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FIRST DIVISION

[G.R. No. 148191. November 25, 2003]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **SOLIDBANK CORPORATION**, *respondent.*

SYNOPSIS

Pursuant to the decision of the Court of Tax Appeals (CTA) in CTA Case No. 4720, entitled *Asian Bank Corporation vs. Commissioner of Internal Revenue,* wherein it held that the 20% final withholding tax (FWT) on bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax (GRT), respondent Solidbank Corporation filed with the Bureau of Internal Revenue (BIR) a letter-request for refund or tax credit certificate and a petition for review with the Court of Appeals by alleging that for the calendar year 1995, it included in the computation of the total gross receipt the sum of ₱350,807, 875.15 representing gross receipt from passive income which was already subjected to 20% final withholding tax. After trial, the CTA rendered its decision in favor of respondent. On appeal, the Court of Appeals held that the 20% FWT on bank's interest income did not form part of the taxable gross receipts in computing the 5% GRT, because the FWT was not actually received by the bank but was directly remitted to the government. Hence, the Commissioner of the Internal Revenue filed this petition.

The petition was granted. Under the Tax Code, the earnings of banks from "passive" income are subject to a twenty percent final withholding tax (20% FWT). This tax is withheld at source and is thus not actually and physically received by the banks, because it is paid directly to the government by the entities from which the banks derived the income. Apart from the 20% FWT, banks are also subject to a five percent gross receipts tax (5% GRT) which is imposed by the Tax Code on their gross receipts, including the "passive" income. Since the 20% FWT is constructively received by the banks and forms part of their gross receipts or earnings, it follows that it is subject to the 5% GRT. After all, the amount withheld is paid to the government on their behalf, in satisfaction of their withholding taxes. That

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they do not actually receive the amount does not alter the fact that it is remitted for their benefit in satisfaction of their tax obligations. Stated otherwise, the fact is that there were no withholding tax system in place in this country, this 20% portion of the "passive" income of banks would actually be paid to the banks and then remitted by them to the government in payment of their income tax. The institution of the withholding tax system does not alter the fact that the 20% portion of their "passive" income constitutes part of their actual earnings, except that it is paid directly to the government on their behalf in satisfaction of the 20% final income tax due on their "passive" incomes.

SYLLABUS

1. **TAXATION; TAX CODE; TAX ON INCOME; EARNINGS OF BANKS FROM "PASSIVE" INCOME ARE SUBJECT TO 20% FINAL WITHHOLDING TAX.**— Under the Tax Code, the earnings of banks from "passive" income are subject to a twenty percent final withholding tax (20% FWT). This tax is withheld at source and is thus not *actually* and physically received by the banks, because it is paid directly to the government by the entities from which the banks derived the income. Apart from the 20% FWT, banks are also subject to a five percent gross receipts tax (5% GRT) which is imposed by the Tax Code on their gross receipts, including the "passive" income.

2. **ID.; ID.; OTHER PERCENTAGE TAXES; 20% FINAL WITHHOLDING TAX FORMS PART OF THEIR GROSS RECEIPTS, IT FOLLOWS THAT IT IS SUBJECT TO THE 5% GROSS RECEIPTS TAX.**— Since the 20% FWT is *constructively* received by the banks and forms part of their gross receipts or earnings, it follows that it is subject to the 5% GRT. After all, the amount withheld is paid to the government on their behalf, in satisfaction of their withholding taxes. That they do not *actually* receive the amount does not alter the fact that it is remitted for their benefit in satisfaction of their tax obligations. Stated otherwise, the fact is that if there were no withholding tax system in place in this country, this 20 percent portion of the "passive" income of banks would *actually* be paid to the banks and then remitted by them to the government in payment of their income tax. The institution of the withholding tax system does not alter the fact that the 20 percent portion of

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their "passive" income constitutes part of their *actual* earnings, except that it is paid directly to the government on their behalf in satisfaction of the 20 percent final income tax due on their "passive" incomes.

3. **ID.; ID.; ID.; BANK AND BANK INTERMEDIARIES LIABLE FOR 5% GROSS RECEIPTS TAX SHALL FILE QUARTERLY RETURNS ON THE AMOUNT OF GROSS RECEIPTS.**— The 5% GRT is included under "Title V. Other Percentage Taxes" of the Tax Code and is not subject to withholding. The banks and non-bank financial intermediaries liable therefor shall, under Section 125(a)(1), file quarterly returns on the amount of gross receipts and pay the taxes due thereon within twenty (20) days after the end of each taxable quarter.

4. **ID.; ID.; TAX ON INCOME; 20% FINAL WITHHOLDING TAX IS A TAX ON PASSIVE INCOME DEDUCTED AND WITHHELD AT SOURCE BY THE PAYOR-CORPORATION AND/OR PERSON AS WITHHOLDING AGENT.**— The 20% FWT, on the other hand, falls under Section 24(e)(1) of "Title II. Tax on Income." It is a tax on passive income, deducted and withheld at source by the payor-corporation and/or person as withholding agent pursuant to Section 50, and paid in the same manner and subject to the same conditions as provided for in Section 51.

5. **ID.; ID.; PERCENTAGE TAX; DEFINED.**— A *percentage tax* is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services. It is not subject to withholding.

6. **ID.; ID.; INCOME TAX; DEFINED.**— An *income tax*, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year. It is subject to withholding.

7. **ID.; ID.; WITHHOLDING TAX SYSTEM; EXPLAINED.**— In a withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed; the payor, a separate entity, acts as no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, this amount that is used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base. These proceeds are

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either actual or constructive. Both parties herein agree that there is no *actual* receipt by the bank of the amount withheld. What needs to be determined is if there is *constructive* receipt thereof. Since the payee — not the payor — is the real taxpayer, the rule on constructive receipt can be easily rationalized, if not made clearly manifest.

8. **ID.; ID.; ID.; POSSESSION IS ACQUIRED BY THE PAYOR AS THE WITHHOLDING AGENT OF THE GOVERNMENT.**— In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because the taxpayer ratifies the very act of possession for the government. There is thus *constructive* receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed — for legal purposes — tantamount to delivery, receipt or remittance. Besides, respondent itself admits that its income is subjected to a tax burden immediately upon "receipt," although it claims that it derives no pecuniary benefit or advantage through the withholding process. There being *constructive* receipt of such income — part of which is withheld — RR 17-84 applies, and that income is included as part of the tax base upon which the GRT is imposed.

9. **CIVIL LAW; POSSESSION; ACQUISITION OF THE RIGHT OF POSSESSION IS THROUGH THE PROPER ACTS AND LEGAL FORMALITIES ESTABLISHED THEREFOR.**— Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.

10. **STATUTORY CONSTRUCTION; RULES AND REGULATIONS ISSUED BY ADMINISTRATIVE OR EXECUTIVE OFFICERS PURSUANT TO THE PROCEDURE OR AUTHORITY CONFERRED BY LAW UPON THE ADMINISTRATIVE AGENCY HAVE THE FORCE AND EFFECT OF A STATUTE; APPLIED IN CASE AT BAR.**— In general, rules and regulations issued by administrative or executive officers pursuant to the procedure or authority

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conferred by law upon the administrative agency have the force and effect, or partake of the nature, of a statute. The reason is that statutes express the policies, purposes, objectives, remedies and sanctions intended by the legislature in general terms. The details and manner of carrying them out are oftentimes left to the administrative agency entrusted with their enforcement. In the present case, it is the finance secretary who promulgates the revenue regulations, upon recommendation of the BIR commissioner. These regulations are the consequences of a delegated power to issue legal provisions that have the effect of law.

11. **TAXATION; REVENUE REGULATION IS BINDING ON THE COURTS AS LONG AS THE PROCEDURE FIXED FOR ITS PROMULGATION IS FOLLOWED.**— A revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. Even if the courts may not be in agreement with its stated policy or innate wisdom, it is nonetheless valid, provided that its scope is within the statutory authority or standard granted by the legislature. Specifically, the regulation must (1) be germane to the object and purpose of the law; (2) not contradict, but conform to, the standards the law prescribes; and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws.

12. **STATUTORY CONSTRUCTION; REPEAL MAY BE EXPRESS OR IMPLIED.**— A repeal may be express or implied. It is express when there is a declaration in a regulation — usually in its repealing clause — that another regulation, identified by its number or title, is repealed. All others are implied repeals. An example of the latter is a general provision that predicates the intended repeal on a substantial conflict between the existing and the prior regulations.

