Cab.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 5647

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 03 2000

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DECISION

This petition for review is seeking for the refund or issuance of tax credit certificate in the original amount of P31,899,605.57 but was later reduced to P31,283,262.62, allegedly representing overpaid gross receipts tax for the period June 30, 1996 to June 30, 1997.

The facts are briefly stated as follows:

Petitioner, Philippine National Bank, is a private financial institution organized and existing under the laws of the Philippines with office address located at PNB Financial Center, Roxas Blvd., Pasay City.

For the following calendar quarters, petitioner seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts in the total amount of P9,712,670,769.86 with corresponding gross receipts tax payments in the sum of P442,619,126.10, to wit:

Quarter Ended	Exh.	Gross Receipts	Gross Receipts Tax
June 30, 1996	A-6	P 2,637,487,724.88	P 120,877,204.63
September 30,1996	B-3	9,506,521,828.87	461,936,933.75
December 31, 1996	C-3	3,118,759,317.74	141,049,001.50
March 31, 1997	D-3	3,438,241,754.26	156,965,167.40
June 30, 1997	E-3	3,155,669,797.86	144,604,957.20
Total		P9,712,670,769.86	P 442,619,126.10

In arriving at the computation of the gross receipts tax, petitioner alleged that it erroneously included in the taxable gross receipts the final withholding taxes on interest income and trading gain derived from passive investments and deposits in the total sum of P635,257,769.46, broken down as follows:

Quarter Ended	Final Withholding Taxes
June 30, 1996	P 22,055,202.83
September 30,1996	531,999,540.34
December 31, 1996	12,692,894.73
March 31, 1997	65,361,237.25
June 30, 1997	3,145,894.31
Total	P635,257,769.46

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.

As a consequence, petitioner on December 5, 1997, simultaneously amended its percentage tax returns for the calendar quarters involved (Exhs. A-3, B, C, D, and E). It also filed on December 9, 1997, a letter-request for refund or issuance of a tax credit certificate with the Bureau of Internal Revenue in the amount of P31,899,605.57 anchoring its stand on the aforementioned decision (Exh. A), to wit:

Quarter Ended	GRT Per Original Percentage Tax Return	GRT Per Amended Return	Claim For Refund
June 30, 1996	P 120,877,204.63	P119,774,444.48	P 1,102,760.15
September 30,1996	461,936,933.75	435,336,956.73	26,599,977.02
December 31, 1996	141,049,001.50	140,414,356.76	634,644.74
March 31, 1997	156,965,167.40	153,696,105.54	3,268,061.86
June 30, 1997	144,604,957.20	144,310,795.40	294,161.80
Total	P1,025,432,264.48	P993,532,658.91	P31,899,605.57

On June 24, 1998, petitioner lodged its appeal to 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:

> 4. Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by respondent;
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> 5. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;
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> 6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;
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> 7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/ credit;
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> 8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the Tax Code , as amended; and
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> 9. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).

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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> x x x x x x x x x
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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:
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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 recent 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 for 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 Revnue, CTA Case No. 5403, April 19, 1999**). Applying the above ruling in the case at bar reveals that petitioner was able to file its claim for refund with the Bureau of Internal Revenue on December 9, 1997, and the Petition for Review with this Court on June 24, 1998, both within the two-year reglementary period, considering that the original 1996 second quarter percentage tax return was filed on July 22, 1996.

Aside from proving that the petition for review was filed within the two-year reglementary period under the law, 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 calendar quarters of June 30, 1996, September 30, 1996, December 30, 1996, March 31, 1997, and June 30, 1997, as evidenced by the machine validations appearing on the lower portion of its original quarterly percentage tax returns (Exhs. A-6, B-3, C-3, and D-3). It was attested to by Mr. Ruben R. Rubio, the independent CPA commissioned by the Court to check the veracity of petitioner's claim for refund, that the alleged 20% final withholding taxes on interest income derived from passive investments were included in the gross receipts reflected in petitioner's quarterly percentage tax returns (Exh. O, inclusive of submarkings). However, from among the passive income which were allegedly subjected to final tax, only interest income from treasury bonds for the third quarter of 1996 were supported by certifications of withholding and remittance. The rest of the passive investments which are composed of CB Bills, Treasury Bills, Deposit with Local Banks, and Treasury Bonds (for the other quarters), have no certifications. The certification of withholding and remittance of final tax is important for the Court to verify, if indeed the final tax on passive income was paid and remitted to the Bureau of Internal Revenue -- the rationale behind the Asian Bank case which was earlier quoted.

Hence, petitioner is only entitled to the amount of P25.201,701.15, representing overpaid gross receipts tax on final tax on interest income of treasury bonds for the third quarter of 1996, computed as follows:

Month Covered	Exh.	Interest Income	Final Tax Withheld
July 1, 1996	R-1	P 413,883,874.80	P 82,776,774.96
August 1, 1996	R-3	2,106,286,240.00	421,257,248.00
Total		P2,520,170,114.80	P504,034,022.96
Multiply by GRT Rate			5%
Amount Refundable			P 25,201,701.15

WHEREFORE, in view of the foregoing, the instant petition for review is hereby **PARTIALLY GRANTED**. Respondent is **ORDERED** to **REFUND** in favor of petitioner the sum of P25,201,701.15.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

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