REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASIAN BANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4720

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 30 1996

x - x

DECISION

This is a judicial claim for refund of alleged overpaid gross receipts and documentary stamp tax for the taxable year 1986 in the total amount of P757,996.80. This claim for refund was born out of an assessment issued by the respondent and received by the petitioner on January 10, 1990 demanding the payment of deficiency gross receipts tax (hereinafter called GRT for brevity) in the amount of P1,566,681.40 and documentary stamp tax (hereinafter called DST) in the amount of P528,138.68 for the taxable year 1986. Petitioner disagreed with the findings of the BIR examiners embodied in the assessment and consequently sent a letter of protest to respondent on February 9, 1990 (see Supplemental Exhibit "X", page

289, CTA records). Shortly thereafter, petitioner decided to pay the assessed amount on March 5, 1990 covered by CB Confirmation Receipts Nos. 18472298 and 18472299 (Exhibits "F" and "W").

Petitioner remained firm in its opposition to the assessed amount and subsequently filed a claim for refund in a letter received by respondent on April 25, 1990. Respondent did not act upon the claim for refund so petitioner had to resort to elevating its case to this Court through a petition for review filed on March 3, 1992 so as to toll the running of the prescriptive period for filing a claim for refund.

A summary of the BIR examiner's computation of petitioner's tax deficiencies for 1986 as compared to petitioner's own computation is enumerated hereunder, thus:

BIR's Computation

A. *Gross Receipts Tax*

Gross Income subject to GRT	P87,656,914.89
GRT Due	4,231,072.85
GRT Remitted	3,439,886.39
Deficiency Tax	P 791,186.46
Add: Surcharge (25%)	P 197,796.62
Interest (20%)	565,698.32
Compromise Penalty	12,000.00
Total Amount Due and Collectible	P 1,566,681.40

B. *Documentary Stamp Taxes*

	Amount of Transaction	DST Due
Total Loan Transactions Subject to DST	P 522,955,569.85	P 522,955.57
Add: Certificate of Time Deposit	503,752,696.75	503,752.70
Government Securities Purchased/Sold	220,633,967.00	220,633.97
Total Amount Subject to DST ...	P1,247,342,233.60	P1,247,342.24
Less: DST paid/affixed in 1986	-	P 832,831.30
Deficiency DST		414,510.94
Add: 25% Surcharge		103,627.74
Total Amount Due and Collectible		P 518,138.68

Petitioner's Computation

A. *Gross Receipts Tax - 1986*

Gross Income subject to GRT	P81,857,815.06
GRT Due	3,902,966.95
GRT Remitted	3,439,886.39
Deficiency Tax	P 463,080.56
Add: Surcharge (25%)	P 115,770.14
Interest (20%)	333,988.92
Compromise Penalty	12,000.00
Total Amount Due and Collectible	P 924,839.62
Less: Amount Paid on 3/5/90	(P 1,411,801.07)
Total Amount Refundable	(P 486,961.45)

B. *Documentary Stamp Taxes - 1986*

	Amount of Transaction	DST Due
Total Loan Transactions in 1986	P522,955,569.85	P522,955.57
Less: Receivable Discounting (No PN)	37,600,000.00	37,600.00
Debits: Returned Checks/ Reclassification and adjustment	458,460.85	458.46
Total Loan Transactions subject to DST	484,897,109.00	484,897.11

Less: Transactions on which DST were already separately affixed by clients not using Petitioner's stock of DST	28,952,000.00	28,952.00
Total	P455,945,109.00	P455,945.11
Add: Certificate of Time Deposit	P503,752,696.63	505,131.14
Gov't. Securities Purchased/Sold	-	-
Total	P959,697,805.63	P961,076.25
Less: DST paid/affixed in 1986	-	P830,404.05
Deficiency DST		130,672.20
Add: 25% Surcharge		32,668.05
Total		P163,340.25
Less: DST Affixed in 1987 - P73,814.60		
1988 - P12,017.60		
1989 - P44,840.00		130,672.20
Total Amount Due (due to 25% Surcharge)		32,668.05
Amount Paid on 3/5/90		(P330,703.40)
Amount Refundable		(P271,035.35)

The discrepancies in the tax deficiencies of both versions as described above are rooted in different theories adopted by both parties as regards the tax implications of several transactions of petitioner which transpired in 1986, and it is for this reason that it is best to tackle the assessed tax deficiencies individually so as to determine whether or not the grant of the tax refund of P757,996.80 is proper.