13. **ID.; EVERY EFFORT MUST BE EXERTED TO MAKE ALL REGULATIONS STAND AND A LATER RULE WILL NOT OPERATE AS A REPEAL OF AN EARLIER ONE, IF BY ANY REASONABLE CONSTRUCTION, THE TWO CAN BE RECONCILED.**— Repeals by implication are not favored and will not be indulged, unless it is manifest that the administrative agency intended them. As a regulation is presumed to have been made with deliberation and full knowledge of all existing rules on the subject, it may reasonably be concluded

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that its promulgation was not intended to interfere with or abrogate any earlier rule relating to the same subject, unless it is either repugnant to or fully inclusive of the subject matter of an earlier one, or unless the reason for the earlier one is "beyond peradventure removed." Every effort must be exerted to make all regulations stand — and a later rule will not operate as a repeal of an earlier one, if by any reasonable construction, the two can be reconciled.

14. **TAXATION; REVENUE REGULATION NO. 12-80; PROVIDES THAT ALL INTERESTS EARNED SHALL BE INCLUDED IN THE TAX BASE FOR COMPUTING THE GROSS RECEIPT TAX.**— Section 4(e) of the earlier RR 12-80 provides that only items of income *actually* received shall be included in the tax base for computing the GRT, but Section 7(c) of the later RR 17-84 makes no such distinction and provides that *all* interests earned shall be included. The exception having been eliminated, the clear intent is that the later RR 17-84 includes the exception within the scope of the general rule. x x x RR 12-80 imposes the GRT only on all items of income *actually* received, as opposed to their mere *accrual*, while RR 17-84 includes *all* interest income in computing the GRT. RR 12-80 is superseded by the later rule, because Section 4(e) thereof is not restated in RR 17-84. Clearly therefore, as petitioner correctly states, this particular provision was impliedly repealed when the later regulations took effect.

15. **ID.; ID.; "ACCRUAL" REFERS TO AN ACCOUNTING METHOD.**— The "accrual" referred to therein should not be equated with the determination of the amount to be used as tax base in computing the GRT. Such accrual merely refers to an accounting method that recognizes income as earned although not received, and expenses as incurred although not yet paid.

16. **ID.; ID.; ID.; SHOULD NOT BE CONFUSED WITH THE CONCEPT OF CONSTRUCTIVE POSSESSION OR RECEIPT.**— Accrual should not be confused with the concept of *constructive* possession or receipt as earlier discussed. Petitioner correctly points out that income that is merely *accrued* — earned, but not yet received — does not form part of the taxable gross receipts; income that has been received, albeit *constructively*, does.

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17. **ID.; ID.; ID.; STRESSES THE FACT THAT SECTION 4(e) DOES NOT DISTINGUISH BETWEEN ACTUAL AND CONSTRUCTIVE RECEIPT.**— The word "actually," used confusingly in Section 4(e), will be clearer if removed entirely. Besides, if *actually* is that important, *accrual* should have been eliminated for being a mere surplusage. The inclusion of *accrual* stresses the fact that Section 4(e) does not distinguish between *actual* and *constructive* receipt. It merely focuses on the method of accounting known as the *accrual* system.

18. **ID.; ID.; RECONCILED WITH REVENUE REGULATION NO. 17-84.**— In reconciling these two regulations, the earlier one includes in the tax base for GRT *all* income, whether *actually* or *constructively* received, while the later one includes specifically interest income. In computing the income tax liability, the only exception cited in the later regulations is the exclusion from gross income of interest income, which is already subjected to withholding. This exception, however, refers to a different tax altogether. To extend mischievously such exception to the GRT will certainly lead to results not contemplated by the legislators and the administrative body promulgating the regulations.

19. **ID.; TAX CODE; GROSS RECEIPTS; ELUCIDATED.**— To begin, we have to nuance the definition of *gross receipts* to determine what it is exactly. In this regard, we note that US cases have persuasive effect in our jurisdiction, because Philippine income tax law is patterned after its US counterpart. "'[G]ross receipts' with respect to any period means the sum of: (a) The total amount received or accrued during such period from the sale, exchange, or other disposition of x x x other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and (b) The gross income, attributable to a trade or business, regularly carried on by the taxpayer, received or accrued during such period x x x." "x x x [B]y gross earnings from operations x x x was intended all operations xxx including incidental, subordinate, and subsidiary operations, as well as principal operations." "When we speak of the 'gross earnings' of a person or corporation, we mean the entire earnings or receipts of such person or corporation from the business or operations to which we refer.

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From these cases, "gross receipts" refer to the total, as opposed to the net, income. These are therefore the total receipts before any deduction for the expenses of management. Webster's *New International Dictionary*, in fact, defines *gross* as "whole or entire."

20. ID.; ID.; ID.; EARMARKING IS NOT THE SAME AS WITHHOLDING.— *Earmarking* is not the same as *withholding*. Amounts *earmarked* do not form part of gross receipts, because, although delivered or received, these are by law or regulation reserved for some person other than the taxpayer. On the contrary, amounts *withheld* form part of gross receipts, because these are in *constructive* possession and not subject to any reservation, the withholding agent being merely a conduit in the collection process.

21. ID.; ID.; ID.; INTEREST INCOME THAT HAD BEEN WITHHELD FOR THE GOVERNMENT BECAME PROPERTY OF THE FINANCIAL INSTITUTIONS UPON CONSTRUCTIVE POSSESSION THEREOF.— The Manila Jockey Club had to deliver to the Board on Races, horse owners and jockeys amounts that never became the property of the race track. Unlike these amounts, the interest income that had been *withheld* for the government became property of the financial institutions upon *constructive* possession thereof. Possession was indeed acquired, since it was ratified by the financial institutions in whose name the act of possession had been executed. The money indeed belonged to the taxpayers; merely holding it in trust was not enough.

22. ID.; ID.; ID.; IT IS OWNERSHIP THAT DETERMINES WHETHER INTEREST INCOME FORMS PART OF TAXABLE GROSS RECEIPTS.— The government subsequently becomes the owner of the money when the financial institutions pay the FWT to extinguish their obligation to the government. As this Court has held before, this is the consideration for the transfer of ownership of the FWT from these institutions to the government. It is ownership that determines whether interest income forms part of taxable gross receipts. Being originally owned by these financial institutions as part of their interest income, the FWT should form part of their taxable gross receipts.

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23. ID.; ID.; FINAL WITHHOLDING TAX IS A TAX ON PASSIVE INCOME WHILE THE GROSS RECEIPT TAX IS ON BUSINESS.— Looking again into Sections 24(e)(1) and 119 of the Tax Code, we find that the first imposes an income tax; the second, a percentage tax. The legislature clearly intended two different taxes. The FWT is a tax on passive income, while the GRT is on business. The withholding of one is not equivalent to the payment of the other.

24. ID.; STATUTORY CONSTRUCTION; TAXING ACT WILL BE CONSTRUED FROM ITS LANGUAGE.— A taxing act will be construed, and the intent and meaning of the legislature ascertained, from its language. Its clarity and implied intent must exist to uphold the taxes as against a taxpayer in whose favor doubts will be resolved. No such doubts exist with respect to the Tax Code, because the income and percentage taxes we have cited earlier have been imposed in clear and express language for that purpose. This Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms — construction and interpretation being called for only when such literal application is impossible or inadequate without them. In *Quijano v. Development Bank of the Philippines*, we stressed as follows: "No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application."

25. ID.; ID.; COURTS ARE NOT TO GIVE WORDS MEANINGS THAT WOULD LEAD TO ABSURD OR UNREASONABLE CONSEQUENCES.— A literal application of any part of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contradict the evident meaning of the statute taken as a whole. Unlike the CA, we find that the literal application of the aforesaid sections of the Tax Code and its implementing regulations does not operate unjustly or contradict the evident meaning of the statute taken as a whole. Neither does it lead to absurd results. Indeed, our courts are not to give words meanings that would lead to absurd or unreasonable consequences.

26. REMEDIAL LAW; EVIDENCE; CREDIBILITY; FINDINGS OF FACT OF THE COURT OF TAX APPEALS WILL ORDINARILY NOT BE REVIEWED, ABSENT ANY SHOWING OF GROSS ERROR OR ABUSE ON ITS PART.— Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing

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tax cases. Because of its recognized expertise, its findings of fact will ordinarily not be reviewed, absent any showing of gross error or abuse on its part. Such findings are binding on the Court and, absent strong reasons for us to delve into facts, only questions of law are open for determination.

27. **TAXATION; TAX REFUNDS; IN THE NATURE OF TAX EXEMPTIONS AND MUST BE STRICTLY CONSTRUED AGAINST TAXPAYER.**— Tax refunds are in the nature of tax exemptions. Such exemptions are strictly construed against the taxpayer, being highly disfavored and almost said "to be odious to the law." Hence, those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. They must be able to point to some positive provision, not merely a vague implication, of the law creating that right. The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty — its most essential power of taxation — by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption."

28. **ID.; TAX EXEMPTIONS; CANNOT BE GRANTED BY IMPLICATION OR MERE ADMINISTRATIVE REGULATION; APPLIED IN CASE AT BAR.**— No less than our 1987 Constitution provides for the mechanism for granting tax exemptions. They certainly cannot be granted by implication or mere administrative regulation. Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim. In the instant case, respondent has not been able to satisfactorily show that its FWT on interest income is exempt from the GRT. Like China Banking Corporation, its argument creates a tax exemption where none exists.

29. **ID.; ID.; NO EXEMPTIONS ARE NORMALLY ALLOWED WHEN A GROSS RECEIPT TAX IS IMPOSED.**— No exemptions are normally allowed when a GRT is imposed. It is precisely designed to maintain simplicity in the tax collection effort of the government and to assure its steady source of revenue even during an economic slump.

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30. **ID.; DOUBLE TAXATION; ELUCIDATED.**— *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.

31. **ID.; ID.; NOT PRESENT IN CASE AT BAR.**— *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. x x x *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.

APPEARANCES OF COUNSEL

Pablo M. Bastes, Jr. and Rhodora J. Corcuera-Menzon for petitioner.

Esquivas Cruz Conlu & Yabut for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Under the Tax Code, the earnings of banks from "passive" income are subject to a twenty percent final withholding tax (20% FWT). This tax is withheld at source and is thus not *actually*

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and physically received by the banks, because it is paid directly to the government by the entities from which the banks derived the income. Apart from the 20% FWT, banks are also subject to a five percent gross receipts tax (5% GRT) which is imposed by the Tax Code on their gross receipts, including the "passive" income.

Since the 20% FWT is *constructively* received by the banks and forms part of their gross receipts or earnings, it follows that it is subject to the 5% GRT. After all, the amount withheld is paid to the government on their behalf, in satisfaction of their withholding taxes. That they do not *actually* receive the amount does not alter the fact that it is remitted for their benefit in satisfaction of their tax obligations.

Stated otherwise, the fact is that if there were no withholding tax system in place in this country, this 20 percent portion of the "passive" income of banks would *actually* be paid to the banks and then remitted by them to the government in payment of their income tax. The institution of the withholding tax system does not alter the fact that the 20 percent portion of their "passive" income constitutes part of their *actual* earnings, except that it is paid directly to the government on their behalf in satisfaction of the 20 percent final income tax due on their "passive" incomes.

The Case

Before us is a Petition for Review[1] under Rule 45 of the Rules of Court, seeking to annul the July 18, 2000 Decision[2] and the May 8, 2001 Resolution[3] of the Court of Appeals[4] (CA) in CA-GR SP No. 54599. The decretal portion of the assailed Decision reads as follows:

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[1] *Rollo*, pp. 8-19.

[2] *Id.*, pp. 21-29.

[3] *Id.*, p. 31.

[4] Sixth Division. Penned by Justice Ma. Alicia Austria-Martinez (Division chairman and now a member of this Court) and concurred in by Justices Portia Aliño-Hormachuelos and Elvi John S. Asuncion (members).

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"WHEREFORE, we AFFIRM *in toto* the assailed decision and resolution of the Court of Tax Appeals."[5]

The challenged Resolution denied petitioner's Motion for Reconsideration.

The Facts

Quoting petitioner, the CA[6] summarized the facts of this case as follows:

"For the calendar year 1995, [respondent] seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts (pertaining to 5% [Gross Receipts Tax] rate) in the total amount of ₱1,474,691,693.44 with corresponding gross receipts tax payments in the sum of ₱73,734,584.60, broken down as follows:

Period Covered	Gross Receipts	Gross Receipts Tax
January to March 1994	₱ 188,406,061.95	₱ 9,420,303.10
April to June 1994	370,913,832.70	18,545,691.63
July to September 1994	481,501,838.98	24,075,091.95
October to December 1994	433,869,959.81	21,693,497.98
Total	₱ 1,474,691,693.44	₱ 73,734,584.60

"[Respondent] alleges that the total gross receipts in the amount of ₱1,474,691,693.44 included the sum of ₱350,807,875.15 representing gross receipts from passive income which was already subjected to 20% final withholding tax.

"On January 30, 1996, [the Court of Tax Appeals] rendered a decision in CTA Case No. 4720 entitled *Asian Bank Corporation vs. Commissioner of Internal Revenue*[,] wherein it was held that the 20% final withholding tax on [a] bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

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[5] Assailed Decision, p. 8; *rollo*, p. 28.

[6] Words in brackets [ ] supplied. In its Memorandum, respondent likewise cites this narration of facts by the CA.

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"On June 19, 1997, on the strength of the aforementioned decision, [respondent] filed with the Bureau of Internal Revenue [BIR] a letter-request for the refund or issuance of [a] tax credit certificate in the aggregate amount of ₱3,508,078.75, representing, allegedly overpaid gross receipts tax for the year 1995, computed as follows:

Gross Receipts Subjected to the Final Tax Derived from Passive [Income]	₱350,807,875.15
Multiply by Final Tax rate	20%
20% Final Tax Withheld at Source	₱ 70,161,575.03
Multiply by [Gross Receipts Tax] rate	5%
Overpaid [Gross Receipts Tax]	₱ 3,508,078.75

"Without waiting for an action from the [petitioner], [respondent] on the same day filed [a] petition for review [with the Court of Tax Appeals] in order to toll the running of the two-year prescriptive period to judicially claim for the refund of [any] overpaid internal revenue tax[,] pursuant to Section 230 [now 229] of the Tax Code, [also 'National Internal Revenue Code'] x x x.

x x x x x x x x x

"After trial on the merits, the [Court of Tax Appeals], on August 6, 1999, rendered its decision ordering x x x petitioner to refund in favor of x x x respondent the reduced amount of ₱1,555,749.65 as overpaid [gross receipts tax] for the year 1995. The legal issue x x x was resolved by the [Court of Tax Appeals], with Hon. Amancio Q. Saga dissenting, on the strength of its earlier pronouncement in x x x *Asian Bank Corporation vs. Commissioner of Internal Revenue* x x x, wherein it was held that the 20% [final withholding tax] on [a] bank's interest income should not form part of its taxable gross receipts for purposes of computing the [gross receipts tax]."[7]

Ruling of the CA

The CA held that the 20% FWT on a bank's interest income did not form part of the taxable gross receipts in computing the 5% GRT, because the FWT was not actually received by the bank but was directly remitted to the government. The

[7] Assailed Decision, pp. 1-3; *rollo*, pp. 21-23.

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appellate court curtly said that while the Tax Code "does not specifically state any exemption, x x x the statute must receive a sensible construction such as will give effect to the legislative intention, and so as to avoid an unjust or absurd conclusion."[8]

Hence, this appeal.[9]

Issue

Petitioner raises this lone issue for our consideration:

"Whether or not the 20% final withholding tax on [a] bank's interest income forms part of the taxable gross receipts in computing the 5% gross receipts tax."[10]

The Court's Ruling

The Petition is meritorious.

Sole Issue:

Whether the 20% FWT Forms Part of the Taxable Gross Receipts

Petitioner claims that although the 20% FWT on respondent's interest income was not actually received by respondent because it was remitted directly to the government, the fact that the amount redounded to the bank's benefit makes it part of the taxable gross receipts in computing the 5% GRT. Respondent, on the other hand, maintains that the CA correctly ruled otherwise.

We agree with petitioner. In fact, the same issue has been raised recently in *China Banking Corporation v. CA*,[11] where

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[8] *Id.*, pp. 5 & 25.

