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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EQUITABLE BANKING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 5559**

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 2 1 2000

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DECISION

This case involves a claim for refund in the amount of P2,092,248.52, allegedly representing overpaid gross receipts tax for the quarter ended September 30, 1995.

Petitioner, Equitable Banking Corporation, is a domestic banking institution duly organized and existing under the laws of the Philippines with principal office located at 262 Juan Luna St., Binondo, Manila.

On October 20, 1995, Petitioner seasonably filed its Quarterly Percentage Tax Return for the quarter ended September 30, 1995 (Exhibit "B") reflecting gross receipts in the total amount of P449,303,178.96 with corresponding gross receipts tax payment in the sum of P20,844,915.53, broken down as follows:

Gross receipts	P 449,303,178.96	Tax Due
Tax due at 0%	P 17,861,095.47	P 0.00
Tax Due at 1%	6,595,939.52	65,959.39
Tax Due at 3%	23,167,552.26	695,026.56
Tax Due at 5%	401,678,591.71	20,083,929.58
	P 449,303,178.96	**P20,844,915.53**

Petitioner alleged that in arriving at the gross receipts tax in the amount of P20,844,915.53, it included the sums of P11,614,518.71 and P30,230,451.73, representing 20% portion of tax paid income and investment income subject to 20% final tax booked at gross, respectively, as part of the total gross receipts.

On January 30, 1996, this Court rendered a Decision in C.T.A. Case No. 4720 entitled **Asian Bank Corporation vs. Commissioner of Internal Revenue** wherein it was held that the 20% final withholding tax on bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

On September 26, 1996, on the strength of the aforementioned Decision, Petitioner filed with the Bureau of Internal Revenue a letter-request for the refund or issuance of tax credit certificate in the aggregate amount of P2,092,248.52, representing allegedly overpaid gross receipts tax for the quarter ended September 30, 1995, computed as follows:

Gross Receipts Subjected to Tax	P449,303,178.96
Less: 20% Portion of Tax Paid Income	11,614,518.71
Investment Income Subject to 20% Final Tax Booked at Gross	30,230,451.73
Adjusted Gross Receipts Tax Base	**P407,458,208.52**

Computation of Adjusted Gross Receipts Tax:

	Gross Receipts	Tax Due
0%	P 17,861,095.47	P 0.00
1%	6,595,939.52	65,959.39
3%	23,167,552.26	695,026.56
5%	359,833,621.27	17,991,681.06
	P407,458,208.52	**P18,752,667.01**

Gross Receipts Tax Paid	P20,844,915.53
Adjusted Gross Receipts Tax	18,752,667.01
Tax Refund	**P 2,092,248.52**

On October 20, 1997, Petitioner filed the instant Petition for Review in order to toll the running of the two-year prescriptive period to judicially claim for the refund of overpaid internal revenue tax pursuant to Section 230 of the Tax Code, as amended.

By way of special and affirmative defenses, Respondent avers that, Petitioner's invocation of the decision of Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720) is flawed since the said case is still pending appeal with the Court of Appeals; Revenue Regulations No. 13-80, dated November 7, 1980, which governs minerals and mineral products is misplaced on the ground that Petitioner is a banking institution; the Petitioner does not state a cause of action insofar 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; the claim for refund is pending administrative investigation; taxes are presumed to have been collected in accordance with law; the burden or proof rests upon the Petitioner to prove that the taxes sought to be refunded were erroneously or illegally collected; Petitioner must show that it has complied with the provision of Section 204(3) and 230 of the Tax Code; and claims for refund of taxes are construed strictly against claimants, the same being in the nature of an exemption from taxation (See Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351).

In order to support its claim for refund, Petitioner presented the following evidence:

1. Transmittal Sheet of Percentage Tax of the Head Office and Branches/Units of Large Taxpayers for the Quarter Ended September 30, 1995, consisting of three pages (Exhs. A, A-1 to A-8);

2. Quarterly Percentage Return for the quarter ended September 30, 1995 (Exhs. B, B-1 to B-6);

3. Written claim for refund with the Bureau of Internal Revenue, dated September 26, 1996(Exhs. C, C-1 to C-10);

4. Subsidiary Ledger Transactions- Income & Expense Account for the quarter ended September 30, 1995 (Exhs. D to Z, and AA to EE) ; and

5. Statement of Income and Expense Accounts of EBC for Head Office for the quarter ended September 30, 1995 (Exh. FF and FF-1).

Respondent, on the other hand, elected not to submit controverting evidence and thereafter filed his Memorandum on September 23, 1998. Meanwhile, Petitioner filed on October 7, 1998, an "Omnibus Motion" praying that the filing of its memorandum be held in abeyance; that the above captioned case be reopened; and that it be allowed to present additional and further evidence to substantiate its claim for refund. In its Motion, Petitioner cited CTA Case Nos. 5146 and 5411, both entitled Equitable Banking Corporation vs. The Commissioner of Internal Revenue, and decided on August 8, 1998 and June 15, 1998, respectively. Both cases were decided against the Petitioner mainly due to insufficiency of evidence. On the other hand, Respondent filed its Opposition thereto on October 26, 1998. Thus, on January 8, 1999, the Court issued a Resolution denying Petitioner's motion in this wise:

> Indeed, the incidental questions presented in the cases at bar are similar, if not identical, to that raised in the case of Equitable Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No.5521, promulgated on October 29, 1998, wherein petitioner's motion seeking a reopening of trial after the presentation of evidence by both parties had been

closed and the case had been submitted for decision, was adversely resolved against it by this Court, thus:

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The presentation of additional evidence is allowed only when it is newly discovered. or where it has been omitted through inadvertence or mistake, or where the purpose of the evidence is to correct evidence previously offered [*I Moran's Comments on the Rules of Court, 2nd ed. 5454, 64 C.J., 160-163; cited in Alegre v. Reyes, 161 SCRA 233 (1988); Agulto v. Court of Appeals, 181 SCRA 80 (1990)]* In addition, the Court, for good reason, in the the furtherance of justice, may permit them to offer evidence upon their original case, and its ruling will not be disturbed in the appellate court where no abuse of discretion appears. (Siuliong & Co. vs. Ylagan, 43 Phil., 393, U.S. v. Alviar, 36 Phil. 804).