ASSESSMENT FOR GROSS RECEIPTS TAX (GRT)

Respondent assessed petitioner for GRT in the sum of P1,566,681.40 for the year 1986 basing the said tax on the gross receipts of petitioner in the total amount of P87,656,914.89. Petitioner disputes the basis utilized by respondent in computing its GRT as it claims that their gross receipts in 1986 amounted to only P81,857,815.06 resulting in a deficiency GRT of P463,080.56. Petitioner opines that the BIR examiners erred in including the 20% final withholding tax on certain passive income as part of its "gross receipts" for 1986. It is the petitioner's theory that since the 20% withholding tax is a final tax, the amount withheld should no longer form part of its gross receipts because this amount is not actually received by them. In short, the gross receipts should be computed net of the 20% final withholding tax. In addition, petitioner also disagrees with the examiner's inclusion of their income from the bonds/debentures issued by the Home Insurance Guaranty Corporation (HIGC) as part of its gross receipts, because the charter creating HIGC, particularly R.A. 580, exempts all bonds/debentures issued by HIGC from taxation, hence such income should no longer be included in the computation of its gross receipts.

From the theories thus presented by the petitioner, respondent asserts her oft-repeated standard line of defenses, thus:

SPECIAL AND AFFIRMATIVE DEFENSES

5. The claim for refund is pending investigation by the Bureau of Internal Revenue;

6. The amounts sought to be refunded were paid in accordance with law;

7. Petitioner has also failed to show that the taxes paid were erroneously or illegally collected;

8. In addition, well-settled is the doctrine the provisions on the tax refund are construed strictly against the taxpayer as they are in the nature of tax exemptions (**Raisin, Inc. (sic) vs. Auditor General,** 25 SCRA 754);

9. Petitioner has not likewise shown that the tax allegedly collected which it wants to be refunded was actually withheld and/or remitted to herein respondent and even assuming that it was remitted, the presumption is that they were received by respondent in accordance with law;

10. It is incumbent upon petitioner to show that it has complied with the provisions of Section 243 of the National Internal Revenue Code;

11. The tax sought to be refunded has already become final and executory.

It is obvious from the above-quoted defenses that respondent did not propose any substantial issues as far as the GRT liability of petitioner is concerned. Moreover, the respondent chose not to assist this Court in the analysis of the facts which led to the formulation of the disputed assessment as can be seen from her failure to submit the BIR records and her omission to offer any kind of evidence to support the government's stand. Nevertheless, we find that the issues for resolution as regards petitioner's GRT liabilities are purely legal and can be confined to two questions, thus:

1) Whether or not the gross receipts for purposes of computing the GRT shall be computed net of the 20% final withholding tax; and

2) Whether or not the income derived from bonds/debentures issued by HIGC shall be excluded from the computation of petitioner's gross receipts.

The assessment for GRT is based on Section 119 of the Tax Code, quoted hereunder thus:

> SEC. 119. ***Tax on banks and non-bank financial intermediaries.***[1] - 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:
>
> (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 (20 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% |

[1]As amended by P.D. No. 1789.

(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.
Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

The aforequoted provision of the law speaks of gross receipts as the basis of the 5% bank tax or GRT, and it is petitioner's contention that the interest income included as part of such gross receipts should be computed minus the final tax already withheld by various withholding agents for the reason that such amount did not actually go to its funds, hence was not actually received by them.

We agree with the petitioner that the 20% final withholding tax on it's interest income should not form part of its taxable gross receipts.

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 institution; shall be based on all items of <u>income actually received</u>, thus:

> **SEC. 4.** xxx xxx xxx
>
> (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 <u>shall be based on all items of income actually received.</u> 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 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 & 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.

The other theory proposed by the petitioner as regards its GRT liability concerns its earnings from the bonds/debentures issued by the Home Insurance Guaranty Corporation (HIGC). It is petitioner's assertion that such bonds and debentures issued by HIGC are exempt from taxation by virtue of Republic Act No. 580.

We likewise uphold the argument of the petitioner. Republic Act No. 580 as amended by Republic Act 1557 provides the following:

> **Sec. 14.** xxx xxx xxx
>
> (d) The debentures issued under this chapter to any mortgagee with respect to mortgages or loans insured under Chapters II and III shall be executed in the name of the Home Financing Commission as obligor, and signed for the Commission by the Chairman-General Manager by either his written or engraved signature, and shall be negotiable, exempt from taxation, attachment, execution or seizure, redeemable at the option of the Commission at or before maturity and fully guaranteed as to principal and interest by the Republic of the Philippines.

