Supreme Court E-Library

FIRST DIVISION

[G.R. No. 146749. June 10, 2003]

CHINA BANKING CORPORATION, *petitioner, vs.* **COURT OF APPEALS, COURT OF TAX APPEALS, and COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

[G.R. No. 147938. June 10, 2003]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **CHINA BANKING CORPORATION,** *respondent.*

SYNOPSIS

Petitioner China Banking Corporation (CBC) filed a formal claim for a tax refund or credit of gross receipts tax that it paid for the second quarter of 1994 arguing that the 20% final withholding tax on its interest income does not form part of its taxable gross receipts. The Court of Tax Appeals (CTA) ruled in favor of CBC. On appeal, the Court of Appeals affirmed the CTA's decision. The CTA granted CBC a tax refund or credit of ₱123,278.73 but denied due to insufficiency of evidence the remainder of CBC's claims for ₱1,140,623.82. Hence, these present petitions by the Commissioner of Internal Revenue and CBC.

The Supreme Court ruled that the amount of interest income withheld in payment of the 20% final withholding tax forms part of CBC's gross receipts in computing the gross receipts tax on banks. Section 8 of Revenue Regulations No. 12-80 expressly states that interest income, even if subject to final withholding tax and excluded from gross income for income tax purposes, should still form part of the bank's taxable gross receipts. Thus, interest earned by banks, even if subject to the final tax and excluded from taxable gross income, forms part of its gross receipts for gross receipts tax purposes. The interest earned refers to the gross interest without deduction since the regulations do not provide for any deduction. The gross interest, without deduction, is the amount the borrower pays,

Supreme Court E-Library

and the income the lender earns, for the use by the borrower of the lender's money. The amount of the final tax plainly comes from the interest earned and is consequently part of the bank's taxable gross receipts.

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; PERCENTAGE TAXES; GROSS RECEIPTS TAX ON BANKS; GROSS RECEIPTS, DEFINED.**— As commonly understood, the term "gross receipts" means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. ... Absent a statutory definition, the term "gross receipts" is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use. ... Under Revenue Regulations Nos. 12-80 and 17-84, as well as in several numbered rulings, the BIR has consistently ruled that the term "gross receipts" does not admit of any deduction. This interpretation has remained unchanged throughout the various re-enactments of the present Section 121 of the Tax Code. The only conclusion that can be drawn is that the legislature has adopted the BIR's interpretation, following the principle of legislative approval by re-enactment.

2. **ID.; ID.; ID.; ID.; THE AMOUNT OF FINAL WITHHOLDING TAX ON INTEREST INCOME SHOULD NOT BE DEDUCTED FROM THE BANK'S INTERESTS INCOME FOR PURPOSES OF GROSS RECEIPTS TAX.**— [T]he amount of the final withholding tax on interest income should not be deducted from the bank's interest income for purposes of the gross receipts tax. The final withholding tax on interest, like the creditable withholding tax on rentals, comes from the bank's income and is money the bank owns that is used to pay the bank's tax liability. The final withholding tax and the creditable withholding tax constitute payment by the bank to extinguish a tax obligation to the government. The bank can only pay with money it owns, or with money it is authorized to spend. In either case, such money comes from the bank's revenues or receipts, and certainly not from the government's coffers.

Supreme Court E-Library

3. ID.; ID.; ID.; APPLIES TO THE ENTIRE RECEIPTS WITHOUT DEDUCTION, EXEMPTION OR EXCLUSION, UNLESS THE LAW CLEARLY PROVIDES OTHERWISE; RATIONALE.— There is a policy objective why no deductions, exemptions or exclusions are normally allowed in a gross receipts tax. The gross receipts tax, as opposed to the income tax, was devised to maintain *simplicity* in tax collection and to assure a *steady source* of state revenue even during periods of economic slowdown. Such a policy frowns upon erosion of the tax base. Deductions, exemptions or exclusions complicate the tax system and lessen the tax collection. By its nature, a gross receipts tax applies to the entire receipts without any deduction, exemption or exclusion, unless the law clearly provides otherwise.

4. ID.; ID.; ID.; ID.; OWNERSHIP IS THE CIRCUMSTANCE THAT MAKES INTEREST INCOME PART OF TAXABLE GROSS RECEIPTS OF THE TAXPAYER.— Unless otherwise provided by law, *ownership* is essential in determining whether interest income forms part of taxable gross receipts. Ownership is the circumstance that makes interest income part of the taxable gross receipts of the taxpayer. When the taxpayer acquires ownership of money representing interest, the money constitutes income or receipt of the taxpayer. In contrast, the trustee or agent does not own the money received in trust and such money does not constitute income or receipt for which the trustee or agent is taxable. This is a fundamental concept in taxation. Thus, funds received by a money remittance agency for transfer and delivery to the beneficiary do not constitute income or gross receipts of the money remittance agency. Similarly, a travel agency that collects ticket fares for an airline does not include the ticket fare in its gross income or receipts. In these cases, the money remittance agency or travel agency does not acquire ownership of the funds received.

5. ID.; ID.; ID.; ID.; INTEREST AS PART OF GROSS RECEIPTS, DEFINED.— [W]hen Section 121 of the Tax Code includes "interest" as part of gross receipts, it refers to the entire interest earned and owned by the bank without any deduction. "Interest" means the gross amount paid by the borrower to the lender as consideration for the use of the lender's money. Section 2(h) of Revenue Regulations No. 12-80, now Section 2(i) of Revenue Regulations No. 17-84, defines the term "interest" as "the amount which a depository bank (borrower) may pay on savings and

Supreme Court E-Library

time deposit in accordance with rates authorized by the Central Bank of the Philippines." This definition does not allow any deduction. The entire interest paid by the depository bank, without any deduction, is what forms part of the lending bank's gross receipts.

6. **ID.; ID.; ID.; THE INTEREST INCOME ACTUALLY RECEIVED BY THE LENDING BANK, BOTH PHYSICALLY AND CONSTRUCTIVELY, IS THE NET INTEREST PLUS THE AMOUNT WITHHELD AS FINAL TAX.**— Income may be taxable either at the time of its actual receipt or its accrual, depending on the accounting method of the taxpayer. Section 4(e) merely provides for an exception to the rule, making interest income taxable for gross receipts tax purposes *only* upon actual receipt. Interest is accrued, and not actually received, when the interest is due and demandable but the borrower has not actually paid and remitted the interest, whether physically or constructively. Section 4(e) does not exclude accrued interest income from gross receipts but merely *postpones* its inclusion until actual payment of the interest to the lending bank. This is clear when Section 4(e) states that *"[m]ere accrual shall not be considered, but once payment is received on such accrual or in case of prepayment, then the amount actually received shall be included in the tax base of such financial institutions x x x."* Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.*

7. **ID.; ID.; ID.; ID.; IN CASE OF A WITHHOLDING TAX ON INCOME, THE AMOUNT OF THE TAX WITHHELD CONSTITUTES INCOME EARNED BY THE TAXPAYER AND FORMS PART OF THE TAXPAYER'S GROSS RECEIPTS.**— The concept of a withholding tax on income *obviously and necessarily* implies that the amount of the tax withheld comes

Supreme Court E-Library

from the income earned by the taxpayer. Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts.

8. ID.; ID.; ID.; ID.; INTEREST EARNED BY BANKS, EVEN IF SUBJECT TO THE FINAL TAX AND EXCLUDED FROM TAXABLE GROSS INCOME, FORMS PART OF ITS GROSS RECEIPTS FOR GROSS RECEIPTS TAX PURPOSES.— Section 8 of Revenue Regulations No. 12-80 expressly states that interest income, even if subject to the final withholding tax and excluded from gross income for income tax purposes, should still form part of the bank's taxable gross receipts. ... Thus, interest earned by banks, even if subject to the final tax and excluded from taxable gross income, forms part of its gross receipts for gross receipts tax purposes. The interest earned refers to the gross interest without deduction since the regulations do not provide for any deduction. The gross interest, without deduction, is the amount the borrower pays, and the income the lender earns, for the use by the borrower of the lender's money. The amount of the final tax plainly comes from the interest earned and is consequently part of the bank's taxable gross receipts.

9. ID.; TAX EXEMPTIONS; ANY DOUBT WHETHER THE EXEMPTION EXISTS IS STRICTLY CONSTRUED AGAINST THE TAXPAYER AND IN FAVOR OF THE TAXING AUTHORITY; CASE AT BAR.— CBC's contention that it can deduct the final withholding tax from its interest income amounts to a claim of tax exemption. The cardinal rule in taxation is exemptions are highly disfavored and whoever claims an exemption must justify his right by the clearest grant of organic or statute law. CBC must point to a specific provision of law granting the tax exemption. The tax exemption cannot arise by mere implication and any doubt about whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority.

10. ID.; NATIONAL INTERNAL REVENUE CODE; PERCENTAGE TAXES; GROSS RECEIPTS TAX ON BANKS; THE INCLUSION OF INTEREST INCOME IN TAXABLE GROSS

Supreme Court E-Library

RECEIPTS CREATES A PRESUMPTION THAT THE ENTIRE AMOUNT OF THE INTEREST INCOME, WITHOUT ANY DEDUCTION, IS SUBJECT TO GROSS RECEIPTS TAX.— Section 121 of the Tax Code expressly subjects interest income to the gross receipts tax on banks. Such express inclusion of interest income in taxable gross receipts creates a *presumption* that the entire amount of the interest income, without any deduction, is subject to the gross receipts tax. . . . To overcome this presumption, CBC must point to a specific provision of law allowing the deduction of the final withholding tax from its taxable gross receipts. CBC has failed to cite any provision of law allowing the final tax as an exemption, deduction or exclusion. Thus, CBC's claim has no legal leg to stand on.

11. ID.; DOUBLE TAXATION; NOT PRESENT WHEN THE LAW IMPOSES DIFFERENT TAXES ON THE SAME INCOME, BUSINESS OR PROPERTY.— [T]here is no double taxation when Section 121 of the Tax Code imposes a gross receipts tax on interest income that is already subjected to the 20% final withholding tax under Section 27 of the Tax Code. The gross receipts tax is a business tax under Title V of the Tax Code, while the final withholding tax is an income tax under Title II of the Code. There is no double taxation if the law imposes two different taxes on the same income, business or property. ... There is no constitutional prohibition on subjecting the same income or receipt to an income tax and to some other tax like the gross receipts tax. Similarly, the same income or receipt may be subject to the value-added tax and the excise tax like the specific tax. If the tax law follows the constitutional rule on uniformity, making all income, business or property of the same class taxable at the same rate, there can be no valid objection to taxing the same income, business or property twice.

12. ID.; NATIONAL INTERNAL REVENUE CODE; PERCENTAGE TAXES; GROSS RECEIPTS TAX ON BANKS; IMPOSED ON THE ENTIRE AMOUNT OF INTEREST INCOME AND NOT ONLY ON THE NET INTEREST INCOME.— The gross receipts tax falls not on the final withholding tax, but on the amount of the interest income withheld as the final tax. What is being taxed is still the interest income. The law imposes the gross receipts tax on that portion of the interest income that the depository bank withholds and remits to the government. Consequently, the entire amount of the interest income is taxable and not only the net interest income.

Supreme Court E-Library

APPEARANCES OF COUNSEL

Lim Vigilia Alcala Dumlao & Orencia for China Banking Corp.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court are the consolidated petitions for review[1] assailing the Decisions[2] of 16 October 2000 and 15 November 2000, and the Resolutions of 25 April 2001 and 8 January 2001 of the Court of Appeals in CA-G.R. SP No. 50790 and in CA-G.R. SP No. 50839, respectively. The Court of Appeals affirmed the Decision[3] of 30 September 1998 and the Resolution of 15 January 1999 of the Court of Tax Appeals in CTA Case No. 5405. The Court of Tax Appeals granted China Banking Corporation ("CBC") a tax refund or credit of ₱123,278.73 but denied due to insufficiency of evidence the remainder of CBC's claim for ₱1,140,623.82.

Antecedent Facts

CBC is a universal banking corporation organized and existing under Philippine law. On 20 July 1994, CBC paid ₱12,354,933.00 as gross receipts tax on its income from interests on loan investments, commissions, services, collection charges, foreign exchange profits and other operating earnings during the second quarter of 1994.

---

[1] Under Rule 45 of the Rules of Court.

[2] In CA-G.R. SP No. 50839, penned by Associate Justice Candido V. Rivera and concurred in by Associate Justices Conchita Carpio Morales and Josefina Guevara-Salonga, Fourteenth Division. In CA-G.R. SP No. 50790, penned by Associate Justice Delilah Vidallon-Magtolis and concurred in by Associate Justices Teodoro P. Regino and Perlita J. Tria-Tirona, Thirteenth Division.

[3] Penned by Associate Judge Ramon O. De Vera, concurred in by Presiding Judge Ernesto D. Acosta, with a dissenting opinion by Associate Judge Amancio Q. Saga.

Supreme Court E-Library

On 30 January 1996, the Court of Tax Appeals in ***Asian Bank Corporation v. Commissioner of Internal Revenue***[4] ruled that the 20% final withholding tax on a bank's passive interest income does not form part of its taxable gross receipts.[5]

On 19 July 1996, CBC filed with the Commissioner of Internal Revenue ("Commissioner") a formal claim for tax refund or credit of ₱1,140,623.82 from the ₱12,354,933.00 gross receipts tax that CBC paid for the second quarter of 1994. To ensure that it filed its claim within the two-year prescriptive period,[6] CBC also filed on the same day a petition for review with the Court of Tax Appeals. Citing ***Asian Bank***, CBC argued that it was not liable for the gross receipts tax — amounting to ₱1,140,623.82 — on the sums withheld by the *Bangko Sentral ng Pilipinas* as final withholding tax on CBC's passive interest income[7] in 1994.

Disputing CBC's claim, the Commissioner asserted that CBC paid the gross receipts tax pursuant to Section 119 (now Section 121) of the National Internal Revenue Code ("Tax Code") and pertinent Bureau of Internal Revenue ("BIR") regulations. The Commissioner argued that the final withholding tax on a bank's interest income forms part of its gross receipts in computing

---

[4] CTA Decision in CTA Case No. 4720, 30 January 1996.

[5] *Rollo* of G.R. No. 146749, p. 45; *Rollo* of G.R. No. 147938, p. 32.

[6] Section 230 of the National Internal Revenue Code of 1986, as amended, provides: "Sec. 230. *Recovery of tax erroneously or illegally collected.* —x x x

In any case, no such suit or proceeding shall be begun after the expiration of two years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, that the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. x x x"

[7] Under Section 2(h)(iii)(b) of Revenue Regulations No. 17-84, the term "deposit substitutes" includes "[A]ll borrowings of the national and local government and its instrumentalities including the *Central Bank of the Philippines*, evidenced by debt instruments denoted as treasury bonds, bills, notes, certificates of indebtedness and similar instruments." The *Bangko Sentral ng Pilipinas* is the withholding agent for the 20% final tax on interest on Treasury Bills. *See* Revenue Regulations No. 02-97 dated 21 January 1997.

Supreme Court E-Library

the gross receipts tax.[8] The Commissioner contended that the term "gross receipts" means the entire income or receipt, without any deduction.

The Ruling of the Court of Tax Appeals

The Court of Tax Appeals ruled in favor of CBC and held that the 20% final withholding tax on interest income does not form part of CBC's taxable gross receipts. The tax court based its decision mainly on its earlier ruling in *Asian Bank*[9] which the tax court quoted extensively, as follows:

> That petitioner is liable for gross receipts tax is not disputed. The question that is now left for our determination is the basis of the said tax which issue has already been settled in the case cited by petitioner, *Asian Bank Corporation vs. Commissioner of Internal Revenue, supra.* In said case, this Court held:
>
> > 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 Nov. 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 on income actually received, thus:
> >
> > SEC. 4. x x x
> >
> > (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 of income actually received.* 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. (Italics supplied)

---

[8] *Rollo* of G.R. No. 146749, pp. 93 and 99; *Rollo* of G.R. No. 147938, p. 7.

[9] *Supra*, note 4.

Supreme Court E-Library

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. 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, 1966, thus:

> 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:
>
> > x x x. The Government could not have meant to tax as gross receipts 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 receipts 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 prizes 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*

Supreme Court E-Library

Revenue vs. Manila Jockey Club, Inc., G.R. Nos. L-13890 & L-13887, June 30, 1960)

It is to be noted that, under Section 260 of the Tax Code, a racetrack 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., x x x.[10]

Thus, the Court of Tax Appeals granted CBC a partial refund of ₱123,778.73 since the tax court found that the evidence of CBC was sufficient only to support the payment of the gross receipts tax on its medium term investments. The dispositive portion of the tax court's Decision of 30 September 1998 states as follows:

WHEREFORE, in view of the foregoing, judgment is hereby rendered ordering the respondent to REFUND or ISSUE a tax credit certificate in the reduced amount of ₱123,778.73 representing the overpaid GRT payments for the second quarter of 1994. The remaining amount claimed by petitioner is DENIED for insufficiency of evidence.

SO ORDERED.[11]

However, Associate Judge Amancio Q. Saga dissented to the exclusion of the final withholding tax from the bank's taxable gross receipts. He opined that: (1) Section 4(e) of Revenue Regulations No. 12-80 did not prescribe the manner of computing the tax base for the gross receipts tax but merely authorized the cash basis as the method of accounting in reporting the interest income; (2) the exclusion was effectively an exemption from tax, and there is no specific provision of law clearly granting such exemption; (3) no law or regulation specifically earmarked the final withholding tax for some other person than CBC, thus the Supreme Court decisions cited in ***Asian Bank*** are not

---

[10] *Supra*, note 5.

[11] *Supra*, note 5.

Supreme Court E-Library

applicable; and (4) there is no double taxation if the law imposes different taxes on the same income.

Both CBC and the Commissioner filed motions for reconsideration from the tax court's decision. CBC argued that the tax court should have given proper weight to the testimony of the witnesses that CBC presented on the computation and payment of its gross receipts tax. CBC pointed out that the Commissioner did not controvert such testimony. On the other hand, the Commissioner maintained that the final withholding tax forms part of the taxable gross receipts. However, the tax court dismissed both motions in its Resolution of 15 January 1999.[12]

The CBC and the Commissioner both filed petitions for review under Rule 43 of the Rules of Court, appealing the tax court's decision and resolution to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals did not consolidate the petitions for review filed by CBC and the Commissioner. The parties apparently failed to move for the consolidation of the two petitions. The 14th Division of the Court of Appeals, in its Decision of 15 November 2000[13] in CA-G.R. SP No. 50839, affirmed the tax court's ruling on the ground that substantial evidence supported the factual findings of the tax court. The 13th Division of the Court of Appeals, in its Decision of 16 October 2000[14] in CA-G.R. SP No. 50790, also affirmed the tax court's ruling on the ground that the 20% final withholding tax does not form part of CBC's taxable gross receipts.

The 14th Division of the appellate court denied CBC's subsequent motion for reconsideration in its Resolution of 8 January 2001.[15] Likewise, the 13th Division of the appellate

---

[12] *Rollo* of G.R. No. 146749, p. 65.

[13] *Ibid.*, p. 38.

[14] *Rollo* of G.R. No. 147938, p. 18.

[15] *Rollo* of G.R. No. 146749, p. 44.

Supreme Court E-Library

court denied the Commissioner's motion for reconsideration in its Resolution of 25 April 2001.[16]

On 6 February 2001, CBC filed with the Court a petition for review assailing the decision of the Court of Appeals in CA-G.R. SP No. 50839, and prayed that the Court render a decision awarding CBC's full claim for the refund of ₱1,140,623.82. CBC claimed that since it did not actually receive the final withholding tax, the same should not form part of its taxable gross receipts. CBC also asserted that it had presented sufficient evidence to prove its overpayment of the gross receipts tax, and that it had a right to a refund of the full ₱1,140,623.82 overpayment.

On 25 June 2001, the Commissioner filed with the Court a petition for review questioning the decision of the Court of Appeals in CA-G.R. SP No. 50790, and prayed that the Court deny CBC's claim for refund. The Commissioner pointed out that the Court of Appeals had already reversed the ***Asian Bank*** decision of the Court of Tax Appeals in ***Commissioner of Internal Revenue v. Asian Bank Corporation***,[17] promulgated by the Court of Appeals *earlier* on 22 November 1999. The Commissioner further manifested that the Court of Tax Appeals subsequently rendered two decisions reversing its ruling in ***Asian Bank.*** **In** ***Far East Bank and Trust Co. v. Commissioner of Internal Revenue***[18] and ***Standard Chartered Bank v. Commissioner of Internal Revenue***,[19] the tax court ruled[20] that the 20% final withholding tax on a bank's interest income forms part of its gross receipts in computing the gross receipts tax.

---

[16] *Rollo* of G.R. No. 147938, p. 24.

[17] *Ibid.*, p. 159; CA-G.R. SP. No. 51248.

[18] CTA Case No. 5763, 16 November 2001.

[19] CTA Case No. 5679, 16 November 2001.

[20] A unanimous Court of Tax Appeals reiterated this ruling in *Solidbank Corporation v. Commissioner of Internal Revenue* (CTA Case No. 6096), decided on 10 March 2003. The earlier two cases, *Far East Bank and Standard Chartered Bank*, were both decided by a 2-1 majority.

Supreme Court E-Library

During the oral arguments of this case on 21 April 2003, the Court ordered the consolidation[21] of the petition filed by CBC in G.R. No. 146749 and the petition filed by the Commissioner in G.R. No. 147938.

The Issues

The consolidated petitions raise the following issues:

1. Whether the 20% final withholding tax on interest income should form part of CBC's gross receipts in computing the gross receipts tax on banks;
2. Whether CBC has established by sufficient evidence its right to claim the full refund of ₱1,140,623.82 representing alleged overpayment of the gross receipts tax.

The Ruling of the Court

We rule that the amount of interest income withheld in payment of the 20% final withholding tax forms part of CBC's gross receipts in computing the gross receipts tax on banks.

Section 121[22] of the Tax Code provides as follows:

Sec. 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:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities on 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%

---

[21] Per the Court's Resolution of 21 April 2003.

[22] This was Section 119 of the Tax Code at the time the Court of Tax Appeals decided CTA Case No. 5405.

Supreme Court E-Library

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 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.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

The gross receipts tax on banks was first imposed on 1 October 1946 by Republic Act No. 39 ("RA No. 39") which amended Section 249[23] of the Tax Code of 1939. Interest income of banks, without any deduction, formed part of their taxable gross receipts. From October 1946 to June 1977, there was no withholding tax on interest income from bank deposits.

On 3 June 1977, Presidential Decree No. 1156 required the withholding at source of a 15% tax on interest on bank deposits. This tax was a creditable, not a final withholding tax. Despite the withholding of the 15% tax, the entire interest income, without any deduction, formed part of the bank's taxable gross receipts. On 17 September 1980, Presidential Decree No. 1739 made the withholding tax on interest a final tax at the rate of 15%

---

[23] RA No. 39 amended Section 249 of the Tax Code to read as follows: "Sec. 249. *Tax on banks.* — There shall be collected a tax of five per centum on the gross receipts derived by all banks doing business in the Philippines from interests. discounts, dividends. commissions, profits from exchange, royalties. rentals of property, real and personal, and all other items treated as gross income under section twenty-nine of this Code."

Supreme Court E-Library

on savings account, and 20% on time deposits.[24] Still, from 1980 until the Court of Tax Appeals decision in ***Asia Bank*** on 30 January 1996, banks included the entire interest income, without any deduction, in their taxable gross receipts.

In ***Asia Bank***, the Court of Tax Appeals held that the final withholding tax is not part of the bank's taxable gross receipts. The tax court anchored its ruling on Section 4(e) of Revenue Regulations No. 12-80,[25] which stated that the gross receipts "shall be based on all items actually received" by the bank. The tax court ruled that the bank does not actually receive the final withholding tax. As authority, the tax court cited ***Collector of Internal Revenue v. Manila Jockey Club***,[26] which held that "gross receipts of the proprietor 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." In effect, the tax court considered Section 4(e) of Revenue Regulations No. 12-80 as earmarking by regulation the final withholding tax in favor of the government. This earmarking, according to the tax court, prevented the final withholding tax from being "*actually received*" by the bank. The tax court adopted the *Asia Bank* ruling in succeeding cases involving the same issue.[27]

---

[24] The final withholding tax on bank deposits is now imposed, for corporate taxpayers like banks, in Section 27(D)(1) of the Tax Code, as follows: "(D) *Rates of Tax on Certain Passive Income — (I) Interest from Deposits and Yield or any other Monetary Benefit from Deposit Substitutes and from Trust Funds and Similar Arrangements, and Royalties.* — A final tax at the rate of twenty percent (20%) is hereby imposed upon the amount of interest on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines: Provided, however, That interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7½%) of such interest income."

[25] Issued on 7 November 1980.

[26] 108 Phil. 821 (1960).

[27] *Equitable Banking Corporation v. Commissioner*, CTA Case. No. 5411 (1998); *Philam Savings Bank v. Commissioner,* CTA Case No. 5407

Supreme Court E-Library

Subsequently, the Court of Tax Appeals reversed its ruling in ***Asia Bank.*** **In *Far East Bank & Trust Co. v. Commissioner***[28] and ***Standard Chartered Bank v. Commissioner,***[29] both promulgated on 16 November 2001, the tax court ruled that the final withholding tax forms part of the bank's gross receipts in computing the gross receipts tax. The tax court held that Section 4(e) of Revenue Regulations No. 12-80 did not prescribe the computation of the gross receipts but merely authorized "the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer."

The tax court also held in ***Far East Bank*** **and** ***Standard Chartered Bank*** that the exclusion of the final withholding tax from gross receipts operates as a tax exemption which the law must expressly grant. No law provides for such exemption. In addition, the tax court pointed out that Section 7(c) of Revenue Regulations No. 17-84 had already superseded Section 4(e) of Revenue Regulations No. 12-80. Section 7(c) of Revenue Regulations No. 17-84, the existing applicable regulation, states:

> Section 7. *Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes* —
>
> xxx xxx xxx
>
> (c) 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. (Italics supplied)

The items of income referred to in Section 7(c) are interest on bank deposits and yield from deposit substitutes.

There are two related legal concepts that come into play in the resolution of the first issue raised in the instant case. First is the

---

(1998); *BPI Family Savings Bank v. Commissioner,* CTA Case No. 5522 (1998); *Solid Bank Corporation v. Commissioner,* CTA Case No. 5408 (1999); *Citibank NA — Philippine Branch v. Commissioner,* CTA Case No. 5434 (1999); *Union Bank of the Philippines v. Commissioner,* CTA Case No. 5416 (1999); *Hong Kong Bank Corporation v. Commissioner,* CTA Case No. 5410 (1999).

[28] CTA Case No. 5763.

[29] CTA Case No. 5679.

Supreme Court E-Library

meaning of the term "gross receipts." Second is the determination of the circumstance when interest income becomes part of gross receipts for tax purposes.

The Tax Code does not define the term "gross receipts" for purposes of the gross receipts tax on banks. Since 1 October 1946 when RA No. 39 first imposed the gross receipts tax on banks until the present, there has been no statutory definition of the term "gross receipts." Absent a statutory definition, the BIR has applied the term in its plain and ordinary meaning.

On 12 July 1952, four years after RA No. 39 imposed the gross receipts tax on banks, the defunct Board of Tax Appeals[30] had occasion to interpret the term "gross receipts." In ***National City Bank v. Collector of Internal Revenue***,[31] the bank contended that the amortized premium costs in buying U.S. Government bonds should be deducted from the interest income from the bonds in computing the bank's gross receipts tax. On the other hand, the Collector of Internal Revenue argued that "gross receipts should be interpreted as the whole amount received as interests without deductions, otherwise, if deductions are

---

[30] The Board of Tax Appeals was the predecessor of the existing Court of Tax Appeals. In *University of Santo Tomas v. Board of Tax Appeals*, 93 Phil. 376 (1953), the Court declared unconstitutional Executive Order No. 401-A insofar as it interfered with the "jurisdiction of the courts of first instance in cases arising not only under the internal revenue laws but also customs law and assessment law." However, in *Ipekdjian Merchandising v. Court of Tax Appeals*, G.R. No. L-14791, 30 May 1963, the Court held: "We can thus see, that Rep. Act No. 1125 had conferred judicial character on the proceedings and decisions of the BTA. It, therefore, results that the decisions of the BTA, in cases not subsequently brought before the Court of First Instance, in accordance with the decision in the case of *U.S.T. vs. BTA* (*supra*), or before the CTA, under the provisions of Rep. Act No. 1125, within the 30-day period prescribed in Section 11 thereof, counted from the creation or organization of the CTA (*Lim Tio, et al. vs. CTA, et al.*, G.R. No. L-10681, March 29, 1958; *Sta. Clara Lumber Co. vs. CTA*, G.R. No. L-9833, Dec. 21, 1957), received judicial confirmation under said R.A. No. 1125 and the same should be considered final and executory and enforceable by execution, just

Supreme Court E-Library

made from gross receipts, it will be considered as 'net' receipts." The Board of Tax Appeals agreed with the Collector, ruling that —

> Conceding that the premiums amortized form part of the capital invested by the petitioner, to deduct same from the accrued interests of the bonds would result in the realization of the net interests and not the gross receipts on the interests earned by the petitioner in its investments as provided for in Section 249 of the Tax Code. The denial, therefore, of the respondent in allowing the deduction of the amortized premium in the amount of ₱239,678.41 from the accrued interest of the bonds, is in order.

The ***National City Bank*** ruling remained unchallenged from 1952 until January 1996 when the Court of Tax Appeals rendered its decision in ***Asia Bank***. In November 2001, however, the same tax court, citing ***National City Bank*** among other authorities, reversed ***Asia Bank*** in the twin cases of ***Far East Bank*** **and** ***Standard Chartered Bank***.

As commonly understood, the term "gross receipts" means the entire receipts without any deduction. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in ***Commonwealth*** of ***Pennsylvania v. Koppers Company, Inc.,***[32] —

> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control

---

like any other decision of a court of justice. Factually, several decisions of the BTA were affirmed on appeal by this Court and were executed by the CTA (*Cu Unjieng Sons v. BTA*, L-6296, Sept. 29, 1956; *Cebu Arrastre Service v. Coll. of Int. Rev.*, L-7444, May 30, 1956; *Advertising Associates v. Coll. of Int. Rev.*, L-6553, Sept. 30, 1955.)"

[31] BTA Case No. 52 (1952).

[32] 397 Pa. 523; 156 A.2d 328 (1959).

Supreme Court E-Library

the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. ***Under the ordinary basic methods of handling accounts, the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions***. x x x.[Citations omitted] (Italics supplied)

Likewise, in ***Laclede Gas Co. v. City of St. Louis***,[33] the Supreme Court of Missouri held:

The word 'gross' appearing in the term 'gross receipts,' as used in the ordinance, must have been and was there used as the direct antithesis of the word 'net.' ***In its usual and ordinary meaning 'gross receipts' of a business is the whole and entire amount of the receipts without deduction***. x x x On the contrary 'net receipts' usually are the receipts which remain after deductions are made from the gross amount thereof of the expenses and cost of doing business, including fixed charges and depreciation. Gross receipts become net receipts after certain proper deductions are made from the gross. And in the use of the words 'gross receipts,' the instant ordinance, of course, precluded plaintiff from first deducting its costs and expenses of doing business, etc., in arriving at the higher base figure upon which it must pay the 5% tax under this ordinance. (Italics supplied)

Absent a statutory definition, the term "gross receipts" is understood in its plain and ordinary meaning. Words in a statute are taken in their usual and familiar signification, with due regard to their general and popular use.[34] The Supreme Court of Hawaii held in ***Bishop Trust Company v. Burns***[35] that —

x x x It is fundamental that in construing or interpreting a statute, in order to ascertain the intent of the legislature, the language used therein is to be taken in the generally accepted and usual sense. Courts will presume that the words in a statute were used to express their meaning in common usage. ***This principle is equally applicable to a tax statute***. [Citations omitted] (Italics supplied)

---

[33] 363 Mo. 842, 253 S.W.2d 832 (1953).

[34] *In RE Taxes of Harriet Johnson*, 44 Haw. 519, 356 P.2d 1028 (1960).

[35] 46 Haw. 375, 381 P.2d 687 (1963).

Supreme Court E-Library

The Tax Code does not also define the term "gross receipts" for purposes of the common carriers' tax,[36] the international carriers' tax,[37] the tax on radio and television franchises,[38] and the tax on finance companies.[39] All these business taxes under Title V of the Tax Code are based on gross receipts. Despite the absence of a statutory definition, these taxes have been collected in this country for over half a century on the general and common understanding that they are based on all receipts without any deduction.

Since 1 October 1946 when RA No. 39 first imposed the gross receipts tax on banks under Section 249 of the Tax Code, the legislature has re-enacted several times this section of the Tax Code. On 24 December 1972, Presidential Decree No. 69, which enacted into law the ***Omnibus Tax Bill of 1972***, re-enacted Section 249 of the Tax Code. Then on 11 June 1977, Presidential Decree No. 1158, otherwise known as the ***National Internal Revenue Code of 1977***, re-enacted Section 249 as Section 119 of the Tax Code. Finally on 11 December 1997, Republic Act No. 8424, otherwise known as the ***Tax Reform Act of 1997***, re-enacted Section 119 as the present Section 121 of the Tax Code. Throughout these re-enactments, the legislature has not provided a statutory definition of the term "gross receipts" for purposes of the gross receipts tax on banks, common carriers, international carriers, radio and television operators, and finance companies.

Under Revenue Regulations Nos. 12-80 and 17-84, as well as in several numbered rulings,[40] the BIR has consistently ruled

---

[36] Section 117, Tax Code.

[37] Section 118, *ibid.*

[38] Section 119, *ibid.*

[39] Section 122, *ibid.*

[40] BIR Ruling No. 146-95 dated 19 September 1995 states in part: "Under Section 119 of the Tax Code as implemented by Revenue Regulations No. 12-80, the rates to be imposed on the gross receipts of banks and non-bank financial intermediaries shall be based on all items of income actually received, mere accrual will 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." Also, BIR Ruling No. 223-89 dated 2 November 1989 states in part: "x x x Accordingly, your

Supreme Court E-Library

that the term "gross receipts" does not admit of any deduction. This interpretation has remained unchanged throughout the various re-enactments of the present Section 121 of the Tax Code. The only conclusion that can be drawn is that the legislature has adopted the BIR's interpretation, following the principle of legislative approval by re-enactment. In ***Inte-provincial Autobus Co., Inc. v. Collector of Internal Revenue,***[41] the Court declared:

> Another reason for sustaining the validity of the regulation may be found in the principle of legislative approval by re-enactment. The regulations were approved on September 16, 1924. When the National Internal Revenue Code was approved on February 18, 1939, the same provisions on stamp tax, bills of lading and receipts were reenacted. There is a presumption that the Legislature reenacted the law on the tax with full knowledge of the contents of the regulations then in force regarding bills of lading and receipts, and that it approved or confirmed them because they carry out the legislative purpose.

The presumption is that the legislature is familiar with the contemporaneous interpretation of a statute given by the administrative agency tasked to enforce the statute.[42] The subsequent re-enactments of the present Section 121 of the Tax Code, without changes on the term interpreted by the BIR, confirm that the BIR's interpretation carries out the legislative purpose.

---

income derived from investing the excess funds in short-term market placements through commercial banks constitutes income, hence, subject to the 5% gross receipts tax under said Section of the Tax Code. The fact that it has been subjected to the 20% final withholding tax under Section 50(a) of the Tax Code is immaterial. Besides, the withholding tax is imposed under Title II of the Tax Code while the finance tax is provided under Title V thereof."

[41] 98 Phil. 290 (1956). See *Mindanao Bus Co. v. Collector of Internal Revenue*, 111 Phil. 137 (1961); *Laxamana v. Baltazar*, 92 Phil. 32 (1952). See also *Alexander Howden & Co., Ltd., et al. v. Comm. of Int. Revenue*, 121 Phil. 579.

[42] *Laxamana v. Baltazar*, 92 Phil. 32 (1952). See also *ABS-CBN Broadcasting v. Court of Tax Appeals*, 108 SCRA 142 (1981).

Supreme Court E-Library

However, for the amusement tax, which is also a business tax under the same Title V, the Tax Code makes a special definition of the term "gross receipts." The term "gross receipts" for amusement tax purposes "embraces all receipts of the proprietor, lessee or operator of the amusement place."[43] The Tax Code further adds that "[s]aid gross receipts also include income from television, radio and motion picture rights, if any."[44] This definition merely confirms that the term "gross receipts" embraces the entire receipts without any deduction or exclusion, as the term is generally and commonly understood.

Even without a statutory definition, the term "gross receipts" will have to exclude any deduction of the withholding tax. Otherwise, other items of income in Section 121 would also be subject to deductions despite the absence of a specific provision of law excluding any portion of such items of income from taxable gross receipts. Section 121 refers not only to interest income, but also to "dividends, x x x *rentals* of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code."

Under Revenue Regulations No. 13-78,[45] rental income received by a bank is subject to a creditable withholding tax. Under Section 121, such rental income, without any deduction of the withholding tax, forms part of the bank's taxable gross receipts. The amount of the creditable withholding tax is indubitably part of the bank's rental income. The creditable withholding tax is merely an advance payment by the bank of its tax on the rental income. The amount of the withholding tax comes from the bank's rental income and its payment extinguishes the bank's tax liability. The amount deducted by the payor-lessee and remitted to the government, representing the creditable withholding tax, is money the bank owns that is used to pay the bank's tax liability. The amount deducted and remitted as

---

[43] Section 125, Tax Code.

[44] *Ibid.*

[45] Expanded Withholding Tax Regulations.

Supreme Court E-Library

creditable withholding tax patently comes from the bank's rental income, and correctly forms part of the bank's gross receipts.

In the same manner, the amount of the final withholding tax on interest income should not be deducted from the bank's interest income for purposes of the gross receipts tax. The final withholding tax on interest, like the creditable withholding tax on rentals, comes from the bank's income and is money the bank owns that is used to pay the bank's tax liability. The final withholding tax and the creditable withholding tax constitute payment by the bank to extinguish a tax obligation to the government. The bank can only pay with money it owns, or with money it is authorized to spend. In either case, such money comes from the bank's revenues or receipts, and certainly not from the government's coffers.

CBC's argument will create tax exemptions where none exist. If the amount of the final withholding tax is excluded from taxable gross receipts, then the amount of the creditable withholding tax should also be excluded from taxable gross receipts. For that matter, any withholding tax should be excluded from taxable gross receipts because such withholding would qualify as "earmarking by regulation." Under Section 57(B) of the Tax Code, the Commissioner, with the approval of the Secretary of Finance, may by regulation impose a withholding tax on other items of income to facilitate the collection of the income tax. Every time the Commissioner expands the withholding tax, he will create tax exemptions where the law provides for none. Obviously, the Court cannot allow this.

Under Section 27(D)(4) of the Tax Code, dividends received by a domestic corporation from another corporation are not subject to the corporate income tax. Such intracorporate dividends are some of the passive incomes that are subject to the 20% final tax, just like interest on bank deposits. Intracorporate dividends, being already subject to the final tax on income, no longer form part of the bank's gross income under Section 32 of the Tax Code for purposes of the corporate income tax. However, Section 121 expressly states that dividends shall form part of the bank's gross receipts for purposes of the gross

Supreme Court E-Library

receipts tax on banks. This is the same treatment given to the bank's interest income that is subject to the final withholding tax. Such interest income, being already subject to the final tax, no longer forms part of the bank's gross income for purposes of the corporate income tax. Section 121, however, expressly includes such interest income as part of the bank's gross receipts for purposes of the gross receipts tax.

Whether an item of income is excluded from gross income or is subject to the final withholding tax has no bearing on its inclusion in gross receipts if Section 121 expressly includes such income as part of gross receipts. As held in ***Commonwealth of Pennsylvania***, "[t]he exemption of dividends and interest from taxation, through their exclusion from net income to be allocated, does not also exclude those items from the gross receipts from business activity of the corporation."[46]

There is a policy objective why no deductions, exemptions or exclusions are normally allowed in a gross receipts tax. The gross receipts tax, as opposed to the income tax, was devised to maintain ***simplicity*** in tax collection and to assure a ***steady source*** of state revenue even during periods of economic slowdown.[47] Such a policy frowns upon erosion of the tax base. Deductions, exemptions or exclusions complicate the tax system and lessen the tax collection. By its nature, a gross receipts tax applies to the entire receipts without any deduction, exemption or exclusion, unless the law clearly provides otherwise.

CBC cites ***Collector of Internal Revenue v. Manila Jockey Club***[48] as authority that the final withholding tax on interest income does not form part of a bank's gross receipts because the final tax is "earmarked by regulation" for the government. CBC's reliance on the ***Manila Jockey Club*** is misplaced. In this case the Court stated that Republic Act No. 309 and

---

[46] *Supra*, note 32.

[47] Robert J. Desiderio, James La Fata, and Maria Siemel McCulley, *New Mexico Taxes: Taking Another Look*, 32 New Mexico Law Review, Summer 2002.

[48] 108 Phil. 821 (1960).

Supreme Court E-Library

Order No. 320 apportioned the total amount of the bets in horse races as follows:

87½% as dividends to holders of winning tickets; 12½% as 'commission' of the Manila Jockey Club, of which ½% was assigned to the Board of Races and 5% was distributed as prizes for owners of winning horses and authorized bonuses for jockeys.[49]

A subsequent law, Republic Act No. 1933 ("RA No. 1933"), amended the sharing by ordering the distribution of the bets as follows:

Sec. 19. ***Distribution of receipts.*** — The total wager funds or gross receipts from the sale of pari-mutuel tickets shall be ***apportioned as follows:*** eighty-seven and one-half per centum shall be distributed in the form of dividends among the holders of win, place and show horses, as the case may be, in the regular races; ***six and one-half per centum shall be set aside as the commission of the person, racetrack, racing club, or any other entity conducting the races;*** five and one-half per centum shall be set aside for the payment of stakes or prizes for win, place and show horses and authorized bonuses for jockeys; and one-half per centum shall be paid to a special fund to be used by the Games and Amusements Board to cover its expenses and such other purposes authorized under this Act. x x x. (Italics supplied)

Under the "distribution of receipts" expressly mandated in Section 19 of RA No. 1933, the gross receipts "apportioned" to Manila Jockey Club referred only to its own 6½% commission. There is no dispute that the 5½% share of the horse-owners and jockeys, and the ½% share of the Games and Amusement Board, do not form part of Manila Jockey Club's gross receipts.RA No. 1933 took effect on 22 June 1957, three years before the Court decided ***Manila Jockey Club*** on 30 June 1960.

Even under the earlier law, ***Manila Jockey Club*** did not own the entire 12½% commission.Manila Jockey Club owned, and could keep and use, only 7% of the total bets. Manila Jockey merely held in trust the balance of 5½% for the benefit of the Board of Races and the winning horse owners and Jockeys, the real owners of the 5½% share.

---

[49] *Ibid.*

Supreme Court E-Library

The Court in ***Manila Jockey Club*** quoted with approval the following Opinion of the Secretary of Justice made *prior* to RA No. 1933:

> ***There is no question that the Manila Jockey Club, Inc. owns only 7-1/2% [sic] of the total bets registered by the Totalizer.*** This portion represents its share or commission in the total amount of money it hnadles and goes to the funds thereof as its own property which it may legally disburse for its own purposes. ***The 5% [sic] does not belong to theclub. It is merely held in trust for distribution as prizes to the owners of winning horses.*** It is destined for no other object than the payment of prizes and the club cannot otherwise appropriate this portion without incurring liability to the owners of winning horses. It can not be considered as an item of expense because the sum used for the payment of prizes is not taken from the funds of the club but from a certain portion of the total bets especially earmarked for that purpose.[50] (Emphasis supplied)

Consequently, the Court ruled that the 5½% balance of the commission, not being owned by Manila Jockey Club, did not form part of its gross receipts for purposes of the amusement tax. Manila Jockey Club correctly paid the amusement tax based only on its own 7% commission under RA No. 309 and Executive Order No. 320.

Manila Jockey Club does not support CBC's contention but rather the Commissioner's position. The Court ruled in *Manila Jockey Club* that receipts not owned by the Manila Jockey Club but merely held by it in trust did not form part of Manila Jockey Club 's gross receipts. Conversely, receipts owned by the Manila Jockey Club would form part of its gross receipts.

In the instant case, CBC owns the interest income which is the source of payment of the final withholding tax. The government subsequently becomes the owner of the money constituting the final tax when CBC pays the final withholding tax to extinguish its obligation to the government. This is the consideration for the transfer of ownership of the money from CBC to the government. Thus, the amount constituting the final

---

[50] *Ibid.*

Supreme Court E-Library

tax, *being originally owned by CBC as part of its interest income*, should form part of its taxable gross receipts.

In ***Commissioner v. Tours Specialists, Inc.,***[51] the Court excluded from gross receipts money entrusted by foreign tour operators to Tours Specialists to pay the hotel accommodation of tourists booked in various local hotels. The Court declared that Tours Specialists ***did not own such entrusted funds*** and thus the funds were not subject to the 3% contractor's tax payable by Tours Specialists. The Court held:

> x x x ***[G]ross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit;*** and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code.
>
> x x x [T]he room charges entrusted by the foreign travel agencies to the private respondent do not form part of its gross receipts within the definition of the Tax Code. ***The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels.*** x x x [T]his arrangement was only to accommodate the foreign travel agencies. (Italics supplied)

Unless otherwise provided by law, ***ownership*** is essential in determining whether interest income forms part of taxable gross receipts. Ownership is the circumstance that makes interest income part of the taxable gross receipts of the taxpayer. When the taxpayer acquires ownership of money representing interest, the money constitutes income or receipt of the taxpayer.

In contrast, the trustee or agent does not own the money received in trust and such money does not constitute income or receipt for which the trustee or agent is taxable. This is a fundamental concept in taxation. Thus, funds received by a money remittance agency for transfer and delivery to the beneficiary do not constitute income or gross receipts of the money remittance agency. Similarly, a travel agency that collects

---

[51] G.R. No. 66416, 21 March 1990, 183 SCRA 402.

Supreme Court E-Library

ticket fares for an airline does not include the ticket fare in its gross income or receipts. In these cases, the money remittance agency or travel agency does not acquire ownership of the funds received.

Moreover, when Section 121 of the Tax Code includes "interest" as part of gross receipts, it refers to the entire interest earned and owned by the bank without any deduction. "Interest" means the gross amount paid by the borrower to the lender as consideration for the use of the lender's money. Section 2(h) of Revenue Regulations No. 12-80, now Section 2(i) of Revenue Regulations No. 17-84, defines the term "interest" as "the amount which a depository bank (borrower) may pay on savings and time deposit in accordance with rates authorized by the Central Bank of the Philippines." This definition does not allow any deduction. The entire interest paid by the depository bank, without any deduction, is what forms part of the lending bank's gross recipts.

To illustrate, assume that the gross amount of the interest income is ₱100. The lending bank owns this entire ₱100 since this is the amount the depository bank pays the lending bank for use of the lender's money. In its books the depository bank records an interest expense of ₱100 and claims a deduction for interest expense of ₱100. The 20% final withholding tax[52] on this interest income is ₱20, which the law requires the depository bank to withhold and remit directly to the government. The depository bank withholds the final tax in trust for the government which then becomes the owner of the ₱20. The final tax is the legal liability of the lending bank as recipient of the interest income. The payment of the ₱20 final tax extinguishes the tax liability of the lending bank. The interest income that the depository bank turns over physically to the lending bank

[52] Under Section 2(h)(iii)(a) of Revenue Regulations No. 17-84, "[A]ll interbank borrowings by or among banks and non-bank financial institutions authorized to engage in quasi-banking functions evidenced by deposit substitute instruments, except interbank call loans to cover deficiency in reserves against deposit liabilities as evidenced by interbank loan advice or repayment transfer tickets."

Supreme Court E-Library

is ₱80, the net receipt after deducting the ₱20 final tax. Still, the interest income that forms part of the lending bank's gross receipts for purposes of the gross receipts tax is ₱100 because the total amount earned by the lending bank from its passive investment is ₱100, not ₱80.

Stated differently, the lending bank paid ₱20 as final tax which is 20% of the interest income it received. Logically, the lending bank's interest income is ₱100 to arrive at a ₱20 final withholding tax. Since what the law includes in gross receipts is the interest income, then it is ₱100 and not P80 which forms part of the lending bank's gross receipts. If the lending bank's interest income is only ₱80, then its 20% final withholding tax should only be ₱16.

CBC also relies on the Tax Court's ruling in ***Asia Bank*** that Section 4(e) of Revenue Regulations No. 12-80 authorizes the exclusion of the final tax from the bank's taxable gross receipts. Section 4(e) provides that:

Sec. 4. . . .

(e) Gross receipts tax on banks, non-bank financial Intermediaries, financing companies, and other non-bank financial intermediaries not performing quasi-banking functions. — The rates of taxes to be imposed on the gross receipts of such financial institutions ***shall be based on all items of income actually received.*** 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: x x x. (Emphasis supplied by Tax Court)

Section 4(e) states that the gross receipts "shall be based on all items of income actually received." The tax court in ***Asia Bank*** concluded that "it is but logical to infer that the final tax, not having been received by 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."

The Tax Court erred glaringly in interpreting Section 4(e) of Revenue Regulations No. 12-80. Income may be taxable either at the time of its actual receipt or its accrual, depending on the

Supreme Court E-Library

accounting method of the taxpayer. Section 4(e) merely provides for an exception to the rule, making interest income taxable for gross receipts tax purposes only upon actual receipt. Interest is accrued, and not actually received, when the interest is due and demandable but the borrower has not actually paid and remitted the interest, whether physically or constructively. Section 4(e) does not exclude accrued interest income from gross receipts but merely *postpones* its inclusion until actual payment of the interest to the lending bank. This is clear when Section 4(e) states that *"[m]ere accrual shall not be considered, but once payment is received on such accrual or in case of prepayment, then the amount actually received shall be included in the tax base of such financial institutions . . . ."*

Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt.[53] When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld. From the amount constructively received by the lending bank, the depository bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.*

The concept of a withholding tax on income *obviously and necessarily* implies that the amount of the tax withheld comes from the income earned by the taxpayer.[54] Since the amount of the tax withheld constitutes income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of

---

[53] Article 531, Civil Code.

[54] *Bank of America NT & SA v. Court of Appeals*, G.R. No. 103092, 21 July 1994, 234 SCRA 302. The Court stated that, "Obviously, the amount thereby used to settle the tax liability is deemed sourced from the proceeds constructive of the tax base."

Supreme Court E-Library

his tax liability. The amount withheld indubitably comes from income of the taxpayer, and thus forms part of his gross receipts. In addition, Section 8 of Revenue Regulations No. 12-80 expressly states that interest income, even if subject to the final withholding tax and excluded from gross income for income tax purposes, should still form part of the bank's taxable gross receipts. Section 8 of Revenue Regulations No. 12-80 provides that —

> Section 8. *Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes* —
>
> (a) The interest earned on Philippine currency, bank deposits and yield from deposit substitutes subjected to the withholding taxes in accordance with these regulations *need not be included in the gross income* in computing the depositor's/investor's income tax liability in accordance withthe provision of Section 29(b), (c) and (d) of the Tax Code.
>
> (b) . . .
>
> (c) *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."* (Emphasis supplied)

Thus, interest earned by banks, even if subject to the final tax and excluded from taxable gross income, forms part of its gross receipts for gross receipts tax purposes. The interest earned refers to the gross interest without deduction since the regulations do not provide for any deduction. The gross interest, without deduction, is the amount the borrower pays, and the income the lender earns, for the use by the borrower of the lender's money. The amount of the final tax plainly comes from the interest earned and is consequently part of the bank's taxable gross receipts.

In ***PLDT v. Collector of Internal Revenue***,[55] the Court ruled that PLDT's gross receipts included the uncollected fees from customers because PLDT already earned the uncollected

[55] 90 Phil. 674 (1952).

Supreme Court E-Library

fees. The Court declared that fees earned, even if not collected, formed part of PLDT's gross receipts for purposes of the franchise tax. Construing "'gross receipts' . . . as meaning the same as 'gross earnings'," the Court refused to allow deductions of uncollected or bad accounts from the gross receipts in computing the franchise tax.

Presidential Decree No. 1739 ("PD No. 1739"), which took effect on 17 September 1980, made the withholding tax on interest from bank deposits a final tax. To implement PD No. 1739, the then Ministry of Finance, upon recommendation of the BIR, issued Revenue Regulations No. 12-80 "to govern the manner of taxation of certain income derived from banking activities as provided for by Presidential Decree No. 1739." Subsequently, Presidential Decree No. 1959, which took effect on 10 October 1984, amended PD No. 1739. The Ministry of Finance, upon recommendation of the BIR, issued on 12 October 1984 Revenue Regulations No. 17-84 "to govern the manner of taxation of interest income derived from deposit and deposit substitutes as provided for by Presidential Decree No. 1959." Thus, as early as 12 October 1984 Revenue Regulations No. 17-84 had supplanted Revenue Regulations No. 12-80.

Among the changes introduced by PD No. 1959 was the reduction of the final withholding tax on time deposits and yield on deposit substitutes to 15% from the 20% rate in PD No. 1739. Revenue Regulations No. 17-84 readopted verbatim Section 2(h) on the definition of "interest,"[56] as well as Section 8(c) on

---

[56] Section 2(h) of Revenue Regulations No. 12-80 provides: "'Interest' with respect to bank deposits, shall mean the amount which a depository bank may pay on savings and time deposit in accordance with rates authorized by the Central Bank of the Philippines." Similarly, Section 2(i) of Revenue Regulations No. 17-84 provides: "'Interest' with respect to bank deposits, shall mean the amount which a depository bank may pay on savings and time deposits in accordance with rates authorized by the Central Bank of the Philippines."

Supreme Court E-Library

the computation of the taxable base of the bank's gross receipts,[57] found in Revenue Regulations No. 12-80. However, Revenue Regulations No. 17-84 did ***not*** readopt Section 4(e) of Revenue Regulations No. 12-80, which was the regulation cited in ***Asia Bank*** as basis for excluding the final withholding tax from the bank's taxable gross receipts. As early as 12 years before the tax court decided ***Asia Bank***, the revenue regulations already required interest income, whether actually received or merely accrued, to form part of the bank's taxable gross receipts.

On the other hand, Section 7 of Revenue Regulations No. 17-84, which replaced Section 4 of Revenue Regulations No. 12-80, provides that —

> Section 7. *Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes.* —
>
> (a) The interest earned on Philippine Currency bank deposits and yield from deposit substitutes subjected to the withholding taxes in accordance with these regulations ***need not be included in the gross income*** in computing the depositor's/investor's income tax liability in accordance with the provision of Section 29(b), (c) and (d) of the National Internal Revenue Code, as amended.
>
> (b) Only interest paid or accrued on bank deposits, or yield from deposit substitutes declared for purposes of imposing the withholding taxes in accordance with these regulations shall be allowed as interest expense deductible for purposes of computing taxable net income of the payor.
>
> (c) ***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 receipt tax is imposed.*** (Emphasis supplied)

---

[57] Section 8(c) of Revenue Regulations No. 12-80 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." Similarly, Section 7(c) of Revenue Regulations No. 17-84 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."

Supreme Court E-Library

Thus, the Tax Court, which decided ***Asia Bank*** on 30 January 1996, not only erroneously interpreted Section 4(e) of Revenue Regulations No. 12-80, it also cited Section 4(e) when it was no longer the applicable revenue regulation. To reiterate, the revenue regulations applicable at the time the tax court decided ***Asia Bank*** was Revenue Regulations No. 17-84, not Revenue Regulations No. 12-80.

The argument that Section 7(c) of Revenue Regulations No. 17-84 does not apply to banks but only to finance companies deserves scant consideration. This argument proceeds from the interpretations[58] that the term "financial institutions" in Section 7(c) is the equivalent of the term "finance companies." Section 7(c) states as follows:

> If the recipient of the above-mentioned items of income are ***financial institutions,*** the same shall be included as part of their tax base upon which the gross receipts tax is imposed." (Emphasis supplied)

However, the ***immediately succeeding*** section belies this interpretation. Section 8 of Revenue Regulations No. 17-84 states:

> Section 8. ***Statement to be attached to the corporate tax return of financial institutions.*** — There shall be attached to the final consolidated corporate return of the ***authorized agent bank or non-financial intermediaries*** for each taxable year, a statement summarizing the pertinent information required by these regulations with respect to the computation of the aggregate interest paid on savings, time deposits and deposit substitutes and taxes withheld therefrom and paid to the Bureau, during the year (B.I.R. Form No. __). (Emphasis supplied)

Section 8 expressly specifies banks and non-bank financial intermediaries as the "financial institutions" that should attach to their corporate tax returns statements summarizing certain pertinent information on the computation of their interest income subject to the final tax. Revenue Regulations No. 17-84 applies

---

[58] *Supra*, note 15, Resolution of Court of Appeals dated 25 April 2001 in CA-G.R. SP No. 50790.

Supreme Court E-Library

to "banks, non-bank financial intermediaries," "finance companies," "lending investors, investment houses, trust companies and similar institutions and corporations."[59] Obviously, the term "financial institutions" is not the same as the term "finance companies," but signifies a broader meaning to embrace banks.

