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THIRD DIVISION

[G.R. NO. 147375, June 26, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

D E C I S I O N

TINGA, J.:

At issue is the question of whether the 20% final tax on a bank's passive income, withheld from the bank at source, still forms part of the bank's gross income for the purpose of computing its gross receipts tax liability. Both the Court of Tax Appeals (CTA) and the Court of Appeals answered in the negative. We reverse, in favor of petitioner, following our ruling in *China Banking Corporation v. Court of Appeals.*[1]

A brief background of the tax law involved is in order.

Domestic corporate taxpayers, including banks, are levied a 20% final withholding tax on bank deposits under Section 24(e)(1)[2] in relation to Section 50(a)[3] of Presidential Decree No. 1158, otherwise known as the National Internal Revenue Code of 1977 ("Tax Code"). Banks are also liable for a tax on gross receipts derived from sources within the Philippines under Section 119[4] of the Tax Code, which provides, thus:

> 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 of this Code 5%

> **Provided, however,** That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long term and the correct rate of tax shall be applied accordingly.
>
> Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities.

As a domestic corporation, the interest earned by respondent Bank of the Philippine Islands (BPI) from deposits and similar arrangements are subjected to a final withholding tax of 20%. Consequently, the interest income it receives on amounts that it lends out are always net of the 20% withheld tax. As a bank, BPI is furthermore liable for a 5% gross receipts tax on all its income.

For the four (4) quarters of the year 1996, BPI computed its 5% gross receipts tax payments by including in its tax base the 20% final tax on interest income that had been withheld and remitted directly to the Bureau of Internal Revenue (BIR).

On 30 January 1996, the CTA rendered a decision in *Asian Bank Corporation v. Commissioner of Internal Revenue*,[5] holding that the 20% final tax withheld on a bank's interest income did not form part of its taxable gross receipts for the purpose of computing gross receipts tax.

BPI wrote the BIR a letter dated 15 July 1998 citing the CTA Decision in *Asian Bank* and requesting a refund of alleged overpayment of taxes representing 5% gross receipts taxes paid on the 20% final tax withheld at source.

Inaction by the BIR on this request prompted BPI to file a Petition for Review against the Commissioner of Internal Revenue (Commissioner) with the CTA on 19 January 1999. Conceding its claim for the first three quarters of the year as having been barred by prescription, BPI only claimed alleged overpaid taxes for the final quarter of 1996.

Following its own doctrine in *Asian Bank*, the CTA rendered a Decision,[6] holding that the

20% final tax withheld did not form part of the respondent's taxable gross receipts and that gross receipts taxes paid thereon are refundable. However, it found that only P13,843,455.62 in withheld final taxes were substantiated by BPI; it awarded a refund of the 5% gross receipts tax paid thereon in the amount of P692,172.78.

On appeal, the Court of Appeals promulgated a Decision[7] affirming the CTA. It cited this Court's decision in *Commissioner of Internal Revenue v. Tours Specialists, Inc.*,[8] in which we held that the "gross 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" in concluding that "it would be unjust and confiscatory to include the withheld 20% final tax in the tax base for purposes of computing the gross receipts tax since the amount corresponding to said 20% final tax was not received by the taxpayer and the latter derived no benefit therefrom."[9]

The Court of Appeals also held that Section 4(e) of Revenue Regulations No. 12-80 mandates the deduction of the final tax paid on interest income in computing the tax base for the gross receipts tax. Section 4(e) provides, thus:

> Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries, not performing quasi-banking activities. – **The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in case of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder**. (Emphasis supplied.)

The present Petition for Review filed by the Commissioner seeks to annul the adverse Decisions of the CTA and the Court of Appeals and raises the sole issue of whether the 20% final tax withheld on a bank's passive income should be included in the computation of the gross receipts tax.

In assailing the findings of the lower courts, the Commissioner makes the following arguments: (1) the term "gross receipts" must be applied in its ordinary meaning; (2) there is no provision in the Tax Code or any special laws that excludes the 20% final tax in computing the tax base of the 5% gross receipts tax; (3) Revenue Regulations No. 12-80, Section 4(e), is inapplicable in the instant case; and (4) income need not actually be received to form part of the taxable gross receipts. Additionally, petitioner points out that the CTA *Asian Bank* case cited by petitioner BPI has already been superseded by the CTA decisions in *Standard Chartered Bank v. Commissioner of Internal Revenue* and *Far East Bank and Trust Company v. Commissioner of Internal Revenue*, both promulgated on 16 November 2001.

