REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

AB CAPITAL INVESTMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5436

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 07 1999

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DECISION

This is a Petition for Review filed by the Petitioner, AB CAPITAL AND INVESTMENT CORPORATION, against Respondent COMMISSIONER OF INTERNAL REVENUE, for the latter's inaction on Petitioner's claim for refund/tax credit in the amount of P663,281.69, allegedly representing its overpaid gross receipts taxes for the third and fourth quarters of 1994, the four quarters of 1995 and the first and second quarters of 1996.

As represented, Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 3/F Asian Bank Center, Sen. Gil J. Puyat Avenue, Makati City.

For the third and fourth quarters of 1994, the four quarters of 1995 and the first and second quarters of 1996, Petitioner filed with 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 includes the passive income which was subjected to twenty percent (20%) final taxes, already withheld and paid to Respondent by the various clients of Petitioner.

Period Covered	GRT	Date Paid	Exh.
3rd Qtr. (July to Sept., 1994)	P5,734,510.11	10-20-94	A
4th Qtr. (Oct. to Dec., 1994)	2,811,464.08	01-20-95	B
1st Qtr. (Jan. to Mar., 1995)	663,461.62	04-20-95	C
2nd Qtr. (Apr. to June, 1995)	1,735,951.79	07-20-95	D
3rd Qtr. (July to Sept., 1995)	4,321,174.75	10-20-95	E
4th Qtr. (Oct. to Dec., 1995)	12,493,166.26	01-19-96	F
1st Qtr. (Jan. to Mar., 1996)	3,695,854.35	04-19-96	G
2nd Qtr. (Apr. to June, 1996)	4,355,767.83	07-19-96	H

After taking into consideration the Decision of this Court in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, January 30, 1996,** which ruled that the 20% final withholding tax on interest income should not form part of the taxable gross receipts, Petitioner filed with the Respondent on October 17, 1996 an application for a tax refund/tax credit of its alleged overpaid GRT for the last two quarters of 1994, the four quarters of 1995 and the first two quarters of 1996, in the total amount of P663,281.69 (Exh. Q).

A day after, or on October 18, 1996, Petitioner filed with this Court the instant petition for review.

Petitioner presents the proposition as reason of the Petition for Review that the gross receipts tax paid by

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it for aforesaid period were based on the total gross receipts, inclusive of the passive income which were subjected to the 20% final withholding tax at source, thus, it pointed out 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 tax refund/tax credit is therefore, in order.

On the other hand, Respondent in his special and affirmative defenses, alleges that (1) the Petitioner's claim has partially, if not totally prescribed; (2) the administrative claim for refund was not filed within a reasonable time before the lapse of the two-year period in order to give the Respondent a chance to act on it; (3) interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangement earned by a domestic corporation is subject to a 20% tax in accordance with Section 24(e)(1) of the National Internal Revenue Code, which is the law applicable on this matter; (4) the ruling in the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, is not applicable in the instant case; (5) in claiming for refunds, it is incumbent upon Petitioner to prove that it

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is indeed entitled thereto. x x x; (6) claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes; and (7) it is incumbent upon Petitioner to show compliance with the provision of Section 230 of the Tax Code.

There is no legal impediment in filing the administrative claim for refund with the BIR simultaneously with the Petition for Review with this Court as long as these two acts fall within the two-year prescriptive period prescribed by Section 230 of the Tax Code (see **Gibbs vs. Collector, L-153543, February 29, 1960**), thus, the argument by Respondent that the claim for refund was not filed within a reasonable time for the Court to act on it is devoid of merit.

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 in the total gross receipts of Petitioner for GRT purposes, hence, Petitioner is entitled to the amount sought to be refunded.

We rule in the affirmative. 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 is in all fours with the case at bar. Hence, we find no cogent reason or justification to depart from the Decision We have rendered, a precedent having already been established. Our Decision states in part, thus:

> "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) On dividends 0%
> >
> > (c) On royalties, rentals of property, real or personal, profits from exchange and all other items

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

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

In the second place, the highest tribunal of the land interpreted the term "gross receipts: to mean all receipts of a taxpayer

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> excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer.

