REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 5519

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 10 2000

x - x

DECISION

Before Us for consideration is a Petition for Review filed by the Petitioner on April 18, 1997 seeking for a refund or the issuance of a tax credit certificate in the amount of P4,576,429.72 allegedly representing overpaid gross receipts taxes for 1995.

As represented, Petitioner is a domestic banking corporation, duly registered with the Securities and Exchange Commission, with principal office located at 379 Sen. Gil J. Puyat Ave., Makati City.

For the four quarters of 1995, herein 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 as follows:

PERIOD COVERED	GRT	DATE PAID	EXH.
1st Qtr. (Jan. to March)	P 24,421,495.70	April 20, 1995	A
2nd Qtr. (April to June)	27,619,936.95	July 20, 1995	B
3rd Qtr. (July to Sept.)	28,671,506.35	October 20, 1995	C
4th Qtr. (Oct. to Dec.)	28,203,675.42	January 22, 1996	D
Total	P108,916,614.42		

From the total gross receipts tax of P108,916,614.42, Petitioner allege that it erroneously included in the tax base, gross receipts derived from passive income which were already subjected to final withholding tax in the amount of P98,547,311.10. Thus, Petitioner further allege that it has a refundable amount of P4,576,429.72, the breakdown of which are as follows:

	5%	3%	1%	0%	TOTAL
Income per GRT return	1,827,875,633.79	521,535,791.51	187,675,898.05	122,654,688.82	2,659,742,012.17
Less FWT on Income subject to 20%	86,726,146.68	6,183,295.77	5,462,351.18	175,517.48	98,547,311.10
Net Taxable Base	1,741,149,487.11	515,352,495.74	182,213,546.87	122,479,171.34	2,561,194,701.07
Tax Rate	5%	3%	1%	0%	
Should be Tax Due	87,057,474.36	15,460,574.87	1,822,135.47	0.00	104,340,184.70
Less: Tax due per return	91,393,781.70	15,646,073.74	1,876,758.98	0.00	108,916,614.42
Over remittance	(4,336,307.34)	(185,498.87)	(54,623.51)	0.00	(4,576,429.72)

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 April 17, 1997 an application for a tax refund/tax credit of its alleged overpaid GRT for the taxable year 1995 in the total amount of P4,576,429.72 (Exh. F). The aforesaid claim for refund was not acted upon by Respondent. Thus, a day after, or on April 18, 1997, Petitioner filed with this Court the instant Petition for Review.

Petitioner reiterate its proposition that the 20% final withholding tax on the interest and other income remitted to the government were erroneously included in its taxable gross receipts, thus, it stressed that on the strength of the aforementioned ruling of this Court in the Asian Bank case, *supra*, it has actually overpaid the amount legally due from it, insofar as its gross receipts' tax obligations are concerned, hence, a refund is in order.

Respondent, on the other hand, by way of Special and Affirmative Defenses, alleges that:

(8) Petitioner's claim for refund is still undergoing administrative routinary investigation/examination by Respondent's Bureau considering that the claim for refund with the Bureau was filed two days earlier on the date the instant case was filed with this Honorable Court;

(9) The total amount of P4,576,429.72 claimed by Petitioner as alleged overpaid GRT for the year 1994 is not properly documented;

(10) The alleged refundable GRT was collected and paid pursuant to law and pertinent BIR implementing rules and regulations, hence, the same is not refundable;

(11) Petitioner's allegations that it excessively paid its GRT during the year under review does not *ipso facto* warrant the refund. Petitioner must prove that the exclusions claimed by it from its gross receipts must be an allowable exclusion under the Tax Code and its pertinent implementing rules and regulations;

(12) Claims for refund are construed in *strictissimi juris* against the taxpayer, as it partakes the nature of an exemption from tax and it is incumbent upon the Petitioner to prove that it is entitled thereto under the law. Failure on the part of the Petitioner to prove the same is fatal to its claim for refund.

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

Exhibits	**Description**
A, B, C, D	Quarterly percentage tax returns for taxable year 1995
E and E-1	Computation of GRT overpayment for 1995
F	Letter-claim for refund with the BIR
G and G-1	Certification of final taxes withheld from Central Bank to prove that petitioner's interest income on treasury bills was subjected to the 20% final withholding
H, H-1 to H-8	Certification issued by the SGV and Co. stating the agreed upon procedures with the Petitioner and the outcome of the audit
I-1 to I-14	Financial Statements for taxable year 1995
J	1995 Annual Income Tax Return

The Court directed both parties to submit their respective memorandum after which, the case was submitted for decision.

The issues posed for adjudication in this case are:

(1) Whether or not Petitioner is entitled to the refund of gross receipts tax corresponding to the 20% final withholding tax on its passive income; and

(2) Whether or not Petitioner has proven its claim by sufficient and substantial evidence.

As regards the first issue, this Court has already ruled in numerous cases involving claims for refund of overpaid gross receipts tax that "the 20% final withholding tax on its passive income should no longer form part of the taxable gross receipts for purposes of computing the gross receipts tax."

As aptly cited by Petitioner in **Asian Bank Corporation vs. Commissioner of Internal Revenue (CTA Case No. 4720, January 30, 1996),** this Court ruled:

> **"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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> x x x x x x x x x
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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:
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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:
> >
> > > "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."

Recently the Court of Appeals affirmed the wisdom of this Court's ruling in a case involving a similar cause of action, 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 Respondent's (Citytrust) 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." **(Commissioner of Internal Revenue vs. Citytrust Philippines, CA G.R. SP No. 52707, August 17, 1999).**

Having settled the legal issue in the affirmative, what remains to be resolved are factual matters, more particularly, as to whether or not Petitioner has established by clear and substantial evidence its claim for refund.

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. 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 Revnue, CTA Case No. 5403, April 19, 1999**). Applying the above ruling in the case at bar reveals that Petitioner was able to file its claim for refund with the Bureau of Internal Revenue on April 17, 1997 and the Petition for Review with this Court on April 18, 1997 both within the two-year reglementary period, considering that the 1995 first quarterly percentage tax return was filed on April 20, 1995.

Equally important in the granting of the instant case is Petitioner's compliance with the following requisites:

> 1. that it paid the gross receipts tax;
>
> 2. that it erroneously overpaid its gross receipts tax by including the 20% final withholding tax on its passive income as part of the gross receipts declared in the quarterly percentage tax returns for the year 1995; and
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> 3. that the withholding agent certifies that there is 20% final withholding tax on such passive income. (**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.**)

A meticulous examination of all the evidence on record reveals that Petitioner was able to show that it paid gross receipts tax for the year 1995 as evidenced by the machine validations appearing on the lower portion of its quarterly percentage tax returns (Exhs.

A, B, C, and D, inclusive of sub-markings). The evidence also established that the alleged 20% final withholding taxes on interest income on passive investments were included in the gross receipts reflected in Petitioner's quarterly percentage tax returns. This was attested to by Mr. Renato Galve, the commissioned independent CPA by the Court (TSN, August 17, 1998, p.14). However, from among the passive income which was allegedly subjected to final tax, only interest income from treasury bills were supported by certifications of withholding and remittance. The rest of the passive investments which is composed of deposits with banks, interbank call loan receivables, trading gain, and from other sources have no such certifications. The certification of withholding and remittance of final tax is important for the Court to verify, if indeed the final tax on passive income was paid and remitted to the Bureau of Internal Revenue. This is the rationale behind the Asian Bank case, CTA Case No. 4720, quoted earlier.

It would appear then that Petitioner is only entitled to a partial refund of overpaid gross receipts tax pertaining to the 20% final tax on interest income of treasury bills. However, even after a further painstaking scrutiny of the documents presented as evidence, the Court cannot compute with accuracy how much refund can be granted to Petitioner. Nowhere in the evidence on record can We verify the exact amount of final tax on treasury bills. We cannot solely rely on the certification issued by Bangko Sentral ng Pilipinas because the amount of final tax stated therein is huge and in its original value. We would like to emphasize that treasury bills are bearer securities and can be transferred by mere physical delivery. Thus, whenever Petitioner sells some of its treasury bills to the secondary market, the withholding tax originally paid by it is also shifted (TSN, October 6, 1997, pp. 16 to 19). The only figure appearing in the record of the case is the amount of P76,417,833.00 representing trading accounts securities (TAS, for brevity) and government securities (GS, for brevity) (Exh. H-8). But again, the Court cannot base the refund on this amount. It is to be pointed out that TAS and GS are not all treasury bills. TAS may include commercial papers while GS may include treasury notes (TSN, October 6, 1997, pp. 7 and 8).

In sum, We find the procedures supposedly agreed upon by the Petitioner and the independent auditor to be insufficient to come-up with the desired result in ascertaining the correctness of Petitioner's claim for refund. The procedures merely limited the examination on the verification of the amounts of passive income and the provision for final tax. It failed to scrutinize the accuracy of the composition of the passive income accounts and the corresponding computation for gross receipts tax and the supporting documents for final taxes. To the Court's mind, a more detailed and better procedure, such as tracing, test computation, and analysis of individual transaction pertaining to the passive income accounts should have been conducted and by checking, if the final taxes on these passive income are duly supported.

Further, Petitioner's failure to present in evidence vital documents such as trading orders, outright purchase confirmation, outright sale confirmation and accrual ledger proved fatal to its claim for refund. It is worth stressing that under CTA Circular 1-95, as amended, the "voluminous" documents supporting the claim for refund, should have been pre-marked and submitted to the Court after the independent auditor shall have examined and compared them with the originals. Without these pre-marked documents, the Court cannot verify the correctness of the independent auditor's conclusion.

In fact, We have already denied a petition with a similar cause of action, wherein We ruled:

> "In earning its income, Petitioner is of course expected to have in its possession documents and computerized records of each and every transaction it has entered into from which the aggregate amount of gross receipts as declared in the quarterly returns were based. In this regard, Petitioner should have endeavored to prove that the alleged receipts of interest and passive income were the ones duly reported as such in each of the quarterly percentage tax returns. Inasmuch as the gross receipts reported in said return pertain to a conglomeration of various income subjected to final and creditable withholding taxes, there was therefore a need for the Petitioner to show that the particular portion of reported passive income tallies with its proof of individual transactions (**Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 5458, February 15, 1999**).

Petitioner's failure to present the pertinent documents and individual transactions which would support the certification of the independent auditor as well as the schedule contained therein proved fatal to its claim for refund. Well-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 the light 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