REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION BANK OF THE PHILIPPINES,
Petitioner,

- versus -

C.T.A. CASE NO. 5416

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 29 1999

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DECISION

This is a Petition for Review filed by the Petitioner, UNION BANK OF THE PHILIPPINES, against Respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's failure to act on the former's claim for refund/tax credit in the amount of P4,973,900.38, allegedly representing its overpaid gross receipts taxes for the second, third and fourth quarters of 1994 and the four quarters of 1995.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at SSS Building, Ayala Avenue, Makati City. It is duly registered with the Securities and Exchange Commission (SEC) and authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in general banking operations.

For the second, third and fourth quarters of 1994 and the four quarters of 1995, Petitioner filed with

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Respondent its Quarterly Percentage Tax Returns and paid the corresponding gross receipts tax (GRT) for each of the said quarters, hereunder summarized, the tax bases of which include the passive income which was subjected to twenty percent (20%) final taxes.

PERIOD COVERED	GRT	DATE PAID	EXH.
2nd Qtr. (April to June, 1994)	P15,443,611.33	7-20-94	A
3rd Qtr. (July to Sept., 1994)	21,431,077.23	10-20-94	B
4th Qtr. (Oct. to Dec., 1994)	19,572,519.51	1-20-95	C
1st Qtr. (Jan. to March, 1995)	19,683,823.89	4-20-95	D
2nd Qtr. (April to June, 1995)	23,191,121.58	7-20-95	E
3rd Qtr. (July to Sept., 1995)	24,930,760.12	10-20-95	F
4th Qtr. (Oct. to Dec., 1995)	21,736,752.12	1-22-96	G

After taking into account the Decision of this Court, dated January 30, 1996, in the case of ***Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720***, which ruled that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner filed with Respondent on July 19, 1996, a claim for refund/tax credit of the alleged overpaid GRT for the last three quarters of 1994 and the four quarters of 1995 in the aggregate amount of P4,973,900.38 (Exh. H).

On the same date, July 19, 1996, Petitioner filed with this Court the instant Petition for Review.

Petitioner presents the proposition that the gross receipts tax paid by it for the last three quarters of 1994 and the entire taxable year of 1995 were based on

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the total gross receipts, inclusive of the passive income, which were subjected to the 20% final withholding tax at source, thus, it argued that in the light of this Court's ruling in the Asian Bank case, *supra*, which states that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner has actually overpaid the amount legally due from it insofar as its GRT obligations are concerned, hence, a refund is therefore, in order.

On the other hand, Respondent raised the herein special and affirmative defenses: (1) Petitioner's claim for tax refund/tax credit is still undergoing administrative routinary investigation/ examination by Respondent's Bureau; (2) the alleged refundable/creditable gross receipt taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence the same is not refundable; x x x, (3) Petitioner's allegations that it erroneously and excessively paid its gross receipts tax during the years under review does not ipso facto warrant the refund/credit, x x x, (4) Petitioner must likewise prove that the alleged refundable/creditable gross receipt taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding years nor included as creditable taxes declared and applied to the succeeding taxable year/s;

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(5) claims for tax refund/credit are construed in strictissimi juris against the taxpayer as it partakes the nature of an exemption from tax and it is incumbent upon Petitioner to prove that it is entitled thereto under the law; x x x, and (6) it is incumbent upon Petitioner to prove that it has complied with the provision of Section 230 of the Tax Code.

The decisive issue that comes to the fore for our consideration is whether or not the 20% final withholding tax on certain passive income of the Petitioner should be excluded from the total gross receipts of Petitioner for GRT purposes to entitle it to the amount sought for refund.

This is not the first time that this Court has been confronted with such issue. As correctly stated by the Petitioner, this Court has resolved the same issue in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, *supra*,** which is anchored on similar factual circumstances and on all fours with the case at bar. Hence, we find no cogent justification to depart from the rationale of our Decision in said case, which states in part, to wit:

> "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.***—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 (2) years	5%
Medium-term maturity: two years but not exceeding four (4) years	3%
Long-term maturity: (i) Over four (4) years but not exceeding seven (7) years	1%
(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.

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> 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.

x x x   x x x   x x x

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 1/2% which it directs same club to turn over to the Board of Races. The latter being a Government institution, 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 1/2% 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 1/2% 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

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> 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)

The legal issue having been settled, what remains to be resolved by the Court involve factual matters and, that is, whether or not Petitioner has established by evidence its claim for refund.

After a careful study of the evidence adduced by Petitioner (Exhibits A to EE 498), the Court finds the same insufficient to grant the desired relief.

