LIB:

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE NATIONAL BANK
Petitioner,

- versus -

C.T.A. CASE NO. 5406

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 26 2000

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DECISION

This is a judicial claim for tax refund or credit in the aggregate amount of ₱17,504,775.48 allegedly representing excess payments of gross receipts tax ("GRT" for brevity) for taxable quarters beginning June 30, 1994 up to March 31, 1996.

Petitioner is a private financial institution organized and existing under the laws of the Republic of the Philippines with office address at PNB Financial Center, Roxas Boulevard, Pasay City, Metro Manila.

The facts are simple.

For the eight (8) taxable quarters covering the period June 30, 1994 up to March 31, 1996, Petitioner filed its quarterly percentage tax returns on gross receipts or earnings, inclusive of the 20% final withholding tax on interest income derived from investments, deposits and loans and paid correspondingly the GRT due thereon.

On July 19, 1996, Petitioner filed amended quarterly percentage tax returns for the period involved herein with the 20% final withholding tax duly excluded from its gross receipts on account of the decision of this Court in **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, promulgated on January**

30, 1996, wherein it was ruled that the 20% final withholding tax on interest income should not form part of a bank's taxable gross receipts for GRT purposes. Such amendment thus reflected a reduced amount of taxable gross receipts and GRT liabilities with resulting overpayment of GRT when compared with previous returns, as follows:

Period Covered (Quarter - End)	Tax Due Per Original Return	Tax Due Per Amended Return	Overpayment For Refund
June 30, 1994	107,483,285.27	105,127,122.33	2,356,162.94
September 30, 1994	114,292,729.36	111,817,191.57	2,475,537.79
December 31, 1994	118,443,383.42	116,573,108.77	1,870,274.65
March 31, 1995	127,781,909.47	125,733,423.93	2,048,485.54
June 30, 1995	105,615,948.79	102,932,534.56	2,683,414.23
September 30, 1995	136,977,975.85	134,253,099.12	2,724,876.73
December 31, 1995	137,565,078.91	135,893,668.65	1,671,410.26
March 31, 1996	133,260,982.62	131,586,369.28	1,674,613.34
T O T A L	₱981,421,293.69	₱963,916,518.21	₱17,504,775.48

Simultaneous with the submission of such amended quarterly percentage returns, Petitioner filed with the Respondent at 2:34 p.m. of the same day, the corresponding written claim for tax refund or credit of the above mentioned overpaid GRT in the aggregate amount of ₱17,504,775.48.

Later at 4:35 p.m. of even date, it likewise filed the instant petition for review before this Court allegedly on the ground that the recovery of the portions of its claim for refund for the period covering quarters ending June 30, 1994 and September 30, 1994 were about to be barred judicially when reckoned with the two-year prescriptive period for claiming such refund from date of payment of the tax, as provided under Section 230 of the old Tax Code, as amended.

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

> 7. Petitioner's allegation that it erroneously and excessively paid its gross receipts taxes during the quarters under review does not ipso facto warrant refund/credit. Petitioner must prove that the exclusions claimed by it from its gross receipts are allowable exclusions under the Tax Code and its pertinent implementing rules and regulations. Moreover, the same must be supported by evidence.

Records show that both parties filed their respective memorandum. Petitioner merely reiterated its assertions while Respondent asseverated a new line of reasoning. He 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 such as 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 & Phrases, 1956 Ed., p. 482.*

Respondent further contends as bereft of factual and legal basis the reliance of the *Asian Bank Corporation* case, *supra*, upon 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. He 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, Respondent 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 withholding agent on the interest income received 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 at bar for tax refund or credit of overpaid gross receipts taxes.

After a painstaking scrutiny of the attending facts, the disquisition of the parties and the laws and jurisprudence in point, this Court rules in favor of the Petitioner, albeit on a reduced amount.

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[1], 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 wisdom of said case which is hereunder quoted, 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:

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1 As well as in the later cases of **Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 20, 1996; China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5433, October 7, 1998; AB Leasing and Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5432, April 7, 1999; AB Capital Investment Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5436, April 7, 1999; BPI Family Savings Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5456, April 7, 1999; Standard Chartered Bank - Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 5435, July 12, 1999; Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5460, August 6, 1999** etc.

(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) 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.

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.

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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.

With the legal milieu of this case having been settled already, We now go into the examination of the exhibits adduced in evidence by the petitioner.

Pursuant to CTA Circular No. 1-95, as amended, Petitioner availed of the independent audit services of Sycip, Gorres, Velayo & Co. (SGV), an accounting firm, through the person of Mr. Ruben R. Rubio, who was thereupon commissioned by this Court to submit a special audit report on Petitioner's evidence on its passive interest income for the quarters involved, namely: Floating Rate Treasury Notes (FRTN), Passive Securities & Commercial Papers (PSCP), Landbank/MWSS Bonds, Long Term Commercial Papers (LTCP), Finman Capital, Treasury Bonds, Central Bank Bills & Treasury Bills.