The above-quoted provision of the law is unambiguous thus needs no further interpretation. By virtue of said law, bonds and debentures issued by HIGC are exempt from taxation. We agree with the petitioner that the tax-exemption privilege extends to the earnings derived by the lending institution, (in this case, petitioner bank) as such is intended to encourage the participation of financial institutions in the mortgage insurance programs of the government for the end-purpose of promoting home-building and land ownership among Filipinos.

On this score, Jose Arañas, former Commissioner of Internal Revenue, in his book entitled updated National Internal Revenue Code, 1988, Seventh Edition, page 666, provided an added rationale for excluding the interests derived from tax-exempt government bonds and securities in this manner, thus:

> For purposes of computing the 5% bank tax, interests from government bonds or securities, which by specific provision of law, are 'exempt from taxation" or exempt from all taxes, do not form part of the gross receipts on which said tax is imposed, for to include such tax-free interest income as part of the basis of the bank tax would, in effect, nullify the tax exemption specially provided for in law. xxx

ASSESSMENT FOR DOCUMENTARY STAMP TAX (DST)

Petitioner calls into question the BIR's assessment of its DST liability for the taxable year 1986. It is the first stand of the petitioner that it has properly paid all its DST for 1986 hence it has no DST deficiency except for the 25% surcharge that is to be imposed for the late affixing of DST on certain documents.

Once again we are confronted with differences in theories and assessment of facts adopted by the petitioner and respondent with regard to the DST liability of petitioner.

Petitioner contends that a total amount of P37,600,000.00 was erroneously included as part of its loan transactions in 1986 subject to DST. Erroneous in the sense that this amount represents trade receivables that are evidenced only by mere invoices and not promissory notes which were sold or assigned to the petitioner. As such, mere invoices are not included as one of those instruments subject to DST pursuant to Section 176 of the Tax Code.

We agree with the petitioner that loan transactions that are evidenced by mere invoices and not backed up by corresponding promissory notes are not subject to DST because an invoice is not one of those instruments under Section 176 of the Tax Code whose assignment, sale or transfer is subject to DST. However, equally important to consider is the factual basis of the allegation of the petitioner that a total amount of P37,600,000.00 represents trade receivables backed up by mere invoices. In the instant case, petitioner presented as evidence a comparative computation of DST for 1986 prepared and certified correct by its own vice president and comptroller (Exhibit "B") indicating the above stated amount which is at best self-serving and as such does not convince this Court of the veracity of the figures contained therein. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called. No presumption can be indulged that all of the public officials of the state in the various counties who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law. **(Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals,** 145 SCRA 671). As it is, a mere paper indicating figures not backed up by the corresponding photocopies of the invoices is not sufficient to rebut such presumption.

Petitioner also takes issue to the amount of P26,952,000.00 which it claims was erroneously subjected by the BIR to DST in the sum of P28,952.00. Petitioner asserts that the DST due have already been affixed by its clients pursuant to a prior agreement between petitioner and the clients hence to subject the same amount to DST would in effect be a double imposition of DST on the same transactions. To prove this allegation, petitioner presented as its evidence, the copies of the promissory notes upon which documentary stamps were already affixed (Exhibits "L", "L-1", "L-2", "L-3", "L-4") and presented a copy of petitioner's own documentary stamp as sourced from its own metering machine (Exhibit "M") in an effort to show the difference between the "design" of the documentary stamp affixed by its clients and petitioner's own documentary stamp as sourced from its own stamp metering machine.

We find that the evidence above-described has successfully rebutted the presumption of correctness of the assessment and we hold that the amount of P28,952,000.00 should not have been subjected to DST. In deciding this particular issue, great weight was placed on the petitioner's evidence primarily due to respondent's apparent disinterest in pursuing this case. No BIR records were submitted nor was there any formal offer of evidence made by respondent. Furthermore, no attempt to dispute the specific allegations made by the petitioner was made by the respondent as she presented mere generalities as affirmative and specific defenses in her answer. Respondent having failed to overcome the convincing evidence presented by petitioner, We sustain petitioner's contention with respect to this particular issue.

Another significant objection of the petitioner is the DST imposed by the examiners on the amount of P220,633,967.00 representing the value of government securities specifically Treasury Bills and Central Bank Bills, purchased and sold by petitioner bank in 1986. Petitioner contends that such government securities fall within the meaning of "deposit substitutes" and that pursuant to Rev. Reg. No. 17-84 such deposit substitutes are subject to DST only upon their issuance, and not upon their subsequent transfer, assignment or conveyance.