Petitioner failed to meet the two-year prescriptive period within which to judicially file its claim for refund/credit pertaining to the second quarter of taxable year 1994 which ended June 30, 1994. The last day for the payment of the gross receipts tax for the said quarter was on July 20, 1994, while the instant Petition for Review was filed only on July 31, 1996. Thus, the right of Petitioner to claim tax refund/credit on its alleged overpaid GRT payments for the second quarter of 1994 in the amount of ₱434,284.80 has already been barred

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by prescription. The prescribed amount is computed as follows:

Prescribed Passive Interest Income - 2nd qtr. of 1994 (Exh. Z-2)	
Premium/Disc. on Purchase of Securities	
A. Direct from BSP - Treasury Bills/Notes (Exhs. V, V-2)	₱ (33,291,050.36)
B. From Secondary Market - Treasury Bills (Exh. V-4)	(24,717,049.67)
Premium/Disc. on Sale of Treasury Bills/Notes to Secondary Market (Exhs. W, X)	14,579,619.54
Total Prescribed Passive Interest Income	₱ (43,428,480.49)
Multiply by Rate of Final Tax	20%
Final Tax on Prescribed Passive Interest Income	₱ (8,685,696.10)
Multiply by GRT Rate	5%
Gross Receipts Tax on Prescribed Passive Interest Income	₱ (434,284.80)

As regards the claim for refund of Petitioner relating to the other quarters of 1994 and the four quarters of 1995, the Court finds that said claims have been filed indeed within the two-year prescriptive period provided for in Section 230 of the Tax Code.

An examination of the Petitioner's summary/ computation of gross receipts tax paid in the amount of ₱56,447,208.07 (Exhs. S to S-1) for the last 3 quarters of 1994 and ₱89,542,457.71 for 1995 (Exhs. T to T-1), supporting the total amount paid per the Quarterly Percentage Tax Returns filed with BIR (Exhs. A to G, inclusive), shows that the total interest income (gross of the 20% final tax) under the Treasury Department column of ₱135,880,404.50 (Exh. S) for the last 3 quarters of 1994 and ₱361,509,637.69 (Exh. T) for 1995, with the total amount of ₱497,390,037.50, were included in the computation of the amount paid by Petitioner for

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GRT (see page 5 of Petition for Review). However, a meticulous scrutiny of the evidence presented by Petitioner reveal that the claim for refund cannot be granted because of inherent discrepancies between what is being claimed and the actual gross receipts tax payments made by it for the period covered by the claim. It should be remembered that on the basis of the aforequoted Asian Bank ruling, the refund of gross receipts tax is focused on the 20% final withholding tax already paid by Petitioner on its income derived from passive investment which Petitioner included in its gross receipts, and which, in turn, become the basis for the imposition of the gross receipts tax.

To illustrate the aforesaid discrepancy, it is best to take a closer look at the claimed refund of P4,973,900.38 which was culled from the following computation made by Petitioner:

Gross Receipts Subjected to Final Tax Derived from Passive Investment	**P497,390,037.50**
	x 20%
20% Final Tax Withheld at Source	**P 99,478,007.50**
	x 5%
Overpaid 5% Gross Receipts Tax	**P 4,973,900.38**

An analysis of the figures contained in Exhibits "S" and "T" which includes the total of the gross receipts tax payments made on income from passive investment, reveals that only the aggregate sum of P1,059,698.00 for

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the years 1994 and 1995 was paid. The computation of the amount of P1,059,698.00 is as follows:

GRT (on income from passive investments) paid in 1994	P 237,034.82
GRT (on income from passive investments) paid in 1995	822,663.18
Total	P1,059,698.00

Compared with the amount claimed for refund (P4,973,900.38), the amount of GRT paid of P1,059,698.00 is definitely smaller. This discrepancy creates a doubt as to why the amount of GRT paid on income from passive investment is smaller than the claimed amount for refund which supposedly represents only 5% of the 20% final tax withheld.

Moreover, the amount of P1,059,698.00 is reduced further by the fact that, out of this sum, the GRT payments made on trading gains and other miscellaneous income in the total amount of P152,119.77 will still be deducted because Petitioner never included these payments in its claim for refund. So that if the amount P152,119.77 is to be deducted from P1,059,698.00, what remains is the amount of P907,579.00.

In order to get the gross passive income upon which the gross receipts tax shall be imposed, this amount of P907,579.00 shall be divided by 5% (rate of the gross receipts tax) resulting in the amount of P18,151,564.48 which in turn will be multiplied by 20% to get the final tax withheld from said gross passive income. Computing thus, P18,151,564.48 multiplied by 20% brings about the sum of P3,630,312.90 as final withholding tax.

With the application of the Asian Bank ruling to the instant case, the 5% gross receipts tax on the 20% final withholding tax paid on its passive income should be excluded. As stated above, the amount of P3,630,312.90 shall be further multiplied by 5% thus resulting in the sum of P181,515.64 which should be the actual overpaid gross receipts tax of Petitioner.

