REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA,
Petitioner,

- versus -

C.T.A. CASE NO. 5557

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 06 2000

x -- x

DECISION

This is a petition which seeks the refund or issuance of a tax credit certificate in the amount of P1,538,958.17, allegedly representing overpaid gross receipts tax for the quarter ended September 30, 1995.

The antecedent facts follow.

Petitioner is the Manila branch of Bank of America NT & SA, a bank incorporated and existing under the laws of the United States of America. It is licensed to do business in the Philippines by the Securities and Exchange Commission, in accordance with the laws of the Republic of the Philippines.

On October 20, 1995, Petitioner filed its Quarterly Percentage Tax Return for the quarter ended September 30, 1995 (Exh. C) and paid gross receipts tax (GRT) totalling P6,759,179.17, detailed as follows:

Interest, Commission and Discount on Gross Receipts	Gross Receipts	Tax Rate	Tax Due
Short-term Maturity LN	P72,223,124.38	5%	P3,611,156.22
Medium-term Maturity LN	274,073.62	3%	8,222.21
Long-term Maturity LN	96,371.45	1%	963.71
Over Seven (7) Years LN	743,686.55	0%	0.00
Other Income	62,776,740.65	5%	3,138,837.03
Tax Paid			P6,759,179.17

On March 4, 1996, however, Petitioner filed an amended Quarterly Percentage Tax Return for the quarter ended September 30, 1995 (Exh. A). The amendment was brought about by an alleged error made in the Original return when the deferred income tax expense amounting to P30,779,163.43 (Exh. D-1) was included in the "Other Income" account of Petitioner for purposes of computing the GRT. Consequently, the gross receipts tax due from the Petitioner for the said quarter was reduced to P5,220,221.00, broken down as follows:

Interest, Commission and Discount on Gross Receipts	Gross Receipts	Tax Rate	Tax Due
Short-term Maturity LN	P72,223,124.38	5%	P3,611,156.22
Medium-term Maturity LN	274,073.62	3%	8,222.21
Long-term Maturity LN	96,371.45	1%	963.71
Over Seven (7) Years LN	743,686.55	0%	0.00
Other Income	31,997,577.22	5%	1,599,878.86
Tax Paid			P5,220,221.00

On March 8, 1996, Petitioner filed with Revenue District Office No. 50 of the Bureau of Internal Revenue, a claim for the refund of its overpaid gross receipts tax for the third quarter of 1995 in the amount of P1,538,958.17 (Exh. E), computed as follows:

GRT per original return	P6,759,179.17
GRT per amended return	5,220,221.00
Overpayment	P1,538,958.17

There being no action on the part of herein Respondent, the instant Petition was filed on October 20, 1997.

In his Answer, Respondent raised the following Special and Affirmative Defenses:

> "4. Petitioner's claim for refund or issuance of tax credit certificate is subject to and yet under administrative investigation;
>
> 5. In an action for tax refund or credit, the taxpayer has the burden of showing that the taxes paid were erroneously collected and failure to sustain said burden is fatal to the action;
>
> 6. Claims for refund/credit are construed strictly against claimants since they are in the nature of tax exemption. They cannot be allowed unless granted in the most explicit and categorical language. (Manila Electric Co. vs. Commissioner of Internal Revenue, 47 SCRA 351)."

The sole issue We are tasked to resolve is whether or not Petitioner is entitled to the refund of its alleged overpaid gross receipts tax arising from an erroneous inclusion of the deferred income tax expense in the computation of the gross receipts tax on the basis of the evidence presented.

To support its case, Petitioner submitted the following:

Exhibits	Description
A	Amended Quarterly Percentage Tax Return for the quarter ended September 30, 1995
B	Worksheet on Gross Receipts Tax Computation

C	Quarterly Percentage Tax Return for the quarter ended September 30, 1995
D	Worksheet on Gross Receipts Tax Computation
E	Letter-claim for Refund on Overpaid GRT addressed to the BIR dated March 8, 1996.

Petitioner likewise presented its Assistant Vice-President for Finance, Ms. Ma. Christina del Carmen, who testified, among others, on the contents of the Quarterly Percentage Tax Return, original and amended, as well as on the alleged overpayment of gross receipts tax (see TSN dated February 12, 1998).

Respondent, on his part, submitted his case based on the pleadings as he was not able to get hold of the records of the case (p. 65, CTA Records).

After a careful evaluation of the evidence adduced by Petitioner, this Court finds against the latter.

While both the administrative and judicial claims for refund filed by Petitioner on March 8, 1996 (Exh. E) and October 20, 1997, respectively, fall within the two-year prescriptive period counted from October 20, 1995, the date when Petitioner's 1995 third quarter GRT payment was made (Exh. C), the latter, however, failed to substantiate its claim.

