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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. 5477**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 11 2000

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DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of ₱4,898,352.60 allegedly representing overpaid gross receipts tax for the calendar year 1995.

The factual backdrop of the case are as follows:

Petitioner is a resident foreign corporation duly organized and registered under the laws of the State of New York, U.S.A. and is authorized by the Securities and Exchange Commission to engage in business in the Philippines.

During the year 1995, Petitioner filed its Quarterly Percentage Tax Returns as follows:

Exhibit	Date Filed	Period Covered	Gross Receipts	Tax Paid
A	April 20, 1995	Jan. – March 1995	₱ 775,006,970.73	₱ 38,605,948.68
B	July 20, 1995	Apr. – June 1995	1,028,468,359.28	51,311,056.23
C	October 20, 1995	July – Sept. 1995	931,645,908.30	46,481,457.95
D	January 22, 1996	Oct. – Dec. 1995	1,156,578,406.56	57,723,926.03
TOTAL			₱3,891,699,644.87	₱194,122,389.03

Part of Petitioner's gross receipts subjected to the gross receipts tax included interest income or yield derived from passive investments, inclusive of the 20% final withholding tax. And so Petitioner, citing this Court's decision in **CTA Case No. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue promulgated last January 30, 1996,** where We ruled that the 20% final withholding tax on interest income should not form part of taxable gross receipts, filed with the Bureau of Internal Revenue on March 12, 1997 a claim for the refund of its overpaid gross receipts tax for the year 1995 in the amount of ₱4,898,352.60 (Exh. E), computed as follows:

Final Withholding Tax:	
First quarter, 1995	₱16,627,230.07
Second quarter, 1995	24,494,917.27
Third quarter, 1995	36,641,837.79
Fourth quarter, 1995	20,203,066.94
Total	₱ 97,967,052.07
Gross Receipts Tax Rate	x 5%
Overpaid 5% Gross Receipts Tax	₱ 4,898,352.60

There being no action on the part of Respondent and the two year prescriptive period provided for under Section 230 of the Tax Code was about to lapse, the instant petition was filed on March 26, 1997.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

> "5. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by the respondent's Bureau;
>
> 6. The amount of tax sought by the petitioner to be refunded/credited was paid pursuant to law and BIR implementing rules and regulations, hence the same is not refundable. Petitioner must prove that the said income tax was actually paid, remitted and

received by the respondent's Bureau, and that, the income from which the amount of tax was paid, were declared and included in its gross income during the year under review;

7. Petitioner's allegations that it overpaid its gross receipt tax for the year under review does not ipso facto warrant the refund. Petitioner must prove that it is indeed entitled to a refund under the Tax Code and its implementing rules and regulations. Moreover, the same must be supported by evidence;

8. Petitioner must likewise prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable years;

9. Claims for tax refund are construed strictly against the claimant as it partakes of the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure to prove the same is fatal to its claim for tax refund;

10. Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code, as amended."

The issues We are tasked to resolve are:

1. Whether or not the 20% final withholding tax derived from passive investments form part of gross receipts subject to the gross receipts tax; and

2. Whether or not Petitioner is entitled to the amount of ₱4,898,352.60 representing alleged overpaid gross receipts tax paid for the year 1995 on the basis of the evidence presented.

As regards the first issue, this Court has already ruled in a number of cases involving claims for refund of overpaid gross receipts tax that **the 20% final withholding tax on interest income should not form part of taxable gross receipts.**

As aptly cited by Petitioner, in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, (CTA Case No. 4720)**, promulgated on January 30, 1996, this Court ruled:

> **"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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> 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.
>
> "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."

This aforequoted ruling was later on affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA - G.R. SP No. 52707, dated August 17, 1999.** The Appellate Court citing the Manila Jockey Club case and the case of **Commissioner of Internal Revenue vs. Tours Specialist Inc. 183 SCRA 402**, ruled, thus:

> "As demonstrated in the above-mentioned case, gross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code.
>
> Parenthetically, the room charges entrusted by the foreign travel agencies to the private respondent (a local travel agency) do not form part of its gross receipts within the definition of the Tax Code. The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels. As

stated earlier, this arrangement was only to accommodate the foreign agencies." (**supra., at pages 409-412, Rollo**) (**underlining supplied**).

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"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, to include the same to the Respondent's 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.

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We now proceed to the factual issue.

In support of its claim, Petitioner presented the following:

Exhibits	**Description**
A to D	Quarterly Percentage Tax Returns of Petitioner for the four (4) quarters of 1995.
E	Letter-claim for refund dated February 11, 1997 filed with the BIR on March 12, 1997
F to I	Gross Receipts Tax Computations for the four quarters of 1995
EC and EE	Partial and final reports of the audit firm Alba, Romeo & Co.
ED-2 to ED-214	Trading order slips and other transaction documents relating to the purchase and sale of treasury bills by Petitioner for the year 1995
EF	Letter addressed to Mr. Salamillas of Citibank from the Deputy Treasurer of the Bureau of Treasury
EG	Letter addressed to Citibank by the Government Securities Department of the Bangko Sentral ng Pilipinas

Likewise, Petitioner offered as evidence the various debit and credit advices with the corresponding certificates of final withholding tax issued by the Bangko Sentral ng Pilipinas for calendar year 1995 showing the 20% final withholding tax paid by Petitioner on its purchases of treasury bills and notes, redemption of treasury bills and interest income earned from treasury notes.

Respondent, on his part, manifested that he was not able to retrieve the records of this case and so, there being no evidence to present, he submitted the case for decision based on the pleadings.(p. 413. CTA Records)

After examining the evidence adduced by Petitioner, We rule against Petitioner.

In order to be entitled to a refund of overpaid gross receipts tax, Petitioner must prove:

1. That it actually paid the 20% final withholding tax on its gross receipts from passive income;
2. That the 20% final withholding tax on passive income formed part of its gross receipts subjected to the gross receipts tax; and
3. That it actually paid the gross receipts tax due on its gross receipts from passive income, inclusive of the 20% final withholding tax.

As to the first requirement, We give weight to the findings of Alba, Romeo & Co., the auditing firm engaged by Petitioner and commissioned by the Court to verify and examine the accuracy of the instant claim for refund. According to the final report of the said firm (Exh. EE), out of the P97,967,052.07 final withholding tax claimed by Petitioner, only the amount of P33,105,656.67 was verified to have been withheld based on treasury bills original trading orders/reprints generated by Petitioner's computerized Securities Treasury System (STS). Of this amount, P9,978,131.02 was supported by Central Bank debit advices and P5,319,755.61 was substantiated by Central Bank certificates of final taxes withheld, as follows:

	Supported by		
Gross Receipts	T-Bills Trading Orders (Original Docs./ STS Reprints)	Central Bank Debit Advices	Central Bank Withholding Tax Certificates
Discount	P 136,650,109.63	P 34,950,984.40	P 20,843,180.82
Trading gain (loss)	28,878,173.74	14,939,670.72	5,755,597.22
	P 165,528,283.37	P 49,890,655.12	P 26,598,778.04
20% Final Tax	P 33,105,656.67	P 9,978,131.02	P 5,319,755.61

Since Petitioner must prove actual payment of the 20% final withholding tax, then it would seem that only the amount of P265,987.78 (5% of 5,319,755.61) of gross receipts tax may be refunded.

However, Petitioner showed no proof of compliance with the second requirement. While Petitioner's 1995 quarterly taxable gross receipts (passive and non-passive) and the corresponding gross receipts taxes appearing in its 1995 quarterly percentage tax returns tallied with those appearing in the quarterly GRT computation schedules, the detailed transaction amounts as well as the supporting source documents were not presented. This is necessary in order to determine whether or not Petitioner's claim of P97,967,052.07 in final withholding taxes were included in its quarterly gross receipts from passive income subjected to the gross receipts tax.

The above observations find support in the findings of the audit firm, Alba, Romeo & Co. which stated in its final report that it was able to verify the amount of P165,528,238.37 passive income with 20% final withholding taxes of P33,105,656.67 based on available treasury bill transaction documents. However, it was unable to trace the recording of the said passive income in Petitioner's books of accounts due to missing transaction sheets, thus:

"The following exceptions were noted during our examination:

> 1. Because the income figures in the schedules were derived from documents through manual computation, the income figures could not be traced to recordings in the book of accounts due to missing transaction sheets."

Verily, the audit firm failed to ascertain whether or not the said income of P165,528,238.37 (inclusive of the 20% final tax) was included in Petitioner's 1995 total passive income per books of P489,835,260.35 which became the basis of its 1995 gross receipts tax computation for passive income (Exhs. F to I) and declared as part of its 1995 total taxable gross receipts (passive and non-passive income) of P3,891,699,644.87 per the 1995 quarterly percentage tax returns.

Consequently, as Petitioner failed to prove the inclusion of the 20% final withholding tax of P97,967,052.02 in its 1995 gross receipts from passive income, then We cannot conclude with certainty that there was actual payment of the corresponding 5% gross receipts tax of P4,898,352.60.

WHEREFORE, in the light of all the foregoing, Petitioner's claim for refund or issuance of a tax credit certificate of its overpaid gross receipts tax for the year 1995 is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
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