REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB LEASING AND FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5430

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 07 1999

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DECISION

This case involves a claim for refund or issuance of tax credit certificate in the total amount of ₱284,271.67 allegedly representing overpaid gross receipts taxes for the taxable quarters ending September 30, 1994 to June 30, 1996, the breakdown of which are as follows:

Quarter Ended	Amount Remitted	Amount Claimed
September 30, 1994	₱ 595,504.83	₱ 28,747.86
December 31, 1994	364,657.98	8,484.16
March 31, 1995	495,443.98	54,796.03
June 30, 1995	375,616.47	5,789.64
September 30, 1995	571,343.31	58,996.69
December 31, 1995	779,287.86	63,543.99
March 31, 1996	419,374.70	21,463.11
June 30, 1996	886,643.90	42,450.19
	₱4,488,873.03	₱284,271.67

Petitioner is a corporation duly organized and existing under the laws of the Philippines with principal office at 3/F Asian Bank Center, Sen. Gil Puyat Avenue, Makati City.

144

For the period involved herein, petitioner seasonably filed its Quarterly Percentage Tax Returns (Exhs. A to H) paying a total gross receipts tax of ₱4,488,873.03. Petitioner claims that the tax base of the said sum included the 20% final withholding tax paid on interest income it earned from government securities and bank deposits.

On January 30, 1996, this Court rendered a decision in CTA Case No. 4720 entitled **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."

On October 17, 1996, by virtue of the aforementioned decision, Petitioner filed with the Bureau of Internal Revenue a claim for refund or issuance of tax credit certificate in the sum of ₱284,271.67 allegedly representing overpaid gross receipts tax for the period covering the taxable quarters September 30, 1994 to June 30, 1996 (Exh. Q).

On October 18, 1996, a day after the administrative claim for refund was filed, Petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period to judicially claim a refund of overpaid internal revenue tax pursuant to Section 230 of the Tax Code, as amended.

165

In its petition before Us, Petitioner reiterates its proposition that the 20% final withholding tax on the interest income arising from its government securities and bank deposits which were already withheld and remitted to the BIR were erroneously included in its taxable gross receipts; thus, it stressed that on the strength of the aforementioned ruling of this Court in the Asian Bank case, *supra*, it has actually overpaid the amount legally due from it insofar as its gross receipts tax obligations are concerned, hence, a refund is therefore in order.

Respondent, on the other hand, raised the following special and affirmative defenses:

> 5. The petitioner's claim has partially, if not totally prescribed;
>
> 6. The administrative claim for refund was not filed within a reasonable time before the lapse of the two year period in order to give the respondent a chance to act on it;
>
> 7. Interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangement earned by a domestic corporation is subject to a 20% tax in accordance with Section 224(e)(i) of the National Internal Revenue Code, which is the law applicable on this matter;
>
> 8. The ruling in the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, is therefore, not applicable in the instant case, thus, petitioner has no cause of action;
>
> 9. In claiming for refunds, it is incumbent upon petitioner to prove that it is

166

indeed entitled thereto. It must be able to point positively a provision of law granting such right, otherwise, it would be fatal to the claim for refund;

10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes;

11. It is incumbent upon petitioner to show compliance with the provision of Section 230 of the Tax Code, as amended.

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

1. Quarterly Percentage Tax Returns for the quarters ending September 30, 1994 to June 30, 1996 (Exhs. A to H-2, inclusive of submarkings).

2. The Asian Bank Checks and Check Vouchers pertaining to the above returns (Exhs. Q to Y).

3. The breakdown and computations of overpaid GRT for the period involved (Exhs. I to P-3, inclusive).

4. Petitioner's administrative claim for refund (Exh. Q).

5. Auditor's report, dated June 16, 1997 (Exhs. Z and SS).

The issue in this case is whether or not Petitioner is entitled to the claim for refund in the amount of ₱284,271.67 allegedly representing overpaid gross receipts taxes for the taxable quarters ending September 30, 1994 to June 30, 1996.

