REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM SAVINGS BANK, INC.
Petitioner,

- versus -

C.T.A. CASE NO. 5407

THE COMMISSIONER, BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 18 1998

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D E C I S I O N

Before Us is a claim for refund or issuance of tax credit certificate representing gross receipts taxes allegedly paid erroneously by petitioner for the second quarter of 1994 in the amount of P7,550.02 plus interest at the legal rate from July 19, 1996 until fully paid.

This petition at bench arose from the following factual backdrop.

Petitioner is a banking institution duly organized and existing by virtue of the laws of the Philippines.

Petitioner alleges that on July 20, 1994, it paid the total amount of P3,102,596.28 representing the 5% Gross Receipts Tax (GRT) on all receipts earned/derived by the petitioner for the second quarter ending June 1994, including the 20% final withholding tax on interest income, computed as follows:

Exhibit	Branch	Gross Sales	GRT Paid
"A"	Makati	P59,335,268.05	P2,521,638.99
"B"	Cebu	8,728,311.86	362,740.66
"C"	Davao	5,195,633.34	218,216.63
		P73,259,213.25	P3,102,596.28

120

On January 30, 1996, this Court rendered a decision in a case entitled ***Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720***, ruling that the 20% final tax on interest income withheld by the bank should not form part of its taxable gross receipts for GRT purposes. On account of the said Decision, petitioner filed its amended Quarterly Percentage Returns for the second quarter of 1994 (Exh. "E-3") reflecting a refundable amount of P7,550.02 computed as follows:

Gross Sales/Receipts	P73,108,212.63
Tax Due	P 3,095,046.26
Less: Tax Paid	P 3,102,596.28
Refundable Amount	P 7,550.02

Subsequently, on July 19, 1996, petitioner filed its formal claim for refund and/or tax credit (Exh. "E") of gross receipts taxes allegedly paid erroneously by petitioner for the second quarter on July 20, 1994 in the amount of P7,550.02. On the same day, without waiting for the decision of the Commissioner of Internal Revenue on the formal claim for refund and/or tax credit, petitioner filed the instant petition for review before this Court lest it be barred by the mandatory two-year prescriptive period under Section 230 of the Tax Code

Respondent, in her Answer to the Petitions for Review maintained the following Special and Affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

5) Petitioner's claim for tax refund/tax credit is still undergoing administrative routinary investigation/examination by respondent's Bureau;

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6) The alleged refundable/creditable gross receipt tax was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, the same is not refundable. Petitioner must prove that the refundable/creditable gross receipts tax was actually paid, remitted and received by the respondent's Bureau, and that the income from which the alleged refundable/creditable gross receipts tax was paid from, were declared and included in its gross income during the taxable year under review;

7) Petitioner's allegation that it erroneously and excessively paid its gross receipts tax during the quarter of the year under review does not ipso facto warrant the refund/credit. Petitioner must prove that the exclusions claimed by it from its gross receipts must be allowable exclusion under the Tax Code and its pertinent implementing rules and regulations. Moreover, it must be supported by evidence.

8) Petitioner must likewise prove that the alleged refundable/creditable gross receipts taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s"

9) Claims for tax refund/credit are construed in strictissimi juris against the taxpayer as it partakes 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 on the part of the petitioner to prove the same is fatal to its claim for tax refund/credit;

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

During the course of the trial, petitioner presented as evidence the testimonies of its financial officers who identified the documentary evidence it submitted before Us namely its:

1) Quarterly Percentage Tax Returns for the second quarter of 1994 (Exhs. "A", "B" and "C");

2) Trial Balance for June 1994 (Exh. "D")

3) Letter-request for refund dated July 19, 1996. (Exh. "E").

Respondent, on the other hand, failed to present any evidence to support her special and affirmative defenses.

The sole issue to be resolved in this case is whether or not petitioner is entitled to a refund of the amount of P7,550.02 representing gross receipts taxes alleged to be erroneously paid by petitioner for the second quarter of 1994.

Pertinent to the resolution of this case are the provisions of Section 119 of the Tax Code, to quote:

> "**Sec. 119.** ***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 in accordance with the following schedule:
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> (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.

Short-term maturity not in excess of two (2) years	5%
Medium-term maturity - over two years but not exceeding four (4) years	3%
Long-term maturity:	
(i) Over four (4) years but not exceeding seven (7) years	1%
(ii) Over seven (7) years	0%
(b) On dividends	0%

> (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 28 of this Code 5%

> *Provided, however*, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long term and the correct rate of tax shall be applied accordingly.
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> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities."

It is clear from the foregoing provisions of the Tax Code that gross receipts taxes shall be computed based on all receipts by the bank earned from its lending activities, royalties, rentals, real or personal profits and all other items treated as gross income under Section 28 of the Tax Code. There is no mention whatsoever of the inclusion of the 20% final withholding taxes on the bank's interest income as part of its gross receipts. In fact, the issue of whether or not the gross receipts for purposes of computing the GRT shall be computed net of 20% final withholding tax had long been settled in the case of ***Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 30, 1996*** , thus:

> "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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> **Revenue Regulations No. 12-80** dated Nov. 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 institutions; shall be based on all items of <u>income actually received,</u> thus:
>
> **SEC. 4.** xxx xxx xxx
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> (e) ***Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities.*** - The rates of taxes to be imposed on the gross

receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder. (Underscoring supplied)

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:

"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 that the taxpayer. Thus, it was held:

> "xx xx. The Government could not have meant to tax as gross receipt of the Manila Jockey Club the 2% 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 prizes 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 & L-13887, June 30, 1960)
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> 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.

