REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST INVESTMENT PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 5403

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 19 1999

x - x

DECISION

This is a judicial claim for the tax refund/credit of ₱326,007.01 allegedly representing overpaid gross receipts taxes (GRT) paid for the year 1994.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with head office located at 379 Senator Gil J. Puyat Avenue, Makati City.

The facts are simple.

For the four quarters of calendar year 1994, Petitioner reported the amount of ₱110,788,542.20 as total gross receipts and paid the corresponding 5% GRT in the amount of ₱5,539,427.11. Such gross receipts allegedly included Petitioner's receipts derived from passive income, inclusive of the 20% final withholding taxes collected therefrom, in the aggregate sum of ₱32,600,701.25.

On July 19, 1996, Petitioner filed with Respondent a written claim for the tax refund/credit of the abovestated amount of ₱326,007.01 following this Court's decision in CTA Case No. 4370, entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue, promulgated on January 30, 1996,** wherein it was ruled that the basis for determining the gross receipts tax on banks and non-bank financial intermediaries should be the gross receipts of said institutions minus the twenty percent (20%) final taxes already withheld by various withholding agents on interest and other passive income of said institutions. Petitioner, thus seeks to be reimbursed of the 5% GRT it paid on the portion of 20% final taxes withheld at source which were included in the aforementioned gross receipts on its passive income.

On the same day that Petitioner filed its administrative claim for refund on July 19, 1996, it also filed a Petition for Review with this Court.

At bar, Petitioner reasserts its stance *a quo*. On the other hand, Respondent contends, *inter alia*, the following special and affirmative defenses, to wit:

> 5. x x x Petitioner must prove that the refundable/creditable gross receipts taxes was (sic) actually paid, remitted and received by the respondent's Bureau, and the income from which the alleged refundable/creditable gross receipts tax was paid from, were declared and included in its gross income during the year under review;
>
> x x x x x x x x x

> 8. 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 the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund/credit;
>
> 9. Moreover, petitioner must prove that it has complied with the provision of Section 230 of the Tax Code as amended.

Records show that both parties filed their respective memorandum. Petitioner merely reiterated its assertions while Respondent asserted a new line of reasoning. She contends, *inter alia*, that the case of **Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821,** cited in the Asian Bank Corporation case, *supra*, is not applicable because it dealt on gross receipts of a proprietor of an amusement place and not to a banking institution like the Petitioner in the instant case; and that, the term 'gross earnings' which is synonymous to the term 'gross receipts', is defined as 'the entire earnings, receipts, or the like, under consideration, without any deduction', citing *Words and Phrases, 1956 Ed., p. 482.*

Respondent further contends as bereft of factual and legal basis, the reliance of the Asian Bank Corporation case, *supra*, on the provisions of Section 4(e) of Revenue Regulations No. 12-80 which declares, in part, that the rates of taxes to be imposed on the gross receipts of banking institutions shall be based only on all items of income actually received. She argues that it is erroneous to infer that the questioned items of income (20% final taxes) were not actually received by the Petitioner because, in the first place, no final tax can be withheld therefrom if such items of income were not actually received by it.

Moreover, she observes that under the clear language of Section 7(b) of the same Revenue Regulations No. 12-80, the 20% final withholding tax paid by the Petitioner cannot be deducted or credited against the latter's income or any other taxes, including its gross receipts tax liabilities.

The sole issue to be adjudicated in this case is whether or not Petitioner is legally and factually entitled to its claim for tax refund/credit of overpaid gross receipts taxes.

After a painstaking scrutiny of the attendant facts, the disquisition of the parties and the law and jurisprudence in point, this Court rules in favor of the Petitioner but only in the reduced amount of ₱39,629.44.

The legal aspect of Petitioner's claim for refund is not a case of first impression. As adverted to above, the case of **Asian Bank Corporation vs. Commissioner of**

Internal Revenue, CTA Case No. 4720, promulgated on January 30, 1996, has already enunciated the rule that the 20% final taxes already withheld by various withholding agents on the passive income of banks and non-banking intermediaries are to be excluded in the computation of the latter's obligation on the payment of gross receipts tax. We do not intend to depart from the rationale of said decision, with a pertinent quotation hereunder:

> "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 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%

(ii) over seven (7) years 0%

(b) 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 its interest income should not form part of its taxable gross receipts.

Revenue Regulations No. 12-80 dated November 7, 1980 on Taxation of Certain Income Derived from Banking Activities provides that the rates of tax to be imposed on the gross

> receipts such financial institution; shall be based on all items of <u>income actually received</u>.
>
> x x x x x x x x x
>
> 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. x x x

The aforequoted Asian Bank case cited an earlier case decided by the Court, entitled Compania Maritima vs. Acting Commissioner of Internal Revenue, CTA Case No. 1426, dated November 14, 1996, where it was ruled:

> "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."

We do not intend to depart from the aforementioned rulings and We find Petitioner's contention with respect to the legal basis of its claim for refund to be meritorious.

With the legal milieu of this case having been settled, We now go into the examination of the evidence adduced by the Petitioner to surmount the burden of proof required in proving its claim for refund.

