REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SOLIDBANK CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6096

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 1 0 2003

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P8,843,248.07 allegedly representing overpaid gross receipts tax for the four quarters of 1998.

Petitioner is a domestic banking institution duly organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office address at No. 777 Paseo de Roxas, Makati City (*par. 1, Joint Stipulation of Facts*).

For the four (4) quarters of 1998, petitioner filed its quarterly percentage tax returns showing its gross receipts for each particular quarter and payment of the corresponding gross receipts taxes, details of which are as follows:

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Exhibit	**1998**	**Date of Filing Return/Payment of GRT**	**Gross Receipts**	**Tax Rate**		**Tax Due**
A-2	1st qtr	20-Apr-98	P903,116,704.75	5%		P45,155,835.23
			115,861,561.37	3%		3,475,846.84
			47,993,507.41	1%		479,935.08
						P 49,111,617.15
B-2	2nd qtr	20-Jul-98	P 1,215,311,530.71	5%		P 60,811,054.71
			84,744,102.82	3%		2,542,323.10
			52,776,306.79	1%		527,763.07
			3,603,233.36	0%		-
						P 63,881,140.88
H-2	3rd qtr	20-Oct-98	P 1,397,381,979.97	5%		P 69,872,033.50
			95,855,849.97	3%		2,875,675.52
			41,042,794.65	1%		410,427.95
			4,338,063.96	0%		-
						P 73,170,373.69
H-5	3rd qtr	20-Oct-98	P 3,163,759.00	5%		158,187.95
						P 73,328,561.64
D-2	4th qtr	25-Jan-99	P 1,020,274,991.84	5%		P 51,013,749.58
			75,713,483.75	3%		2,271,404.51
			49,183,169.96	1%		491,831.70
			2,607,794.29	0%		-
						P 53,776,985.80

Petitioner's gross receipts subjected to the 5% GRT amounted to P4,539,248,966.27. This amount included the gross passive income from interest on government securities such as treasury bills, floating rate treasury notes (FRTNs), investment in bonds and other debt instruments (IBODI), private securities, commercial papers and trading gains (*p. 12, TSN, September 17, 2001*) in the total amount of P884,324,807.45 which had been subjected to the 20% final withholding tax at source, broken down as follows:

Interest on Government Securities for the year 1998

Period	Gross Amount	20% Final Tax
1st quarter	P198,718,360.17	P39,743,672.03
2nd quarter	224,672,742.92	44,934,548.58
3rd quarter	224,133,111.75	44,826,622.35
4th quarter	236,800,592.61	47,360,118.53
Total	884,324,807.45	176,864,961.49

In the case of ***Asian Bank Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4720, dated January 30, 1996,*** 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. On the strength of this decision, petitioner filed on April 18, 2000, an administrative claim for refund or issuance of a tax credit certificate in the amount of P8,843,248.07 allegedly representing overpaid 5% gross receipts tax on the 20% final taxes withheld from its passive income for the four quarters of 1998, computed as follows:

1998	Gross Passive Income	20% Final Tax	5% GRT
1st qtr	P 198,718,360.17	P 39,743,672.03	P 1,987,183.60
2nd qtr	224,672,742.92	44,934,548.58	2,246,727.43
3rd qtr	224,133,111.75	44,826,622.35	2,241,331.12
4th qtr	236,800,592.61	47,360,118.52	2,368,005.93
	P 884,324,807.45	P176,864,961.49	P 8,843,248.07

Due to respondent's inaction and in order to toll the running of the two-year prescriptive period, petitioner filed the instant Petition for Review on the following day, April 19, 2000.

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On May 31, 2000, respondent filed his Answer and raised the following Special and Affirmative Defenses:

1. Petitioner's alleged claim for tax refund/credit is subject to administrative routinary investigation/examination by respondent's Bureau.

2. The tax sought to be refunded was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, not refundable.

3. Petitioner's allegation that it has an overpaid Gross Receipts Taxes for the four quarters of taxable year 1998 in the amount of P8,843,248.07 does not *ipso facto* warrant the credit.

   Petitioner has the burden of proving that it is indeed entitled to the credit sought as it is a well-settled rule that claims for tax refund/tax credit are construed in "*strictissimi juris*" against the taxpayer (*Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31 SCRA 95*). This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the petitioner to prove that it is indeed entitled to the refund/credit sought. Failure on the part of the petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (*Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466*)

4. There is no provision of law which excludes the 20% final income tax withheld under Section 57(A) of the Tax Code in the computation of the 5% gross receipts tax.

5. In *Commissioner of Internal Revenue vs. Asianbank Corporation*, CA-G.R. No. 51248-SP, promulgated November 22, 1999, the Honorable Court of Appeals held that the 20% final withholding tax on the bank's interest income forms part of taxable gross receipts in computing the 5% gross receipts tax.

6. The case of *Collector of Internal Revenue vs. Manila Jockey Club*, 108 Phil. 821, is inapplicable to the instant case as the circumstances of the two cases are not the same.

7. Petitioner must show compliance with the provisions of Section 204(c) and 229 of the Tax Code.

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The issues we are tasked to resolve have been stipulated by the parties to be as follows:

1. Whether or not petitioner complied with the provisions of Section 204 (c) and 229 of the Tax Code.

2. Whether or not the tax base for computing the petitioner's 5% gross receipts tax should include the 20% final tax withheld at source from petitioner's interest income from government securities for the four quarters of 1998.

3. Whether or not the 20% final withholding tax was withheld at source from the petitioner's interest income from government securities for the four quarters of 1998.

4. Whether or not the 20% final withholding tax was included as part of the tax base for computing the 5% gross receipts tax liability of the petitioner.

5. Whether or not the claim for refund is properly substantiated as to merit the grant of such claim.

A careful scrutiny of the records of this case reveal that petitioner has complied with the two-year prescriptive period prescribed in Sections 204(C) and 229 in relation to Section 128, all of the 1997 Tax Code.

For the first quarter of 1998, petitioner filed its percentage tax return and paid the corresponding gross receipts tax (GRT) on April 20, 1998 (Exhibit "A). Reckoned from such date, both the administrative and judicial claims for refund filed on April 18, 2000 (*Exhibit "E"*) and April 19, 2000, respectively, fall within the two-year prescriptive period.

We proceed to the second issue.

Petitioner argued that its claim for refund is premised upon Sections 27(D)(1) (formerly Section 24 [e][1], 57(A) (formerly Section 50 [a]) and Section 121 (formerly Section 119) of the NIRC, as amended, as implemented by Revenue Regulations (RR) No.

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12-80 and as interpreted by this court in the aforementioned case of *Asian Bank Corporation vs. Commissioner of Internal Revenue*. According to petitioner, the overpaid tax subject matter of its claim for refund arose out of the erroneous inclusion of the 20% final tax under Section 27 (D)(1) of the Tax Code, withheld by the Bureau of Treasury from the interest or discount given on treasury bills and other securities purchased from it in 1998 by the petitioner pursuant to Section 57 (A) of the Tax Code as part of the latter's gross receipts subject to GRT under Section 121 of the Tax Code.

Petitioner further averred that at maturity date of the securities, petitioner as holder thereof, gets the face value of the treasury bills. The income from these treasury bills should be equal to the discount earlier given. But since the 20% tax was already withheld at source or upon purchase of the treasury bills from the Bureau of Treasury, the actual receipt of petitioner is only the difference between the discount given by the Bureau of Treasury and the 20% final tax withheld by it. In effect, petitioner did not enjoy the full discount given because the 20% final tax was withheld from the discount given. Thus, petitioner should have only recognized the discount less the 20% final tax withheld as its gross receipts for GRT purposes pursuant to Section 121 of the Tax Code inasmuch as that was the only amount actually received by petitioner. To support its stand, petitioner cited Section 4 of RR No. 12-80, implementing Section 121 of the Tax Code, which provides:

> SECTION 4. *Manner of Computation of Tax Base.*-For purposes of Section 3 above, tax bases of the following taxes shall be computed in the following manner:
>
> xxx xxx xxx
>
> *(e) Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking activities.*-The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on **all items**

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> **<u>of income actually received.</u>** Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder." (Emphasis supplied)

Respondent, on the other hand, contends that there is no provision of law which excludes the 20% final income tax withheld under Section 57(A) of the Tax Code in the computation of the 5% gross receipts tax and that the case of ***Collector of Internal Revenue vs. Manila Jockey Club, 108 Phil. 821***, is not applicable because the circumstances of the two cases are not the same. Moreover, in his memorandum, respondent cited the cases of ***Far East Bank and Trust Company vs. Commissioner Internal Revenue,*** **CTA Case No. 5763, promulgated on November 16, 2001*,*** ***and Standard Chartered Bank vs. Commissioner of Internal Revenue, CTA Case No. 5679, promulgated on November 26, 2001***, where this court ruled that the 20% final withholding tax on bank's interest income forms part of the taxable gross receipts in computing the 5% GRT.

After a careful study of the attending facts, the contentions of the parties and the laws and jurisprudence in point, this court rules against the petitioner.

The issue presented is not novel. In this court's recently decided cases of ***Equitable PCI Bank (formerly Equitable Banking Corporation) vs. Commissioner of Internal Revenue*, CTA Case No. 6000, November 23, 2001; *FEB Investments, Inc. vs. The Commissioner of Internal Revenue*, CTA Case No. 5758, November 20, 2001; *Far East Bank and Trust Company vs. Commissioner of Internal Revenue*, CTA Case No. 5763, November 16, 2001; *Standard Chartered Bank vs. Commissioner of Internal Revenue*, CTA Case No. 5679, November 16, 2001;** and ***Standard Chartered Bank-Manila***

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***Branch vs. Commissioner of Internal Revenue*, CTA Case No. 6097, April 4, 2002**, this court already ruled that for purposes of computing the GRT of banks and other financial institutions, the 20% final withholding tax on certain passive income shall form part of their gross receipts, thus:

"We find petitioner's arguments legally objectionable for two (2) reasons, to state:

(1) Section 4(e) of Revenue Regulations No. 12-80 is not a computation determinative of the amount of gross receipts as basis of the gross receipts tax under Section 119 of the Tax Code. Said revenue regulations merely authorize the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer under Section 37 of the Tax Code. Such accounting methods for tax purposes comprise a set of rules for determining when and how to report income and deductions *(Consolidated Mines, Inc. vs. CTA, L-18846, August 29, 1974)*. The two principal accounting methods expressly and impliedly recognized by the Tax Code and the Income Tax Regulations are:

(a) Cash receipts and disbursement method or cash basis. - Income earned by the taxpayer is not included in gross income until received and expenses are not deducted until paid within the taxable year, and

(b) Accrual basis. - Income is included in gross income when earned, whether received or not, and expenses are allowed as deductions when incurred although not yet paid within the year.

(2) The non-inclusion of the 20% final withholding income tax from the gross interest income for purposes of gross receipts tax operates as an exemption from tax. Being an exemption from tax, the same must be construed strictly not against the government but against the one who asserts the claim of exemption. Tax exemption can only be given effect when the grant is clear and categorical inasmuch as taxation is the rule and exemption is the exception, Section 26, Tax Code. The holding therefore in the Asian Bank Corporation to the effect that the non-inclusion of the 20% final withholding income tax from the gross receipts can logically be inferred from the wordings of said Section 4(e) of Revenue Regulations No. 12-80, is misplaced.

Tax statues are to receive a reasonable construction with a view to carrying out their purpose and intent (51 Am Jur 361). It should not be

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> construed as to permit the taxpayer to easily evade the payment of the tax *(Cabon Steel Co. vs. Lewelyn, 251 U.S. 501).* Thus, the good faith of the taxpayer is not sufficient justification for exemption from the payment of surcharges imposed by law *(Commissioner vs. Royal Interocean Lines and CTA, L-26506, July 30, 1970)* A tax statute should be construed to avoid the possibilities of tax evasion *(Lorenzo vs. Posadas, 64 Phils. 353).*"

Our conclusion finds support in the most recent ruling of the Court of Appeals in the case entitled ***Commissioner of Internal Revenue vs. Philippine National Bank,* C.A.-G.R. SP No. 59402, promulgated on January 28, 2003**, excerpts of which are quoted hereunder:

> "Unlike the 5 1/2% commission in the Manila Jockey Club case, the 20% withholding tax on PNB's interest income is money which actually belongs to respondent bank but paid to the government to satisfy the bank's obligation. The withholding of the tax and its payment to the government redounds to the benefit of PNB. Clearly, the money which went into paying the 20% withholding tax forms part of PNB's gross receipts. xxx
>
> We cannot give credence to PNB's argument that "since the 20% final tax on respondent's income has been earmarked in favor of the government, the 20% final tax should be excluded from respondent's gross receipts in the computation of the gross receipts tax. Taxes are, by law, always "earmarked in favour of the government." Taxes are the lifeblood of the nation. Their primary purpose is to generate funds for the State to finance the needs of the citizenry and to advance the common weal. Section 51 [g] of the National Internal Revenue Code and Section 7 of Revenue Regulation No. 12-80, both cited by respondent bank, simply explain what the government intends to do with the 20% final withholding tax paid by the taxpayer.
>
> Neither can we adopt the Tax Court's view that the imposition of the 20% final withholding tax and the 5% gross receipts tax on respondent bank's income constitutes double taxation. Double taxation means taxing the same property twice when it should be taxed only once. That is, "x x x taxing the same person twice by the same jurisdiction for the same thing." This is not the case here."

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Moreover, in the case entitled ***Commissioner of Internal Revenue vs. Asianbank Corporation***, CA-G.R. SP No. 51248, promulgated on November 22, 1999, the Court of Appeals had the occasion to explain the meaning of the phrase 'all items of income actually received' under Revenue Regulations No. 12-80, relied upon by petitioner, thus:

> "It is true that Revenue Regulations No. 12-80 provides that the gross receipts tax on banks and other financial institutions should be based on all items of income actually received. Actual receipt here is used in opposition to mere accrual *(Rep. vs. Lim Tian Teng sons & Co., 16 SCRA 584).*
>
> But receipt may be actual or constructive. Article 531 of the Civil Code provides that possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of one will, or by the proper acts and legal formalities established for acquiring such right. Moreover, taxation income may be received by the taxpayer himself or by someone authorized to received it for him (Art. 532, Civil Code). The 20% final tax withheld from interest income of banks and other similar institutions is not income that they have not received, it is simply withheld from them and paid to the government, for their benefit. Thus, the 20% income tax withheld from the interest income is, in fact, money of the taxpayer bank but paid by the payor to the government in satisfaction of the bank's obligation to pay the tax on interest earned. It is the bank's obligation to pay the tax. Hence the withholding of the said tax and its payment to the government is for its benefit."

In his ***Annotations and Jurisprudence on the National Internal Revenue Code, as amended***, former Commissioner of Internal Revenue Jose Arañas defined gross receipts under then Section 260 (previously Section 249 and now Section 121) of the Tax Code as follows:

> **260(3).** ***Meaning of "gross receipts".*** - The term "gross receipts" provided for in Section 249 of the Tax Code should be interpreted to mean "as the whole amount received without deductions," otherwise, it will be considered as "net receipts" *(National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952).*

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> Profits derived from the sale of miscellaneous accounts, whether it is in connection with the banking business of the banking institution or not, so long as they were earned or derived from its fund, as a banking institution, should be included in gross receipts *(ibid)*. Arañas, *Annotations and Jurisprudence on the National Internal Revenue Code as amended,* 6th ed. (1983), Vol. II, p. 479.

Likewise, in his ***Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,*** Jose N. Nolledo draws the same conclusion:

> "No deductions are allowed from gross income before the 5% tax is imposed as otherwise, the tax is based on net receipts *(See National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952)*. Nolledo, *Commentaries and Jurisprudence on the National Internal Revenue Code of the Philippines,* 1976 Revised Edition, p. 1127."

In the United States, whose jurisprudence has persuasive effect in this jurisdiction, the term "gross receipts" has long had this established meaning:

> "Gross income," "gross proceeds" and "gross receipts" all mean the same, it has been held, although "gross earnings" are sometimes distinguished from "gross receipts". Gross receipts ordinarily mean the total receipts before anything is deducted for the expenses of management." Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, pp. 1789-1790, citing State v. Illinois Cent. R. Co., 246 Ill. 188, 92. N.E. 814.
>
> "Gross earnings means entire earnings from all operations and not earnings less operating expenses, taxes and bad debts. Stae v. United Electric Light & Water Co., 90 Conn. 452, 97 Atl. 857" Cooley, *The Law on Taxation,* 4th ed. (1924), Vol. II, p. 1790.

Excise tax has not been allowed as a deduction for purposes of determining gross receipts. In interpreting the term "gross receipts", Mertens, *Law of Federal Income Taxation,* has this to say:

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&3.37. Construction of Specific Words

x x x

Gross Receipts

In determining "gross receipts" such descriptions as "the total amount received or accrued" have been applied. That gross receipts represent the total amount received or accrued is plain; with respect to inventory, it is the amount the customer paid and not such amount reduced by any excise tax for which the seller is responsible. This definition of gross receipts – not subtracting the excise payments – has been applied in formulas for DISC's. Mertens Law of Federal Income Taxation, 1995 edition, Chapter 3, page 54, Section 3.37, citing Lucky Lager Brewing Co. v. Comm., 26 TC 836 (1956), affd 246 F 2d 621 (CA9 1957) and Brown-Forman Corp. v. Comm., 94 TC 419 (1990).

In the aforecited **Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, 246 F 2d 621 (CA9 1957),** the United States Court of Appeals ruled:

"The contention of petitioner is that the word "gross" in the term "gross receipts" means what the buyer paid for the beer less what the manufacturer paid to the government prior to its sale under the excise tax, enacted in 1939. x x x.

We do not agree. The language of paragraph (5) of Section 435(e) that "gross receipts" are "the total amount received or accrued ***from the sale*** of stock in trade" [emphasis supplied] is irrefutably plain. It is a logical absurdity to contend that the "total amount received" from the sales is not what the customer paid but a lesser amount determined by a deduction of a particular tax paid, here required to be paid and in fact paid by the seller, before the delivery of the beer. *Lucky Lager Brewing Co. vs. Commissioner of Internal Revenue, United States Court of Appeals, Ninth Circuit, June 24, 1957, 246 F 2d 621 (CA9 1957).*

At this point, it is significant to emphasize that the inclusion of the 20% final tax withheld at source from petitioner's interest income in determining the tax base for computing the 5% gross receipts tax would not result to double taxation, contrary to the

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ruling in the *Asianbank* case relied upon by petitioner. It bears stressing that the 20% final withholding tax is payment of income tax, interests being one of the items of gross income specified under Section 32, Chapter VI, Title II-TAX ON INCOME of the Tax Reform Act of 1997, to state:

> **Section 32.** ***Gross Income.*** –
>
> "(A) *General Definition.* - Except when otherwise provided in this Title, **gross income means all income derived from whatever source**, including (but not limited to) the following items:
>
> " (1) Compensation for services in whatever form paid, including, but not limited to fees, salaries, wages, commissions, and similar items;
> " (2) Gross income derived from the conduct of trade or business or the exercise of a profession;
> " (3) Gains derived from dealings in property;
> " (4) **Interests**;
> " (5) Rents;
> " (6) Royalties;
> " (7) Dividends;
> " (8) Annuities;
> " (9) Prizes and winnings;
> "(10) Pensions; and
> "(11) Partner's distributive share from the net income of the general professional partnership. *(Emphasis supplied)*

On the other hand, gross receipts tax is not a tax on income. It is a percentage tax imposed under Section 121, Title V-OTHER PERCENTAGE TAXES of the same Code, which provides:

> **Section 121.** ***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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"(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 (2) years but not exceeding four (4) years) 3%

"Long-term maturity –

"(1) Over four (4) years but not exceeding seven (7) years 1%
"(2) 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 32 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."

Since double taxation in the objectionable or prohibited sense (also known as obnoxious) means that the same property is taxed twice when it should be taxed only once; and that both taxes are imposed on the same property or subject matter for the same purpose, by the same State, Government, or taxing authority within the same jurisdiction or taxing district during the same taxing period and covering the same kind or character of tax (*Villanueva v. City of Iloilo, L-26521, Dec. 28, 1968, cited on page 72, Law of Basic Taxation, Aban, 1994 Ed.)*, and considering that the 20% final withholding tax and the 5% gross receipts tax imposed on the passive interest income are not of the same kind or character, there exists no double taxation in this case.

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The exclusion of the 20% FWT would seriously erode the GRT base. In effect, it would reduce by 20% the tax on gross receipts under Sections 121 (Tax on Banks and Non-bank Financial Intermediaries) and 122 (Tax on Finance Companies). Tax exemptions are strictly construed against the taxpayer. In the absence of any clear provision of law excluding the 20% FWT from the tax base for GRT purposes, we cannot conclude that such 20% FWT should be excluded for purposes of GRT computation.

Finding petitioner not to be legally entitled to the refund sought, we find it no longer necessary to delve into the factual issues raised.

WHEREFORE, in view of the foregoing, the Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
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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