REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus - **C.T.A. CASE NO. 5719**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 16 2000

x - x

DECISION

This is a petition seeking for the refund of the amount of P6,278,856.58 allegedly representing overpaid gross receipts tax for the fourth quarter of 1996.

The antecedent facts follow.

Petitioner is a domestic banking corporation duly organized and existing under Philippine laws. It is licensed by the Bangko Sentral ng Pilipinas (BSP) to engage in expanded commercial banking operations as defined under the rules and regulations of the BSP.

For the four quarters of 1996, Petitioner filed its quarterly percentage tax returns showing its gross receipts for each particular quarter, and paid the corresponding gross receipts tax, detailed as follows:

Exh.	Period Covered	Gross Receipts	Gross Receipts Tax Paid	Date of Payment
N	Jan-Mar 1996	P2,211,105,642.40	P105,816,277.16	April 22, 1996
O	Apr-June 1996	2,412,460,302.86	113,438,799.75	July 22, 1996
P	July-Sept 1996	2,534,935,228.91	117,242,547.35	Oct. 21, 1996
Q	Oct-Dec 1996	3,365,047,326.47	158,224,837.02	Jan. 20, 1997

In determining the basis for the gross receipts tax paid for each quarter of 1996, Petitioner allegedly included therein all of its gross receipts, inclusive of the twenty percent (20%) final taxes already withheld and paid to Respondent by various clients of Petitioner on interest and other passive income received by the latter. Hence, on July 15, 1998, on the strength of 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 held that the twenty percent (20%) final withholding tax on bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing gross receipts tax, Petitioner filed a letter claim for refund dated July 13, 1998 with the Bureau of Internal Revenue in the amount of P26,069,147.00, representing alleged overpaid gross receipts tax for the whole year of 1996.

Respondent did not act on Petitioner's claim. And so, on January 19, 1999, the instant petition for review was filed, praying for the refund of P6,278,856.58, representing Petitioner's overpaid gross receipts tax only for the fourth quarter of 1996, as Petitioner's right to ask for a refund of its overpaid gross receipt tax for the first three quarters of 1996 has already been barred by prescription.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund if at all is still under verification/investigation by respondent Commissioner of Internal Revenue;
>
> 5. In an action for tax refund, petitioner must show that taxes were paid erroneously or collected illegally. Failure to sustain this burden is fatal to the action for refund;

6. Claims for refund are construed strictly against the claimants since they are in the nature of exemptions from taxation. *(Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351);*

7. Taxes are presumed to have been paid and collected in accordance with law."

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 P6,278,856.58 representing alleged overpaid gross receipts tax paid for the fourth quarter of 1996 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)** 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.**
>
> 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:

> "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."

In fact this aforequoted ruling was 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** when it ruled, 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, 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."

With reference to the second issue, Petitioner presented the following:

Exhibits	Description
A, A-1 to A-3	Certification of BSP dated April 13, 1999 showing the purchase of Petitioner of treasury bills
A-4, A-6	Monthly remittance returns of income taxes withheld
A-5, A-7	Credit advice to the Bureau of Treasury supporting Exhs. A-4 and A-6
B-1 to B-333	Purchase order slips covering the fourth quarter of 1996
C-1 to C-59	Monthly statements of Petitioner with the BSP for the periods Oct., Nov. & Dec. 1996
D-1 to D-58	Managers' Checks issued in favor of Petitioner for the fourth quarter of 1996
E-1 to E-140	Journal reports of Petitioner for the fourth quarter of 1996
F-1 to F-19	Reconciliation reports
G-1 to G-2441	General ledger interface reports covering the fourth quarter of 1996
H-1 to H-67	Inventory reports

I-1 to I-355	Sales Order slips documents
J-1 to J-453	Daily trial balances for the three months of the last quarter of 1996
K-1 to K-56	Summary of tax-paid income
L, L-1 to L-9	Transactions' Flow and Accounting
M-1 to M-95	Bank statements of Petitioner
S, S-1, S-1-a & S-2	Report submitted by the Joaquin Cunanan & Co.
N, O, P, Q	Quarterly percentage tax returns
R, R-1 to R-22	Corporation Annual Income Tax Return with accompanying financial statements for the year 1996
T, T-1 & T-2	Written claim for refund of Petitioner dated 7/13/98 addressed to Respondent

Counsel for the Respondent, on the other hand, submitted this case for decision without presenting any evidence (p. 106, CTA Records).