That Petitioner actually paid gross receipts tax of P6,759,179.17 for the third quarter of 1995 is not disputed. The said amount included the 5% GRT payment of P3,138,837.03 on its Other Income of P62,776,740.65 as shown in its original Quarterly Percentage Tax Return for the same period (Exh. C). But the problem lies on the evidence submitted by Petitioner to prove the inclusion of the amount of Deferred Income Tax Expense in its Other Income account which resulted to the overpayment of the gross receipts tax. Petitioner merely presented the worksheet showing how the total earnings subjected to the gross receipts tax with the corresponding tax due was arrived at (Exh. D). The said worksheet showed that an amount of P30,779,163.43 described as "Inc. Tx. E7xp.-Fgn-Deferred" (Exh. D-1) was included as one of the income items subjected to gross receipts tax. Petitioner contended that the said amount refers to a deferred income tax expense account and was erroneously treated as an income item in computing the GRT. However, based on this document alone, this Court cannot verify whether the said amount is actually a deferred income tax expense and not an income item subject to GRT. Petitioner failed to submit the underlying documents from which the amount of P30,779,163.43 was based.

And in its attempt to further prove its case, Petitioner's lone witness, Ms. Christina del Carmen, was recalled to the witness stand on August 24, 1999 to testify on the nature of deferred income tax expense, thus:

"ATTY. ALCAZAR:

Q. Ms. Witness, during the last hearing on February 12, 1998, you testified that the overpayment of GRT arose from the erroneous inclusion of the deferred income tax expense on the items of Gross Receipts subjected to GRT for the Third Quarter of 1995, is that correct, Ms. Witness?

MS. DEL CARMEN:

A. Yes, that is correct.

Q. What particular item of Gross Receipts was this Deferred Income Tax erroneously included?

A. It was included on the "Other Income" portion.

Q. Why was the inclusion of the Deferred Income Tax expense in the computation of the GRT erroneous?

A. Because the Deferred Income Tax is an unrealized tax expense which we compute on unrealized income.

Q. Ms. Witness, could you please tell this Court the nature of this deferred income tax expense which caused the overpayment of GRT?

A. Deferred Income Tax is a financial accounting practice where we are required to assess the tax effects on unrealized income.

Q. How do you determine or compute the amount of company's deferred income tax?

A. We calculate the income that we expect to receive at a future date and subject to the 33% income tax rate.

Q. Why does your company provide for this Deferred Income Tax Account?

A. It is generally accepted accounting practice that we are required to do so.

Q. You said earlier that the unrealized Deferred Income Tax Expense is computed from the unrealized income, is that correct, Ms. Witness?

A. Yes, that is correct.

Q. Could you elaborate further on that?

A. For example: We have assets which earn interest income. Up to a certain point, up to the present date or measuring date, it is income that is already earned. Since the asset will mature at a future date, we have income that we expect to receive. So, it is still unrealized income. So income such as this is subjected to a 33% tax rate and this we record/book as a Deferred Income Tax."

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"ATTY. NAPUTO:

Where does the unrealized income come in?

MS. DEL CARMEN:

Unrealized Income, in our Accounting Books, we have income that we already realized like on loans that have matured and were already paid, we have interest income. But on loans and securities that have to mature at a future date, we have unearned income, income that is still uncollected. We also have unrealized income like when we do revaluation of our forward contracts based on the foreign exchange rate we have either unrealized gains or losses. We also do that on securities. So, the portion that is still unrealized because the asset is maturing at a future date, that is the unrealized income portion.

ATTY. NAPUTO:

You mentioned forward contracts, what relation has it got to do with what you are testifying right now?

MS. DEL CARMEN:

When we compute deferred tax, forward contract is one of the items we take into account. We do monthly mark to market on our forward contract to assess if we are gaining or losing on these contracts that have not yet matured. So when we revalue this contracts and we see that there is a gain it still is not realized because the contract will mature at a future date. But for financial accounting purposes, it is booked as unrealized gain on the forward contract and then, we calculate the deferred tax on that assuming it realized. That's just an example of our unrealized income."

(TSN, August 24, 1999, pages 4 to 6; 11 to 12)

Unfortunately, though, this Court finds the above testimony unsupported by documentary proofs as inadequate to establish Petitioner's claim. Except for the worksheets which to Us are self-serving, nothing more was presented by Petitioner to bolster its claim and convince this Court that indeed, there was an erroneous inclusion in the Other Income account of a deferred income tax expense that resulted to an overpayment of gross receipts tax.

> "A claim for refund partakes of the nature of an exemption which cannot be allowed unless granted in the most explicit and categorical language. **Being in the nature of an exemption from taxation, a claim for refund is strictly construed against the claimant and the failure to discharge said burden is fatal to the claim** (Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990, cited in the Law of Basic Taxation, Aban, p. 206).

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

RAMON O. DE VEYRA
Associate Judge

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