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SECOND DIVISION

[G.R. No. 149636. June 8, 2005]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BANK OF COMMERCE,** *respondent.*

SYLLABUS

1. TAXATION; TAX CODE; TAXABLE GROSS RECEIPTS; CONSTRUED IN ITS PLAIN AND ORDINARY MEANING.— Section 121 (formerly Section 119) of the Tax Code provides that a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries shall be computed in accordance with the schedules therein: The Tax Code does not define "gross receipts." Absent any statutory definition, the Bureau of Internal Revenue has applied the term in its plain and ordinary meaning. In *National City Bank v. CIR,* the CTA held that gross receipts should be interpreted as the whole amount received as interest, without deductions; otherwise, if deductions were to be made from gross receipts, it would be considered as "net receipts." The CTA changed course, however, when it promulgated its decision in *Asia Bank*; it applied Section 4(e) of Rev. Reg. No. 12-80 and the ruling of this Court in *Manila Jockey Club*, holding that the 20% final withholding tax on the petitioner bank's interest income should not form part of its taxable gross receipts, since the final tax was not actually received by the petitioner bank but went to the coffers of the government. The word "gross" must be used in its plain and ordinary meaning. It is defined as "whole, entire, total, without deduction." A common definition is "without deduction." "Gross" is also defined as "taking in the whole; having no deduction or abatement; whole, total as opposed to a sum consisting of separate or specified parts." Gross is the antithesis of net.

2. ID.; ID.; ID.; INTEREST INCOME IS PRESUMED TO BE SUBJECT TO GROSS RECEIPTS TAX WITHOUT ANY DEDUCTION; EXEMPTION MUST BE CLEARLY AND UNAMBIGUOUSLY EXPRESSED IN THE STATUTE; NOT PRESENT IN CASE AT BAR.— The Court, likewise, declared that Section 121 of the Tax Code expressly subjects interest income of banks to the

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gross receipts tax. "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. Indeed, there is a presumption that receipts of a person engaging in business are subject to the gross receipts tax. Such presumption may only be overcome by pointing to a specific provision of law allowing such deduction of the final with holding tax from the taxable gross receipts, failing which, the claim of deduction has no leg to stand on. Moreover, where such 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." In this case, there is no law which allows the deduction of 20% final tax from the respondent bank's interest income for the computation of the 5% gross receipts tax. On the other hand, Section 8(a)(c), Rev. Reg. No. 17-84 provides that interest earned on Philippine bank deposits and yield from deposit substitutes are included as part of the tax base upon which the gross receipts tax is imposed. Such earned interest refers to the gross interest without deduction since the regulations do not provide for any such 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 covers for the interest earned and is consequently part of the taxable gross receipt of the lender. The bare fact that the final withholding tax is a special trust fund belonging to the government and that the respondent bank did not benefit from it while in custody of the borrower does not justify its exclusion from the computation of interest income. Such final withholding tax covers for the respondent bank's income and is the amount to be used to pay its tax liability to the government. This tax, along with the creditable withholding tax, constitutes payment which would extinguish the respondent bank's obligation to the government. The bank can only pay the money it owns, or the money it is authorized to pay.

3. ID.; ID.; FINAL WITHHOLDING TAX AND GROSS RECEIPTS TAX, DISTINGIUSHED.— We reverse the ruling of the CA

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that subjecting the Final Withholding Tax (FWT) to the 5% of gross receipts tax would result in double taxation. In *CIR v. Solidbank Corporation,* we ruled, thus: We have repeatedly said that the two taxes, subject of this litigation, are different from each other. The basis of their imposition may be the same, but their natures are different, thus leading us to a final point. Is there double taxation? The Court finds none. *Double taxation* means taxing the same property twice when it should be taxed only once; that is, "x x x taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character. *First,* the taxes herein are imposed on two different subject matters. The subject matter of the FWT is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT is the privilege of engaging in the business of banking. A tax based on receipts is a tax on business rather than on the property; hence, it is an excise rather than a property tax. It is not an income tax, unlike the FWT. In fact, we have already held that one can be taxed for engaging in business and further taxed differently for the income derived therefrom. Akin to our ruling in *Velilla v. Posadas,* these two taxes are entirely distinct and are assessed under different provisions. *Second,* although both taxes are national in scope because they are imposed by the same taxing authority – the national government under the Tax Code – and operate within the same Philippine jurisdiction for the same purpose of raising revenues, the taxing periods they affect are different. The FWT is deducted and withheld as soon as the income is earned, and is paid after every *calendar* quarter in which it is earned. On the other hand, the GRT is neither deducted nor withheld, but is paid only after every taxable quarter in which it is earned. *Third,* these two taxes are of different kinds or characters. The FWT is an income tax subject to withholding, while the GRT is a percentage tax not subject to withholding. In short, there is no double taxation, because there is no taxing twice, by the same taxing authority, within the same jurisdiction, for the same

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purpose, in different taxing periods, some of the property in the territory. Subjecting interest income to a 20% FWT and including it in the computation of the 5% GRT is clearly not double taxation.

APPEARANCES OF COUNSEL

Alvin Agustin T. Ignacio for respondent.

D E C I S I O N

CALLEJO, SR., *J.*:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52706, affirming the ruling of the Court of Tax Appeals (CTA)[2] in CTA Case No. 5415.

The facts of the case are undisputed.

In 1994 and 1995, the respondent Bank of Commerce derived passive income in the form of interests or discounts from its investments in government securities and private commercial papers. On several occasions during the said period, it paid 5% gross receipts tax on its income, as reflected in its quarterly percentage tax returns. Included therein were the respondent bank's passive income from the said investments amounting to ₱85,384,254.51, which had already been subjected to a final tax of 20%.

Meanwhile, on January 30, 1996, the CTA rendered judgment in *Asia Bank Corporation v. Commissioner of Internal Revenue*, CTA Case No. 4720, holding that the 20% final withholding tax on interest income from banks does not form part of taxable gross receipts for Gross Receipts Tax (GRT)

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[1] Penned by Associate Justice Presbitero J. Velasco, Jr. (now Court Administrator) with Associate Justices Ruben T. Reyes and Juan Q. Enriquez, Jr., concurring; *Rollo*, pp. 23-31.

[2] Penned by Presiding Judge Ernesto D. Acosta with Judges Ramon O. De Veyra, concurring and Amancio Q. Saga, dissenting.

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purposes. The CTA relied on Section 4(e) of Revenue Regulations (Rev. Reg.) No. 12-80.

Relying on the said decision, the respondent bank filed an administrative claim for refund with the Commissioner of Internal Revenue on July 19, 1996. It claimed that it had overpaid its gross receipts tax for 1994 to 1995 by ₱853,842.54, computed as follows:

Gross receipts subjected to Final Tax Derived from Passive Investment	*₱85,384,254.51*
	x 20%
20% Final Tax Withheld at Source	*17,076,850.90*
	x 5%
	₱853,842.54

Before the Commissioner could resolve the claim, the respondent bank filed a petition for review with the CTA, lest it be barred by the mandatory two-year prescriptive period under Section 230 of the Tax Code (now Section 229 of the Tax Reform Act of 1997).

In his answer to the petition, the Commissioner interposed the following special and affirmative defenses:

. . . . . .

5. The alleged refundable/creditable gross receipts taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations; hence, the same are not refundable. Petitioner must prove that the income from which the refundable/creditable taxes were paid from, were declared and included in its gross income during the taxable year under review;

6. Petitioner's allegation that it erroneously and excessively paid its gross receipt tax during the year under review does not *ipso facto* warrant the refund/credit. Petitioner must prove that the exclusions claimed by it from its gross receipts must be an allowable exclusion under the Tax Code and its pertinent implementing Rules and Regulations. Moreover, it must be supported by evidence;

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7. Petitioner must likewise prove that the alleged refundable/creditable gross receipt taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s;

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

9. Furthermore, petitioner must prove that it has complied with the provision of Section 230 (now Section 229) of the Tax Code, as amended.[3]

The CTA summarized the issues to be resolved as follows: whether or not the final income tax withheld should form part of the gross receipts[4] of the taxpayer for GRT purposes; and whether or not the respondent bank was entitled to a refund of ₱853,842.54.[5]

The respondent bank averred that for purposes of computing the 5% gross receipts tax, the final withholding tax does not form part of gross receipts.[6] On the other hand, while the Commissioner conceded that the Court defined "gross receipts" as "all receipts of taxpayers excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer" in *CIR v. Manila Jockey Club, Inc.*,[7] he claimed that such definition was applicable only to a proprietor of an amusement place, not a

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[3] *Rollo*, p. 35.