After examining the evidence adduced by Petitioner this Court finds a refund to be in order but in a reduced amount.

According to Joaquin Cunanan & Co., the independent auditing firm engaged by Petitioner and commissioned by the Court to conduct an examination relative to the instant claim for refund, Petitioner's claim for refund on excess payment of GRT for the fourth quarter of 1996 is correct except for the total amount of only P657,421.46 which was not supported by documents and other related accounting records (Exh. S), to state:

Date	Investment Income	Excess GRT Payment
Oct. and Nov.	P 192,812.50	P 1,156.88
Oct., Nov. and Dec.	6,820,211.85	37,951.11
Oct. 23 and 25	12,812,335.81	128,123.36

Oct, Nov. and Dec.	49,671,071.01	490,190.11
	P69,496,431.17	P 657,421.46

However, a review of Petitioner's supporting documents revealed that out of the P5,621,435.12 overpaid gross receipts tax allegedly verified by Joaquin Cunanan & Co., only the amount of P692,172.78 was duly substantiated.

In order to be entitled to a refund of overpaid gross receipts tax based on the Asian Bank decision, Petitioner must sufficiently prove:

a.) that the 20% final tax on its passive income was actually withheld;

b.) that the 20% final withholding tax formed part of its gross receipts tax base on passive income; and

c.) that it actually paid the gross receipts tax due on gross receipts from passive income inclusive of the 20% final withholding tax.

For purposes of clarity, We shall tackle the foregoing requirements separately.

First, Petitioner must prove that the 20% final tax on its passive income was actually withheld.

In its 1996 4th quarter Summary of Tax-Paid Income (Exhs. K-1 to K-56, inclusive), Petitioner indicated that it derived gross receipts from passive income consisting of: 1) Interest Income from Interbank Loans, Floating Rate Treasury Notes-(FRTN)-short, medium & long term, Treasury Bills, Trading Account Securities (TAS)-Private Securities-short & long term; and 2) Trading Gain from Government Securities on which the alleged 20% final tax withheld therefrom was allegedly further subjected to 5% GRT as follows:

Income	4th quarter – 1996		
	Gross Amount	20% Final Tax	5% GRT Paid
Interest Income on:			
Interbank Loans-Tax Paid	P166,149,532.99	P 33,229,906.60	P1,661,495.33
Invest.– FRTN-Tax Paid-ST	108,214,693.25	21,642,938.65	1,082,146.93
Invest.– FRTN-Tax Paid-MT	1,004,431 87	200,886.37	10,044.32
Invest.– FRTN-Tax Paid-LT	12,476,315.97	2,495,263.19	124,763.16
Invest.–T-Bills-Tax Paid	283,811,510.91	56,762,302.18	2,838,115.11
TAS-Priv. Sec.-Tax Paid-ST	5,122,198.90	1,024,439.78	51,221.99
TAS-Priv. Sec.-Tax Paid-LT	739,395.37	147,879.07	7,393.95
Trading Gain-GS Tax Paid	11,394,678.13	2,278,935.63	113,946.78
Total	P588,912,757.39	P117,782,551.48	P5,889,127.57

Based on the evidence on record, Petitioner failed to prove the actual withholding of the 20% final tax on its Interest Income from Interbank Loans, Floating Rate Treasury Notes (FRTN)-short, medium & long term and Trading Account Securities (TAS)-Private Securities-short & long term. The amounts of 20% final withholding taxes indicated in the purchase order slips submitted by Petitioner related to its purchases of floating rate treasury notes and private securities for the last quarter of 1996 (Exhs. B-5, B-10, B-26, B-40 to B-42, B-47 to B-51, B-53 to B-56, B-61, B-68 to B-74, B-76 to B-78, B-82 to B-88, B-104, B-105, B-109 to B-117, B-119, B-124 to B-133, B-135, B-139, B-140, B-146, B-147, B-151, B-152, B-154 to B-157, B-158, B-164, B-174, B-199, B-202, B-217, B-226, B-241, B-250 to B-254, B-256 to B-264, B-270 to B-273, B-285 to B-286, inclusive) should have been corroborated by certificates of final taxes withheld from the issuers of the said investment securities. With respect to its Interest Income from Interbank Loans, Petitioner likewise failed to present certificates of final taxes withheld from the borrowing banks showing the amount of income payment and the corresponding 20% final withholding tax.

