REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 5640

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 0 7 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 P2,237,924.46, allegedly representing overpaid gross receipts tax for the calendar quarter ended March 31, 1996.

The facts can be briefly stated as follows:

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 April 19, 1996, petitioner seasonably filed its Quarterly Percentage Tax Return, for the months of January to March 31, 1996, reflecting a total gross receipts in the amount of P541,891,625.79, with corresponding gross receipts tax payment in the sum of P24,923,330.78, broken down as follows:

GROSS RECEIPTS	445,573,851.09	TAX DUE
Tax Due at 0%	P 23,406,939.31	0.00
Tax Due at 1%	10,563,889.92	105,638.90
Tax Due at 3%	28,917,397.50	867,521.92
Tax Due at 5%	479,003,399.06	23,950,169.95
	P541,891,625.79	P24,923,330.78

The aforementioned amounts represent the combined gross receipts and gross receipts tax payments of petitioner's Head Office, and its Arranque, Magdalena, Ongpin, Reina Regente and Soler branches.

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* 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 September 26, 1996, on the strength of the aforesaid decision, petitioner filed a letter-request for the refund or issuance of a tax credit certificate with the BIR Revenue District of Binondo in the amount of P2,237,924.46, representing the difference between the gross receipts tax paid and the adjusted gross receipts tax, computed as follows:

Gross Receipts Subjected to Tax	P541,891,625.79
Less: 20% Portion of Tax Paid Income	1,440,735.07
Investment Income Subject to 20% Final Tax Booked at Gross	43,317,753.94
Adjusted Gross Receipts Tax Base	P497,133,136.78

Computation of Adjusted Gross Receipt Tax:

	Gross Receipts	Tax Due
0%	P 23,406,939.31	P 0.00
1%	10,563,889.92	105,638.90
3%	28,917,397.50	867,521.92
5%	434,244,910.05	21,712,245.50
	P497,133,136.78	P22,685,406.32

Gross Receipts Tax Paid	P24,923,330.78
Adjusted Gross Receipts Tax	22,685,406.32
Tax Refund	P 2,237,924.46

On April 20, 1998, petitioner lodged its appeal in this Court 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 of the Tax Code, as amended.

Respondent, in his Answer, raised the following special and affirmative defenses:

> 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;
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> 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;
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> 14. The claim for refund is pending administrative investigation;
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> 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 presented 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 March 31, 1996, consisting of three pages (Exhs. A, A-1 to A-8);

2. Quarterly Percentage Tax Return for the quarter ended March 31, 1996 (Exhs. B, B-1 to B-6);

3. Written claim for refund dated September 26, 1996, with the Bureau of Internal Revenue (Exhs. C, C-1 to C-10);

4. Subsidiary Ledger Transactions – for specific Income & Expense Accounts for the quarter ended March 1996 (Exhs. D to G, V to Z, AA to SS, UU to ZZ, and AAA to III, inclusive of submarkings); and

5. Statement of Income and Expense Accounts of EBC for Head Office for the quarter ended March 31, 1996 (Exh. TT).

Respondent, on the other hand, submitted his case for decision sans the presentation of evidence. Eventually this case was submitted for decision after both parties submitted their respective memoranda.

The Court is now tasked to resolve the following issues:

1. Whether or not the 20% final withholding tax on 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 taxable gross receipts for purposes of computing the 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.

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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 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 aforementioned 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 points out that the claim for refund was filed within the two-year prescriptive period provided by law. Petitioner was able to file its claim for refund with the Bureau of Internal Revenue on September 26, 1996, and the Petition for Review with this Court on April 20, 1998, both within the two-year reglementary period reckoned from April 19, 1996, the date when the 1996 first 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 only able to comply with requirement number one. Petitioner was able to show that it paid gross receipts tax for the quarter ended March 31, 1996, as evidenced by the machine validation appearing on the Transmittal Sheet of Percentage Tax Head Office and Branches/Units of Large Taxpayers which tallies with the declaration reflected in Petitioner's quarterly percentage tax return for the six Manila Branches for the period involved (Exhs. A, A-1 to A-8, B and B-1 to B-6). However, Petitioner failed to convince this Court that the difference between the gross receipts tax per quarterly percentage tax return in the amount of P24,923,330.78 and the adjusted gross receipts tax in the sum of P22,685,406.32 represents the final withholding tax of petitioner derived from its passive investments allegedly included in the payment of gross receipts tax. The subsidiary ledger transactions of petitioner failed to guide the Court in tracing the income figures reflected in the returns with that of the ledgers. It was also noted that there is a discrepancy in the amounts of final taxes claimed to have been paid. Let Us take the example of petitioner's claim for "20% portion of tax-paid income", specifically, the interest deposit with local bank, which has an amount of <u>P21,419.67</u> as final tax (see Exh. C-9). This amount is bigger than the final tax that can be derived from petitioner's subsidiary ledger transactions-income account. The total interest income reflected in the subsidiary ledger transactions-income account is P85,678.68 (Exhs. D-2 and G-2) which would have a final tax of only <u>P17,135.74</u>.