It must be declared at the outset that Petitioner's claim for refund corresponding to the first quarter of

1994 has already prescribed, hence cannot be included in the final computation. Petitioner filed its Quarterly Percentage Tax Return for the first quarter of 1994 on April 19, 1994 while the administrative as well as the judicial claims for refund were both filed on July 19, 1996. Section 230 of the 1994 Tax Code prescribes a two (2) year period from payment of the tax, within which to file both the administrative and judicial claims for refund. The payment of the gross receipts tax for the first quarter of 1994 was deemed to have been made on April 19, 1994, the date when Petitioner filed its Quarterly Percentage Tax Return, so when Petitioner filed the claims for refund on July 19, 1995, the claim corresponding to the first quarter of 1994 had fallen outside the two-year prescriptive period.

As to the rest of the claims relating to the other three quarters of 1994, the evidence presented by the Petitioner only proved the amount of P39,629.44.

A careful analysis of the various documents presented by the Petitioner revealed that only the Petitioner's passive income on interbank call loans were properly substantiated by complete documents which tally with the amounts reflected in the quarterly percentage tax returns. The total amount of P39,629.44 is detailed as follows:

DATE	EXHIBIT	GROSS INTEREST	20% FINAL TAX	5% GRT
06/09/94	WW, XX	₱ 156,875.00	₱ 31,375.00	₱ 1,568.75
11/18/94	YY, ZZ	60,666.67	12,133.33	606.66
12/08/94	AAA, DDD	1,098,888.89	219,777.78	10,988.90
12/08/94	BBB, DDD	413,875.00	82,775.00	4,138.75
12/12/94	CCC, DDD	47,638.89	9,527.78	476.39
12/28/94	EEE, III	855,833.33	171,166.67	8,558.33
12/28/94	FFF, III	400,000.00	80,000.00	4,000.00
12/28/94	GGG, III	66,666.67	13,333.33	666.66
12/28/94	HHH, III	862,500.00	172,500.00	8,625.00
		₱3,962,944.45	₱792,588.89	₱39,629.44

As to the balance of the claim for refund, Petitioner failed to substantiate the amounts of passive income as presented in the Gross Receipts Tax Computation Schedules due to unavailability of some documents. In fact, counsel for the Petitioner impliedly admitted this fact during the hearing held on January 27, 1997, and We quote:

"Q. In the exhibit marked as OOO, there appears a (sic) several amounts. Will you please explain what these amounts mean?

A. Yes, this confirmation reflects the face amount or par value of the securities which were bought. It also reflects the discount and the discounted value which is the difference between the face value and the par value less the discount of ₱101,014.36. It also has here an amount corresponding to the 20% of the discount which is the withholding tax. So in all we paid a total of ₱4,919,188.51 for this transaction alone, which is arrive at by deducting the discount from the face value but adding back the withholding tax.

Q. Miss Witness, in reporting your gain which is subsequently become the basis of your 5% gross receipts tax. Which of these amounts do you report as your gain?

A. We reported as gain the discount which is ₱101,014.30 which is already gross of the withholding tax.

ATTY. ABENIR

I would like to manifest, Your Honors, that these documents was compared previously with their respective original.

Your Honors, since the <u>other documents which are necessary to prove our</u> gain are not yet available as of this moment. I would like to request for the continuance of the testimony of my witness, Your Honors.

JUDGE ACOSTA

Why are they not available?

ATTY. ABENIR

Your Honors, petitioner is having a hard time locating these documents. Presently, we are effecting merger with the Bank of the Philippine Islands, so these documents have not been found, Your Honors.

xxx xxx xxx

However, the above documents averted to by Petitioner's counsel in the aforesaid hearing were never presented at any time during the trial.

WHEREFORE, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a tax credit certificate in favor of Petitioner in the amount of ₱39,629.44 representing overpaid gross receipts tax for the taxable year 1994.

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 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
Court of Tax Appeals

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DISSENTING OPINION

The majority opinion upheld the theory that the 20% final withholding tax on certain passive income should no longer form part of the gross receipts for purposes of computing the 5% gross receipts tax. This position is consistent with the ruling of this Court in the case entitled **Asian Bank Corp. v. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996**.

I have been firm in my opposition to the aforesaid ruling in the Asian Bank case and have consistently expressed my dissenting opinion to the position of the majority in cases involving the refund of gross receipts taxes.

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 5% gross receipts tax.

On the other hand, Section 8(c) of Revenue Regulations No. 12-80 dated November 7, 1980, as amended by Section 7(c), Revenue Regulations No. 17-84 dated October 12, 1984, clearly provides:

> "If the recipient of the above-mentioned items of income are financial institutions, the same shall be included as part of the tax base upon which the gross receipts tax is imposed."

It can be concluded from the aforequoted provision that the taxable base for purposes of gross receipts tax is the gross-up amount, inclusive of the 20% final income tax withholding.

WHEREFORE, I register my dissent to the majority opinion which partially granted the refund and I vote to **DENY** the petition for review.

AMANCIO Q. SAGA
Associate Judge