[9] This case was deemed submitted for decision on January 24, 2002, upon receipt by this Court of petitioner's Memorandum, signed by Attys. Pablo M. Bastes Jr. and Rhodora J. Corcuera-Menzon. Respondent's Memorandum, signed by Atty. P. Winston G. Conlu, was received by this Court on January 10, 2002.

[10] Petitioner's Memorandum, p. 3; *rollo*, p. 120. Original in upper case.

[11] G.R. No. 146749, p. 10, June 10, 2003, per Carpio, *J.*

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this Court held that the amount of interest income withheld in payment of the 20% FWT forms part of gross receipts in computing for the GRT on banks.

The FWT and the GRT: Two Different Taxes

The 5% GRT is imposed by Section 119[12] of the Tax Code,[13] which provides:

"SEC. 119. *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 of instruments from which such receipts are derived.

Short-term maturity not in excess of two (2) years 5%
Medium-term maturity — over two (2) years
but not exceeding four (4) years 3%
Long-term maturity:
(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 28[14] 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.

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[12] Now §121.

[13] Now RA 8424, approved on December 11, 1997, and effective January 1, 1998.

[14] Now §32.

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

The 5% GRT[15] is included under "Title V. Other Percentage Taxes" of the Tax Code and is not subject to withholding. The banks and non-bank financial intermediaries liable therefor shall, under Section 125(a)(1),[16] file quarterly returns on the amount of gross receipts and pay the taxes due thereon within twenty (20)[17] days after the end of each taxable quarter.

The 20% FWT,[18] on the other hand, falls under Section 24(e)(1)[19] of "Title II. Tax on Income." It is a tax on passive income, deducted and withheld at source by the payor-corporation and/or person as withholding agent pursuant to Section 50,[20] and paid in the same manner and subject to the same conditions as provided for in Section 51.[21]

A perusal of these provisions clearly shows that two types of taxes are involved in the present controversy: (1) the GRT, which is a percentage tax; and (2) the FWT, which is an income tax. As a bank, petitioner is covered by both taxes.

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[15] On October 1, 1946, RA 39 amended §249 of the 1939 Tax Code by imposing a GRT on banks. Their taxable gross receipts included interest income on their own deposits with other banks, without deduction or any withholding tax until June 1977. (*China Banking Corp. v. CA*, *supra*, p. 11)

[16] Now §128(A)(1).

[17] Now twenty-five (25) days.

[18] On June 3, 1977, PD 1156 required the withholding of a 15% tax on the interest income from bank deposits. This was a creditable tax — not a FWT — and the entire interest income still formed part of taxable gross receipts. On September 17, 1980, however, PD 1739 made this a FWT of 15% on savings accounts and 20% on time deposits. (*China Banking Corp. v. CA*, *supra*, pp. 11-12)

[19] Now §27(D)(1).

[20] Now §57(A).

[21] Now §58.

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A *percentage tax* is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services.[22] It is not subject to withholding.

An *income tax*, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year.[23] It is subject to withholding.

In a withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed; the payor, a separate entity, acts as no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, this amount that is used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base.[24] These proceeds are either actual or constructive. Both parties herein agree that there is no *actual* receipt by the bank of the amount withheld. What needs to be determined is if there is *constructive* receipt thereof. Since the payee — not the payor — is the real taxpayer, the rule on constructive receipt can be easily rationalized, if not made clearly manifest.[25]

Constructive Receipt
Versus Actual Receipt

Applying Section 7 of Revenue Regulations (RR) No. 17-84,[26] petitioner contends that there is *constructive* receipt of the interest on deposits and yield on deposit

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[22] De Leon, *The Fundamentals of Taxation* (12th ed.), 1998, p. 136.

[23] *Id.*, p. 92.

[24] The withholding tax concept obviously and necessarily implies that the amount withheld comes from the income earned by a taxpayer. (*China Banking Corp. v. CA, supra*, p. 31)

[25] *Bank of America NT & SA v. Court of Appeals*, 234 SCRA 302, July 21, 1994.

[26] Dated October 12, 1984, these regulations cover the "Income Taxation of Interest Income Derived from Deposits and Yield from Deposit Substitutes" as provided for by PD No. 1959.

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substitutes.[27] Respondent, however, claims that even if there is, it is Section 4(e) of RR 12-80[28] that nevertheless governs the situation.

Section 7 of RR 17-84 states:

"SEC. 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),[29] (c)[30] 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[s] tax is imposed.'"

Section 4(e) of RR 12-80, on the other hand, states that the tax rates to be imposed on the gross receipts of banks, non-bank financial intermediaries; financing companies, and other non-bank financial intermediaries not performing quasi-banking

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[27] "Interest" is the amount paid by a borrower to a lender in consideration for the use of the lender's money. It is an expense item to the borrower and an income item to the lender. Hence, the total interest expense paid by a depository bank forms part of the gross income of a lending bank. (*China Banking Corp. v. CA, supra*, p. 28)

[28] Respondent's Memorandum, p. 8; *rollo*, p. 81. Dated November 7, 1980, these regulations cover the "Taxation of Certain Income Derived from Banking Activities."

[29] Now §32(A).

[30] Now §32(B).

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activities shall be based on all items of income *actually* received. This provision reads:

"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 activities. — The rates of tax 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."

Respondent argues that the above-quoted provision is plain and clear: since there is no *actual* receipt, the FWT is not to be included in the tax base for computing the GRT. There is supposedly no pecuniary benefit or advantage accruing to the bank from the FWT, because the income is subjected to a tax burden immediately upon receipt through the withholding process. Moreover, the *earlier* RR 12-80 covered matters not falling under the *later* RR 17-84.[31]

We are not persuaded.

By analogy, we apply to the receipt of income the rules on *actual* and *constructive* possession provided in Articles 531 and 532 of our Civil Code.

Under Article 531:[32]

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[31] Respondent's Memorandum, p. 10; *rollo*, p. 83.

[32] The possession by a sheriff by virtue of a court order is one of the ways of constructive possession. (Paras, *Civil Code of the Philippines*, Vol. II [10th ed.], 1981, p. 359; *Muyco v. Montilla*, 7 Phil. 498, February 18, 1907)

And so is the inscription of *información posesoria* or possessory information titles. (*Bishop of Nueva Segovia v. Municipality of Bantay*, 28 Phil. 347, November 7, 1914. See *Alcala v. Alcala*, 35 Phil. 679, December 11, 1916)

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"Possession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right."

Article 532 states:

"Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice to the juridical consequences of *negotiorum gestio* in a proper case."[33]

The last means of acquiring possession under Article 531 refers to juridical acts — the acquisition of possession by sufficient title — to which the law gives the force of acts of possession.[34] Respondent argues that only items of income *actually* received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have *actual* receipt thereof.

We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.

In our withholding tax system, possession is acquired by the payor as the withholding agent of the government, because

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[33] "The most usual form of the authority to acquire possession for another is that of agency, whether it be a special power or a general authority. Where there is such authorization, the principal acquires the possession from the moment the agent holds the thing for the former." Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines,* Vol. II (1992 ed.), p. 263.

[34] *Id.*, p. 262.

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the taxpayer ratifies the very act of possession for the government. There is thus *constructive* receipt. The processes of bookkeeping and accounting for interest on deposits and yield on deposit substitutes that are subjected to FWT are indeed — for legal purposes — tantamount to delivery, receipt or remittance.[35] Besides, respondent itself admits that its income is subjected to a tax burden immediately upon "receipt," although it claims that it derives no pecuniary benefit or advantage through the withholding process. There being *constructive* receipt of such income — part of which is withheld — RR 17-84 applies, and that income is included as part of the tax base upon which the GRT is imposed.

RR 12-80 Superseded by RR 17-84

We now come to the effect of the revenue regulations on interest income *constructively* received.

In general, rules and regulations issued by administrative or executive officers pursuant to the procedure or authority conferred by law upon the administrative agency have the force and effect, or partake of the nature, of a statute.[36] The reason is that statutes express the policies, purposes, objectives, remedies and sanctions intended by the legislature in general terms. The details and manner of carrying them out are oftentimes left to the administrative agency entrusted with their enforcement.

In the present case, it is the finance secretary who promulgates the revenue regulations, upon recommendation of the BIR commissioner. These regulations are the consequences of a delegated power to issue legal provisions that have the effect of law.[37]

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[35] *Commissioner of Internal Revenue v. Royal Interocean Lines*, 34 SCRA 9, 15, July 30, 1970.