With this marked discrepancy, the Court can not rely solely on petitioner's own computation even with the aid of its subsidiary ledger transactions. We would like to emphasize that entries in the ledger merit very little weight and therefore are not the best evidence (**Equitable Banking Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5661, March 30, 2000**). Hence, We are not convinced that subsidiary ledgers should be given credence.

It is also apparent that petitioner failed to present Certificates of Final Income Tax Withheld in order to prove payment of 20% final withholding taxes. Although We agree with petitioner that the Rules of Evidence provide for the presumption of regularity in the performance of official functions, however, such presumption does not excuse the petitioner in not submitting these certificates in evidence. In fact it is because of this presumption of regularity in performance of official functions that we expect these withholding agents to issue certificates of final income tax withheld and which should have been presented by the petitioner in support of its case. In the case entitled **China Banking Corporation vs. Commissioner of Internal Revenue, C.T.A. Case No. 5433, dated October 7, 1998**, this Court had the occasion to rule on the importance of presenting the certificates of final income tax withheld in cases where the petitioner is claiming refund of gross receipts tax, thus:

> A thorough and careful examination of all the documentary evidence presented by the petitioner reveals that petitioner has failed to substantially prove its entitlement to the refund/credit sought. Even though petitioner in the case at bar had satisfactorily proved through various documentary evidence that it actually paid its gross receipts taxes which was computed based on its gross receipts inclusive of the 20% final withholding tax on the bank's interest income, it however failed to prove that the said 20% final withholding taxes were actually paid and remitted to the Bureau of Internal Revenue, thus entitling the same to be excluded in the computation of petitioner's gross receipts tax. Petitioner is reminded that in the case of Asian Bank Corporation (supra) from which it based its claim for refund, a disputable presumption exists that the final tax excluded from the computation of gross receipts tax already "went to the coffers of the government", and therefore, should no longer form part of its gross receipts for the purpose of computing the GRT. This Court in deciding on the Asian Bank case sought to avoid the unfavored existence of double taxation. In the instant case, petitioner showed no convincing proof that it suffered from being erroneously taxed twice thus entitling it to the refund sought.

> It is our opinion that for the petitioner to substantially prove its entitlement to the refund/credit sought, it should have presented as evidence copies of Certificates of Final Income Tax Withheld issued by its withholding agents, as what it did in its previous case covering its second quarter of 1994 in CTA Case No. 5405, or any proof whatsoever that would show payment of the 20% final withholding tax and which would necessarily justify its exclusion from petitioner's gross receipts.

In the aforementioned decision, the Court found petitioner legally entitled to the refund but denied the petition for review for failure of petitioner to produce the aforementioned document.

As regards the argument of petitioner that the doctrine of *strictissimi juris* applies only in construing a tax law and does not apply in the appreciation of evidence, suffice it to state that the Supreme Court in the case of **Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459**, held that the doctrine applies with equal force on tax refunds, thus:

> In general, there is no disagreement that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. <u>Tax refunds, like tax exemptions, are construed strictly against the taxpayer.</u> (Emphasis supplies).

Finally, We are not swayed by petitioner's ratiocination that in the Asian Bank case what is essential to prove is that a financial institution did not receive the amount of 20% final tax for it not to include the same in the computation of gross receipts tax. Petitioner failed to analyze that the Asian Bank case involves an assessment case that presupposes an audit from respondent's examiners and requires only a ruling from the Court regarding exclusion of final taxes in the base of gross receipts. It does not involve a refund case wherein petitioner should adduce evidence to show payment of final tax in order to be entitled to a refund.

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

RAMON O. DE VEYRA
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