Petitioner failed to specifically state the facts surrounding the alleged inadvertence or mistake or excusable negligence in the presentation of that alleged additional document except for the fact that it was raised in our previous decisions involving the same parties and subject matter. The Court cannot allow the presentation of piece-meal evidence, otherwise, there will be no end to litigation.

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A Motion for Reconsideration was filed by Petitioner but was denied by the Court on April 30, 1999, for having failed to state the subject of the additional evidence to be presented and the purpose for which they will be offered which, in effect, would prejudice the right of the Respondent to a speedy disposition of this case. Petitioner was then directed to file its memorandum within thirty days from receipt of the said resolution if it so desires. But instead of filing a memorandum, Petitioner on June 28, 1999, opted to file with the Court of Appeals a "Petition for Certiorari" with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction which is now pending resolution by the said Court.

Eventually, on July 9, 1999, this case was submitted for decision after Petitioner's failure to file its memorandum.

The Court is now confronted with the following issues:

a. Whether or not the 20% final withholding tax on bank's interest income should form part of the taxable receipts for purposes of computing the gross receipts tax,

b. Whether or not Petitioner has proven its claim with sufficient evidence.

With reference to the first issue, this Court finds petitioner's cause to be meritorious. The final taxes derived by Petitioner on its passive income should no longer form part of the gross receipts for purposes of computing the gross receipts tax as ruled by Us in the case of **Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996**, pertinent portions of which read as follows:

> **"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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> xxx xxx xxx
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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, 19956, thus:
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> > 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:
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> > > "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.
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> "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 the case of Commissioner of Internal Revenue vs Citytrust Investment Philippines Inc., CA-GR SP. NO. 52707 promulgated on August 17, 1999, the Court of Appeals ruled:

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.

The legal issue having been settled, We now delve on the factual aspect of this case which is the second issue at bar.

Section 230 of the Tax Code, as amended, provides that a claim for refund, both with the Bureau of Internal Revenue and with this Court, must be filed within two years from the date of payment of the tax. Furthermore, in counting for the two-year prescriptive period, the filing of the quarterly percentage tax return should be considered as the "date of payment of the tax" (Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999; and Citytrust Investment Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5403, April 19, 1999). The records show that Petitioner filed its Quarterly Percentage Tax Return for the quarter ended September 30, 1995, on <u>October 20, 1995</u>, while the instant petition for review was filed on <u>October 20, 1997.</u> Clearly, the claim for refund is well within the two-year period.

What is now left for the petitioner to prove is its compliance with the following requisites:

1. that it paid the gross receipts tax;
2. that it erroneously overpaid its gross receipts by including the 20% final withholding tax on its passive income as part of the gross receipts declared in

the quarterly percentage tax return for the quarter ended September 30, 1995; and

3. that the withholding agent certifies that there is 20% final withholding tax on such passive income which is tantamount to double taxation. **(Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 5458, February 15, 1999; and BPI Capital vs. Commissioner of Internal Revenue, CTA Case No. 5457, March 1, 1999;***cited in* **Solid Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5408, April 14, 1999, supra).**

A careful examination of all the evidence at hand reveals that Petitioner only complied with requirements number one and two. Petitioner was able to show that it paid gross receipts tax for the quarter ended September 30, 1995 as evidence by the quarterly percentage tax return (Exhs. B, B-1 to B-6). The Petitioner's subsidiary ledgers show that the amounts of P11,614,518.71 and P30,230,451.73, representing 20% portion of tax paid income and investment income subject to 20% final tax booked at gross, respectively, were included in the gross receipts of Petitioner as clearly presented in the computation made by Petitioner detailed as follows:

	Per Qtrly Percentage Tax Return		Adjusted Gross Receipts	
	Gross Receipts	Tax Due	Gross Receipts	Tax Due
0%	P 17,861,095.47	P 0.00	P 17,861,095.45	P 0.00
1%	6,595,939.52	65,959.39	6,595,939.52	65,959.39
3%	23,167,552.26	695,026.56	23,167,552.26	695,026.56
5%	401,678,591.71	20,083,929.58	359,833,621.27	17,991,681.06
	P449,303,178.96	P20,844,915.53	P407,458,208.52	P18,752,667.01

However, Petitioner failed to comply with the third requirement. Nowhere in the evidence presented by Petitioner did it submit the Certificates of Final Income Tax Withheld issued by the withholding agents. These documents are indispensable for the Court to know and determine that the amounts excluded by Petitioner in its gross receipts represent the 20% final tax on passive income. We cannot rely solely on the recording and computation made by Petitioner. It should be emphasized that in order to be entitled to the refund sought, Petitioner must prove that there was payment of gross receipts tax and that the 20% final tax withheld on passive income was included in the computation of gross receipts upon which the gross receipts tax was based. Furthermore, Petitioner must show proof that the 20% final tax was indeed paid and remitted to the Bureau of Internal Revenue. In the absence of a vital document that will substantiate payment of final tax on passive income, the same deserves no inclusion from the gross receipts (Philam Savings Bank Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 5407, August 8, 1998).

Settled is the rule in this jurisdiction that a claim for refund is in the nature of a claim for exemption, hence should be construed in *strictissimi juris* against the taxpayer **(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332).**

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** due to 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 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