On its direct purchases of T-bills from Bangko Sentral ng Pilipinas, Petitioner presented the following to prove the withholding of the 20% final tax:

		Exhibits
1.)	BSP Certification of Final Taxes Withheld on petitioner's T-bills Purchases for the year 1996	A to A-3
2.)	Purchase order slips	B-14, B-31, B-33, B-34, B-64, B-95 to B-97, B-183, B-188, B-198, B-223, B-242, B-246, B-282, B-288, B-327, B-328, B-329
3.)	Monthly Bank Statements from BSP-1996	October, November & Dec., C-1 to C-59
4.)	Testimony of Mrs. Jeanette Siguenza, Bank Officer III, BSP Treas. Dept. (TSN, May 26, 1999, pp. 11 – 21)	

However, while the net purchase prices (inclusive of the 20% final tax) indicated in the above enumerated purchase order slips pertaining to Petitioner's direct purchases of T-bills from BSP for the last quarter of 1996 tallied with the amounts charged against Petitioner's demand deposit account with BSP (Exhs. C-1 to C-59, inclusive) for the same period, we give more weight to the Certification issued by BSP to Petitioner (Exhs. A to A-3, inclusive) which reflected Petitioner's date of purchase of the T-bills, face amount (in millions), amount of interest (discount), 20% final tax withheld on the interest (discount) and date of remittance to the BIR of the 20% final withholding tax. The amounts of 20% final withholding taxes shown in the BSP Certification were even confirmed by Mrs. Jeanette Siguenza, Bank Officer III of the BSP Treasury Department during the May 26, 1999 hearing of this case(TSN, May 26, 1999, pp. 11-21). Unfortunately, though, only the amount of P 11,710,879.20 in final withholding taxes (Annex A) was verified to have been actually withheld on interest income (amortized discount) on T-bills of P58,554,396.00 where the corresponding purchases on the said interest income have the same date of purchase, par value and purchase price as shown in the Inventory Reports (Daily Accrual Reports) for October 20, November 20 & December 20, 1996 (Exhs. H-6, H-7, H-28 & H-48) and in the BSP Certification (Exhs. A to A-3, inclusive). The interest accrual (amortized discount) of P58,554,396.00 (inclusive of the 20% final tax) was also traced to Petitioner's 1996 4th quarter Summary of Tax-Paid Income (Exhs. K-17, K-23 & K-32) and General Ledger Interface Reports (G-1 to G-2441, inclusive).

As to the interest income on T-bills purchased from other banks, Petitioner presented the following to prove actual payment of the 20% final tax:

	Exhibits
1.) Purchase Order Slips	B-1 to B-4, B-6 to B-9, B-11 to B-13, B-15 to B-25, B-27 to B-30, B-32, B-35 to B-39, B-43 to B-46, B-52, B-57 to B-60, B-62, B-63, B-65, B-66, B-67, B-75, B-79 to B-81, B-89 to B-94, B-98 to B-103, B-106 to B-108, B-118, B-121 to B-123, B-136 to B-138, B-141 to B-145, B-148 to B-150, B-153, B-159 to B-163, B-165 to B-173, B-175 tc B-182, B-184 to B-187, B-189 to B-197, B-200, B-201, B-203 to B-207, B-209 to B-216, B-218, B-219 to B-222, B-224, B-225, B-227 to B-240,

B-243 to B-245, B-247 to B-249, B-266 to B-269, B-275 to B-281, B-283, B-284, B-287, B-289 to B-297, B-299 to B-326, B-330 to B-333, inclusive

2.) Monthly bank statement of BPI Family Bank from petitioner -October, Nov. & Dec., 1996 — M-1 to M-95, inclusive