The issues raised by the Commissioner have already been ruled upon in his favor by this

Court in *China Banking Corporation v. Court of Appeals*[10] and reiterated in *Commissioner of Internal Revenue v. Solidbank Corporation*[11] and more recently in *Commissioner of Internal Revenue v. Bank of Commerce*.[12] Consequently, the petition must be granted.

The Tax Code does not provide a definition of the term "gross receipts."[13] Accordingly, the term is properly understood in its plain and ordinary meaning[14] and must be taken to comprise of the entire receipts without any deduction.[15] We, thus, made the following disquisition in *Bank of Commerce*:[16]

> 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. Indeed, in China Banking Corporation v. Court of Appeals, 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 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] (Emphasis 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. (Emphasis 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 —

> 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] (Emphasis supplied)

Additionally, we held in *Solidbank*, to wit:[17]

> [W]e 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 x x x 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."
>
> 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."

The legislative intent to apply the term in its ordinary meaning may also be surmised from a historical perspective of the levy on gross receipts. From the time the gross receipts tax on banks was first imposed in 1946 under R.A. No. 39 and throughout its successive reenactments,[18] the legislature has not established a definition of the term "gross receipts." Absent a statutory definition of the term, the BIR had consistently applied it in its ordinary meaning, *i.e.*, without deduction. On the presumption that the legislature is familiar with the contemporaneous interpretation of a statute given by the administrative agency tasked to enforce the statute, subsequent legislative reenactments of the subject levy sans a definition of the term "gross receipts" reflect that the BIR's application of the term carries out the legislative purpose.[19]

Furthermore, Section 119 (a)[20] of the Tax Code expressly includes interest income as part of the base income from which the gross receipts tax on banks is computed. This 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.[21]

The exclusion of the 20% final tax on passive income from the taxpayer's tax base is effectively a tax exemption, the application of which is highly disfavored.[22] The rule is that whoever claims an exemption must justify this right by the clearest grant of organic or statute law.[23] Like the other banks who have asserted a right tantamount to exception under these circumstances, BPI has failed to present a clear statutory basis for its claim to take away the interest income withheld from the purview of the levy on gross tax receipts.

Bereft of a clear statutory basis on which to hinge its claim, BPI's view, as adopted by the Court of Appeals, is that Section 4(e) of Revenue Regulations No. 12-80 establishes the exclusion of the 20% final tax withheld from the bank's taxable gross receipts.

However, we agree with the Commissioner that BPI's asserted right under Section 4(e) of Revenue Regulations No. 12-80 presents a misconstruction of the provision. While, indeed, the provision states that "[t]he rates of taxes to be imposed on the gross receipts of such financial institutions shall be **based on all items of income actually received**," it goes on to distinguish actual receipt from accrual, *i.e.*, 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."

Section 4(e) recognizes that income could be recognized by the taxpayer either at the time of its actual receipt or its accrual,[24] depending on the accounting method used by the taxpayer,[25] but establishes the rule that, for purposes of gross receipts tax, interest income is taxable upon actual receipt of the income, as opposed to the time of its accrual. 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, thus mandating 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*."[26]

Even if Section 4(e) had been properly construed, it still cannot be the basis for deducting the income tax withheld since Section 4(e) has been superseded by Section 7 of Revenue Regulations No. 17-84, which states, thus:

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

The provision categorically provides that **if the recipient of interest subjected to withholding taxes is a financial institution, the interest shall be included as part of the tax base upon which the gross receipts tax is imposed.**

The implied repeal of Section 4(e) is undeniable. Section 4(e) imposes the gross receipts tax only on all items of income *actually* received, as opposed to their mere *accrual*, while Section 7 of Revenue Regulations No. 17-84 includes *all* interest income (whether actual or accrued) in computing the gross receipts tax.[27] Section 4(e) of Revenue Regulations No. 12-80 was superseded by the later rule, because Section 4(e) thereof is not restated in Revenue Regulations No. 17-84.[28] Clearly, then, **the current revenue regulations requires interest income, whether actually received or merely accrued, to form part of the bank's taxable gross receipts**.[29]

The Commissioner correctly controverts the conclusion made by the Court of Appeals that it would be "unjust and confiscatory to include the withheld 20% final tax in the tax base for purposes of computing the gross receipts tax since the amount corresponding to said 20% final tax was not received by the taxpayer and the latter derived no benefit therefrom." [30]

Receipt of income may be actual or constructive. We have held that the withholding process results in the taxpayer's constructive receipt of the income withheld, to wit:

> 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:
> >
> > "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."
> >
> > 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. 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 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**.[31] (Emphasis supplied.)

Thus, BPI constructively received income by virtue of its acquiescence to the extinguishment of its 20% final tax liability when the withholding agents remitted BPI's income to the government. Consequently, it received the amounts corresponding to the 20% final tax and benefited therefrom.

