REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLID BANK CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5641

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 07 2000

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DECISION

This petition for review is seeking for the refund in the amount of P5,971,479.02, allegedly representing overpaid gross receipts tax for the calendar quarters of 1996.

The facts can be briefly stated as follows:

Petitioner is a banking institution organized and existing under the laws of the Philippines with office address located at 777 Paseo de Roxas, Makati City.

For the calendar quarters of 1996, petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts (pertaining to 5% GRT rate) in the total amount of P1,835,359,863.19, with corresponding gross receipts tax payments in the sum of P91,767,993.13, to wit:

Quarter Ended	Exh.	Gross Receipts	Gross Receipts Tax
March 31, 1996	A	P 379,651,617.72	P18,982,580.88
June 30, 1996	B	404,610,952.79	20,230,547.64
September 30,1996	C	517,227,463.01	25,861,373.14
December 31, 1996	D	533,869,829.67	26,693,491.47
Total		P1,835,359,863.19	P91,767,993.13

In arriving at the computation of the gross receipts tax, petitioner alleges that it erroneously included in the taxable gross receipts the final withholding taxes derived from interest on trading account securities in the total amount of P119,429,580.36, broken down as follows:

Quarter Ended	Gross Amount	20%Final Tax
March 31, 1997	P 55,666,436.81	P 11,133,287.36
June 30, 1996	137,423,659.76	27,484,731.95
September 30,1996	207,552,308.22	41,510,461.64
December 31, 1996	196,505,497.02	39,301,099.40
T o t a l	P597,147,901.81	P119,429,580.35

On January 30, 1996, this Court rendered a decision in C.T.A. Case No. 4720 entitlted 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.

In the light of this Court's decision in the aforementioned Asian Bank case, petitioner on April 15, 1998, filed a letter-request for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the amount of P5,971,479.02 (Exhs. E, and E-1 to E-5), detailed as follows:

Interest Income Subjected to the 20% Final Tax Withheld At Source	P597,147,901.81
Multiply by Final Tax Rate	20%
20% Final Tax Withheld At Source	P119,429,580.36
Multiply by GRT Rate	5%
Overpaid GRT	P 5,971,479.02

On April 21, 1998, without waiting for an action from the respondent, petitioner lodged its appeal in this Court in order to toll the running of the two-year prescriptive period to judicially claim a refund pursuant to Section 230 of the Tax Code, as amended.

Respondent, in his Answer, raised the following Special and Affirmative defenses:

8. The ruling in the case of Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821, is not applicable in the instant case on the ground that the definition of the term "gross receipts" as interpreted by the Supreme Court is intended "for the purpose of the amusement tax" as provided in Section 123(b) of the National Internal Revenue Code (NIRC), hence, not applicable to the gross receipts tax (GRT) under Section119 of the NIRC;

9. If the tax base used in the imposition of the 5% GRT is the total gross receipts minus the 20% final taxes on passive income will only result in the unlawful reduction of the amount of tax fixed by law or regulations or, worst, a subtle amendment of the said law or regulations;

10. The petition states no cause of action since it does not alleged (sic) the date/s when the tax/es sought to be refunded were actually paid;

11. In an action for tax credit/refund, the burden of proof is on the taxpayer to establish its right to the refund and failure to sustain the burden is fatal to the action for tax refund; and

12. Well-settled is the rule that claims for refund are construed in *strictissimi juris* against the claimants since it partakes of the nature of an exemption from taxation.

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

1. The Quarterly Percentage Tax Returns for the year 1996 (Exhs. A to D, inclusive of submarkings);

2. The administrative claim for refund filed with the Bureau of Internal Revenue (Exh. E, inclusive of submarkings);

3. Certifications issued by the Revenue Accounting Division of the Bureau of Internal Revenue as to the receipt of gross receipts' tax payments of petitioner (Exhs. F and G);

4. Letters from the Government Securities Department of the Bangko Sentral ng Pilipinas with attached certifications of final taxes withheld and remittted to the

Bureau of Internal Revenue for the years 1994, 1995 and 1996 (Exhs. H and I, inclusive of submarkings);

5. Preliminary and amended reports of SGV and Co. signed by Mr. R. R. Rubio, the commissioned independent auditor, who conducted the examination on petitioner's documents relative to the instant claim for refund (Exhs. J and M); and

6. Pre-marked documents examined by the commissioned independent auditor (Exhs. O-1 to O-347).

Respondent, on the other hand, submitted his case for decision sans the presentation of evidence and memorandum.