Of course, the term "financial institutions" also covers finance companies since Section 7(c) uses this term to refer to institutions that are subject to the "gross receipts tax." Section 7(c) states that interest income received by financial institutions shall form part of their "***tax base upon which the gross receipts tax is based***." Under Sections 121 and 122[60] of the Tax Code, the financial institutions that are subject to the gross receipts tax are banks, non-bank financial intermediaries and finance companies. These financial institutions are taxable on the same class of interest income and at the same tax rates. Evidently, the term "financial institutions" refers to banks, non-bank financial intermediaries, and finance companies. CBC's contention that it can deduct the final withholding tax from its interest income amounts to a claim of tax exemption. The cardinal rule in taxation is exemptions are highly disfavored and whoever claims an exemption must justify his right by the clearest grant of organic or statute law.[61] CBC must point to a specific provision of law granting the tax exemption.[62] The tax exemption cannot arise

---

[59] Section 2(h)(ii) of Revenue Regulations No. 17-84.

[60] Section 122 of the Tax Code provides as follows: "Section 122. *Tax on Finance Companies.* — There shall be collected a tax of five percent (5%) on the gross receipts derived by all finance companies, as well as by other financial intermediaries not performing quasi-banking functions doing business in the Philippines, from interest, discounts and all other items treated as gross income under this Code: *Provided*, That interests, commissions and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of the remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule: x x x"

[61] *Wonder Mechanical Engineering Corporation v. Court of Tax Appeals*, G.R. No. L-22805 and L-27858, 30 June 1975, 64 SCRA 555.

[62] *Manila Electric Company v. Vera*, G.R. No. L-29987, 22 October 1975, 67 SCRA 351.

Supreme Court E-Library

by mere implication and any doubt about whether the exemption exists is strictly construed against the taxpayer and in favor of the taxing authority.[63]

Section 121 of the Tax Code expressly subjects interest income to the gross receipts tax on banks. Such express inclusion of interest income in taxable gross receipts creates a *presumption* that the entire amount of the interest income, without any deduction, is subject to the gross receipts tax. As ruled by the Supreme Court of New Mexico in ***Kewanee Industries, Inc. v. Reese***,[64] —

> ***x x x There is a presumption that receipts of a person engaging in business are subject to the gross receipts tax. For Kewanee to prevail, it must clearly overcome this presumption.*** Additionally, where an exception is claimed, the statute is construed strictly in favor of the taxing authority. The exemption must be clearly and unambiguously expressed in the statute, and must be clearly established by the taxpayer claiming the right thereto. Thus, taxation is the rule and the claimant must show that his demand is within the letter as well as the spirit of the law. (Citations and quotations omitted)

To overcome this presumption, CBC must point to a specific provision of law allowing the deduction of the final withholding tax from its taxable gross receipts. CBC has failed to cite any provision of law allowing the final tax as an exemption, deduction or exclusion. Thus, CBC's claim has no legal leg to stand on.

In ***Asia Bank***, the Court of Tax Appeals quoted ***Manila Jockey Club*** that the legislature could not have intended the Board of Races' ½% share to be subjected to the amusement tax because it would constitute double taxation. The Court in ***Manila Jockey Club*** explained that "double taxation . . . should be avoided unless the statute admits of no other interpretation." This statement was not the ***ratio decidendi in Manila Jockey Club.*** There, the Court found that the Board of Races' ½% share, and the horse-owners' and jockeys' 5% share, were

---

[63] *Collector of Internal Revenue v. Manila Jockey Club, Inc.*, 98 Phil. 670 (1956).

[64] 114 N.M. 784; 845 P.2d 1238 (1993).

Supreme Court E-Library

not owned by the ***Manila Jockey Club*** and thus did not form part of the Manila Jockey Club's gross receipts.

Nevertheless, the tax court quoted with approval this particular statement in ***Manila Jockey Club***, thus implying two interpretations. One, the court should avoid an interpretation that will tax twice the same interest income, first to the 20% final tax and then to the gross receipts tax. Two, the court should avoid an interpretation that will impose a "tax on a tax," such as subjecting the final tax to the gross receipts tax.

The first interpretation raises the bogey of a constitutional prohibition on double taxation, The rule, however, is well-settled that there is no constitutional prohibition against double taxation. As the Court aptly explained in ***City of Baguio v. De Leon***[65] —

> To repeat, the challenged ordinance cannot be considered ultra vires as there is more than ample statutory authority for the enactment thereof. Nonetheless, its validity on constitutional grounds is challenged because the allegation that it imposed double taxation, which is repugnant to the due process clause, and that it violated the requirement of uniformity. We do not view the matter thus.
>
> As to why double taxation is not violative of due process, Justice Holmes made clear in this language: "The objection to the taxation as double may be laid down on one side . . . . The 14th Amendment [the due process clause] no more forbids double taxation than it does doubling the amount of a tax, short of confiscation or proceedings unconstitutional on other grounds." With that decision rendered at a time when American sovereignty in the Philippines was recognized, it possesses more than just a persuasive effect. To some, it delivered the coup de grace to the bogey of double taxation as a constitutional bar to the exercise of the taxing power. It would seem though that in the United States, as with us, its ghost, as noted by an eminent critic, still stalks the juridical stage. In a 1947 decision, however, we quoted with approval this excerpt from a leading American decision: 'Where, as here, Congress has clearly expressed its intention, the statute must be sustained even though double taxation results.'

---

[65] 134 Phil. 912 (1968).

Supreme Court E-Library

Besides, there is no double taxation when Section 121 of the Tax Code imposes a gross receipts tax on interest income that is already subjected to the 20% final withholding tax under Section 27 of the Tax Code. The gross receipts tax is a business tax under Title V of the Tax Code, while the final withholding tax is an income tax under Title II of the Code. There is no double taxation if the law imposes two different taxes on the same income, business or property.

The second interpretation, of a prohibition on "a tax on a tax," is as illusory as the prohibition on double taxation. The gross receipts tax falls not on the final withholding tax, but on the amount of the interest income withheld as the final tax. What is being taxed is still the interest income. The law imposes the gross receipts tax on that portion of the interest income that the depository bank withholds and remits to the government. Consequently, the entire amount of the interest income is taxable and not only the net interest income.

Moreover, whenever the legislature excludes a certain tax from gross receipts, the legislature states so clearly and unequivocally. Thus, for purposes of the value-added tax, Section 106[66] of the Tax Code expressly excludes the value-added tax from the "gross selling price" to avoid a "tax on the tax." To clarify that only the value-added tax does not form part of the gross selling price, Section 106 expressly states that the gross selling price shall include any excise tax, effectively resulting in a "tax on a tax." Of course, the "tax on a tax" is in reality a tax on the portion of the income or receipt that is equivalent to the tax, usually withheld and remitted to the government.

There is no constitutional prohibition on subjecting the same income or receipt to an income tax and to some other tax like the gross receipts tax. Similarly, the same income or receipt

---

[66] Section 10 of the Tax Code states in part: "The term 'gross selling price' means the total amount of money or its equivalent which the purchaser pays or is obligated to pay to the seller in consideration of the sale, barter or exchange of the goods or properties, excluding the value-added tax. The excise tax, if any, on such goods or properties shall form part of the gross selling price."

Supreme Court E-Library

may be subject to the value-added tax and the excise tax like the specific tax. If the tax law follows the constitutional rule on uniformity, making all income, business or property of the same class taxable at the same rate, there can be no valid objection to taxing the same income, business or property twice.

In summary, CBC has failed to point to any specific provision of law allowing the deduction, exemption or exclusion, from its taxable gross receipts, of the amount withheld as final tax. Such amount should therefore form part of CBC's gross receipts in computing the gross receipts tax. There being no legal basis for CBC's claim for a tax refund or credit, the second issue raised in this petition is now moot.

WHEREFORE, the Petition for Review filed by China Banking Corporation in G.R. No. 146749 is *DENIED* for lack of merit. The Petition for Review filed by the Commissioner of Internal Revenue in G.R. No. 147938 is *GRANTED*. The assailed decisions and resolutions of the Court of Tax Appeals in CTA Case No. 5405 and those of the Court of Appeals in CA-G.R. SP No. 50839 and CA-G.R. SP No. 50790 are *SET ASIDE*.

SO ORDERED.

Davide, Jr., C. J. (Chairman), Vitug, Ynares-Santiago, and *Azcuna, JJ.*, concur.