We disagree with the contention of petitioner and we hold that the government securities (treasury bills and Central Bank bills) are not deposit substitutes but are classified as "certificates of indebtedness" subject to DST pursuant to Section 174 of the Tax Code. thus:

> Section 174. *Stamp tax on bonds, debentures, and certificates of indebtedness.* - On all bonds, debentures and certificates of indebtedness issued by any association, company

> or corporation, there shall be collected a documentary stamp tax of one peso on each two hundred pesos, or fractional part thereof, of the face value of such documents. (As amended by PD 1457 and PD 1959).

In the case entitled **BPI Family Bank vs. Commissioner of Internal Revenue,** CTA Case No. 4256, August 7, 1992, this Court made a comprehensive analysis of the nature of the Treasury Bills and Central Bank Bills that justified their being classified as <u>certificates of indebtedness</u> and not as deposit substitutes. Pertinent portions of the above-cited decision are quoted hereunder, thus:

> To resolve the issue we have to determine the nature of treasury or CB bills. Treasury Bills are evidence of indebtedness issued by the National Government under authority of Republic Act No. 245, as amended. They are offered for sale either at auction on competitive or non-competitive basis and at fixed discount or interest rate. It represents a direct, unconditional and general obligation of the National Government (Section 1, R.A. 245). "Central Bank bills" is similar to treasury bills except that it is issued pursuant to Republic Act 265, as amended, otherwise known as the Central Bank Act. CB bills are also evidence of indebtedness issued by the Central Bank against its international reserve or against other government securities it has acquired, or may be issued without relation to specific types of assets of the bank. (Section 99, R.A. 265) Treasury bills and CB bills are the two most popular government securities being traded in the open market operation of the Central Bank.
>
> From the above concepts of treasury bills and CB bills, it may not be concluded that they fall under the term promissory notes, bill of

exchange draft, certificate of deposit nor debt instruments used for deposit substitutes as defined above. xxx

The Court of Appeals subsequently affirmed the aforequoted decision in the case entitled BPI Family Bank vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA GR SP No. 29853, September 19, 1994. Pertinent portions are quoted, thus:

"Without any doubt, having the general character of investment securities, T-bills and CB bills cannot be considered as mere promissory notes. In fact, the primary function of CB bills and T-bills are quite different from that of instruments evidencing debts in ordinary transactions between individuals (Article 19, U.S. Reg. No. 71 Treasury Department, cited in Arañas, updated NIRC, p. 776; Revised Documentary Stamp Reg., Department of Finance, Sept. 16, 1924; [XXXII, O.G. 112 p. 2335, Section 2]). Instruments evidencing debts in ordinary transactions between individuals are more in the nature of promissory notes which are treated separately and distinctly from government securities that are issued by authority of the Central Bank. Consequently, the issuance and the subsequent transfer and sale of government securities should be subject to the payment of documentary stamp taxes pursuant to Section 173, as amended by P.D. No. 1994 of the NIRC xxxxx."

From the foregoing, we can conclude that such government securities can be classified as "certificates of indebtedness" under Section 174 of the Tax Code hence subject to DST.

The final objection of the petitioner to the DST assessment for 1986 is the inclusion of the amount of

P458,460.85 which it asserts to have been erroneously classified as new loan releases subject to DST but are claimed to be merely "reversed entries" found in their books to cover adjustments resulting from returned/bouncing checks and reclassified existing loans. Furthermore, petitioner contends that these reversed entries are not accompanied by the issuance of new promissory notes or execution of new loan agreements hence not subject to DST. To bolster its stand, petitioner presented as evidence a Schedule of Returned/Reclassified Checks for 1986 which was certified correct by Mrs. Cleofe C. Bonifacio, petitioner's Comptroller and Vice President (Exhibits "I" and "I-1") and photocopies of pages from petitioner's subsidiary ledger (Exhibits "J" to "J-8") indicating the amounts of the checks that bounced and the amounts of the loans reclassified. The amounts indicated in the schedule (Exhibit "I") are also reflected in the subsidiary ledger (Exhibits "J" to "J-8") submitted by the petitioner.

The fact that a check was cancelled or bounced has no bearing to the DST already paid since the DST on checks is paid in advance upon the application of new sets of check booklets from the bank. However, the payment of the DST is affected at the time such act is date or transaction had, or on the date of execution or signing of the document (or check). The DST paid is deemed to have been attached on the checks at the time of their delivery or issuance.