The cases cited by BPI, *Commissioner of Internal Revenue v. Tours Specialists, Inc*.[32] and *Commissioner of Internal Revenue v. Manila Jockey Club, Inc*.,[33] in which this Court held that "gross 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,"[34] only further substantiate the fact that BPI **benefited** from the withheld amounts.

In *Tours Specialists* and *Manila Jockey Club*, the taxable entities held the subject monies not as income earned but as mere trustees. As such, they held the money entrusted to them but which neither belonged to them nor redounded to their benefit. On the other hand, BPI cannot be considered as a mere trustee; it is the actual owner of the funds. As owner thereof, it was BPI's tax obligation to the government that was extinguished upon the withholding agent's remittance of the 20% final tax. We elucidated on BPI's ownership of the funds in *China Banking*, to wit:

> *Manila Jockey Club* does not support CBCï¿½s contention but rather the Commissioner's proposition. The Court ruled in *Manila Jockey Club* that receipts not owned by the Manila Jockey Club but merely held by it in trust did not form part of Manila Jockey Club's gross receipts. Conversely, receipts owned by the Manila Jockey Club would form part of its gross receipts.
>
> **In the instant case, CBC owns the interest income which is the source of payment of the final withholding tax. The government subsequently becomes the owner of the money constituting the final tax when CBC pays**

> **the final withholding tax to extinguish its obligation to the government. This is the consideration for the transfer of ownership of the money from CBC to the government. Thus, the amount constituting the final tax, *being originally owned by CBC as part of its interest income*, should form part of its taxable gross receipts.**
>
> In *Commissioner v. Tours Specialists, Inc.*, the Court excluded from gross receipts money entrusted by foreign tour operators to Tours Specialists to pay the hotel accommodation of tourists booked in various local hotels. The Court declared that Tours Specialists *did not own such entrusted funds* and thus the funds were not subject to the 3% contractor's tax payable by Tours Specialists. The Court held:
>
>> *x x x [G]ross receipts subject to tax under the Tax Code do not include monies or receipts entrusted to the taxpayer which do not belong to them and do not redound to the taxpayer's benefit*; and it is not necessary that there must be a law or regulation which would exempt such monies and receipts within the meaning of gross receipts under the Tax Code.
>>
>> x x x [T]he room charges entrusted by the foreign travel agencies to the private respondent do not form part of its gross receipts within the definition of the Tax Code. *The said receipts never belonged to the private respondent. The private respondent never benefited from their payment to the local hotels*. x x x [T]his arrangement was only to accommodate the foreign travel agencies.
>
> **Unless otherwise provided by law, *ownership* is essential in determining whether interest income forms part of taxable gross receipts. Ownership is the circumstance that makes interest income part of the taxable gross receipts of the taxpayer. When the taxpayer acquires ownership of money representing interest, the money constitutes income or receipt of the taxpayer.**
>
> In contrast, the trustee or agent does not own the money received in trust and such money does not constitute income or receipt for which the trustee or agent is taxable. This is a fundamental concept in taxation. Thus, funds received by a money remittance agency for transfer and delivery to the beneficiary do not constitute income or gross receipts of the money remittance agency. Similarly, a travel agency that collects ticket fares for an airline does not include the ticket fare in its gross income or receipts. In these cases, the money remittance agency or travel agency does not acquire ownership of the funds received.[35] (Emphasis supplied.)

BPI argues that to include the 20% final tax withheld in its gross receipts tax base would be to tax twice its passive income and would constitute double taxation. Granted that interest income is being taxed twice, this, however, does not amount to double taxation. There is no double taxation if the law imposes two different taxes on the same income, business or property. [36] In *Solidbank*, we ruled, thus:

> *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 [Final Withholding Tax] is the passive income generated in the form of interest on deposits and yield on deposit substitutes, while the subject matter of the GRT [Gross Receipts Tax] 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 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.[37]

Clearly, therefore, despite the fact that that interest income is taxed twice, there is no double taxation present in this case.

An interpretation of the tax laws and relevant jurisprudence shows that the tax on interest income of banks withheld at source is included in the computation of their gross receipts tax base.

WHEREFORE, the Petition is GRANTED. The assailed Decisions of the Court of Appeals and the Court of Tax Appeals are REVERSED AND SET ASIDE. Petitioner Commissioner of Internal Revenue's denial of respondent Bank of Philippine Islands' claim for refund is SUSTAINED. No costs.

SO ORDERED.

Quisumbing, (Chairperson), Carpio, Carpio Morales, and *Velasco, Jr., JJ.,* concur.

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[1]451 Phil. 772 (2003).

[2]Sec. 24. **Rates of tax on domestic corporations**. x x x - (e) **Tax on certain incomes derived by domestic corporations**. — **(1) Interest from deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements, and royalties**. -Interest on Philippine currency bank deposits and yield or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements received by domestic corporations, and royalties, derived from sources within the Philippines, shall be subject to a 20% tax. [Now Section 27(D) of the Tax Reform Act of 1997 (R.A. No. 8242).]

[3]Sec. 50. Withholding of tax at source. (A) Withholding of final tax on certain incomes. - The tax imposed or prescribed by Sections x x x 24 (e) (1) x x x 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 51 of the National Internal Revenue Code, as amended. [Now Section 57(A) of R.A. No. 8242.]

[4]Now Section 121 of R.A. No. 8242.

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

[6]Dated 16 June 2000 and penned by Presiding Judge Ernesto D. Acosta, concurred in by Associate Judge Ramon O. de Vera, with a dissenting opinion from Associate Judge Amancio Q. Saga.

[7]Dated 28 February 2001 and penned by Associate Justice Edgardo P. Cruz and concurred

in by Associate Justice Ramon Mabutas, Jr., and Associate Justice Roberto A. Barrios.

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

[9]CA Decision, *rollo*, p. 26.

[10]Supra note 1.

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

[12]G.R. No. 149636, 8 June 2005, 459 SCRA 638.

[13]*China Banking Corporation v. Court of Appeals*, supra note 1, at 789.

[14]Id. at 791.

[15]Id. at 790.

[16]*Commissioner of Internal Revenue v. Bank of Commerce*, supra note 12, at 649-650.

[17]Supra note 11, at 453-454.

[18]It was reenacted under the Omnibus Tax Bill of 1972 (P.D. No. 69), thereafter under the National Internal Revenue Code of 1977 (P.D. No. 1158), and, finally, in the current Tax Reform Act of 1997 (R. A. No. 8424).

[19]China Banking Corporation v. Court of Appeals, supra note 1, at 793; *See* pp. 792-793.

[20]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 of this Code . . . 5%

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[21]*China Banking Corporation v. Court of Appeals*, supra note 1, at 808.

[22]Id. at 807 *citing Wonder Mechanical Engineering Corporation v. Court of Tax Appeals*, G.R. No. L-22805 and L-27858, 30 June 1975, 64 SCRA 555.

[23]Id.

[24]The "cash basis" considers as income as that which is actually or constructively received and as deduction that which is actually paid. The "accrual basis" method treats as part of taxable income that which is already earned and as possible deductions those which, although not paid or disbursed, have already incurred by the taxpayer. (JUSTICE JOSE C. VITUG AND JUDGE ERNESTO D. ACOSTA, TAX LAW AND JURISPRUDENCE, c. 2000, p. 177.)

[25]Except where final taxes on certain transactions are imposed, the liability of taxpayers from income tax is determined on the basis of a fixed period consisting normally of a taxable year, calendar or fiscal, covering a 12-month period. The Tax Code does not prescribe any specific accounting method; it allows the taxpayer to adopt any standard method as long as it can properly reflect his income and his deductions and that it is used by him with consistency. However, the law recognizes certain principal accounting methods, such as the cash basis and accrual basis methods. *Id.*

[26]*China Banking Corporation v. Court of Appeals*, supra note 1, at 801-802.

[27]*Commissioner of Internal Revenue v. Solidbank Corporation*, supra note 11, at 451.

[28]Id.

[29]In fact, the CTA case relied upon by the BIR in filing this petition, *Asia Bank*, not only erroneously interpreted Section 4(e) of Revenue Regulations No. 12-80, it also cited Section 4(e) when it was no longer the applicable revenue regulation. The revenue regulations applicable at the time the tax court decided *Asia Bank* was Revenue Regulations No. 17-84, not Revenue Regulations No. 12-80. *See China Banking Corporation v. Court of Appeals,* supra note 1, at 806.

[30]CA Decision, *rollo*, p. 26.

[31] *Commissioner of Internal Revenue v. Solidbank Corporation*, supra note 11, at 446-448.

[32]Supra note 8.

[33]108 Phil. 821 (1960).

[34]*Commissioner of Internal Revenue v. Tours Specialists, Inc.,* supra note 8, at 409-412.

[35]*China Banking Corporation v. Court of Appeals*, supra note 1, at 798-801.

[36]Id. at 798-800.

[37]*Commissioner of Internal Revenue v. Solidbank Corporation*, supra note 11, at 462-464.