REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5516

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 26 2000

x - x

DECISION

This is a petition seeking for the refund or issuance of a tax credit certificate in the amount of ₱3,531,051.03 representing alleged overpaid gross receipts tax for the four quarters of 1995.

The factual backdrop of the case are as follows:

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws and is engaged in general banking business.

During the year 1995, Petitioner, pursuant to Section 119 of the Tax Code imposing a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries, filed its Quarterly Percentage Tax Returns detailed as follows:

Exhibit	Date Filed	Period Covered	Gross Receipts	Tax Paid
A	April 20, 1995	Jan. – March 1995	₱ 541,537,248.06	₱ 24,083,728.50
B	July 20, 1995	Apr. – June 1995	850,678,408.12	39,799,657.71
C	October 20, 1995	July – Sept. 1995	789,957,154.13	36,938,561.29
D	January 22, 1996	Oct. – Dec. 1995	755,339,549.73	35,175,811.39
		TOTAL	₱2,937,512,360.04	₱135,997,758.89

Part of Petitioner's gross receipts subjected to the gross receipts tax included interest income or yield derived from passive investments amounting to ₱353,105,103.33 (Exh. F), inclusive of the 20% final withholding tax. Petitioner, citing this Court's decision in **CTA Case No. 4720 entitled Asian Bank Corporation vs. Commissioner of Internal Revenue promulgated last January 30, 1996,** where We ruled that the 20% final withholding tax on interest income should not form part of taxable gross receipts, it filed on April 16, 1997 a claim for refund with the Bureau of Internal Revenue of its overpaid gross receipts tax for the year 1995 in the amount of ₱3,531,051.03 (Exh. E), computed as follows:

Gross receipts derived from passive investments subjected to the final tax	₱353,105,103.33
	x 20%
20% Final Tax Withheld at Source	₱ 70,621,020.66
	x 5%
Overpaid 5% Gross Receipts Tax	₱ 3,531,051.03

The following day, that is, on April 17, 1997, the instant Petition for Review was filed in order to toll the running of the two-year prescriptive period.

In his Answer, Respondent claimed by way of Special and Affirmative Defenses that:

x x x x x x x x x

6. Petitioner has no clear right to a refund.

7. In an action for refund of taxes, it is incumbent upon the taxpayer to show that the taxes paid were erroneously or illegally collected. Failure to meet this burden is fatal to the action for refund. In the instant case, petitioner has not shown any evidence that the tax claimed was erroneously or illegally collected.

8. Moreover, as a claim for refund partakes of the nature of an exemption, it cannot be allowed unless granted in the most explicit and categorical language.

The issues We are tasked to resolve are:

1. Whether or not the 20% final withholding tax derived from passive investments form part of gross receipts subject to the gross receipts tax; and

2. Whether or not Petitioner is entitled to the amount of ₱3,531,051.03 representing alleged overpaid gross receipts tax paid for the year 1995 on the basis of the evidence presented.

As regards the first issue, this Court has already ruled in a number of cases involving claims for refund of overpaid gross receipts tax that **the 20% final withholding tax on interest income should not form part of taxable gross receipts.**

As aptly cited by Petitioner, in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, (CTA Case No. 4720)** this Court ruled:

> **"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:

> 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 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."

In fact this aforequoted ruling was affirmed by the Court of Appeals in the case entitled **Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA - G.R. SP No. 52707, dated August 17, 1999** when it ruled, 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 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.

In support of its case, Petitioner presented the following:

Exhibits	Description
A to D	Quarterly Percentage Tax Returns of Petitioner for the four (4) quarters of 1995.
E	Letter-claim for refund dated April 16, 1997 filed with the BIR
G & J	Debit Advice Memos issued to Petitioner by the Central Bank
H & K	Credit Advice memos issued to Petitioner by the Central Bank
I, P-1 to P-2, U-1 to U-5,	Certificates of Tax Withheld issued by the Central Bank for various investments of Petitioner

L, M-1, N, V	Letter-reports prepared by the duly commissioned independent CPA
O-1 to O-3, Z-1	Trading Sheets of Fixed Rate Treasury Notes
Q-1 to Q-3	Trading Sheets of Commercial Papers
S-1 to S-7, W-1 to W-10	Trading Sheets of CB Bills (Liquidity Floor)
T-1 to T-10, X-1 to X-55	Trading Sheets of CB Bills (Trading Account Securities)
Y-1 to Y-4	Trading Sheets of CB Bills (Trust Duties)

Respondent, on his part, manifested that no investigation was conducted on this case and so, there being no evidence to present, he submitted his case for decision based on the pleadings.

After examining the evidence adduced by Petitioner, this Court finds that a refund to be in order but in a reduced amount.

According to SGV & Co., the independent auditing firm engaged by Petitioner and commissioned by the Court to conduct an examination of the documents relative to the instant claim for refund, out of the amount of P70,621,020.71 of final withholding tax claimed to be included in its gross receipts for the year 1995, only the amount of P30,373,374.84 was verified to have been included in its gross receipts subjected to the 5% gross receipts tax. Thus, the report shows that only P1,518,668.74 out of the total claim of P3,531,051.03 represent overpayment of gross receipts tax for the year 1995, summarized as follows:

		Per Bank's Claim		Per SGV Verification		Difference	
1995	Index	FWT	GRT	FWT	GRT	FWT	GRT
1st qtr	N-3	17,708,471.80	885,423.59	8,906,950.43	445,347.52	8,801,521.37	440,076.07
2nd qtr.	N-8	24,351,933.80	1,217,596.69	10,719,782.17	535,989.11	13,632,151.63	681,607.58
3rd qtr	N-13	13,426,009.54	671,300.48	6,146,309.87	307,315.49	7,279,699.67	363,984.99
4th qtr	N-18	15,134,605.57	756,730.27	4,600,332.37	230,016.62	10,537,273.20	526,713.65
		70,621,020.71	3,531,051.03	30,373,374.84	1,518,668.74	40,250,645.87	2,012,382.29

A review, however, of Petitioner's supporting documents revealed that out of the P1,518,668.74 overpaid gross receipts tax per SGV verification, only the amount of P797,929.70 was duly substantiated. Petitioner failed to establish the fact of withholding as to the balance of P720,739.08. The certifications coming from the issuers of the securities (see Annex A) in order to confirm the amounts of withholding taxes reflected in its domestic trading sheets as well as certifications of interest rates for commercial papers issued by secondary market were not submitted by Petitioner. In view thereof, this Court is constrained to reduce further the amount of refund/tax credit of Petitioner to P797,929.70, detailed as follows:

1995	Overpaid 5% GRT Per SGV Verification (Exh.V)	Disallowances Per Court's Verification (Annex A)	Amount Refundable
1st Quarter	P 445,347.52	P 153,753.32	P 291,594.20
2nd Quarter	535,989.11	239,080.81	296,908.30
3rd Quarter	307,315.49	167,236.59	140,078.90
4th Quarter	230,016.62	160,668.32	69,348.30
Total:	P 1,518,668.74	P 720,739.04	P 797,929.70

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the Respondent to **REFUND** or **ISSUE** a tax credit certificate in the reduced amount of ₱797,929.70 representing overpaid GRT payment for the four quarters of 1995. The remaining amount claimed is **DENIED** for 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

Rizal Commercial Banking Corporation vs.
Commissioner of Internal Revenue
CTA Case No. 5516
Schedule of Court's Disallowances
on Petitioner's Excess 1995 GRT
Payment as Verified by SGV

Particulars						Disallowances				
						1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	Total
1.) Final taxes on interest income from commercial papers without certificates of final taxes withheld										
1st Qtr.										
Month	Exh.				20% FWT					
January	N-6-a			P	340,325.83					
February	N-6-b				415,428.66					
March	N-6-c				383,854.59					
		Subtotal		P	1,139,609.08					
		Multiply by GRT rate			x 5%	P 56,980.45	P	P	P	56,980.45
2nd Qtr.										
Month	Exh.				20% FWT					
April	N-11-a			P	523,517.01					
May	N-11-b				511,691.68					
June	N-11-c				492,914.79					
		Subtotal		P	1,528,123.48					
		Multiply by GRT rate			x 5%		76,406.17			76,406.17
3rd Qtr.										
Month	Exh.				20% FWT					
July	N-16-a			P	8,728.39					
August	N-16-b				26,138.96					
Sept.	N-16-c				162,105.53					
		Subtotal		P	196,972.88					
		Multiply by GRT rate			x 5%			9,848.64		9,848.64
4th Qtr.										
Month	Exh.				20% FWT					
Oct.	N-21-a			P	1,452.41					
Nov.	N-21-b				14,380.57					
		Subtotal		P	15,832.98					
		Multiply by GRT rate			x 5%				791.649	791.65
2.) Final taxes on interest income from CB treasury bills without certificates of final taxes withheld										
1st Qtr.										
Month	Exh.	Ref.	Series		20% FWT					
January	N-7-a	16369	4A-D-05	P	642,300.36					
January	N-7-a	16769	4A-D-05		60,552.82					
February	N-7-b	16369	4A-D-05		873,528.48					
February	V-6-a	17140	4A-D-05		23,643.77					
February	V-6-a	17141	4A-D-05		14,418.73					
February	V-6-a	17155	4A-D-05		20,340.99					
March	N-7-d	17474	5A-J-02		194,115.64					
March	N-7-d	17492	5A-J-02		14,397.98					
March	V-7-a	17509	5A-J-01		69,207.45					
March	V-7-a	17510	5A-J-02		22,951.11					
		Subtotal		P	1,935,457.33					
		Multiply by GRT rate			x 5%	96,772.87				96,772.87
2nd Qtr.										
Month	Exh.	Ref.	Series		20% FWT					
April	N-12-a	17547	5A-I-02	P	111,815.30					
April	N-12-a	17474	5A-J-02		1,203,516.99					
April	N-12-a	17492	5A-J-02		111,584.32					
April	V-13-a	17509	5A-J-01		49,882.72					
April	V-13-a	17510	5A-I-02		74,825.80					
April	V-13-a	17510	5A-I-02		132,479.95					
June	N-12-c	17547	5A-I-02		111,815.30					
June	N-12-c	17474	5A-J-02		1,203,516.99					
June	N-12-c	17492	5A-J-02		111,584.32					
June	N-12-d	17815	5A-I-02		26,006.89					
June	V-14-a	18199	5A-G-35		14,317.86					
		Subtotal		P	3,151,346.44					
		Multiply by GRT rate			x 5%		157,567.32			157,567.32
3rd Qtr.										

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Particulars						Disallowances				
Month	Exh.	Ref.	Series		20% FWT	1st Qtr.	2nd Qtr.	3rd Qtr.	4th Qtr.	Total
Aug.	N-17-a	17547	5A-I-02	P	111,815.30					
Aug.	N-17-a	17474	5A-J-02		1,203,516.99					
Aug.	N-17-a	17492	5A-J-02		111,584.32					
Aug.	V-20-a	18980	5A-E-36		16,552.57					
Aug.	V-20-a	18986	5A-E-36		26,042.89					
Aug.	V-20-a	19007	5A-E-36		17,515.62					
Aug.	V-20-a	19007	5A-E-36		47,217.20					
Aug.	V-20-a	18530	5A-F-11		20,218.05					
Aug.	V-20-a	18532	5A-E-37		72,806.53					
Aug.	V-20-a	18962	5A-F-23		10,891.43					
Sept.	N-17-a	17547	5A-I-02		111,815.30					
Sept.	N-17-a	17474	5A-J-02		1,203,516.99					
Sept.	N-17-a	17492	5A-J-02		111,584.32					
Sept.	V-21-a	18453	5A-F-23		14,957.01					
		Subtotal		P	3,080,034.52					
		Multiply by GRT rate			x 5%			154,001.73		154,001.73
4th Qtr.										
Month	Exh.		Series		20% FWT					
Oct.	N-22-a	17474	5A-J-02	P	1,164,693.87					
Oct.	N-22-a	17492	5A-J-02		107,984.83					
Oct.	V-24	19821	5A-D-33		34,806.77					
Nov.	N-22-c	17474	5A-J-02		1,164,693.87					
Nov.	N-22-c	17492	5A-J-02		107,984.83					
Nov.	V-25	19821	5A-D-33		74,585.95					
		Subtotal		P	2,654,750.12					
		Multiply by GRT rate			x 5%				132,737.51	132,737.51
3.) Final taxes on interest income from treasury notes without certificates of final taxes withheld										
2nd Qtr.										
Month	Exh.		Series		20% FWT					
May	V-10		9	P	54,658.15					
June	V-11		9		47,488.19					
		Subtotal		P	102,146.34					
		Multiply by GRT rate			x 5%		5,107.32			5,107.32
3rd Qtr.										
Aug.	V-17		9	P	9,547.50					
Sept.	N-14-a		10		37,224.31					
Sept.	V-18		9		20,952.59					
		Subtotal		P	67,724.40					
		Multiply by GRT rate			x 5%			3,386.22		3,386.22
4th Qtr.										
Oct.	N-19-a		10	P	101,520.84					
Nov.	N-19-b		10		101,520.84					
		Subtotal		P	542,783.16					
		Multiply by GRT rate			x 5%				27,139.16	27,139.16
					Total	P 153,753.32	239,080.81	167,236.59	P 160,668.31	720,739.04