A bouncing check is a check issued without sufficient funds also called to be "worthless check" or a check that has been dishonored by a bank. (Cruz v. Intermediate Appellate Court, L-66327, May 28, 1984, 129 SCRA 494; Ortiz v. Board of Directors, 46446-R, December 2, 1974; Villar v. Commercial Bank and Trust Co., 66193-R, March 4, 1982.)

The fact that the check has been issued and delivered is enough for the DST to be affixed thereon. Whether or not the checks have been cleared and debited in the account of the drawer or were dishonored by the bank is of no moment to the payment of the DST because the DST has already been paid in advance at the time of requisition of a new set of check booklet and the DST is deemed attached to the checks upon their signing or execution or delivery. Therefore, the DST on checks that have bounced or were dishonored by the bank cannot anymore be refunded. Section 179 of the Tax Code is clear. On each bank checks drawn upon or issued by any bank or person there shall be collected a DST of twenty centavos. The key here is issuance. Thus, regardless of whether the checks issued have been cleared or not is immaterial to the payment of the DST. The fact that the checks have been issued and delivered is enough for the DST to attach to said document.

The same is true in the case of reclassified existing loans. Section 180 of the Tax Code provides for the payment of DST on all promissory notes, whether negotiable or non-negotiable, and on each renewal thereof. The existing loans that were reclassified did not entail the issuance of new promissory notes but merely a reversing entry. This however does not mean that the DST paid thereon should be refunded since the DST on promissory notes attaches on the document itself upon their issuance or execution. As a matter of fact, the mere renewal of said promissory notes is subject to the DST.

A recomputation of the amounts involved particularly with regard to petitioner's DST liability would show that there is still an unpaid portion as far as the taxable year of 1986 is concerned, this notwithstanding the fact that this Court already reduced the amount to be paid. The main reason for this is rooted in petitioner's incomplete payment of its DST liability as originally assessed by respondent. Evidence shows that the BIR assessed petitioner for deficiency DST in the amount of P518,138.68 but petitioner only paid the sum of P303,703.40 (Exhibit "W"), so whatever deductions this Court finally granted to petitioner as regards its DST liability did not result in any overpayment of taxes, hence refund cannot be allowed.

Hereunder is the detailed recomputation of petitioner's final DST liability for the taxable year 1986, thus:

		Amout of Transaction	DST Due
Total loan transactions in 1986		P 522,955,569.85	P 522,955.57
Add/(Deduct):			
a. Transaction on which DST were already separately affixed by clients		(28,952,000.00)	(28,952.00)
b. Government securities purchased/sold		220,633,967.00	220,633.97
d. Certificate of time deposit		503,752,696.63	503,752.70
Total		P1,218,390,233.00	P1,218,390.24
Less: DST paid/affixed in 1986			830,404.05
Basic deficiency DST			P 387,986.19
Add: 25% surchage			96,996.55
Total deficiency DST			P 484,982.74
Less: DST affixed in	1987	P73,814.60	
	1988	12,017.60	
	1989	44,840.00	
for certain transaction in 1986			130,672.20
Balance of deficiency DST			P 354,310.54
Less: Payment made on 3/5/90			303,703.40
Total amount payable			P 50,607.14

WHEREFORE, in view of the foregoing, petitioner is entitled to the refund of Gross Receipts Tax (GRT) in the sum of P486,961.45 computed as follows:

Gross income subject to GRT per BIR computation		P87,656,914.89
Add/(Deduct) Adjustments:		
a) final taxes already withheld from petitioner's 1986 passive income	(P5,419,218.75)	
b) income from HIGC bonds and debentures which are exempt	(392,544.38)	(5,811,763.13)
Gross income subject to GRT		P81,857,815.06*
GRT Due		P 3,902,966.95
GRT Remitted		3,439,886.39
Deficiency GRT		P 463,080.56
Add: Surcharge (25%)	P 115,770.14	
Interest (20%)	333,988.92	
Compromise Penalty	12,000.00	461,759.06
Total amount due and collectible		P 924,839.62
Less: Amount paid (Exhibit "F")		1,411,801.07
Total amount refundable		P 486,961.45

With respect to petitioner's claim for refund of documentary stamp tax, it has been established that no excess payment was made in the taxable year 1986, hence such claim for documentary stamp tax is hereby **DENIED.**

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals