L1B.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5661

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 30 2000

x - x

DECISION

The instant petition seeks for the refund or issuance of a tax credit certificate in the amount of P1,066,044.57 allegedly representing overpaid gross receipts tax for the quarter ended June 30, 1996.

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

On July 22, 1996, Petitioner filed with the Bureau of Internal Revenue (BIR) its various 1996 quarterly percentage tax returns, covering those of its Head Office and branches, and paid a total amount of P44,745,960.19 as gross receipts tax (GRT) (Exhs. A, A-1). Of the said amount, P23,844,310.06 pertained to the GRT paid by Petitioner's Head Office on taxable gross receipts of P524,442,111.65, as shown by its Quarterly Percentage Tax Return for the same period (Exhs. B to B-3).

On September 26, 1996, on the strength of 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 held that the twenty percent (20%) final withholding tax on bank's passive income should not form part of the bank's taxable gross receipts for the purpose of computing Gross Receipts Tax, Petitioner filed a claim for refund with the Bureau of Internal Revenue in the amount of P2,369,379.37 computed as follows:

Gross Receipts Subjected to Tax	P 498,375,415.75
Less: 20% Portion of Tax Paid Income	1,128,948.75
Investment Income subject to 20% final tax booked at gross	20,191,942.63
Adjusted Gross Receipts Tax base	P 477,054,524.37

Computation of Adjusted Gross Receipts Tax:

	Gross Receipts	Tax Due
0%	P 26,066,695.90	P 0.00
1%	9,075,070.48	90,750.70
3%	35,572,895.57	1,067,186.87
5%	406,339,862.42	20,316,993.12
	P477,054,524.37	P21,474,930.69

Gross Receipts Tax Paid	P 23,844,310.06
Adjusted Gross Receipts Tax	21,474,930.69
Tax Refund	P 2,369,379.37

Petitioner's claim was likewise premised on the principle that no one shall unjustly enrich himself at the expense of another and on Section 230 of the National Internal Revenue Code which allows for recovery of any national internal revenue tax erroneously and illegally collected by the BIR.

As there was no action on the part of herein Respondent, the instant Petition was filed on July 22, 1998 to toll the running of the two-year prescriptive period.

In his Answer filed on August 26, 1998, Respondent raised the following Special and Affirmative Defenses:

x x x x x x x x x

> 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.
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> 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.
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> 14. The claim for refund is pending administrative investigation.
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> 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 Section 204(3) and Section 229 of the 1997 Tax Code (R.A. 5424).
>
> 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).

Through a letter dated October 5, 1998, Petitioner followed-up its letter request of September 26, 1996 and decreased the amount of refund for the quarter ended June 30, 1996 to only P1,066,044.57 after finding an error in the computation of its claim. On

October 30, 1998, Petitioner likewise filed an Amended Petition for Review before this Court in order to amend its claim to the lesser amount of P1,066,044.57, recomputed as follows:

Gross Receipts Subjected to Tax	P 524,442,111.65
Less: 20% Portion of Tax Paid Income	1,128,948.75
Investment Income subject to 20% final tax booked at gross	20,191,942.63
Adjusted Gross Receipts Tax base	P 503,121,220.27

Computation of Adjusted Gross Receipts Tax:

	Gross Receipts	Tax Due
0%	P 26,066,695.90	P 0.00
1%	9,075,070.48	90,750.70
3%	35,572,895.57	1,067,186.87
5%	432,406,558.32	21,620,327.92
	P503,121,220.27	P22,778,265.49

Gross Receipts Tax Paid	P 23,844,310.06
Adjusted Gross Receipts Tax	22,778,265.49
Tax Refund	P 1,066,044.57

Since there was no substantial change in the Amended Petition as only the amount was modified, Respondent opted not to file an Amended Answer and merely adopted his Original Answer (p. 57, CTA Records).

In their Joint Stipulation of Facts, the parties admitted that Revenue Regulations No. 13-80, dated November 7, 1980, as cited by Petitioner in its Petition for Review should actually read as Revenue Regulations No. 12-80, dated November 7, 1980.

Revenue Regulations No. 13-80 governs the taxation of minerals and mineral products and therefore, irrelevant to this case since Petitioner is a banking institution.

On the other hand, Respondent's argument that the decision in the Asianbank case is pending appeal with the Court of Appeals and that invocation thereof at this point in time is premature, is untenable. This Court has already given its position on the matter. Inevitably, the taxpayers affected cannot be expected to wait for the decision of the Court of Appeals as their claims for refund may in the meantime be barred by prescription.

In the Joint Stipulation of Facts admitted by this Court in its Resolution dated March 1, 1999, the parties agreed to limit the issues to be resolved on the following:

1. Whether or not EBC Head Office actually included in the computation of its GRT Base for the Quarter ended June 30, 1996 the amounts of (a) P1,128,948.75 (representing 20% tax withheld on income received and booked net of 20% final tax during the Quarter ended June 30, 1996), and (b) P20,191,942.63 [representing 20% final tax withheld on tax paid income booked at gross (100%) subjected to gross receipts tax for the Quarter ended June 30, 1996];

2. Whether or not the said amounts represented the twenty percent (20%) final tax on certain passive income of EBC for the said quarter;

3. Whether or not the said amounts were received by EBC as part of its gross receipts for the said quarter;

4. Whether or not the respective withholding agents of EBC have paid the said amounts to the BIR; and

5. Whether or not EBC is entitled to its claim for refund covering the said quarter and for how much ((pars. D[1] to D[5], pp. 3-4, EBC's Pre-Trial Brief which were all admitted by Respondent's counsel).

Petitioner, to support its case, presented the following:

Exhibits	**Description**
A	EBC's Transmittal Sheet of Percentage Tax of Head Office and Branches/Units of Large Taxpayers for the Quarter Ended June 30, 1996
B	EBC Head Office Quarterly Percentage Tax Return for the quarter ended June 30, 1996
C	Written claim for refund dated September 26, 1996 by EBC, thru its then Senior Manager Maritess B. Antonio, with supporting documents, requesting the Commissioner of Internal Revenue for refund of, or issuance of credit certificate for, among other figures, the amount of P2,369,379.37 for the excess GRT for the quarter ended June 30, 1996 and paid on July 22, 1996.
D	Written follow up dated October 5, 1998 of request for refund by EBC, thru its Assistant Vice President Maritess B. Antonio, lowering the refund claim for the Quarter ended June 1996 from P2,369,379.37 to P1,066,044.57.
E, E-1	EBC Head Office Income and Expense Statement for the period ended June 1996, consisting of seven (7) pages.

Respondent, on his part, presented no evidence and submitted the case for decision based on the pleadings (p. 145, CTA records).

In order to be entitled to the refund of overpaid gross receipts tax based on the Asian Bank decision, Petitioner must prove:

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.

After an examination of the evidence adduced by Petitioner, this Court finds that the above requirements were not met.

Petitioner's 1996 Second Quarterly Percentage Tax Return and Transmittal Sheet of Percentage Tax of Head Office and Branches/Units of Large Taxpayers showed that Petitioner's head office paid a gross receipts tax of P23,844,310.06 on taxable gross receipts of P524,442,111.65 (Exhs. A-2, B-2 & B-3). Petitioner allegedly included in its taxable gross receipts of P524,442,111.65 the amounts of P1,128,948.75 representing 20% final tax withheld on income received and booked net of 20% final tax and P20,191,942.63 representing 20% final tax withheld on tax paid income booked at gross for which a 5% gross receipts tax of P1,066,044.57 was allegedly paid.

However, Petitioner failed to present proof of actual withholding of the 20% final taxes of P1,128,948.75 and P20,191,942.63, respectively. The certificates of final taxes withheld issued by the withholding agents or issuers of the investment securities showing the amount of interest income payment and the corresponding 20% final withholding tax were not presented.

Petitioner likewise failed to substantiate that the 20% final withholding taxes formed part of its gross receipts subjected to the gross receipts tax.

While Petitioner's 1996 second quarter taxable gross receipts (passive and non-passive) and the corresponding gross receipts tax appearing in its 1996 second quarterly percentage tax return (Exh. B) tally with those appearing in its computation sheet and general ledger (Exhs. B-3, C-3 & E) the amounts of passive income shown in the computation sheet and general ledger, however, cannot be verified as to whether these were recorded at gross or net of the 20% withholding taxes. Petitioner failed to submit supporting documents, such as detailed transaction records, confirmation of purchase, confirmation of sale, trading sheets, credit/debit advices, accounting tickets, certificates of final taxes withheld, etc., to show the actual receipt of income and the withholding of the corresponding 20% final tax.

Contrary to Petitioner's assertion, the general ledger balances are not sufficient proof of Petitioner's claim for refund. Entries in the general ledger cannot substitute for the aforecited source documents since said entries are based on information found in the said documents. Without supporting documents, entries in the ledger merit very little weight and therefore are not the best evidence.

Finally, inasmuch as Petitioner failed to prove the inclusion of the 20% final withholding taxes of P1,128,948.75 and P20,191,942.63 in its 1996 second quarter gross receipts from passive income subjected to 5% GRT, it follows then that it failed to show that the corresponding 5% GRT of P1,066,044.57 was included in its 1996 second quarter total GRT payment of P23,844,310.06.

WHEREFORE, in view of all the foregoing, the instant Petition for Review is hereby **DISMISSED** 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