[4] Section 119 of the Tax Code.

[5] *Rollo*, p. 37.

[6] Citing the rulings in *Asian Bank Corporation v. Commissioner of Internal Revenue*, CTA Case No. 4720, January 30, 1996; and in *CIR v. Manila Jockey Club*, 108 Phil. 821 (1960).

[7] 108 Phil. 821 (1960).

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banking institution which is an entirely different entity altogether. As such, according to the Commissioner, the ruling of the Court in *Manila Jockey Club* was inapplicable.

In its Decision dated April 27, 1999, the CTA by a majority decision[8] partially granted the petition and ordered that the amount of ₱355,258.99 be refunded to the respondent bank. The *fallo* of the decision reads:

> WHEREFORE, in view of all the foregoing, respondent is hereby *ORDERED* to *REFUND* in favor of petitioner Bank of Commerce the amount of ₱355,258.99 representing validly proven erroneously withheld taxes from interest income derived from its investments in government securities for the years 1994 and 1995.[9]

In ruling for respondent bank, the CTA relied on the ruling of the Court in *Manila Jockey Club*, and held that the term "gross receipts" excluded those which had been especially earmarked by law or regulation for the government or persons other than the taxpayer. The CTA also cited its rulings in *China Banking Corporation v. CIR*[10] and *Equitable Banking Corporation v. CIR*.[11]

The CTA ratiocinated that the aforesaid amount of ₱355,258.99 represented the claim of the respondent bank, which was filed within the two-year mandatory prescriptive period and was substantiated by material and relevant evidence. The CTA applied Section 204(3) of the National Internal Revenue Code (NIRC).[12]

The Commissioner then filed a petition for review under Rule 43 of the Rules of Court before the CA, alleging that:

(1) There is no provision of law which excludes the 20% final income tax withheld under Section 50(a) of the Tax Code in

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[8] Penned by Presiding Judge Ernesto D. Acosta, with Judges Ramon O. De Veyra, concurring and Amancio Q. Saga, dissenting.

[9] *Rollo*, p. 44.

[10] CTA Case No. 5433, October 7, 1995.

[11] CTA Case No. 4720, January 30, 1996.

[12] *Rollo*, pp. 42-43.

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the computation of the 5% gross receipts tax.

(2) The Tax Court erred in applying the ruling in *Collector of Internal Revenue vs. Manila Jockey Club* (108 Phil. 821) in the resolution of the legal issues involved in the instant case.[13]

The Commissioner reiterated his stand that the ruling of this Court in *Manila Jockey Club*, which was affirmed in *Visayan Cebu Terminal Co., Inc. v. Commissioner of Internal Revenue*,[14] is not decisive. He averred that the factual milieu in the said case is different, involving as it did the "wager fund." The Commissioner further pointed out that in *Manila Jockey Club*, the Court ruled that the race track's commission did not form part of the gross receipts, and as such were not subjected to the 20% amusement tax. On the other hand, the issue in *Visayan Cebu Terminal* was whether or not the gross receipts corresponding to 28% of the total gross income of the service contractor delivered to the Bureau of Customs formed part of the gross receipts was subject to 3% of contractor's tax under Section 191 of the Tax Code. It was further pointed out that the respondent bank, on the other hand, was a banking institution and not a contractor. The petitioner insisted that the term "gross receipts" is self-evident; it includes all items of income of the respondent bank regardless of whether or not the same were allocated or earmarked for a specific purpose, to distinguish it from net receipts.

On August 14, 2001, the CA rendered judgment dismissing the petition. Citing Sections 51 and 58(A) of the NIRC, Section 4(e) of Rev. Reg. No. 12-80[15] and the ruling of this Court in *Manila Jockey Club*, the CA held that the ₱17,076,850.90 representing the final withholding tax derived from passive investments subjected to final tax should not be construed as forming part of the gross receipts of the respondent bank upon which the 5% gross receipts

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[13] CA *Rollo*, p. 9.