The Court is now tasked to resolve the following issues:

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

2. Whether or not petitioner adduced sufficient evidence to support its cause.

Anent the first issue, this Court in a long line of cases has already ruled that 20% final taxes on interest income should no longer form part of taxable gross receipts for purposes of computing gross receipts tax. This is the maxim behind Our decision in the case of *Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996*, supra, pertinent portions of which read 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.
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> x x x x x x x x x

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, 1996, 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:
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> > "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 prized 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 and 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."

Our ruling in the above decision has already been affirmed by the Court of Appeals in the recent case entitled **Commissioner of Internal Revenue vs. Citytrust Philippines, CA G.R. SP No. 52707, August 17, 1999,** which involves a similar issue, thus:

> Accordingly the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue, for the corresponding year that the same was actually withheld and considered final withholding taxes under Section 50 of the same Code. Indubitably, <u>to include the same to Respondent's (Citytrust) gross receipts for the year 1994 would be to tax twice the passive income derived by the Respondent for the said year, which would **constitute double taxation** anathema to our taxation laws</u>." (Underlining supplied).

The legal issue having been settled, what remains to be resolved is the factual aspect of the case.

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. In counting 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 Revnue, CTA Case No. 5403, April 19, 1999**). Applying the above ruling in the case at bar reveals that petitioner was able to file its claim for refund with the Bureau of Internal Revenue on April 15, 1998, and the Petition for

Review with this Court on April 21, 1998, both within the two-year reglementary period, reckoned from April 22, 1996, the date when Petitioner filed its 1996 First Quarterly Percentage Tax Return.

Aside from proving that the Petition for Review was timely filed within the two-year reglementary period, Petitioner must also prove 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 derived on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the period involved; and

3. That the withholding agent certifies that the 20% final withholding tax was paid 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.)**

A meticulous examination of all the evidence on record reveals that petitioner was able to comply with requirement number one and partially with requirement number three.

Petitioner was able to show that it paid gross receipts tax for the calendar quarters of 1996 as evidenced by the machine validations appearing on the lower portion of the quarterly percentage tax returns (Exhs. A-1, B-1, C-1, and D-1). These payments of gross receipts tax were even certified by Ms. Carmelita SJ Pascual, Chief, Revenue Accounting Division, BIR, to have been received by the respondent's bureau (Exhs. F and G). And that the Bangko Sentral ng Pilipinas (BSP) certified that it withheld and remitted 20% final withholding tax on treasury bills purchased by petitioner through regular auction (Exhs. I, I-1, and I-2). However, We cannot trace how much 20% final withholding tax was included in the 1996 quarterly percentage tax returns of petitioner. The evidence submitted by petitioner are insufficient to guide the Court as to what portion of the alleged 20% final tax in the amount of P119,429,580.36 derived from interest on trading account securities was included by petitioner in its taxable gross receipts.

Although it may be argued that the independent auditor has verified the amount of P70,911,256.73 as final taxes on treasury bills and IBODI (Liquidity Floor) was included in the gross receipts of petitioner during the year, the same cannot be given much weight by the Court (Exh. M). The audit procedures adopted by the independent auditor are insufficient to come-up with the desired result of ascertaining the propriety of petitioner's claim for refund. The audit procedures performed focused on tracing of daily summary total of interest from the schedule of daily accrual of interest to monthly subsidiary ledger without checking the authenticity of individual entries stated in the schedule and their supporting documents. Hence, We consider the schedule of daily accrual of interest to be self-serving evidence because entries therein must have been supported by another document.

This Court is not also convinced that the pre-marked documents submitted by petitioner are supportive of the independent auditor's findings. This is because the information appearing in the pre-marked documents (Exhs. O-1 to O-347) do not tally with the data appearing in the schedule of accrual of interest income. The schedule of accruals of interest bears the series number of the treasury bills, issue date, due date and maturity value which are not evident in the pre-marked documents. In addition, petitioner failed to submit material supporting documents such as confirmation of sale, confirmation of purchase, trading sheets, monthly subsidiary ledger and the like that will substantiate the alleged investment of petitioner in trading accounts securities.

Hence, petitioner's failure to present the pertinent documents and individual transactions that would support the certification of the independent auditor proved fatal to its claim for refund. Well-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 the 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:

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
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