LIB.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5575

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUN 27 2000

x - x

DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P2,403,680.81 allegedly representing overpaid gross receipts tax for the quarter ended December 31, 1995.

The antecedent facts of the case are as follows:

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

Records show that on July 22, 1996, Petitioner filed with the Bureau of Internal Revenue its various quarterly percentage tax returns for its head office and all of its branches and paid a total amount of gross receipts tax of P41,679,162.64 (Exhibit A-7) as evidenced by the machine validation on the Transmittal Sheet of Percentage tax of Head Office and Branches for the period ended December 31, 1995.

Of the total gross receipts tax payment of P41,679,162.64 the amount of P26,256,002.65 (Exhs. B-1 and B-4) pertains to the combined gross receipts tax paid by

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Petitioner's head office and its branches. Said GRT is computed based on the accumulated total gross receipts of P668,240,537.50 (Exh. B-3) as reflected in Petitioner's Quarterly Percentage Tax Return for the quarter ended December 31, 1995, details of which are tabulated as follows:

	GROSS RECEIPTS	GROSS RECEIPTS TAX PAID
Head Office	P651,338,673.87	P25,410,909.47
Arranque	352,687.75	17,634.39
Magdalena	122,247.02	6,112.35
Ongpin	652,396.25	32,619.81
Reina Regente	451,209.93	22,560.50
Soler	15,323,322.68	766,166.13
T O T A L S	P668,240,537.50	P26,256,002.65
	(Exhibit B-5)	(Exhibit B-6)

Anchored on the ruling laid down by this Court in the case of Asian Bank Corporation vs. CIR, CTA Case No. 4720, dated January 30, 1996 where We held that the 20% final withholding tax on a bank's passive income should not form part of its gross receipts tax base, petitioner filed with the BIR on September 26, 1996 an administrative claim for refund of P2,403,680.81 corresponding to the difference between the GRT paid (pertaining to EBC Head Office and its Arranque, Magdalena, Ongpin, Reina Regente and Soler branches) and the adjusted gross receipts tax in the amount of P23,852,321.84, computed as follows:

Gross Receipts Subjected to Tax		P668,240,537.50
Less:		
20% Portion of Tax Paid Income	P 1,077,946.79	
Investment Income subjected to 20% formal tax booked at gross	46,995,669.26	48,073,616.05
Adjusted Gross Receipts Tax Base		P620,166,921.45

Computation of Adjusted Gross Receipts Tax

	Gross Receipts	Tax Due
0%	P124,960,594.04	P 0.00
1%	8,684,990.59	86,849.91
3%	28,030,083.89	840,902.53
5%	458,491,387.93	22,924,569.40
	P620,166,921.45	P 23,852,321.84

Gross Receipts Tax Paid	P26,256,002.65
Adjusted Gross Receipts Tax	23,852,321.84
TAX REFUND	P 2,403,680.81

Petitioner alleges that in arriving at the adjusted gross receipts tax base, it validly deducted from the original gross receipts the amount of P1,077,946.79 representing the 20% tax withheld on income received and booked net of 20% final tax (Exh. C-9-a) and the P46,995,669.26 representing the 20% final tax withheld on tax paid income booked at gross (Exh. C-10). Thus, Petitioner is claiming for the refund of the computed difference in the amount of P2,403,680.81.

As the claim for refund was not acted upon by Respondent, this prompted the Petitioner to elevate the matter before this Court by way of Petition for Review on January 20. 1998.

In his Answer filed on February 20, 1998, (see CTA docket, pp. 24-26) Respondent raised the following Special and Affirmative Defenses:

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

12. 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 institution.

13. The petition does not state a cause of action as there is no allegation that the tax sought to be refunded was actually paid to the Bureau of Internal Revenue in accordance with the provisions of the Tax Code.

14. The claim for refund is pending administrative investigation.

15. Taxes are presumed to have been collected in accordance with law, Hence, petitioner must prove that the taxes sought to be refunded were erroneously or illegally collected.

16. Petitioner must show that it has complied with the provisions of Sections 204(3) and 230 of the 1993 Tax Code.

17. Claims for refund of taxes are 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).

Petitioner, in order to substantiate its cause of action presented the following documentary evidence, to wit:

Exhibits	Description
A	Petitioner's Transmittal Sheet of Percentage Tax
B	Petitioner's Quarterly Percentage Tax Return for the quarter ended December 31, 1995
C	Written claim for refund
D	General Ledger on Income and Expense Statement
E to Q	Subsidiary Ledger Transaction on Income Account
R to X, AA to CC	Subsidiary Ledger Transaction on Expense Account

Respondent, on his part, presented no evidence and submitted the case for decision based on the pleadings (see TSN, dated February 7, 2000).