[36] *Victorias Milling Co., Inc. v. Social Security Commission*, 114 Phil. 555, 558, March 17, 1962.

[37] Kenneth Culp Davis, *Administrative Law Treatise*, Vol. I (1958 ed.), p. 299.

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A revenue regulation is binding on the courts as long as the procedure fixed for its promulgation is followed. Even if the courts may not be in agreement with its stated policy or innate wisdom, it is nonetheless valid, provided that its scope is within the statutory authority or standard granted by the legislature.[38] Specifically, the regulation must (1) be germane to the object and purpose of the law;[39] (2) not contradict, but conform to, the standards the law prescribes;[40] and (3) be issued for the sole purpose of carrying into effect the general provisions of our tax laws.[41]

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[38] *Victorias Milling Co., Inc. v. Social Security Commission, supra.*

[39] *Director of Forestry v. Muñoz*, 23 SCRA 1183, 1198, June 28, 1968.

[40] *People v. Exconde*, 101 Phil. 1125, 1129, August 30, 1957.

"The delegated power, if at all, therefore, is not the determination of what the law shall be, but merely the ascertainment of the facts and circumstances upon which the application of said law is to be predicated." *Calalang v. Williams*, 70 Phil. 726, 731, December 2, 1940, per Laurel, *J.*

"*Delegata potestas non potest delegare* x x x has been made to adapt itself to the complexities of modern governments, giving rise to the adoption, within certain limits, of the principle of 'subordinate legislation' x x x. The difficulty lies in the fixing of the limit and extent of the authority. While courts have undertaken to lay down general principles, the safest is to decide each case according to its peculiar environment, having in mind the wholesome legislative purpose intended to be achieved." *People v. Rosenthal*, 68 Phil. 328, 343, June 12, 1939, per Laurel, *J.*

"Accordingly, with the growing complexity of modern life, the multiplication of the subjects of governmental regulation, and the increased difficulty of administering the laws, there is a constantly growing tendency toward the delegation of greater powers by the legislature, and toward the approval of the practice by the courts." *Pangasinan Transportation Co., Inc. v. Public Service Commission*, 70 Phil. 221, 229, June 26, 1940, per Laurel, *J.*

"Discretion x x x may be committed by the Legislature to an executive department or official. The Legislature may make decisions of executive departments or subordinate officials thereof, to whom it has committed the execution of certain acts, final on questions of fact." *Rubi v. Provincial Board of Mindoro*, 39 Phil. 660, 701, March 7, 1919, per Malcolm, *J.*

[41] The true distinction is between the delegation of power to make the law, which necessarily involves a discretion as to what it shall be, and the conferment of an authority or discretion as to its execution, to be exercised under and in pursuance of the law. The first cannot be done; to the latter,

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In the present case, there is no question about the regularity in the performance of official duty. What needs to be determined is whether RR 12-80 has been repealed by RR 17-84.

A repeal may be express or implied. It is express when there is a declaration in a regulation — usually in its repealing clause — that another regulation, identified by its number or title, is repealed. All others are implied repeals.[42] An example of the latter is a general provision that predicates the intended repeal on a substantial conflict between the existing and the prior regulations.[43]

As stated in Section 11 of RR 17-84, all regulations, rules, orders or portions thereof that are inconsistent with the provisions of the said RR are thereby repealed. This declaration proceeds on the premise that RR 17-84 clearly reveals such an intention on the part of the Department of Finance. Otherwise, later RRs are to be construed as a continuation of, and not a substitute for, earlier RRs; and will continue to speak, so far as the subject matter is the same, from the time of the first promulgation.[44]

There are two well-settled categories of implied repeals: (1) in case the provisions are in irreconcilable conflict, the later regulation, to the extent of the conflict, constitutes an implied repeal of an earlier one; and (2) if the later regulation covers the whole subject of an earlier one and is clearly intended as a substitute, it will similarly operate as a repeal of the earlier one.[45]

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no valid objection can be made. (*Calalang v. Williams, supra,* 730. See *also Rubi v. Provincial Board of Mindoro, supra,* pp. 700-701; *State v. Fields*, 35 NE 2d 744, 750, July 15, 1938; and *Matz v. J. L. Curtis Cartage Co.*, 7 NE 2d 220, 226, March 17, 1937)

[42] *Mecano v. Commission on Audit*, 216 SCRA 500, 504, December 11, 1992.

[43] *Id.*, p. 505.

[44] *Posadas Jr. v. National City Bank of New York*, 296 US 497, 503, 80 L. Ed. 351, 355, January 6, 1936.

[45] *Ibid.*

A subsequent regulation, which revises the whole subject matter of a previous one and is evidently intended as a substitute for it, operates to repeal it. (*People v. Almuete*, 69 SCRA 410, 414, February 27, 1976)

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There is no implied repeal of an earlier RR by the mere fact that its subject matter is related to a later RR, which may simply be a cumulation or continuation of the earlier one.[46]

Where a part of an earlier regulation embracing the same subject as a later one may not be enforced without nullifying the pertinent provision of the latter, the earlier regulation is deemed impliedly amended or modified to the extent of the repugnancy.[47] The unaffected provisions or portions of the earlier regulation remain in force, while its omitted portions are deemed repealed.[48] An exception therein that is amended by its subsequent elimination shall now cease to be so and instead be included within the scope of the general rule.[49]

Section 4(e) of the earlier RR 12-80 provides that only items of income *actually* received shall be included in the tax base for computing the GRT, but Section 7(c) of the later RR 17-84 makes no such distinction and provides that *all* interests earned shall be included. The exception having been eliminated, the clear intent is that the later RR 17-84 includes the exception within the scope of the general rule.

Repeals by implication are not favored and will not be indulged, unless it is manifest that the administrative agency intended them. As a regulation is presumed to have been made with deliberation and full knowledge of all existing rules on the subject, it may reasonably be concluded that its promulgation was not intended to interfere with or abrogate any earlier rule relating to the same subject, unless it is either repugnant to or

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When both intent and scope clearly evince the idea of a repeal, then all parts and provisions of the previous regulation that are omitted from the revised one are deemed repealed. (*People v. Binuya*, 61 Phil. 208, 210, February 27, 1935)

[46] *Valera v. Tuason Jr.*, 80 Phil. 823, 827, April 30, 1948.

[47] Agpalo, *Statutory Construction* (2nd ed.), 1990, p. 279.

[48] *Parras v. Land Registration Commission*, 108 Phil. 1142, 1146, July 26, 1960.

[49] *Victorias Milling Co., Inc. v. Social Security Commission, supra.*

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fully inclusive of the subject matter of an earlier one, or unless the reason for the earlier one is "beyond peradventure removed."[50] Every effort must be exerted to make all regulations stand — and a later rule will not operate as a repeal of an earlier one, if by any reasonable construction, the two can be reconciled.[51]

RR 12-80 imposes the GRT only on all items of income *actually* received, as opposed to their mere *accrual*, while RR 17-84 includes all interest income in computing the GRT. RR 12-80 is superseded by the later rule, because Section 4(e) thereof is not restated in RR 17-84. Clearly therefore, as petitioner correctly states, this particular provision was impliedly repealed when the later regulations took effect.[52]

Reconciling the Two Regulations

Granting that the two regulations can be reconciled, respondent's reliance on Section 4(e) of RR 12-80 is misplaced and deceptive. The "accrual" referred to therein should not be equated with the determination of the amount to be used as tax base in computing the GRT. Such accrual merely refers to an accounting method that recognizes income as earned although not received, and expenses as incurred although not yet paid.

Accrual should not be confused with the concept of *constructive* possession or receipt as earlier discussed. Petitioner correctly points out that income that is merely *accrued* — earned, but not yet received — does not form part of the taxable gross receipts; income that has been received, albeit *constructively*, does.[53]

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[50] *Smith, Bell & Co. v. Estate of Maronilla*, 41 Phil. 557, 562, February 5, 1916, per Carson, *J.*

[51] *Ibid.*

[52] Petitioner's Memorandum, p. 7; *rollo*, p. 124. Indeed, RR 17-84 supplanted RR 12-80; §4(e) of the earlier regulation was not readopted by the later one. (*China Banking Corp. v. CA, supra*, pp. 33-34)

[53] *Id.*, pp. 9 & 126. In fact, we ruled in *China Banking Corp. v. CA* that Section 4(e) did not exclude accrued interest income from taxable gross receipts, but merely postponed its inclusion until actual payment, physically or constructively, to a lending bank, pp. 30-31.