[14] G.R. Nos. L-19530 and L-19444, 27 February 1965, 13 SCRA 357.

[15] Issued on 7 November 1980.

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tax should be imposed. The CA declared that the final withholding tax in the amount of ₱17,768,509.00 was a trust fund for the government; hence, does not form part of the respondent's gross receipts. The legal ownership of the amount had already been vested in the government. Moreover, the CA declared, the respondent did not reap any benefit from the said amount. As such, subjecting the said amount to the 5% gross receipts tax would result in double taxation. The appellate court further cited *CIR v. Tours Specialists, Inc.*,[16] and declared that the ruling of the Court in *Manila Jockey Club* was decisive of the issue.

The Commissioner now assails the said decision before this Court, contending that:

THE COURT OF APPEALS ERRED IN HOLDING THAT THE 20% FINAL WITHHOLDING TAX ON BANK'S INTEREST INCOME DOES NOT FORM PART OF THE TAXABLE GROSS RECEIPTS IN COMPUTING THE 5% GROSS RECEIPTS TAX (GRT, for brevity).[17]

The petitioner avers that the reliance by the CTA and the CA on Section 4(e) of Rev. Reg. No. 12-80 is misplaced; the said provision merely authorizes the determination of the amount of gross receipts based on the taxpayer's method of accounting under then Section 37 (now Section 43) of the Tax Code. The petitioner asserts that the said provision ceased to exist as of October 15, 1984, when Rev. Reg. No. 17-84 took effect. The petitioner further points out that under paragraphs 7(a) and (c) of Rev. Reg. No. 17-84, interest income of financial institutions (including banks) subject to withholding tax are included as part of the "gross receipts" upon which the gross receipts tax is to be imposed. Citing the ruling of the CA in *Commissioner of Internal Revenue v. Asianbank Corporation*[18] (which likewise cited *Bank of America NT & SA v. Court of Appeals*,)[19]

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

[17] *Rollo*, p. 11.

[18] CA-G.R. SP No. 51248, 22 November 1999.

[19] G.R. No. 103092, 21 July 1994, 234 SCRA 302.

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the petitioner posits that in computing the 5% gross receipts tax, the income need not be actually received. For income to form part of the taxable gross receipts, constructive receipt is enough. The petitioner is, likewise, adamant in his claim that the final withholding tax from the respondent bank's income forms part of the taxable gross receipts for purposes of computing the 5% of gross receipts tax. The petitioner posits that the ruling of this Court in Manila Jockey Club is not decisive of the issue in this case.

The petition is meritorious.

The issues in this case had been raised and resolved by this Court in *China Banking Corporation v. Court of Appeals*,[20] and *CIR v. Solidbank Corporation*.[21]

Section 27(D)(1) of the Tax Code reads:

(D) Rates of Tax on Certain Passive Incomes. —

(1) 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 (7 1/2%) of such interest income.

On the other hand, Section 57(A)(B) of the Tax Code authorizes the withholding of final tax on certain income creditable at source:

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[20] G.R. No. 146749, 10 June 2003, 403 SCRA 634.

[21] G.R. No. 148191, 25 November 2003, 416 SCRA 436.

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SEC. 57. *Withholding of Tax at Source.* —

(A) Withholding of Final Tax on Certain Incomes. — Subject to rules and regulations, the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.

(B) Withholding of Creditable Tax at Source. — The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.

The tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer. [22]

Section 121 (formerly Section 119) of the Tax Code provides that a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries shall be computed in accordance with the schedules therein:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

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[22] Section 58(A).

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Short-term maturity (not in excess of two (2) years)	*5%*
Medium-term maturity (over two (2) years but not exceeding four (4) years)	*3%*
Long-term maturity —	
(1) Over four (4) years but not exceeding seven (7) years	*1%*
(2) Over seven (7) years	*0%*
(b) On dividends	*0%*
(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code	*5%*

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pre-termination, then the maturity period shall be reckoned to end as of the date of pre-termination 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 Tax Code does not define "gross receipts." Absent any statutory definition, the Bureau of Internal Revenue has applied the term in its plain and ordinary meaning.[23]

In *National City Bank v. CIR*,[24] the CTA held that gross receipts should be interpreted as the whole amount received as interest, without deductions; otherwise, if deductions were to be made from gross receipts, it would be considered as "net

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[23] *China Banking Corporation v. Court of Appeals, supra; CIR v. Solidbank Corporation, supra.*

[24] CTA Case No. 52 (1952).