There is no doubt as to the legality of Petitioner's claim as this controversy has already been resolved in

167

the earlier case of **Asian Bank Corporation vs. Commissioner of Internal Revenue**, *supra*, which has similar facts and circumstances obtaining as in the case at bar. This Court stands firm behind its ruling that the 20% final withholding tax on bank's interest income should not form part of the taxable gross receipts for purposes of computing the gross receipts tax and We find no valid reason to deviate from our ruling in said case, which partly states in this wise:

> "We agree with the petitioner that the 20% final withholding tax on its interest income should not form part of its taxable gross receipts.
>
> Revenue Regulations No. 12-80 dated November 7, 1980 on Taxation of Certain Income Derived from Banking Activities provides that the rates of tax to be imposed on the gross receipts of such financial institution; shall be based on all items of <u>income actually received</u>.
>
> x x x x x x x x x
>
> From the foregoing, it is but logical to infer that the final tax, not having been received by the petitioner but instead went to the coffers of the government, should no longer form part of its gross receipts for the purpose of computing the GRT. 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, 1966, thus:
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> > In the second place, the highest tribunal of the land interpreted the term "gross receipts: to mean all receipts of a

168

> taxpayer excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer.

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Having resolved the legal issue involved. We are now tasked to settle the factual milieu of this case.

Based on the evidence presented, this Court finds that Petitioner has established its entitlement to the refund claimed. Its claim for refund was seasonably filed, both administrative and judicial, within two (2) years from the date of payment of the tax pursuant to Section 230 of the Tax Code in relation to Section 125 of the same Code. However, We are limiting the refund to the amount which have been verified since the independent auditing firm, SGV & Co., commissioned by this Court pursuant to CTA Circular No. 1-95, as amended, has rendered a disclaimer regarding Petitioner's passive interest income and quarterly GRT payments (Exhs. 7 and SSS).

A thorough and careful scrutiny of all documents presented shows that Petitioner has not satisfactorily proved that it has indeed paid the 20% final tax on its interest income arising from bank deposits. Petitioner's interest income from bank deposits and the corresponding 20% final tax for the third quarter of 1994 and second quarter of 1996 cannot be verified by mere presentation of detailed account summaries for the period January to

169

June 1996 (Exhs. OO to OO-3). Account entries in the said summaries can only be evaluated and validated through documents such as passbooks, bank statements and certificates of final taxes withheld. In the case at bar, Petitioner failed to present such vital documents to sustain its claim. As Petitioner failed to bolster the detailed account entries, We have no way of verifying whether it has really paid the 20% final tax on interest income arising from bank deposits.

As regards Petitioner's interest income from government securities, this Court, after evaluating the detailed account summaries for January to June 1996 supported and confirmed by purchase documents, tracing sheets, journal voucher listings and computation sheets, finds that Petitioner is only entitled to the amount of ₱7,286.59, detailed as follows:

Month	Exhibits	Interest Income	Final Tax (20%)	5% GRT on the 20% Final Tax
Jan. 1996	OO, NN-1, AA, RRR	₱ 68,052.94	₱ 17,013.24	₱ 850.66
Feb. 1996	OO-1, KK-1, RRR, PPP, QQ-11, AA	45,348.70	11,337.19	566.86
Mar. 1996	OO-2, LL-1, CC	71,787.40	17,946.85	897.34
Apr. 1996	RR, SS-3, CC	119,645.67	29,911.42	1,495.57
May 1996	RR-1, MM-2, CC, GG, FF-1, EE	178,296.73	44,574.19	2,228.71
June 1996	SS-15, GG, EE, TT-27 CC, TT-28, SS-13	99,795.83	24,948.96	1,247.45
		₱582,927.27	₱145,731.83	₱7,286.59

170

WHEREFORE, finding the petition partially meritorious and in accordance with law, Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE in favor of Petitioner in the amount of P7,286.59 representing overpaid gross receipts taxes.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB LEASING AND FINANCE CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5432

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 07 1999

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DISSENTING OPINION

In cases of this nature where the common issue involves the basis of the 5% gross receipts tax, I have consistently expressed my disagreement with the majority opinion which rules that said gross receipts tax shall be based on the amount of passive interest, net of the 20% final income tax withheld at source.

The legal basis of my dissent is mainly anchored on the provisions of Section 8(c), Revenue Regulations No. 12-80 dated November 7, 1980, as amended by Section 7(c), Revenue Regulations No. 17-84 dated October 12, 1984 which provides, thus:

> "If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed."

172

Based on the aforequoted provisions, the taxable bases therefore for purposes of GRT is the gross-up amount, inclusive of the 20% final tax withholding.

WHEREFORE, I hereby express my dissent to the opinion of my esteemed colleagues and vote to **DENY** the petition for lack of legal merit.

AMANCIO Q. SAGA
Associate Judge

173