V. D.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5686

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 0 3 2000

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DECISION

This is a Petition for Review filed by Petitioner EQUITABLE BANKING CORPORATION against Respondent COMMISSIONER OF INTERNAL REVENUE for the latter's failure to act on the former's claim for refund/tax credit in the amount of P1,770,274.60, allegedly representing Petitioner's overpaid gross receipts tax for the quarter ended September 30, 1996.

As represented, Petitioner is a banking institution organized and existing under the laws of the Philippines with head office address located at 262 Juan Luna St., Binondo, Manila.

On October 21, 1996, Petitioner filed with Respondent its Quarterly Percentage Tax Return for the quarter ended September 30, 1996 and paid the corresponding gross receipts tax (GRT) for the said quarter in the total amount of P46,064,040.46, the tax base of which includes the passive income which was subjected to twenty percent (20%) final taxes.

Of the aforementioned GRT payments, P20,712,606.35 represents the GRT paid by the Petitioner's Head Office (Exhibits A-1 & B).

After taking into account the decision of this Court, dated January 30, 1996, in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720**, which held that the 20% final withholding tax on interest income should not form part of the taxable gross receipts for purposes of computing the gross receipts tax, Petitioner filed with Respondent on April 24, 1997 a claim for refund or issuance of a tax credit certificate of the alleged overpaid GRT of its Head Office for the quarter ended September 30, 1996 in the total amount of P1,770,274.60 (Exh. D-1), computed as follows:

Gross Receipts Subjected to Tax	P653,406,067.60
Less: 20% Portion of Tax Paid Income	2,458,653.33
Investment Income Subject to 20% Final Tax Booked at Gross	32,946,838.83
Adjusted Gross Receipts Tax Base	P618,000,575.44

Computation of Adjusted Gross Receipt Tax:

	Gross Receipts	Tax Due
0%	P 215,606,555.76	P 0.00
1%	10,316,445.62	103,164.46
3%	38,235,570.67	1,147,067.12
5%	353,842,003.39	17,692,100.17
	P 618,000,575.44	P 18,942,331.76

Gross Receipts Tax Paid	P20,712,606.35
Adjusted Gross Receipts Tax	18,942,331.76
Tax Refund	P 1,770,274.60

On October 21, 1998, Petitioner filed with this Court the instant Petition for Review in order to toll the running of the two-year prescriptive period to judicially claim for the refund of overpaid internal revenue tax, pursuant to Section 230 (now 229) of the Tax Code.

Petitioner presents the proposition that the gross receipts tax paid by it for the third quarter of 1996 were based on the total gross receipts inclusive of the passive income, which were subjected to the 20% final withholding tax at source thus, it argued, that in the light of this Court's ruling in the Asian Bank case, *supra,* which states that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner had actually overpaid the amount legally due from it, insofar as its GRT obligations are concerned, hence, a refund is, therefore, in order.

Respondent in his Answer, specifically in his "Special and Affirmative Defense", pointed out that Petitioner's claim for refund of alleged overpaid gross receipts taxes for the third quarter of 1996 should be denied on the following grounds:

x x x

> 11. The decision in Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720) is pending appeal with the Court of Appeals. Hence, invocation thereof at this point in time is premature;
>
> 12. Revenue Regulations No. 13-80 dated November 7, 1980 governs the taxation of minerals and mineral products and, therefore, it is irrelevant to this case since petitioner is a banking institution;
>
> 13. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue in accordance with the provisions of the Tax Code;
>
> 14. The claim for refund is pending administrative investigation;
>
> 15. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected;

16. Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 of the 1993 Tax Code; and

17. Claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).

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

1. EBC's Transmittal Sheet of Percentage Tax of the Head Office and Branches/Units of Large Taxpayers for the Quarter Ended September 30, 1996, consisting of four pages (Exhs. A, A-1 to A-4);

2. Quarterly Percentage Tax Return for the quarter ended September 30, 1996 (Exhs. B, B-1 to B-5);

3. EBC Head Office Income & Expense Statement for the quarter ending September 30, 1996 (Exh. C & C-1); and

4. Written claim for refund dated April 21, 1997 with the Bureau of Internal Revenue (Exhs. D, D-1 to D-8).

Respondent, on the other hand, submitted his case for decision based on the pleadings. Eventually this case was submitted for decision after both parties submitted their respective memorandum.

The legal issue to be resolved by the Court is whether or not the 20% final withholding tax on certain passive income of the Petitioner should be excluded in the total gross receipts of said Petitioner for GRT purposes, and the factual issue is whether or not Petitioner has adduced sufficient evidence to be entitled to the amount sought to be refunded.

With respect to the legal issue, We rule the same in the affirmative. This is not a case of first impression. As correctly stated by the Petitioner, this Court has resolved the same issue in favor of the Petitioner in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue,** ***supra,*** which is anchored on similar factual circumstances and on all fours with the case at bar. Said decision states in part:

> "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:
> >
> > > "xx xx. The Government could not have meant to tax as gross receipts 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."

Moreover, the Court of Appeals in the case of **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA G.R. Sp No. 52707, August 17, 1999,** affirmed our stand that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, and we quote:

> "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 by the Court is the factual issue, that is, whether or not Petitioner has established by evidence its claim for refund.

This Court has ruled time and again that to be entitled to a refund of excess/overpaid GRT, Petitioner taxpayer must show compliance with the following requisites:

1. That its claim for refund was filed within the two (2) year period prescribed under Section 230 (now 229) of the Tax Code;
2. That it paid the gross receipts tax;
3. 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
4. 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**).

Evidence on record clearly show that the administrative claim for refund and the filing of the instant petition are within the two year period from the date of payment of the tax, hence, there is no question as to the timeliness of the instant petition. Petitioner has complied with the first requirement aforestated.

Likewise, Petitioner was able to prove that it complied with the number two requirement that indeed its Head Office paid its gross receipts tax amounting to P20,712,606.35. This Court finds that Petitioner failed to comply with the third and fourth requirements thus, the Court is constrained to deny the refund of the amount of

P1,770,274.60, allegedly representing the difference between its gross receipts tax paid pertaining to EBC Head Office and the Adjusted Gross Receipts Tax, since there is no way by which the Court would be able to verify the accuracy and the fact of actual withholding of the 20% final tax on its passive income in the amount of P1,770,274.60. Petitioner should have presented in evidence the certificates of final taxes withheld issued by its withholding agents or issuers of the investment securities showing the amount of interest income payment and the corresponding 20% final withholding taxes.

In the same token, Petitioner failed to substantiate its allegation that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax. Moreover, the Court could not ascertain whether the passive income reflected thereon were recorded at gross or net of the 20% final withholding taxes. In this regard, the source documents such as the detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advises, accounting tickets, and certificates of final taxes withheld could serve as the best evidence that would clearly establish its entitlement to the claimed refund. Absence of these documents therefore, is fatal to the taxpayers cause.

Thus, applying the settled rule in this jurisdiction that tax refunds partake of the nature of tax exemptions and as such are regarded as in derogation of sovereign authority and is to be construed strictly against the person or entity claiming the refund, the burden of proof then is upon the claimant to establish its claimed refund, and since in the case at bar, Petitioner failed to discharge this burden, the Court has no other recourse but to deny the instant claim for refund.

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is **DENIED** due to insufficiency of evidence.

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