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receipts." The CTA changed course, however, when it promulgated its decision in *Asia Bank*; it applied Section 4(e) of Rev. Reg. No. 12-80 and the ruling of this Court in *Manila Jockey Club*, holding that the 20% final withholding tax on the petitioner bank's interest income should not form part of its taxable gross receipts, since the final tax was not actually received by the petitioner bank but went to the coffers of the government.

The Court agrees with the contention of the petitioner that the appellate court's reliance on Rev. Reg. No. 12-80, the rulings of the CTA in *Asia Bank*, and of this Court in *Manila Jockey Club* has no legal and factual bases. Indeed, the Court ruled in *China Banking Corporation v. Court of Appeals*[25] that:

> . . . In *Far East Bank & Trust Co. v. Commissioner and Standard Chartered Bank v. Commissioner*, 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 amount of 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 word "gross" must be used in its plain and ordinary meaning. It is defined as "whole, entire, total, without deduction." A common definition is "without deduction."[26] "Gross" is also defined as "taking in the whole; having no deduction or abatement; whole, total as opposed to a sum consisting of separate or specified parts."[27] Gross is the antithesis of net.[28] Indeed, in *China Banking Corporation v. Court of Appeals*,[29] the Court defined the term in this wise:

> As commonly understood, the term "gross receipts" means the entire receipts without any deduction. Deducting any amount from

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[25] *Supra.*

[26] *First Trust Co. of St. Paul v. Commonwealth Co.*, 98 F.2d27 (1938).

[27] *Scott v. Hartley*, 25 NE 826 (1890).

[28] *Laclede Gas Co. v. City of St. Louis*, 253 S.W. 2d 832 (1953).

[29] *Supra.*

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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.*, —

> 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 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*, 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. The Supreme Court of Hawaii held in *Bishop Trust Company v. Burns* that —

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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)

The Court, likewise, declared that Section 121 of the Tax Code expressly subjects interest income of banks to the gross receipts tax. "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. Indeed, there is a presumption that receipts of a person engaging in business are subject to the gross receipts tax. Such presumption may only be overcome by pointing to a specific provision of law allowing such deduction of the final withholding tax from the taxable gross receipts, failing which, the claim of deduction has no leg to stand on. Moreover, where such 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."[30]

In this case, there is no law which allows the deduction of 20% final tax from the respondent bank's interest income for the computation of the 5% gross receipts tax. On the other hand, Section 8(a)(c), Rev. Reg. No. 17-84 provides that interest earned on Philippine bank deposits and yield from deposit substitutes are included as part of the tax base upon which the gross receipts tax is imposed. Such earned interest refers to the gross interest without deduction since the regulations do not provide for any such 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

[30] *Kewanee Industries, Inc. v. Reese*, 845 P.2d 1238 (1993).

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money. The amount of the final tax plainly covers for the interest earned and is consequently part of the taxable gross receipt of the lender.[31]

The bare fact that the final withholding tax is a special trust fund belonging to the government and that the respondent bank did not benefit from it while in custody of the borrower does not justify its exclusion from the computation of interest income. Such final withholding tax covers for the respondent bank's income and is the amount to be used to pay its tax liability to the government. This tax, along with the creditable withholding tax, constitutes payment which would extinguish the respondent bank's obligation to the government. The bank can only pay the money it owns, or the money it is authorized to pay.[32]

In the same vein, the respondent bank's reliance on Section 4(e) of Rev. Reg. No. 12-80 and the ruling of the CTA in *Asia Bank* is misplaced. The Court's discussion in *China Banking Corporation*[33] is instructive on this score:

> 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. x x x x x x 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 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. (Italics supplied by Tax Court)

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[31] *China Banking Corporation v. Court of Appeals, supra.*

[32] *Supra.*

[33] *Ibid.*

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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 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.*

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. 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.