However, as earlier discussed, part of the claim of Petitioner pertaining to the second quarter of 1994 has already prescribed, so that the aforesaid sum of P181,515.64 shall be further reduced, thus resulting in a nil refundable amount. Hereunder is a tabular computation of the above discussion, which has eventually lead Us to the conclusion that nothing can be refunded to Petitioner, thus:

Total GRT Payment on Passice Interest Income				
GRT Payments under Treasury Department				
1.) For the last 3 quarters of 1994 (Exh. S)		P 237,034.82		-4 740 646.47
Less: payments not claimed by petitioner				
a. Trading Gain	P 26,078,290.08			
b. Miscellaneous Income	34,730.25			
Total	P 26,113,020.33			
Multiply by	5% ; 5%	65,282.55		
GRT Payment on Passive Interest Income for the last 3 quarters of 1994			P 171,752.27	
2.) For the year 1995 (Exh. T)		P 822,663.18		16,453,124
Less: payments not claimed by petitioner				
a. Trading Gain	P 34,688,610.77			
b. Miscellaneous Income	46,279.22			

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Total	₱ 34,734,889.99			
Multiply by	5% ; 5%	86,837.22		
GRT Payment on Passive Interest Income for the year 1995			735,825.96	₱ 907,578.22
Divide by GRT Rate				5 %
Gross Receipts on Passive Interest Income				₱18,151,564.48
Multiply by Rate of Final Tax				20 %
Final Tax on Gross Receipts from Paaive Interet Income				₱ 3,630,312.90
Multiply by GRT Rate				5 %
GRT Payment on the 20% Final Tax on Passive Interest Income				₱ 181,515.64
Less: Prescribed Passive Interest Income - 2nd qtr. of 1994 (Exh. Z-2)				
Premium/Disc. on Purchase of Securities				
A. Direct from BSP - Treasury Bills/Notes (Exhs. V, V-2)			₱ (33,291,050.36)	
B. From Secondary Market - Treas. Bills (Exh. V-4)			(24,717,049.67)	
Premium/Disc. on Sale of Treas. Bills/Notes to Secondary Market (Exhs. W, X)			14,579,619.54	
Total Prescribed Passive Interest Income			₱ (43,428,480.49)	
Multiply by Rate of Final Tax			20 %	
Final Tax on Prescribed Passive Interest Income			₱ (8,685,696.10)	
Multiply by GRT RAte			5 %	
Gross Receipts Tax on Precribed Passive Interest Income				(434,284.80)
Amount Refundable				₱ - nil -

WHEREFORE, in view of the foregoing, the instant Petition for Review is **DENIED** for lack of merit.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

(Dissenting)
AMANCIO Q. SAGA
Associate Judge

CERTIFICATION

I hereby certify that this 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

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

UNION BANK OF THE PHILIPPINES,
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- versus -

C.T.A. CASE NO. 5416

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 29 1999

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DISSENTING OPINION

Majority of my esteemed colleagues dismissed the case for lack of merit due to their contention that the final computation by this Court of petitioner's alleged excess payment of gross receipts tax revealed that there is nothing left to be granted to petitioner. The majority opinion acknowledged however, the merit of petitioner's legal theory that the gross receipts tax should be based on the gross receipts net of the 20% final withholding tax on income derived from passive investments.

I humbly disagree with the majority opinion and submit that there is no provision in the Tax Code or any special law which excludes the 20% final withholding tax from the total gross receipts for purposes of computing the gross receipts tax.

I have consistently maintained my opposition to the ruling of this Court in the case entitled Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720 dated January 30, 1996 where this Court approved the petitioner's citation of Section 4 (e) of Revenue Regulations No. 12-80 dated November 7, 1980, thus:

> "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 tax to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered but once payment is received on such accrual or in cases of overpayment then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder."

This Court concluded in said case that from the aforestated provisions it can logically be inferred that the amount representing 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 purposes of computing the gross receipts tax . Such conclusion in law is legally objectionable for two (2) reasons, to wit:

(1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions (Consolidated Mines Inc. vs. CTA, L-18843, August 29, 1974). The two principal accounting methods expressly and impliedly recognized by the Tax Code and the Income Tax Regulations are:

a) Cash receipts and disbursement method or cash basis. – Income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year; and

b) Accrual basis – Income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not yet paid within the year.

2) That the non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. 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, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statutes are to receive a reasonable construction with a view to carrying out their purpose and intent (51 Amer 361). It should not be construed as to permit the taxpayer to easily evade the payment of the tax (Cabon Steel Co. vs. Lewelyn 251 US 501). Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law (Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970). A tax statute should be construed to avoid the tax possibilities of tax evasion (Lorenzo vs. Posadas, 64 Phil 353).

WHEREFORE, in view of the foregoing, I hereby register my dissent to the majority opinion and vote to deny the petition for the aforequoted reasons.

AMANCIO Q. SAGA
Associate Judge

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