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The word "actually," used confusingly in Section 4(e), will be clearer if removed entirely. Besides, if *actually* is that important, *accrual* should have been eliminated for being a mere surplusage. The inclusion of *accrual* stresses the fact that Section 4(e) does not distinguish between *actual* and *constructive* receipt. It merely focuses on the method of accounting known as the *accrual* system.

Under this system, income is accrued or earned in the year in which the taxpayer's right thereto becomes fixed and definite, even though it may not be *actually* received until a later year; while a deduction for a liability is to be accrued or incurred and taken when the liability becomes fixed and certain, even though it may not be *actually* paid until later.[54]

Under any system of accounting, no duty or liability to pay an income tax upon a transaction arises until the taxable year in which the event constituting the condition precedent occurs.[55] The liability to pay a tax may thus arise at a certain time and the tax paid within another given time.[56]

In reconciling these two regulations, the earlier one includes in the tax base for GRT *all* income, whether *actually* or *constructively* received, while the later one includes specifically interest income. In computing the income tax liability, the only exception cited in the later regulations is the exclusion from gross income of interest income, which is already subjected to withholding. This exception, however, refers to a different tax altogether. To extend mischievously such exception to the GRT will certainly lead to results not contemplated by the legislators and the administrative body promulgating the regulations.

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[54] *Commissioner of Internal Revenue v. Blaine, Mackay, Lee Co.*, 141 F. 2d 201, 203, March 6, 1944. See *Brown v. Helvering*, 291 US 193, 199, 78 L. Ed. 725, 730, January 15, 1934.

[55] *Utah-Idaho Sugar Co. v. State Tax Commission*, 73 P. 2d 974, 977-978, December 2, 1937.

[56] *Lorenzo v. Posadas*, 64 Phil. 353, 368, June 18, 1937.

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Manila Jockey Club Inapplicable

In *Commissioner of Internal Revenue v. Manila Jockey Club*,[57] we held that the term "gross receipts" shall not include money which, although delivered, has been especially earmarked by law or regulation for some person other than the taxpayer.[58]

To begin, we have to nuance the definition of *gross receipts*[59] to determine what it is exactly. In this regard, we note that US cases have persuasive effect in our jurisdiction, because Philippine income tax law is patterned after its US counterpart.[60]

"'[G]ross receipts' with respect to any period means the sum of: (a) The total amount received or accrued during such period from the sale, exchange, or other disposition of x x x other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the close of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of its trade or business, and (b) The gross income, attributable to a trade or business, regularly carried on by the taxpayer, received or accrued during such period x x x."[61]

"x x x [B]y gross earnings from operations x x x was intended all operations x x x including incidental, subordinate, and subsidiary operations, as well as principal operations."[62]

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[57] 108 Phil. 821, 825–826, June 30, 1960.

[58] See *Visayan Cebu Terminal Co., Inc. v. Commissioner of Internal Revenue*, 21 Phil. 337, February 27, 1965.

[59] From RA 39 to the present Tax Code, there has been no statutory definition of "gross receipts" as applied to taxes on banks. (*China Banking Corp. v. CA*, *supra*, p. 14)

[60] *Limpan Investment Corp. v. Commissioner of Internal Revenue*, 17 SCRA 703, 709, July 26, 1966. See also *Consolidated Mines, Inc. v. Court of Tax Appeals*, 58 SCRA 618, August 29, 1974.

[61] *Lucky Lager Brewing Co. v. Commissioner of Internal Revenue*, 246 F. 2d, 621, 622, June 24, 1957, per Denman, *CJ.*

[62] *State v. United Electric Light & Eater Co.*, 97 A. 857, 859, June 2, 1916, per Thayer, *J.*

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"When we speak of the 'gross earnings' of a person or corporation, we mean the entire earnings or receipts of such person or corporation from the business or operations to which we refer."[63]

From these cases, "gross receipts"[64] refer to the total, as opposed to the net, income.[65] These are therefore the total receipts before any deduction[66] for the expenses of management.[67] *Webster's New International Dictionary*, in fact, defines *gross* as "whole or entire."

Statutes taxing the gross "receipts," "earnings," or "income" of particular corporations are found in many jurisdictions.[68] Tax thereon is generally held to be within the power of a state to impose; or constitutional, unless it interferes with interstate commerce or violates the requirement as to uniformity of taxation.[69]

Moreover, we have emphasized that the BIR has consistently ruled that "gross receipts" does not admit of any deduction.[70]

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[63] *Ibid.*

[64] "Gross receipts," absent a statutory definition, is to be understood in its plain and ordinary meaning. The words are to be taken in their usual and familiar signification, with due regard to their general and popular use. This principle applies to all statutes, including tax statutes. (*China Banking Corp. v. CA, supra*, p. 17)

[65] *Ibid.* See *Taylor v. Rosenthal*, 213 SW 2d 437, April 23, 1948. The Taylor case, however, is not a tax case. It refers to a lease contract covering the rental of a motion picture theater.

[66] Deducting any amount from gross receipts changes the meaning to net receipts. (*China Banking Corp. v. CA, supra*, p. 16, citing *Commonwealth v. Koppers Co., Inc.*, 156 A. 2d 328, 332, Nov. 24, 1959, and *Laclede Gas Co. v. City of St. Louis*, 253 SW 2d 832, 835, January 9, 1953)

[67] Cooley, *The Law on Taxation*, Vol. II (1924), pp. 1789-1790; *State v. Illinois Cent.* R. Co., 92 NE 848, Oct. 28, 1910.

[68] *Ibid.*, pp. 1786-1787.

[69] *Id.*, p. 1788.

The rule of taxation shall be uniform and equitable. §28(1), Art. VI, 1987 Constitution.

[70] *China Banking Corp. v. CA, supra*, p. 19.

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Following the principle of legislative approval by reenactment,[71] this interpretation has been adopted by the legislature throughout the various reenactments of then Section 119 of the Tax Code.[72]

Given that a tax is imposed upon total receipts and not upon net earnings,[73] shall the income withheld be included in the tax base upon which such tax is imposed? In other words, shall interest income *constructively* received still be included in the tax base for computing the GRT?

We rule in the affirmative.

Manila Jockey Club does not apply to this case. *Earmarking* is not the same as *withholding*. Amounts *earmarked* do not form part of gross receipts, because, although delivered or received, these are by law or regulation reserved for some person other than the taxpayer. On the contrary, amounts *withheld* form part of gross receipts, because these are in *constructive* possession and not subject to any reservation, the withholding agent being merely a conduit in the collection process.

The Manila Jockey Club had to deliver to the Board on Races, horse owners and jockeys amounts that never became the property of the race track.[74] Unlike these amounts, the interest income that had been *withheld* for the government became property of the financial institutions upon *constructive* possession thereof. Possession was indeed acquired, since it was ratified by the financial institutions in whose name the act of possession

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[71] "When a statute is susceptible of the meaning placed upon it by a ruling of the government agency charged with its enforcement and the [l]egislature thereafter [reenacts] the provisions with substantial change, such action is to some extent confirmatory that the ruling carries out the legislative purpose." *Alexander Howden & Co., Ltd. v. Collector (now Commissioner) of Internal Revenue,* 121 Phil. 579, 587, April 14, 1965, per Bengzon J.P., *J.*

[72] *China Banking Corp. v. CA, supra.*

[73] *State v. Illinois Cent.* R. Co., 92 NE 847, Oct. 28, 1910.

[74] *Manila Jockey Club* merely held that these amounts were held in trust and did not form part of gross receipts.

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had been executed. The money indeed belonged to the taxpayers; merely holding it in trust was not enough.[75]

The government subsequently becomes the owner of the money when the financial institutions pay the FWT to extinguish their obligation to the government. As this Court has held before, this is the consideration for the transfer of ownership of the FWT from these institutions to the government.[76] It is ownership that determines whether interest income forms part of taxable gross receipts.[77] Being originally owned by these financial institutions as part of their interest income, the FWT should form part of their taxable gross receipts.