After examining the above documents, We find that Petitioner was able to prove that the 20% final taxes of P2,080,783.04 was actually withheld on interest income of P10,403,915.19 on T-bills purchased from BPI Family Bank (Annex B) which were traced to Petitioner's 1996 4th quarter Summary of Tax-Paid Income (Exhs. K-20, K-21, K-27, K-28, K-35, K-36), General Ledger Interface Reports (Exhs. G-1 to G-2441, inclusive), purchase order slips (Exhs. B-1, B-3, B-4, B-11, B-16, B-22, B-24, B-35, B-37, B-46, B-75, B-102, B-122, B-169, B-170, B-182, B-275, B-287, B-290, B-330) and BPI Family Bank monthly bank statements with Petitioner (Exhs. M-12, M-17, M-18, M-33, M-36, M-37, M-43, M-66, M-72, M-78, M-81, M-85, M-87, M-92, M-93, M-94). Petitioner's 1996 4th quarter purchases of T-bills from BPI Family Bank were supported by monthly bank statements issued to BPI Family Bank by Petitioner for October, November & December, 1996. The net purchase prices (inclusive of the 20% final tax) indicated in the purchase order slips regarding Petitioner's 1996 4th quarter T-bills purchases from BPI Family Bank were found to be in agreement with the amounts credited to the account of BPI Family Bank with Petitioner for the same period. And since the T-bills were purchased from a secondary or tertiary market, i.e. banks/financial institutions other than the Bureau of Treasury/Bangko Sentral ng Pilipinas, Petitioner's monthly bank statements to BPI Family Bank together with the purchase order slips can be considered as sufficient proofs of payment of the 20% final tax in lieu of the certificates of final taxes withheld considering that it can be gathered from the said documents that there was actual withholding of the 20% final tax. It should be noted, however, that in T-bill purchases from the primary market, i.e. from the Bureau of Treasury/Bangko Sentral ng Pilipinas, certificates of final taxes withheld are necessary to prove actual withholding of the 20% final tax.

As regards the purchases of T-bills from other banks aside from BPI Family Bank, the purchase order slips alone submitted by Petitioner cannot be considered as valid proofs of payment of the 20% final tax.

Anent the last item, Trading Gain-Government Securities, only the amount of P 51,793.38 was verified to have been actually withheld on gain of P258,966.92 arising from the purchase and sale of T-bills purchased from BPI Family Bank (Annex C).

To sum, the total amount of final taxes verified to have been actually withheld amounted to P13,843,455.62 on Petitioner's total interest income and trading gain from T-bills of P69,217,278.11, detailed as follows:

	Gross Amount	20% Final Tax Withheld
Interest Income on T-Bills		
Purchased from BSP (primary market) – Annex A	P 58,554,396.00	P 11,710,879.20
Purchased from BPI Family Bank – Annex B	10,403,915.19	2,080,783.04
Sub-total:	P 68,958,311.19	P 13,791,662.24
Trading Gain – T-bills – Annex C	258,966.92	51,793.38
Total :	P 69,217,278.11	P 13,843,455.62

Accordingly, Our next concern is whether the 20% final withholding taxes of P13,843,455.62 formed part of its gross receipts tax base on passive income for the fourth quarter of 1996.

A review of the accounting entries relative to Petitioner's total interest income and trading gain of P69,217,278.11 disclosed that the same was recorded at gross (inclusive of the 20% final tax) and that the corresponding 20% final tax of P13,843,455.62 was separately recorded as shown in the General Ledger Interface Reports for the last quarter of 1996 (Exhs. G-1 to G-2441, inclusive). As certified by Joaquin Cunanan & Co. (Exh. S), Petitioner's recorded gross interest income and trading gain from passive investments (inclusive of the 20% final tax) became the basis for the computation of its GRT payment on passive income for the fourth quarter of 1996. It may then be safe to assume that that Petitioner's interest income and trading gain from T-bills of P69,217,278.11 (inclusive of the 20% final tax of P13,843,455.62) for the last quarter of 1996 formed part of its gross receipts tax base on passive income for the same period.

Finally, inasmuch as the final taxes of P13,843,455.62 formed part of Petitioner's gross receipts tax base on passive income, it follows that the corresponding 5% GRT of P692,172.78 represents Petitioner's valid claim for refund of excess GRT payment for the 4th quarter of 1996 broken down as follows:

	Gross Amount	20% Final Tax Withheld	5% Excess GRT Payment
Interest Income on T-Bills			
Purchased from BSP – Annex A	P58,554,396.00	P 11,710,879.20	P 585,543.96
Purchased from BPI Family Bank – Annex B	10,403,915.19	2,080,783.04	104,039.15
Sub-total:	P68,958,311.19	P 13,791,662.24	P 689,583.11
Trading Gain – T-bills – Annex C	258,966.92	51,793.38	2,589.67

Total :	P69,217,278.11	P 13,843,455.62	P 692,172.78

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the Respondent to **REFUND** or **ISSUE** a Tax Credit Certificate in the reduced amount of P692,172.78 representing overpaid gross receipts tax for the fourth quarter of 1996. The remaining amount claimed is **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