**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

**EQUITABLE BANKING CORPORATION,**
Petitioner,

- versus -

**C.T.A. CASE NO. 5721**

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**Promulgated:**
JUN 08 2000

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# DECISION

This is a judicial claim for refund of the amount of TWO MILLION NINE HUNDRED SEVENTEEN THOUSAND ONE HUNDRED SIXTY SIX AND 20/100 PESOS (P2,917,166.20) filed by the Petitioner on January 20, 1999, representing allegedly overpaid gross receipts tax for the last quarter of taxable year 1996.

The facts are simple.

Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Philippines with principal office at 262 Juan Luna Street, Binondo, Manila.

Records reveal that Petitioner filed with the Respondent Bureau of Internal Revenue its various quarterly percentage tax returns, covering those of its Head Office and branches, for the period ending December 31, 1996, and allegedly paid its Gross Receipts Tax due in the amount of P53,096,548.39, as evidenced by a "Transmittal Sheet of Percentage Tax of the Head Office and Branches/Units of Large Taxpayers for the Quarter ended December 31, 1996". (Exhibit A).

Petitioner alleges that, of the said amount of P53,096,548.39, P31,068,242.67 pertains to percentage tax paid by its Head Office as shown in its Quarterly Percentage Tax Return for the quarter ended December 31, 1996. (Exhibit B, B-1, B-2).

On the strength of the decision of this Court in the case of ***Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 3, 1996***, where We ruled that the 20% final tax on passive income should not form part of the taxable gross receipts for Gross Receipts Tax purposes, Petitioner filed an administrative claim for refund of its alleged overpaid gross receipts tax with the Respondent on April 24, 1997, computed as follows:

| | |
|---|---|
| Gross Receipts Subjected to Tax | P711,475,266.54 |
| Less: 20% Portion of Tax Paid Income (Annex B1 of 2) | 1,597,837.45 |
| Investment Income subject to 20% final tax booked at gross (Annex B2 of 2) | 56,745,486.54 |
| Adjusted Gross Receipts Tax Base | P653,131,942.55 |

Computation of Adjusted Gross Receipt Tax:

| | Gross Receipts | Tax Due |
|---|---|---|
| 0% | P 69,452,096.18 | P 0.00 |
| 1% | 10,729,421.40 | 107,294.21 |
| 3% | 30,186,949.33 | 905,608.48 |
| 5% | 542,763,475.64 | 27,138,173.78 |
| | P653,131,942.55 | P28,151,076.47 |

| | |
|---|---|
| Gross Receipts Tax Paid | P31,068,242.67 |
| Adjusted Gross Receipts Tax | 28,151,076.47 |
| Tax Refund | P 2,917,166.20 |

Unable to secure an affirmative response from the Respondent and fearing that its cause might prescribe, Petitioner elevated its grievance to this Court on January 20, 1999, via Petition for Review.

In opposition thereto, Respondent filed its Answer to the Petition for Review on March 24, 1999, and interposed the following Special and Affirmative Defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSE**

11. The decision in **Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720)** is pending appeal with the Court of Tax Appeals. (should be Court of Appeals). Hence, invocation thereof at this point in time is premature.

12. There is no provision in the Tax Code or any Special Law which excludes the 20% final income tax withholding under Section 50(a) of the Tax Code , as no longer forming part of the gross receipts for the purpose of the computation of gross receipt tax under Section 119 of the Tax Code.

13. 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 corporation.

14. The petition does not state a case of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue and that the 20% final withholding tax on income was actually remitted by its withholding agents in accordance with the provision of the Tax Code.

15. The claim for refund is pending administrative investigation.

16. Taxes are presumed to have been collected in accordance with law. Hence, petitioner must prove that

taxes sought to be refunded were erroneously or illegally collected.

17. The non inclusion of the 20% final withholding tax on income from the gross income for purposes of the gross receipts tax operates as an exemption from tax. Hence, the same must be construed strictly against the one who asserts the claim of exemption, considering that tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception.

18. Claims for refund of taxes are to be 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).

19. Petitioner must show that it has complied with the provisions of Section 204(3) and Section 230 of the Tax Code, as amended."

To prove its stance, Petitioner presented in evidence, among others, the following documentary exhibits, to wit:

1. EBC's Transmittal Sheet of Quarterly withholding Tax Returns filed by Banks and other Financial Institutions classified as Large Taxpayers with Branch Offices for the Quarter Ended December 31, 1996. (Exh. A);

2. Written claim for refund (Exh. C); and

3. EBC Head Office Income and Expense Statement (Exh. D).

On March 3, 2000, after the parties have submitted their respective memoranda, this case was considered submitted for decision.

Forming the crux of the controversy, legal and factual, posed for consideration by this Court are:

1) Whether or not the 20% final withholding tax on bank's passive income form part of the gross receipts of a taxpayer for GRT purposes; and

2) Whether or not, on the basis of the evidence presented and submitted to this Court, Petitioner is entitled to a refund in the amount of P2,917,166.20 representing alleged overpaid gross receipts tax.

With regard to the first issue, We consistently hold that the 20% final withholding tax should not form part of the gross receipts of the taxpayer for purposes of the 5% gross receipts tax (China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5433, October 7, 1998; Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 20, 1996). This is in accord with the thrust of Our decision in the Asian Bank Case, supra, where this Court emphatically ruled, thus:

> "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
>
> 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:
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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:
>>
>> "x x x. 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, to winning horses and jockeys-admitted 5%. It is true that the law says that out of the total wager funds 12 ½% 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 12 ½% 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.**"

Parallel to this, the Court of Appeals, in the case of **Commissioner of Internal Revenue vs. Citytrust Investment Philippines Inc.**, CA-GR SP. NO. 52707, promulgated on August 17, 1999, ruled on the same subject matter in this wise:

> "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 the Respondent's 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."

Tested by these pronouncements, it would appear that the Petitioner is entitled to a refund. However, a sedulous review of the evidence on record does not sustain Petitioner's stance, accordingly, the claim for refund must be denied, not on legal grounds, but for insufficiency of evidence.

In a litany of cases, this Court has invariably held that in a refund of overpaid gross receipts tax, the taxpayer must prove that it has complied with the following requisites:

1) That it actually paid the 20% final withholding taxes on its gross receipts from passive income;

2) That the 20% final withholding tax on passive income formed part of its gross receipts subjected to the gross receipts tax; and

3) That it actually paid the GRT due on its gross receipts from passive income inclusive of the 20% final withholding taxes.

Concededly, Petitioner was able to prove that indeed, it paid its gross receipts tax amounting to P53,096,548.39. However, this Court finds it ineluctable to deny the refund of the amount of P2,917,166.20, 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 We would be able to decipher with accuracy the fact of actual withholding of the 20% final tax on its passive income in the amount of P2,917,166.20. 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 breath, Petitioner failed to substantiate that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax.

While it is true that Petitioner's 1996 last quarter taxable gross receipts and the corresponding gross receipts tax appearing on its last quarter percentage tax return tally with those appearing on its general ledger, this Court, however, cannot ascertain whether the passive income reflected thereon were recorded at gross or net of the 20% final withholding taxes. In this respect, the source documents such as the detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advises, accounting tickets, certificates of final taxes withheld could serve as the best evidence that would merit a weightier probative value. Absence of these documents, therefore, is fatal to the taxpayers cause.

With these circumstances in mind and considering that refunds of taxes are in the nature of an exemption and must be construed in *strictissimi juris* against the taxpayer and in favor of the taxing authority, the instant claim for refund must be denied.

**WHEREFORE,** in view of all the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

**SO ORDERED.**

ERNESTO D. ACOSTA
Presiding Judge

**WE CONCUR:**

RAMON O. DE VEYRA
Associate Judge

(Dissenting)
**AMANCIO Q. SAGA**
Associate Judge

## C E R T I F I C A T I O N

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