Besides, these amounts *withheld* are in payment of an income tax liability, which is different from a percentage tax liability. *Commissioner of Internal Revenue v. Tours Specialists, Inc.* aptly held thus:[78]

"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."[79]

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[75] A trustee does not own money received in trust. It is a basic concept in taxation that such money does not constitute taxable income to the trustee. (*China Banking Corp. v. CA, supra*, p. 27)

[76] *Ibid.*, p. 26.

[77] *Ibid.*, p. 27.

[78] 183 SCRA 402, March 21, 1990.

[79] *Id.*, p. 412, per Gutierrez Jr., *J.*

In an earlier case — *Philippine Long Distance Telephone Co. v. Collector of Internal Revenue,* 90 Phil. 674, January 21, 1952 — cited in the Dissenting Opinion of CTA Associate Judge Amancio Q. Saga, *receipts* means amounts actually received; otherwise, they will not be receipts. A careful reading of this case, however, reveals that *receipts* are equated with *earnings*, the latter word having been used in the legislative acts referred to therein; and dealing with collection, not accrual. In fact, these acts have been construed so as not to be rendered unconstitutional.

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In the construction and interpretation of tax statutes and of statutes in general, the primary consideration is to ascertain and give effect to the intention of the legislature.[80] We ought to impute to the lawmaking body the intent to obey the constitutional mandate, as long as its enactments fairly admit of such construction.[81] In fact, "x x x no tax can be levied without express authority of law, but the statutes are to receive a reasonable construction with a view to carrying out their purpose and intent."[82]

Looking again into Sections 24(e)(1) and 119 of the Tax Code, we find that the first imposes an income tax; the second, a percentage tax. The legislature clearly intended two different taxes. The FWT is a tax on passive income, while the GRT is on business.[83] The withholding of one is not equivalent to the payment of the other.

Non-Exemption of FWT from GRT : Neither Unjust nor Absurd

Taxing the people and their property is essential to the very existence of government. Certainly, one of the highest attributes of sovereignty is the power of taxation,[84] which may legitimately be exercised on the objects to which it is applicable to the utmost extent as the government may choose.[85] Being an incident of sovereignty, such power is coextensive with that to which it is an incident.[86] The interest on deposits and yield on deposit

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[80] *Hart v. Smith*, 64 NE 661, 662, June 27, 1902.

[81] *Ibid.*

[82] *Scottish Union & National Insurance Co. v. Bowland*, 196 US 611, 629, 49 L. Ed. 619, 627, February 20, 1905, per Day, *J.*

[83] *China Banking Corp. v. CA, supra*, p. 40.

[84] *Hart v. Smith, supra.*

[85] *Kirtland v. Hotchkiss*, 100 US 491, 497, 25 L. Ed. 558, 561–562, November 17, 1879.

[86] *M'Culloch v. Maryland*, 4 Wheaton 316, 429, 4 L. Ed. 579, 607, February 1819.

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substitutes of financial institutions, on the one hand, and their business as such, on the other, are the two objects over which the State has chosen to extend its sovereign power. Those not so chosen are, upon the soundest principles, exempt from taxation.[87]

While courts will not enlarge by construction the government's power of taxation,[88] neither will they place upon tax laws so loose a construction as to permit evasions, merely on the basis of fanciful and insubstantial distinctions.[89] When the legislature imposes a tax on income and another on business, the imposition must be respected. The Tax Code should be so construed, if need be, as to avoid empty declarations or possibilities of crafty tax evasion schemes. We have consistently ruled thus:

"x x x [I]t is upon taxation that the [g]overnment chiefly relies to obtain the means to carry on its operations, and it is of the utmost importance that the modes adopted to enforce the collection of the taxes levied should be summary and interfered with as little as possible. x x x."[90]

"Any delay in the proceedings of the officers, upon whom the duty is devolved of collecting the taxes, may derange the

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[87] *Kirtland v. Hotchkiss, supra*, p. 562.

[88] *Bromley v. McCaughn*, 280 US 124, 137, 74 L. Ed. 226, 230, November 25, 1929.

[89] "It is a general rule in the interpretation of all statutes levying taxes or duties upon subjects or citizens, not to extend their provisions by implication beyond the clear import of the language used, or to enlarge their operation so as to embrace matters not specifically pointed out, although standing on a close analogy. In every case, therefore, of doubt, such statutes are construed most strongly against the government, and in favor of the subjects or citizens, because burdens are not to be imposed, nor presumed to be imposed, beyond what the statutes expressly and clearly import. Revenue statutes are in no just sense either remedial laws, or laws founded upon any permanent public policy, and therefore are not to be liberally construed." *Froelich & Kuttner v. Collector of Customs*, 18 Phil. 461, 481-482, March 2, 1911, per Moreland, *J.*

[90] *Churchill and Tait v. Rafferty*, 32 Phil. 580, 585, December 21, 1915, per Trent, *J.*

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operations of government, and thereby cause serious detriment to the public."[91]

"No government could exist if all litigants were permitted to delay the collection of its taxes."[92]

A taxing act will be construed, and the intent and meaning of the legislature ascertained, from its language.[93] Its clarity and implied intent must exist to uphold the taxes as against a taxpayer in whose favor doubts will be resolved.[94] No such doubts exist with respect to the Tax Code, because the income and percentage taxes we have cited earlier have been imposed in clear and express language for that purpose.[95]

This Court has steadfastly adhered to the doctrine that its first and fundamental duty is the application of the law according to its express terms — construction and interpretation being called for only when such literal application is impossible or inadequate without them.[96] In

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[91] *Lorenzo v. Posadas Jr., supra*, p. 371, per Laurel, *J.*

[92] *Republic v. Lim Tian Teng Sons & Co., Inc.*, 16 SCRA 584, 590, March 31, 1966, per Bengzon, J.P., *J.* See also *Churchill and Tait v. Raferty, supra*.

[93] *A. Magnano Co. v. Hamilton*, 292 US 40, 46, 78 L. Ed. 1109, 1115, April 2, 1934.

[94] *Moran v. Leccony Smokeless Coal Co.*, 10 SE 2d 581, June 22, 1940.

Tax laws are to be strictly construed against the taxing power. (*Miller v. Illinois Cent.* R. Co. 111 So. 559, February 28, 1927)

[95] "If there is any doubt whether the language of an act was intended to authorize the taxation of certain property, the language of the act will not be extended beyond its clear import in order to make the property subject to the tax. In case of doubt such statutes are construed most strongly against the government and in favor of the citizen." *People ex rel. Chicago v. Barrett*, 139 NE 903, 906, June 20, 1923, per Carter, *J.*

"Before one is liable for taxes he must come within the express provisions of the taxing statute." *Miller v. Illinois Cent. R. Co., supra.*

[96] *Lizarraga Hermanos v. Yap Tico*, 24 Phil. 504, 513, March 27, 1913. See *Pacific Oxygen & Acetylene Co. v. Central Bank of the Philippines*, 22 SCRA 917, 921, March 1, 1968.

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Quijano v. Development Bank of the Philippines,[97] we stressed as follows:

"No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application."[98]

A literal application of any part of a statute is to be rejected if it will operate unjustly, lead to absurd results, or contradict the evident meaning of the statute taken as a whole.[99] Unlike the CA, we find that the literal application of the aforesaid sections of the Tax Code and its implementing regulations does not operate unjustly or contradict the evident meaning of the statute taken as a whole. Neither does it lead to absurd results. Indeed, our courts are not to give words meanings that would lead to absurd or unreasonable consequences.[100] We have repeatedly held thus:

"x x x [S]tatutes should receive a sensible construction, such as will give effect to the legislative intention and so as to avoid an unjust or an absurd conclusion."[101]

"Where language is plain, subtle refinements which tinge words so as to give them the color of a particular judicial theory are not only unnecessary but decidedly harmful. That which has caused so much confusion in the law, which has made it so difficult for the public to understand and know what the law is with respect to a given matter, is in considerable measure the unwarranted interference by judicial tribunals with the English language as found in statutes and contracts, cutting out words here and inserting them there, making them fit personal ideas of what the legislature ought to have done or what parties should have agreed upon, giving them meanings which they do not ordinarily have, cutting, trimming, fitting, changing and coloring until lawyers themselves are unable to advise their clients as to the meaning of a given statute or contract until it has been submitted to some court for its interpretation and construction." *Nery v. Lorenzo*, 44 SCRA 431, 437, April 27,1972, per Fernando, *J.* See *Yangco v. Court of First Instance of Manila*, 29 Phil. 183, 188, January 6, 1915.