Per audit, SGV reduced the amount of claim for tax refund or credit from the original amount of ₱17,504,775.48 to only ₱14,177,273.74. The difference was attributed to lack of supporting documents and discrepancy with regard to the amount of interest income.

Based on its own examination, this Court readily concurs with the report of SGV, except for some adverse findings which necessitate disallowance.

For the quarters ended June 30, 1994, September 30, 1994, December 31, 1994 and March 31, 1996, Petitioner failed to present the Certificates of Final Tax Withheld in order to prove the fact that the 20% final tax on its passive income from Landbank Bonds, PSCP, and Central Bank Bills and Treasury Bills were included in its quarterly percentage tax returns. It likewise failed to submit any kind of evidence at all for its passive income from LTCP for the quarter ended March 31, 1996. Due to these insufficiency or lack of evidence, the portions of Petitioner's claim for refund or tax credit corresponding to said commercial papers and taxable quarters were disallowed correspondingly.

Overall, the total disallowance as found by this Court amounts to ₱391,860.36[2], as follows:

PERIOD COVERED (Quarter Ended)	PER SGV VERIFICATION	PER COURT'S VERIFICATION	DIFFERENCES/ EXCEPTION
June 30, 1994	₱ 1,656,358.01	₱ 1,525,606.94	₱130,751.07
September 30, 1994	1,690,454.47	1,679,702.34	10,752.13
December 31, 1994	1,533,480.21	1,460,839.74	72,640.47
March 31, 1995	1,770,291.04	1,770,291.04	-
June 30, 1995	2,252,406.94	2,252,406.94	-
September 30, 1995	2,358,688.55	2,358,688.55	-
December 31, 1995	1,410,149.87	1,410,149.87	-
March 31, 1996	1,505,444.65	1,327,727.96	177,716.69
	₱14,177,273.74	₱13,785,413.38	₱391,860.36

Hence, Petitioner is only entitled to the amount of ₱13,785,413.38, after deducting therefrom the said amount of disallowance from ₱14,177,273.74, the amount arrived at by SGV.

[2] Please see annex A for details.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Respondent is hereby **ORDERED** to **ISSUE a TAX CREDIT CERTIFICATE** in the amount of **₱13,785,413.38** to the Petitioner immediately.

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

PHILIPPINE NATIONAL BANK VS. CIR
CTA CASE NO. 5406 **ANNEX A**
SCHEDULE OF FINAL AND GROSS RECEIPTS TAXES
FOR THE PERIOD APRIL 01, 1994 TO MARCH 31, 1996

A. SECOND QUARTER ENDED JUNE 30, 1994

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
FINMAN	891,193.27	44,559.66	891,193.27	44,559.66	-	-
LANDBANK	354,723.23	17,736.16	354,723.23	17,736.16	-	-
PSCP/LTCP	2,313,319.32	115,665.97	-		2,313,319.32	115,665.97
TREASURY BONDS	17,576.71	878.84	17,576.71	878.84	-	-
FRTN	2,720,396.32	136,019.82	2,720,396.32	136,019.82	-	-
CB BILLS	278,127.61	13,906.38	254,553.21	12,727.66	23,574.40	1,178.72
T BILLS	26,551,823.78	1,327,591.18	26,426,480.23	1,321,324.00	125,343.55	6,267.18
TOTALS	33,127,160.24	1,656,358.01	30,664,922.97	1,533,246.14	2,462,237.27	123,111.87

B. THIRD QUARTER ENDED SEPTEMBER 30, 1994

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
FINMAN	880,816.83	44,040.84	880,816.83	44,040.84	-	-
LANDBANK	324,726.27	16,236.31	324,726.27	16,236.31	-	-
TREASURY BONDS	18,059.59	902.98	18,059.59	902.98	-	-
FRTN	1,068,962.95	53,448.15	1,068,962.95	53,448.15	-	-
CB BILLS	215,042.52	10,752.13	-	-	215,042.52	10,752.13
T BILLS	31,301,481.21	1,565,074.06	31,301,481.21	1,565,074.06	-	-
TOTALS	33,809,089.37	1,690,454.47	33,594,046.85	1,679,702.34	215,042.52	10,752.13

C. FOURTH QUARTER ENDED DECEMBER 31, 1994

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
FINMAN	685,125.88	34,256.29	685,125.88	34,256.29	-	-
LANDBANK	295,896.52	14,794.83	295,896.52	14,794.83	-	-
TREASURY BONDS	17,769.86	888.49	17,769.86	888.49	-	-
PSCP	726,072.50	36,303.63	-	-	726,072.50	36,303.63
LTCP	846,178.27	42,308.91	846,178.27	42,308.91	-	-
FRTN	712,249.13	35,612.46	712,249.13	35,612.46	-	-
CB BILLS	726,736.83	36,336.84	-	-	726,736.83	36,336.84
T BILLS	26,659,575.16	1,332,978.76	26,659,575.16	1,332,978.76	-	-
			-	-		
TOTALS	30,669,604.15	1,533,480.21	29,216,794.82	1,460,839.74	1,452,809.33	72,640.47