The lone issue to be resolved in the case at bar is WHETHER OR NOT PETITIONER IS ENTITLED TO A REFUND OF THE AMOUNT OF P2,403,680.81 allegedly representing excess GROSS RECEIPTS TAX PAID FOR THE QUARTER ENDED DECEMBER 31, 1995.

The case in point is not one of first impression. With the advent of the Asian Bank decision *(supra)*, refunds of this nature has often reached this Court. In the instant case, Petitioner draws its strength from the maxim of the aforesaid case where this Court held that the 20% final withholding tax on a bank or financial institution's passive income should not form part of its gross receipts tax base for purposes of computing the gross receipts tax. Furthermore, Petitioner puts forth as one of its arguments the legal principle of *solutio indebiti* that no one shall unjustly enrich himself at the expense of another. It likewise convinces this Court that the evidence it presented (i.e., Transmittal Sheet, ITR, Subsidiary and General ledgers) is sufficient and preponderant to establish its case since the data entered therein were done in the normal course of business such that the disputable presumption that official duty has been regularly performed is tilted in its favor.

In order to be entitled to the refund of overpaid gross receipts tax based on the Asian Bank decision *(supra)*, Petitioner must sufficiently prove the following:

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.

(see Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5661, March 30, 2000)

A review of Petitioner's documentary evidence reveals that Petitioner failed to satisfactorily prove its claim for refund.

Based on the evidence on record, Petitioner failed to present proof of actual withholding of the 20% final taxes of P1,077,946.79 and P46,995,669.26. Nowhere from among the bulk of documents presented would show that the alleged 20% final tax on its interest income was actually withheld and remitted to the BIR. It should have presented copies of Certificates of Final Taxes Withheld issued by the withholding agents or issues of the investment securities showing the amount of interest income payment and the corresponding 20% final withholding tax.

Petitioner likewise failed to substantiate that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax. The amounts of passive income shown in the general ledger of income statement (Exh. D) cannot be verified as to whether these were recorded at gross or net of the 20% withholding taxes. Petitioner failed to adduce as evidence the supporting documents such as detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advices, accounting tickets or certificates of final taxes withheld to show the actual receipt of income and the withholding of the corresponding 20% final tax.

The contention of the Petitioner that the entries in the general and subsidiary ledgers should be given highest probative value pursuant to Section 43 of Rule 130 of the Rules of Evidence holds no water. Contrary to Petitioner's assertion, the general ledger balances are not sufficient proof of Petitioner's claim for refund. In order for the entries made in the regular course of business to be admissible, it is necessary that the entries should have been made contemporaneously or nearly so with the fact or transaction recorded (Francisco, Evidence, Rules of Court in the Philippines, 1994, 2nd edition). Statements of past transactions made after the completion of the act recorded or after the regular recording thereof creates a serious doubt as to the veracity, accuracy and truthfulness of the entries made. Such that resort to other supporting documents is needed to verify its contents. True enough, entries in the general ledger are already the result or summation of Petitioner's detailed transaction on passive investments. A substantial period of time has lapsed between the occurrence of the transaction and the act of recording said transaction. Thus, the raw data entered in the ledger should be corroborated by the production of the best evidence obtainable such as the above-mentioned source documents.

As tax refunds are in the nature of tax exemptions and regarded as in derogation of sovereign authority, it should be construed *strictissimi juris* against the claimant (CIR vs. Procter and Gamble Phil., Mfg. Corp., 204 SCRA 377). This strict construction of tax laws necessitates upon the claimant to create a prima facie case in his favor. Thus, he must justify his claim by showing convincing proofs and introducing strong evidence to satisfactorily sustain his points of contention. Failure on his part to adduce evidence pertinent and substantial to his case is fatal to the claim for refund.

Inasmuch as Petitioner failed to prove the inclusion of the 20% final withholding taxes of P1,077,946.79 and P46,995,669.26 in its 1995 quarterly gross receipts from passive income subjected to 5% GRT, it then follows that it failed to show that the corresponding 5% GRT of P2,403,680.81 was included in its 1995 total quarterly GRT payment of P26,256,002.65.

WHEREFORE, in view of 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

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