[97] 35 SCRA 270, October 16, 1970.

[98] *Id.*, p. 277 per Barredo, *J.*

[99] *In Re Allen*, 2 Phil. 630, 643, October 29, 1903.

[100] *Commissioner of Internal Revenue v. Esso Standard Eastern, Inc.*, 172 SCRA 364, 370, April 18, 1989.

[101] *People v. Rivera*, 59 Phil. 236, 242, December 22, 1933, per Imperial, *J.*

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"While it is true that the contemporaneous construction placed upon a statute by executive officers whose duty is to enforce it should be given great weight by the courts, still if such construction is so erroneous, x x x the same must be declared as null and void."[102]

It does not even matter that the CTA, like in *China Banking Corporation*,[103] relied erroneously on *Manila Jockey Club*. Under our tax system, the CTA acts as a highly specialized body specifically created for the purpose of reviewing tax cases.[104] Because of its recognized expertise, its findings of fact will ordinarily not be reviewed, absent any showing of gross error or abuse on its part.[105] Such findings are binding on the Court and, absent strong reasons for us to delve into facts, only questions of law are open for determination.[106]

Respondent claims that it is entitled to a refund on the basis of excess GRT payments. We disagree.

Tax refunds are in the nature of tax exemptions.[107] Such exemptions are strictly construed against the taxpayer, being highly disfavored[108] and almost said "to be odious to the law."

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[102] *Insular Bank of Asia and America Employees' Union v. Inciong*, 132 SCRA 663, 673, October 23, 1984, per Makasiar, *J*. (later *CJ*). See *Chartered Bank Employees Association v. Ople*, 138 SCRA 273, 280, August 28, 1985, per Gutierrez, *J*.

[103] *China Banking Corp. v. CA, supra*, p. 24.

[104] It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954.

[105] The *Coca-Cola Export Corp. v. Commissioner of Internal Revenue*, 56 SCRA 5, 14, March 15, 1974. See *Commissioner of Internal Revenue v. Court of Appeals*, 242 SCRA 289, 304, March 10, 1995.

[106] *Commissioner of Internal Revenue v. Tours Specialists, Inc.*, 183 SCRA 402, 407, March 21, 1990. See *Philippine Refining Co. v. CA*, 256 SCRA 667, 675-676, May 8, 1996.

[107] *Commissioner of Internal Revenue v. SC Johnson & Son, Inc.*, 368 Phil. 388, 411, June 25, 1999; *Magsaysay Lines, Inc., v. Court of Appeals*, 329 Phil. 310, 324, August 12, 1996; *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, 314 Phil. 220, 228, May 26, 1995.

[108] Whoever claims an exemption must justify it by the clearest grant of organic or statute law. (*China Banking Corp. v. CA, supra*, p. 37)

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Hence, those who claim to be exempt from the payment of a particular tax must do so under clear and unmistakable terms found in the statute. They must be able to point to some positive provision, not merely a vague implication,[109] of the law creating that right.[110]

The right of taxation will not be surrendered, except in words too plain to be mistaken. The reason is that the State cannot strip itself of this highest attribute of sovereignty — its most essential power of taxation — by vague or ambiguous language. Since tax refunds are in the nature of tax exemptions, these are deemed to be "in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the exemption."[111]

No less than our 1987 Constitution provides for the mechanism for granting tax exemptions.[112] They certainly cannot be granted by implication or mere administrative regulation. Thus, when an exemption is claimed, it must indubitably be shown to exist, for every presumption is against it,[113] and a well-founded doubt is fatal to the claim.[114] In the instant case, respondent has not been able to satisfactorily show that its FWT on interest income is exempt from the GRT. Like China Banking Corporation, its argument creates a tax exemption where none exists.[115]

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[109] *Ibid.* See *Davao Light & Power Co., Inc. v. Commissioner of Customs*, 44 SCRA 122, 130, March 29, 1972.

[110] *Asiatic Petroleum Co., Ltd. v. Llanes*, 49 Phil. 466, 471, October 20, 1926.

[111] *Commissioner of Internal Revenue v. SC Johnson and Son, Inc., supra*, p. 411, per Gonzaga-Reyes, *J.*

[112] §28(4) of Art. VI states:

"No law granting any tax exemption shall be passed without the concurrence of a majority of all the Members of the Congress."

[113] *Davao Light & Power Co., Inc. v. Commissioner of Customs, supra.*

[114] *Manila Electric Co. v. Vera*, 67 SCRA 351, 357-358, October 22, 1975. See *Asiatic Petroleum Co., Ltd. v. Llanes, supra.*

[115] *China Banking Corp. v. CA, supra*, p. 22.

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No exemptions are normally allowed when a GRT is imposed. It is precisely designed to maintain simplicity in the tax collection effort of the government and to assure its steady source of revenue even during an economic slump.[116]

No Double Taxation

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."[117] It is obnoxious when the taxpayer is taxed twice, when it should be but once.[118] Otherwise described as "direct duplicate taxation,"[119] 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.[120]

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.

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[116] *Ibid.*, p. 23.

[117] *Afisco Insurance Corp. v. Court of Appeals*, 361 Phil. 671, January 25, 1999, per Panganiban, *J.*

[118] *San Miguel Brewery, Inc. v. City of Cebu*, 43 SCRA 275, 280, February 26, 1972. See also *Villanueva v. City of Iloilo*, 135 Phil. 572, 588, December 28, 1968, and *Commissioner of Internal Revenue v. Lednicky*, 120 Phil. 586, 593, July 31, 1964.

[119] *Victorias Milling, Co., Inc. v. Municipality of Victorias, Province of Negros Occidental*, 134 Phil. 180, 198, September 27, 1968.

[120] *Villanueva v. City of Iloilo, supra.*

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A tax based on receipts is a tax on business rather than on the property; hence, it is an excise[121] rather than a property tax.[122] 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.[123] Akin to our ruling in *Velilla v. Posadas,*[124] 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 purpose, in different taxing periods,

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[121] Generally stated, an excise tax is one that is imposed on the performance of an act, the engagement in an occupation, or the enjoyment of a privilege; and the word has come to have a broader meaning that includes every form of taxation not a burden laid directly on persons or property. (*Manila Electric Company v. Vera,* 67 SCRA 352, October 22, 1975. See also *State ex rel. Janes v. Brown,* 148 NE 95, 96, May 19, 1925; *Buckstaff Bath House Co. v. McKinley*, 127 SW 2d 802, 806, April 10, 1939; and *State v. Fields*, 35 NE 2d 744, 749, July 15, 1938)

[122] Cooley, *The Law on Taxation*, Vol. II, 1924, p. 1785.

[123] We have also ruled that there is no double taxation when the law imposes two different taxes on the same income, business or property. (*China Banking Corp. v. CA, supra*, p. 40. See also *Sanchez v. Collector of Internal Revenue*, 97 Phil. 687, 690, Oct. 18, 1955, and *People v. Mendaros*, 97 Phil. 958, 959, May 27, 1955)

[124] 62 Phil. 624, 632, December 19, 1935.

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some of the property in the territory.[125] Subjecting interest income to a 20% FWT and including it in the computation of the 5% GRT is clearly not double taxation.

WHEREFORE, the Petition is *GRANTED*. The assailed Decision and Resolution of the Court of Appeals are hereby *REVERSED* and *SET ASIDE*. No costs.

SO ORDERED.

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

EN BANC

[G.R. Nos. 159486-88. November 25, 2003]

PRESIDENT JOSEPH EJERCITO ESTRADA, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN [SPECIAL DIVISION], HON. MINITA CHICO-NAZARIO, HON. EDILBERTO SANDOVAL, HON. TERESITA LEONARDO-DE CASTRO, and THE PEOPLE OF THE PHILIPPINES OF THE PHILIPPINES**, *respondents*.

SYNOPSIS

In the petition for *certiorari* filed by Joseph Ejercito Estrada, through his counsel Attorney Allan F. Paguia, which was dismissed by this Honorable Court, the Court ruled that Atty. Paguia has not limited his discussions to the merits of his client's case within the judicial forum; indeed, he has repeated his assault on the Court in both broadcast and print media. Rule 13.02 of

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[125] *Afisco Insurance Corp. v. Court of Appeals, supra.* De Leon, *The Fundamentals of Taxation* (12th ed.) 1998, p. 51.