We vehemently disagree with the contention of the respondent that the application of the cited cases of Collector of Internal Revenue vs. Manila Jockey Club Inc. and Compania Maritima vs. Acting Commissioner of Internal Revenue in conjunction with Revenue Regulations No. 12-80 is misplaced considering that the subject matter of these cited cases is distinct and different from the subject matter of the present case. In the aforecited cases, portions of the race track's gross receipts which were turned over to the Board of Races, a government institution, and to the winning horses and jockeys were excluded from its gross receipts for the purpose of computing its gross receipts tax (20% amusement taxes in this case) because although delivered to the race track owner, the same had already been earmarked by law or regulation other than the proprietor. In the

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same vein, the case at bar involves 20% final taxes withheld on the bank's interest income which should not form part of petitioner's gross receipts simply because the same were already turned over to the Government by the petitioner as it filed and remitted the 20% final withholding taxes on its interest income. Subjecting the same amount to gross receipts taxes would be tantamount to double taxation which is obviously unfair on the part of the petitioner.

With regard to the contention of the respondent that petitioner is not entitled to its claim for tax refund/credit due to its failure to exhaust all available administrative remedies before resorting to court action, the same lacks merit. The Court of Appeals in a case entitled, ***Commissioner of Internal Revenue vs. Bank of Philippine Islands, as Liquidator of Paramount Acceptance Corporation and the Court of Tax Appeals, CA-G.R. SP No. 34102, September 19, 1994***, had ruled as follows:

> "Accordingly, We do not agree with appellant that it is necessary for the Commissioner of Internal Revenue to act unfavorably on the claim for refund before the Court of Tax Appeals may acquire jurisdiction. This is so because of the positive requirement of Section 230 and the doctrine that delay of the Commissioner in rendering decision does not extend the peremptory period fixed by the statute.
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> Neither are We convinced that the law requires that the claim for refund should have been filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. The law fixed the same period - two years - for filing a claim for refund with the Commissioner (Sec. 204, par. 3), and for filing suit in court (Sec. 230), unlike in protests of assessment under Sec. 229 which fixed the period (thirty days from receipt of decision) for appealing to the court, thus clearly implying that the prior decision of the Commissioner is necessary for the court to take cognizance of the case. While it may be true that the Court of Tax Appeals is essentially an appellate court, and should act only upon claims for

> refund that are unfavorably decided by the Commissioner, the remedy is addressed to the legislature.
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> The taxpayer cannot be faulted for taking advantage of the full two-year period prescribed by law in filing his claim for refund. The Court of Tax Appeals itself acknowledges that the claim for refund with the Commissioner can be pending simultaneously with a suit for refund filed with said court:
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> "xxx. In fact the records will show that from the time Petitioner filed its claim for refund either from April 2, 1986 or April 14, 1988 up to promulgation of this decision on December 20, 1993, respondent has failed to act favorably or unfavorably on the said claim for refund. <u>The institution of a petition for review covering claim for refund filed with the Bureau of Internal Revenue has never been a bar to the continuous administrative processing of claim for refund</u>. In fact in a number of cases filed before this court, petition for review were withdrawn afterwards by the petitioner from this court by reason of the grant of the refund by the respondent." (See Order denying Motion for Reconsideration dated April 27, 1994). (Underscoring Supplied)

Applying the foregoing decision In the instant case, the fact that the administrative claim for refund before the Bureau of Internal Revenue and the Petition for Review before this Court were filed on the same day, July 19, 1996, does not equate to petitioner's failure to exhaust all available administrative remedies before resorting to court action as erroneously claimed by the respondent. The law does not require that the claim for refund should be filed at the earliest instance in order to give the respondent the time to rule on the claim. It is sufficient that the taxpayer takes advantage of the two-year period prescribed by law for filing the claim for refund ***(Manila Electric Company vs. Commissioner of Internal Revenue, CTA Case 5091, October 2, 1997).***

After affirmatively settling the legal issue of whether or not the 20% final withholding taxes should not form part of the gross receipts of the petitioner, We are now tasked to resolve on the factual issue of whether or not petitioner is entitled to the refund/credit sought based on the evidence at hand..

A thorough and careful examination of all the documentary evidence presented by the petitioner revealed that petitioner failed to substantially prove its entitlement to the refund/credit sought. Petitioner in the case at bar merely presented as evidence its Quarterly Percentage Tax Returns to prove that it actually paid its gross receipts taxes based on its gross receipts which allegedly included the disputed 20% final withholding taxes on interest income. In addition, it presented its self-serving Trial Balance showing the inclusion of the 20% final withholding tax in the computation of its gross receipts.

Nowhere in the evidences presented by the petitioner does it show that the 20% final taxes on its interest income were actually withheld and remitted to the Bureau of Internal Revenue, thus entitling the same to be excluded in the computation of its gross receipt taxes. It is Our firm belief that the petitioner should have presented copies of the Certificates of Final Income Tax Withheld issued by the withholding agents showing that the 20% final tax was withheld from the petitioner's interest income or the Quarterly and Annual Returns filed by these withholding agents with the Bureau of Internal Revenue pursuant to Section 51(d) of the Tax Code.

Therefore, in view of the principle that tax refunds are in the nature of tax exemptions and as such, they are regarded as in derogation of sovereign authority and to be construed in strictissimi juris against the person or entity claiming the

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exemption ***(Towa Industry, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5219, May 13, 1997),*** and the taxpayer having the burden of proof to show that it is entitled to the return of the amount claimed as refund ***(Benguet Corp. vs. Commissioner of Internal Revenue, CTA Case No. 4686, 4829, June 27, 1995),*** this Court has no other recourse but to deny the instant petition.

WHEREFORE, in the light of all the foregoing, petitioner's claim for issuance of tax credit certificate or refund of gross receipt taxes allegedly paid erroneously by petitioner for the second quarter of 1994 in the amount of P7,550.02 is hereby **DENIED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

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