Lit. —

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB INVESTMENTS, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5438

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 30 2000

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DECISION

This petition for review is seeking for the refund or issuance of a tax credit certificate in the amount of P3,111,553.17, allegedly representing overpaid gross receipts tax for the calendar quarters of July 1994 to December 31, 1995.

The facts can be briefly stated as follows:

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines with office address located in Far East Bank Center, Sen. Gil Puyat Avenue, Makati City. It is engaged in the business as a dealer of securities and commercial paper and an investment consultant and a broker (TSN, January 30, 1997, p. 12).

For the following calendar quarters, Petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts in the total amount of P507,076,877.65

with corresponding gross receipts tax payments in the sum of P22,356,359.83, broken down as follows:

Quarter Ended	Exh.	Gross Receipts	Gross Receipts Tax
September 30,1994	A	P152,537,901.58	P 7,292,875.91
December 31, 1994	B	91,531,881.40	4,212,499.77
March 31, 1995	C	42,749,912.16	1,226,900.16
June 30, 1995	D	82,448,812.68	3,808,699.33
September 30,1995	E	97,373,394.21	4,698,273.03
December 31, 1995	F	40,434,975.62	1,117,111.63[1]
Total		P507,076,877.65	P22,356,359.83

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 its passive income in the total amount of P62,231,063.36

On January 30, 1996, this Court rendered a decision in C.T.A. Case No. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue where it was held that the 20% final withholding tax on a 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 October 18, 1996, filed a letter-request for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the aggregate amount of P3,111,553.17, representing 5% of final withholding taxes allegedly included in the gross receipts for the third and fourth quarters of 1994 and for the four quarters of 1996 (Exh. G, page 218, CTA records).

[1] Amended return with annotation "NO PAYMENT RECEIVED".

On the same day, October 18, 1996, 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:

> 4. Petitioner's claim for tax refund or request for issuance of tax credit certificate in the amount of P3,111,553.17 allegedly representing overpaid or erroneously paid gross receipts taxes for the 3rd and 4th quarters of 1994 and the 1st up to the 4th quarter of 1995 is still under administrative investigation;
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> 5. Taxes paid are presumed collected in accordance with law and regulations, thus not refundable;
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> 6. In actions for refund the burden of proof is upon the taxpayer to establish its right thereto otherwise it would be fatal to said action;
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> 7. It is incumbent upon the Petitioner to show compliance with the provisions of Sections 204 and 230 of the Tax Code, as amended; and
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> 8. Well-settled is the rule that claims for refund are construed strictly against claimants because they partake of the nature of exemption from taxation. (Resins, Inc. vs. Auditor General, 75 SCRA 754, 1968).

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

1. The Quarterly Percentage Tax Returns for the third and fourth quarters of 1994 and for the four quarters of 1995 (Exhs. A to F, inclusive of sub-markings);

2. The administrative claim for refund filed with the Bureau of Internal Revenue (Exh. G);

3. Central Bank Credit Advice with attached certification (Exhs. AA, BB, and CC);

4. Letter-certification pursuant to CTA Circular 1-95, as amended, dated November 17, 1999, prepared by the duly commissioned independent CPA including all schedules appended thereon (Exh. H, inclusive of sub-markings);

5. Schedules of outstanding sales for treasury bills, private securities commercial papers, floating rate treasury notes together with their corresponding trading sheets, confirmation of sales (Exhs. I-1 to I-2057, J-1 to J-820, K-1 to K-1309, and L-1 to L-2234);

6. Monthly schedule of accrued interest receivable from treasury bills, floating rate treasury notes, and private securities commercial papers together with their corresponding confirmation of purchases (Exhs. M-1 to M-88, N-1 to N-255 and O-1 to O-157);

7. Subsidiary ledgers for accrual of interest (Exhs. P-1 to P-130);

8. Certificate of final tax withheld issued by FEBTC (Exhs. Q-1 to Q-2); and

9. Certifications issued by Bangko Sentral ng Pilipinas with respect to withholding of final taxes on purchases of treasury bills and treasury notes of Petitioner (Exhs. R-1 to R-17).

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 the 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 the 20% final taxes on interest income should no longer form part of the 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.
>
> 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:
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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 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 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.

"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 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, 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." (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 Revenue, CTA Case No. 5403, April 19, 1999**). Applying the above ruling in the case at bar reveals that Petitioner timely filed its claim for refund with the Bureau of Internal Revenue (on October 18, 1996) and the Petition for Review with this Court (on October 18, 1996) reckoned, at the earliest, from October 20, 1994, the date when the 1994 Third Quarterly Percentage Tax Return was filed.

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 show that it paid gross receipts tax for the last two calendar quarters of 1994 and for the first three calendar quarters of 1995. The payments were evidenced by the machine validations appearing on the lower portion of the respective quarterly percentage tax returns (Exhs. A-1, B-1, C-1, and D-1). However, Petitioner failed to show proof of payment of gross receipts tax for the fourth quarter of 1995. The 1995 fourth quarterly percentage tax return which is supposed to reflect the machine validation of gross receipts tax payment bears an annotation of "NO PAYMENT RECEIVED" and is an amended return, hence, Petitioner cannot claim a refund/credit of overpaid gross receipts tax for the fourth quarter of 1995 without offering proof that there was indeed payment of gross receipts tax for the said period.

With regard to the inclusion of the 20% final taxes derived from passive income in the gross receipts declared in the quarterly percentage tax return, the Court after due consideration of the evidence on record is inclined to adopt the findings arrived at by the commissioned independent CPA that only the amount of P34,052,663.00 out of the total claimed final tax of P62,231,063.36 was included in its gross receipts. We find said findings of the independent CPA to be in order.

Although We agree that the 20% final taxes in the amount of P34,052,663.00 was included in the gross receipts, still We are not convinced that the same should be the basis of computing the overpaid gross receipts tax of Petitioner. It should be emphasized that only the 20% final withholding taxes which were proven to have been paid or withheld on passive income should be excluded in the computation of gross receipts tax **(Philam Savings Bank, Inc. vs. The Commissioner, Bureau of Internal Revenue, CTA Case No. 5407, August 18, 1998)**. Records show that out of the verified final taxes in the amount of P34,052,663.00, only the final taxes on treasury bills and floating and fixed rate treasury notes have certificates of withholding from Bangko Sentral ng Pilipinas. While the investments of Petitioner in private securities commercial papers have none. Furthermore, the documents supporting the latter kind of investment (confirmations of purchase and confirmations of sales) bear no traces of payment nor withholding of 20% final tax. Consequently, the overpaid gross receipts tax computed by the independent CPA from private securities commercial papers should be disallowed **(Solidbank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5533, August 6, 1999)**.

In sum, Petitioner is only entitled to the amount of P1,547,376.30, computed as follows:

Recommended refund per verification of SGV		P1,702,633.18
Less: Disallowances made by the Court		
a. Without supporting GRT payment (month of December 1995)		
1. Sale of Treasury Bills	P 7,064.85	
b. Without certification of withholding of final tax		
1. Private securities commercial papers	148,192.03	155,256.88
Amount Refundable		P1,547,376.30

WHEREFORE, in the view of the foregoing, the instant petition for review is hereby *partially* **GRANTED.** Respondent is **ORDERED** to **REFUND** or in the alternative to **ISSUE A TAX CREDIT CERTIFICATE** in favor of Petitioner the sum of P1,547,376.30, representing overpaid gross receipts tax.

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