D. FIRST QUARTER ENDED MARCH 31, 1995

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
FINMAN	791,872.76	39,593.64	791,872.76	39,593.64	-	-
LANDBANK	339,320.07	16,966.00	339,320.07	16,966.00	-	-
TREASURY BONDS	17,093.84	854.69	17,093.84	854.69	-	-
PSCP	2,392,484.43	119,624.22	2,392,484.43	119,624.22	-	-
LTCP	1,491,418.28	74,570.91	1,491,418.28	74,570.91	-	-
FRTN	2,661,405.13	133,070.26	2,661,405.13	133,070.26	-	-
CB BILLS	175,125.91	8,756.30	175,125.91	8,756.30	-	-
T BILLS	27,537,100.37	1,376,855.02	27,537,100.37	1,376,855.02	-	-
TOTALS	35,405,820.79	1,770,291.04	35,405,820.79	1,770,291.04	-	-

E. SECOND QUARTER ENDED JUNE 30, 1995

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
LANDBANK	385,407.19	19,270.36	385,407.19	19,270.36	-	-
TREASURY BONDS	17,576.71	878.84	17,576.71	878.84	-	-
PSCP	3,816,607.01	190,830.35	3,816,607.01	190,830.35	-	-
LTCP	1,824,162.46	91,208.12	1,824,162.46	91,208.12	-	-
FRTN	5,103,000.43	255,150.02	5,103,000.43	255,150.02	-	-
CB/T BILLS	33,901,385.05	1,695,069.25	33,901,385.05	1,695,069.25	-	-
TOTALS	45,048,138.85	2,252,406.94	45,048,138.85	2,252,406.94	-	-

F. THIRD QUARTER ENDED SEPTEMBER 30, 1995

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
LANDBANK	466,141.22	23,307.06	466,141.22	23,307.06	-	-
TREASURY BONDS	18,059.59	902.98	18,059.59	902.98	-	-
PSCP	2,303,415.05	115,170.75	2,303,415.05	115,170.75	-	-
LTCP	1,060,588.62	53,029.43	1,060,588.62	53,029.43	-	-
FRTN	13,280,937.49	664,046.87	13,280,937.49	664,046.87	-	-
CB BILLS	169,242.60	8,462.13	169,242.60	8,462.13	-	-
T BILLS	29,875,386.49	1,493,769.33	29,875,386.49	1,493,769.33	-	-
TOTALS	47,173,771.06	2,358,688.55	47,173,771.06	2,358,688.55	-	-

G. FOURTH QUARTER ENDED DECEMBER 31, 1995

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
LANDBANK	684,048.24	34,202.41	684,048.24	34,202.41	-	-
TREASURY BONDS	17,769.85	888.49	17,769.85	888.49	-	-
PSCP	2,862,509.83	143,125.49	2,862,509.83	143,125.49	-	-
LTCP	1,061,878.14	53,093.91	1,061,878.14	53,093.91	-	-
FRTN	6,886,611.63	344,330.58	6,886,611.63	344,330.58	-	-
CB BILLS	136,622.01	6,831.10	136,622.01	6,831.10	-	-
T BILLS	16,553,557.73	827,677.89	16,553,557.73	827,677.89	-	-
TOTALS	28,202,997.43	1,410,149.87	28,202,997.43	1,410,149.87	-	-

H. FIRST QUARTER ENDED MARCH 31, 1996

SECURITIES	PER SGV VERIFICATION		PER COURT'S VERIFICATION		DIFFERENCE/ EXCEPTION	
	20% Final Tax	5% GRT	20% Final Tax	5% GRT	20% Final Tax	5% GRT
LANDBANK	794,217.66	39,710.88	-	-	794,217.66	39,710.88
TREASURY BONDS	17,286.99	864.35	17,286.99	864.35	-	-
PSCP	3,959,912.44	197,995.62	1,748,536.24	87,426.81	2,211,376.20	110,568.81
LTCP	446,794.33	22,339.72	-	-	446,794.33	22,339.72
FRTN	8,142,900.19	407,145.01	8,142,900.19	407,145.01	-	-
CB BILLS	168,552.94	8,427.65	66,607.35	3,330.37	101,945.59	5,097.28
T BILLS	16,579,228.39	828,961.42	16,579,228.39	828,961.42	-	-
TOTALS	30,108,892.94	1,505,444.65	18,411,658.97	1,327,727.96	3,554,333.78	177,716.69