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The Court went on to explain in that case that far from supporting the petitioner's contention, its ruling in *Manila Jockey Club*, in fact even buttressed the contention of the Commissioner. Thus:

> CBC cites *Collector of Internal Revenue v. Manila Jockey Club* 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 Executive Order No. 320 apportioned the total amount of the bets in horse races as follows:
>
> > 87 1/2% as dividends to holders of winning tickets, 12 1/2% as "commission" of the Manila Jockey Club, of which 1/2% was assigned to the Board of Races and 5% was distributed as prizes for owners of winning horses and authorized bonuses for jockeys.
>
> 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 6 1/2% commission. There is no dispute that the 5 1/2% share of the horse-owners and jockeys, and the 1/2% share of the Games and Amusements Board, do not form part of Manila Jockey Club's gross receipts. RA No. 1933 took effect on 22 June

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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 12 1/2% commission. Manila Jockey Club owned, and could keep and use, only 7% of the total bets. Manila Jockey Club merely held in trust the balance of 5 1/2% for the benefit of the Board of Races and the winning horse-owners and jockeys, the real owners of the 5 1/2% share.

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 bets registered by the Totalizer.* This portion represents its share or commission in the total amount of money it handles 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 the club. 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. (Italics supplied)

Consequently, the Court ruled that the 5 1/2% 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.[34]

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[34] *China Banking Corporation v. Court of Appeals, supra.*

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We reverse the ruling of the CA that subjecting the Final Withholding Tax (FWT) to the 5% of gross receipts tax would result in double taxation. In *CIR v. Solidbank Corporation*,[35] we ruled, thus:

> We have repeatedly said that the two taxes, subject of this litigation, are different from each other. The basis of their imposition may be the same, but their natures are different, thus leading us to a final point. Is there double taxation?
>
> The Court finds none.
>
> *Double taxation* means taxing the same property twice when it should be taxed only once; that is, ". . . taxing the same person twice by the same jurisdiction for the same thing." It is obnoxious when the taxpayer is taxed twice, when it should be but once. Otherwise described as "direct duplicate taxation," the two taxes must be imposed on the same subject matter, for the same purpose, by the same taxing authority, within the same jurisdiction, during the same taxing period; and they must be of the same kind or character.
>
> *First*, the taxes herein are imposed on two different subject matters. The subject matter of the FWT is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT is the privilege of engaging in the business of banking.
>
> A tax based on receipts is a tax on business rather than on the property; hence, it is an excise rather than a property tax. It is not an income tax, unlike the FWT. In fact, we have already held that one can be taxed for engaging in business and further taxed differently for the income derived therefrom. Akin to our ruling in *Velilla v. Posadas*, these two taxes are entirely distinct and are assessed under different provisions.
>
> *Second*, although both taxes are national in scope because they are imposed by the same taxing authority — the national government under the Tax Code — and operate within the same Philippine jurisdiction for the same purpose of raising revenues, the taxing periods they affect are different. The FWT is deducted and withheld as soon as the income is earned, and is paid after every *calendar*

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[35] *Supra.*

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quarter in which it is earned. On the other hand, the GRT is neither deducted nor withheld, but is paid only after every taxable quarter in which it is earned.

Third, these two taxes are of different kinds or characters. The FWT is an income tax subject to withholding, while the GRT is a percentage tax not subject to withholding.

In short, there is no double taxation, because there is no taxing twice, by the same taxing authority, within the same jurisdiction, for the same purpose, in different taxing periods, some of the property in the territory. Subjecting interest income to a 20% FWT and including it in the computation of the 5% GRT is clearly not double taxation.

IN LIGHT OF THE FOREGOING, the petition is *GRANTED*. The decision of the Court of Appeals in CA-G.R. SP No. 52706 and that of the Court of Tax Appeals in CTA Case No. 5415 are SET *ASIDE and REVERSED*. The CTA is hereby *ORDERED* to *DISMISS* the petition of respondent Bank of Commerce. No costs.

SO ORDERED.

Austria-Martinez, Tinga, and Chico-Nazario, JJ., concur.

Puno, J. (Chairman), on official leave.