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

After a careful scrutiny of the Petitioner's evidence, the Court finds that the evidence adduced by the Petitioner did not clearly establish with accuracy the amount being claimed as refund.

The petition for tax refund was filed within the two-year period as provided under Section 230 of the Tax Code. Petitioner filed its claim for refund with the Bureau of Internal Revenue on October 17, 1996 and with this Court on October 18, 1996, which are both within two years from Petitioner's payment of gross receipts tax for the third quarter of 1994 (July 1 to September 30, 1994) on October 20, 1994 (Exh. A).

Petitioner engaged the services of SGV & Co., an auditing firm, to verify the accuracy of its passive interest income and quarterly GRT payments for the period July 1, 1994 to June 30, 1996. However, it was stated in the report submitted by R. J. Galve, a Partner at SGV & Co., dated June 13, 1997 (Exh. OO) and July 14, 1997 (Exh. NNNNNN) that the extent of the tests and audit procedures undertaken by the said firm were solely determined by the Petitioner. Such limitation would obviously affect the ability of the said auditing firm to render an informed and independent opinion. Thus, SGV & Co. rendered a disclaimer regarding Petitioner's passive interest income and quarterly GRT payments for the period July 1, 1994 to June 30, 1996. And, therefore, the SGV reports cannot be relied upon as solid basis for granting the claim for refund.

A re-examination of the documents presented shows that the amounts reported by Petitioner as gross passive interest income from bank deposits (inclusive of the 20% final tax) for which the gross receipts taxes were paid for the period July 1, 1994 to June 30, 1996 (Exhs. I, J-1, K-1, L-1, M-1, N-1, O-1, P-1) included interest income from dollar deposits which were not subjected to 20% final tax as evidenced by the account entries per general ledger (PP to PP-133, EXhs. QQQ to QQQ-104, QQQQ to QQQQ-104, QQQQQ to QQQQQ-10), Petitioner's peso/dollar passbooks (Exhs. NNN to NNN-39, NNNN to NNNN-29, NNNNN to NNNNN-32) and schedules of interest in bank (L-1 to LL-2). The amount of interest income from bank deposits which were actually subjected to 20% final taxes for the period July 1, 1994 to June 30, 1996 was only P80,050.91 as shown by Petitioner's savings passbook (Exh. NNN), general ledger entries (Exhs. PP to PP-133) and schedules of interest in bank (Exhs. LL-1 to LL-2), thus, the

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corresponding refundable gross receipts tax on the 20% final tax is only ₱1,000.63, summarized hereunder:

		Exhibits	Net Interest	Final Tax (20%)	Refundable 5% GRT on 20% Final Tax
1994	July	NNN1, QQQQQ11	₱ 2,191.32	₱ 547.83	₱ 27.39
	August	NNN1, QQQQQ28	2,286.40	571.60	28.58
	Sept.	NNN1, QQQQQ46	1,404.44	351.11	17.56
	TOTAL		**5,882.16**	**1,470.54**	**73.53**
	Oct.	NNN1, QQQQQ62	₱ 698.64	₱ 174.66	₱ 8.73
	Nov.	NNN1, NNN5	1,872.08	468.02	23.40
	Dec.	NNN1, QQQQQ96	25.48	6.37	0.32
	TOTAL		**2,596.20**	**649.05**	**32.45**
1995	Jan.	NNN1, NNNN1, QQQ10	₱ 4,723.72	₱ 1,180.93	₱ 59.05
	Feb.	NNN1, NNNN2, QQQ26	1,362.94	340.73	17.04
	March	NNN1, NNNN2, QQQ44	2,870.31	717.57	35.88
	TOTAL		**8,956.97**	**2,239.23**	**111.97**
	April	NNN1, NNNN4, QQQ63	₱ 3,050.76	₱ 762.68	₱ 38.13
	May	NNN1, NNNN5, QQQ80	2,186.37	546.59	27.33
	June	NNN1, NNNN6, QQQ100	3,627.64	906.90	45.35
	TOTAL		**8,864.77**	**2,216.17**	**110.81**
	July	NNN1, QQQQ8	₱ 25.88	₱ 6.46	₱ 0.32
	August	NNN1, NNNNN1, NNNNN2, QQQQ28	7,979.89	1,994.96	99.75
	Sept.	NNN2, NNNNN3, QQQQ45	3,465.24	866.30	43.32
	TOTAL		**11,471.01**	**2,867.72**	**143.39**
	Oct.	NNN2, NNN3, NNNNN4, QQQQ67	₱ 7,730.88	₱ 1,932.72	₱ 96.64
	Nov.	NNN2, NNN3, NNNNN5, QQQQ78	2,257.87	564.46	28.22
	Dec.	NNN6, NNN3, QQQQ93	3,595.44	898.82	44.94
	TOTAL		**13,584.19**	**3,396.00**	**169.80**
1996	Jan.	NNN4, NNN7, NNN2, PP127	₱ 6,040.31	₱ 1,510.06	₱ 75.50
	Feb.	NNN4, NNN8, NNN2, PP109	2,735.07	683.75	34.19
	March	NNN4, NNN8, NNN2, PP87	4,765.17	1,191.30	59.57
	TOTAL		**13,540.55**	**3,385.11**	**169.26**
	April	NNN4, NNN9, NNN2, PP64	₱ 6,613.24	₱ 1,653.30	₱ 82.67

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May	**NNN10, NNN4, NNN2, PP40**	**3,409.91**	**852.48**	**42.62**
June	**NNN11, NNN4 NNN2, PP12**	**5,131.91**	**1,282.99**	**64.15**
TOTAL		**15,155.06**	**3,788.77**	**189.44**
GRAND TOTAL		**P80,050.91**	**P20,012.62**	**P1,000.63**

General ledger balances of interest income from government securities, commercial papers/private securities and bonds (Exhs. PP to PP-133, QQQ to QQQ-104, QQQQ to QQQQ-104, QQQQQ to QQQQQ-10) tallied with the amounts reported per Petitioner's schedules of GRT paid on gross passive interest income (inclusive of the 20% final tax) for the period July 1, 1994 to June 30, 1996 (Exhs. I, J-1, K-1, L-1, M-1, N-1, O-1, P-1). However, account entries in the general ledger cannot be verified, whether or not said amounts included the 20% final tax. Documents supporting the general ledger entries, such as journal vouchers, purchase abstracts, confirmation of purchase, certificates of final taxes withheld submitted by Petitioner, were incomplete to enable Us to confirm that the recorded amounts per general ledger were actually subjected to 20% final tax.

Moreover, the corresponding GRT rates applied by Petitioner to said interest income from government securities, commercial papers/private securities and bonds, cannot be ascertained from the schedules of GRT paid on gross passive interest income for the period July 1, 1994 to June 30, 1996 submitted by Petitioner (Exhs. I, J-1, K-1, L-1, M-1, N-1, O-1, P-1), because it was not specifically identified by Petitioner for which items of passive interest income the GRT rates of 5%, 3% and 1% were to be applied.

IN THE LIGHT OF ALL THE FOREGOING, the instant petition is partially **GRANTED.** Respondent is hereby **ORDERED** to **REFUND** or **ISSUE** a TAX CREDIT CERTIFICATE to herein Petitioner in the amount of ₱1,000.63, representing Petitioner's proven overpaid gross receipts taxes for the last two quarters of 1994, the four quarters of 1995 and the first two quarters of 1996. No costs.

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

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DISSENTING OPINION

Where the center of controversy involves the basis of the 5% gross receipts tax, I have been firm in my belief that the ruling of the majority based on the case of Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, is erroneous.

Contrary to the majority opinion, the gross receipts for purposes of computing the 5% gross receipts tax should not exclude the 20% final income tax withheld on certain kinds of passive income.

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.

With due respect to the opinion held by my esteemed colleagues, I vote to **DENY** the petition.

AMANCIO Q. SAGA
Associate Judge

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