only the actual amount earned, without adding the 1% tax assumed by the client?
>
> Ans. - Yes. There will be no pyramiding of the 1% tax passed on to the client for the financial institution.

On May 22, 1986, petitioner relying on Rev. Memo. Cir. No. 39-85 filed a claim for refund with respondent

(Exh. U). It alleged that the 1% additional taxes paid totalling P9,568,749.28 were erroneously added as part of its gross receipts subjected anew to the 5% bank tax pursuant to Section 260 (c). In other words, the gross receipts was overstated by P9,568,749.28. Necessarily, the 5% gross receipts tax on P9,568,749.28 or P478,437.46 was erroneously paid by petitioner following the interpretation placed by respondent on Rev. Reg. No 16-84 through its Rev. Memo. Cir. No. 39-85 particularly Question No. 31 thereof.

As of present time, respondent has not acted upon petitioner's claim for refund of P478,437.46 on the alleged excess 5% gross receipts tax for the fourth quarter of 1984. On January 19, 1987, petitioner filed the instant petition for review pursuant to Sections 292 and 295 (now 230 and 204) of the National Internal Revenue Code, as amended.

In his answer, respondent contends that petitioner failed to support by evidence payment of the additional 1% tax totalling P9,568,749.28. Contrary to respondent's claim, the Court, after examining the records, found that petitioner was able to prove payment of at least P9,229,054.35 (Exhs. A - S-2, inclusive, pp. 65-102, CTA rec.). However, payment made on January 2, 1985 amounting to P339,694.85 was not presented as part of petitioner's evidence. Therefore, the same cannot be considered.

Petitioner also presented proof that the additional 1% tax was added as part of the gross receipts of petitioner for the fourth quarter of 1984 (Exhs. X, X-1, and W). There is no dispute that the 1% transaction taxes paid were indeed included in the computation of the 5% bank tax.

The crucial question which has to be resolved is whether or not the additional 1% tax should be added as part of petitioner's gross receipts in the computation of the 5% bank tax.

We hold that it should be included as part of the gross receipts subjected to the 5% bank tax.

The 5% bank tax under Section 260 is based on the "gross receipts" derived from sources within the Philippines. The term "gross receipts" was interpreted to mean "the whole amount received without deductions," otherwise, it will be considered a "net receipts". (**National City Bank of New York v. Commissioner of Internal Revenue**, BTA Case No. 52, July 12, 1952.) Though the term "gross receipts" ordinarily means the gross amount of cash received, it includes the gross amount collected and uncollected of all the sales, on which amount the percentage must be computed to determine the tax. (**Eppstein v. State**, Tex., 138 S.W. 1124, 1125.)

It is noteworthy to stress that the additional 1% tax on the sale or exchange of foreign currency is a liability imposed on the bank. If the 1% transaction tax is shifted by the bank to its clients then the 1% tax collected from the clients still form part of the gross receipts of the bank because what was received was actually earned and should be treated as income.

Section 260 provides for the basis of computing the 5% bank tax, that is, the receipts derived by all banks doing business in the Philippines from interest, discounts, dividends, commissions, profits from exchange, royalties, rentals of property, real and personal, and all other items treated as gross income under Section 29(b) [now 28(a)] of the National Internal Revenue Code. (Underscoring supplied.)

Section 29 (b) defines "gross income" as to "include gains, profits and income derived from professions, vocations, trades, business, commerce, sales, or from dealings in property, whether real or personal, or growing out of the ownership or use of property or any interest therein; and from interest, rents, dividends, securities, or the transactions of any business carried on for gain or profit, or gains, profits and income of whatever kind and in whatever form derived from any source." Instead of the bank shouldering the payment of the 1% transaction tax the burden was shifted to the clients. As such, the additional 1% tax charged by petitioner to its clients are actually gains or income of the bank. (Underlining Ours.)

As a general rule, administrative construction of revenue laws are given great weight. (**Molina v. Rafferty,** 37 Phil. 545; **Madrigal and Paterno v. Rafferty and Concepcion,** 38 Phil. 414; **People v. Hernandez,** 59 Phil 272; **Anderson v. Posadas,** 66 Phil. 205.) However, this principle is not absolute. It may be overcome by strong reasons to the contrary. Thus, if through a misapprehension of the law an officer (in this case respondent) has erroneously executed it for a long time, the error may be corrected when the true construction is ascertained. Incidentally, the doctrine of estoppel does not apply here. (**Philippine Long Distance Telephone Co., v. Collector of Internal Revenue,** 90 Phil. 674.)

In the case at bar, the interpretation placed by respondent on Rev. Reg. No. 16-84 through Rev. Memo. Cir. No. 39-85 particularly answer to question no. 31 thereof is not in consonance with the provisions of Sections 260 and 29 (b) of the National Internal Revenue Code. The construction or interpretation of an administrative officer charged with the duty of enforcing the law when clearly erroneous shall not be given effect. Finding no legal basis to support the interpretation of respondent in Rev. Memo. Cir. No. 39-85 question no. 31 it follows that such interpretation of Rev. Reg. No. 16-84 does not have the force and effect of law.

Claims for refund are in the nature of claims for exemption from taxation. (**Commissioner of Internal Revenue v. Ledesma,** 31 SCRA 95; **Resins, Inc. v. Auditor General,** 25 SCRA 754.) When exemption from taxation is claimed, it must be shown indubitably to exist. The presumption is always against any surrender of the taxing power. (**Molina v. Rafferty,** supra.) As such, exemption "cannot be allowed unless granted in the most explicit and categorical language". (**Resins, Inc. v. Auditor General,** supra.; **Commissioner of Internal Revenue v. Guerrero,** 21 SCRA 180; **Republic Flour Mills, Inc. v. Commissioner of Internal Revenue,** 31 SCRA 520; **Union Garment Co., Inc. v. Court of Tax Appeals,** 4 SCRA 304.) The law does not look with favor a tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. (**Reagan v. Commissioner of Internal Revenue,** 30 SCRA 968; **Wonder Mechanical Engineering Corp. v. CTA,** 64 SCRA 555; **Commissioner of Internal Revenue v. P. J. Keiner Co.,**

Ltd., 65 SCRA 143; **Manila Electric Co. v. Vera**, 67 SCRA 351.)

In view of the foregoing, this court is of the opinion and so holds that the additional 1% tax paid by petitioner for the fourth quarter of 1984 pursuant to Rev. Reg. No. 16-84 was rightfully included in its gross receipts for the period for purposes of computing the 5% bank tax under Section 260.

WHEREFORE, finding the instant petition for review without merit the same is hereby **DISMISSED**. Petitioner's claim for refund of 5% gross receipts tax for the fourth quarter of 1984 amounting to P478,437.46 is therefor **DENIED**.

Costs against petitioner.

SO ORDERED.

Quezon City, Metro Manila, March 30, 1992.

CONSTANTE C. ROAQUIN
Associate Judge

I CONCUR:

ERNESTO D. ACOSTA
Presiding 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 between the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals