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SECOND DIVISION

[G.R. NO. 139786, September 27, 2006]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. CITYTRUST INVESTMENT PHILS., INC., RESPONDENT.

ASIANBANK CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

G.R. NO. 140857

D E C I S I O N

SANDOVAL-GUTIERREZ, J.:

Does the twenty percent (20%) final withholding tax (FWT) on a bank's passive income[1] form part of the taxable gross receipts for the purpose of computing the five percent (5%) gross receipts tax (GRT)? This is the central issue in the present two (2) consolidated petitions for review.

In **G.R. No. 139786**, petitioner Commissioner of Internal Revenue (Commissioner) assails the Court of Appeals Decision dated August 17, 1999 in CA-G.R. SP No. 52707 [2] affirming the Court of Tax Appeals (CTA) Decision[3] ordering the refund or issuance of tax credit certificate in favor of respondent Citytrust Investment Philippines., Inc. (Citytrust). In **G.R. No. 140857**, petitioner Asianbank Corporation (Asianbank) challenges the Court of Appeals Decision dated November 22, 1999 in CA-G.R. SP No. 51248[4] reversing the CTA Decision[5] ordering a tax refund in its (Asianbank's) favor.

A brief review of the taxation laws provides an adequate backdrop for our subsequent narration of facts.

Under Section 27(D), formerly Section 24(e)(1) of the *National Internal Revenue Code of 1997* (Tax Code), the earnings of banks from passive income are subject to a 20% FWT,[6] thus:

> **(D)** Rates of Tax on Certain Passive Incomes -
>
> (1) *Interest from Deposits and Yield or any other Monetary Benefit from Deposit*

Substitutes and from Trust Funds and Similar Arrangements, and Royalties. - A **final tax** at the rate of **twenty percent (20%)** is hereby imposed upon the **amount of interest** on currency bank deposit and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements received by domestic corporation and royalties, derived from sources within the Philippines: x x x

Apart from the 20% FWT, banks are also subject to the 5% GRT on their gross receipts, which includes their passive income. Section 121 (formerly Section 119) of the Tax Code reads:

SEC. 121. Tax on banks and Non-bank financial intermediaries. - There shall be collected a tax on **gross receipts** derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

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

(1) Over four (4) years but not exceeding seven (7) years 1%

(2) Over seven (7) years 0%

(b) On dividends0%

(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code 5%

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.

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

I - G.R. No. 139786

Citytrust, respondent, is a domestic corporation engaged in quasi-banking activities. In 1994, Citytrust reported the amount of P110,788,542.30 as its total gross receipts and paid the amount of P5,539,427.11 corresponding to its 5% GRT.

Meanwhile, on January 30, 1996, the CTA, in *Asian Bank Corporation v. Commissioner of Internal Revenue*[7] (ASIAN BANK case), ruled that the basis in computing the 5% GRT is the gross receipts minus the 20% FWT. In other words, the 20% FWT on a bank's passive income does not form part of the taxable gross receipts.

On July 19, 1996, Citytrust, inspired by the above-mentioned CTA ruling, filed with the Commissioner a written claim for the tax refund or credit in the amount of P326,007.01. It alleged that its reported total gross receipts included the 20% FWT on its passive income amounting to P32,600,701.25. Thus, it sought to be reimbursed of the 5% GRT it paid on the portion of 20% FWT or the amount of P326,007.01.

On the same date, Citytrust filed a petition for review with the CTA, which eventually granted its claim.[8]

On appeal by the Commissioner, the Court of Appeals affirmed the CTA Decision, citing as main bases *Commissioner of Internal Revenue v. Tours Specialist Inc*.[9] and *Commissioner of Internal Revenue v. Manila Jockey Club*,[10] holding that monies or receipts that do not redound to the benefit of the taxpayer are not part of its gross receipts, thus:

> Patently, as expostulated by our Supreme Court, **monies or receipts that do not redound to the benefit of the taxpayer are not part of its gross receipts for the purpose of computing its taxable gross receipts**. In *Manila Jockey Club*, a portion of the wager fund and the ten-peso contribution, although *actually received* by the Club, was not considered as part of its gross receipts for the purpose of imposing the amusement tax. Similarly, in *Tours Specialists*, the room or hotel charges *actually received* by them from the foreign travel agency was, likewise, not included in its gross receipts for the imposition of the 3% contractor's tax. In both cases, the fees, bets or hotel charges, as the case may be, were actually received and held in trust by the taxpayers. **On the other hand, the 20% final tax on the Respondent's passive income was already deducted and withheld by various withholding agents. Hence, the actual or the exact amount received by the Respondent, as its passive income in the year 1994, was less the 20% final tax already withheld by various withholding agents. The various withholding agents at source were required under section 50 (a), of the National Internal Revenue Code of**

1986, to withhold the 20% final tax on certain passive income x x x.

> **Moreover, under Section 51 (g) of the said Code, all taxes withheld pursuant to the provisions of this Code and its implementing regulations are considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.**
>
> **Accordingly, the 20% final tax withheld against the Respondent's passive income was already remitted to the Bureau of Internal Revenue, for the corresponding year that the same was actually withheld and considered final withholding taxes under Section 50 of the same Code. Indubitably, to include the same to the Respondent's gross receipts for the year 1994 would be to tax twice the passive income derived by Respondent for the said year, which would constitute double taxation anathema to our taxation laws.**

II - G.R. No. 140857

Asianbank, petitioner, is a domestic corporation also engaged in banking business. For the taxable quarters ending June 30, 1994 to June 30, 1996, Asianbank filed and remitted to the Bureau of Internal Revenue (BIR) the 5% GRT on its total gross receipts.

On the strength of the January 30, 1996 CTA Decision in the *ASIAN BANK* case, Asianbank filed with the Commissioner a claim for refund of the overpaid GRT amounting to P2,022,485.78.

To toll the running of the two-year prescriptive period for filing of claims, Asianbank also filed a petition for review with the CTA.

On February 3, 1999, the CTA allowed refund in the reduced amount of P1,345,743.01,[11] the amount proven by Asianbank. Unsatisfied, the Commissioner filed with the Court of Appeals a petition for review.

On November 22, 1999, the Court of Appeals reversed the CTA Decision and ruled in favor of the Commissioner, thus:

> It is true that Revenue Regulation No. 12-80 provides that the gross receipts tax on banks and other financial institutions should be based on all items of income actually received. Actual receipt here is used in opposition to mere accrual. Accrued income refers to income already earned but not yet received. (*Rep. v. Lim Tian Teng Sons & Co.*, 16 SCRA 584).
>
> **But receipt may be actual or constructive**. Article 531 of the Civil Code provides that 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 one will, or by the proper acts and legal formalities established for acquiring such right.

Moreover, taxation income may be received by the taxpayer himself or by someone authorized to receive it for him (Art. 532, Civil Code). **The 20% final tax withheld from interest income of banks and other similar institutions is not income that they have not received; it is simply withheld from them and paid to the government, for their benefit. Thus, the 20% income tax withheld from the interest income is, in fact, money of the taxpayer bank but paid by the payor to the government in satisfaction of the bank's obligation to pay the tax on interest earned. It is the bank's obligation to pay the tax. Hence, the withholding of the said tax and its payment to the government is for its benefit.**

x x x

The case of Collector of *Internal Revenue vs. Manila Jockey Club* is inapplicable. In that case, a percentage of the gross receipts to be collected by the Manila Jockey Club was earmarked by law to be turned over to the Board on Races and distributed as prizes among owners of winning horses and authorized bonus for jockeys. The Manila Jockey Club itself derives no benefit at all from earmarked percentage. That is why it cannot be considered as part of its gross receipts.

WHEREFORE, the C.T.A's judgment herein appealed from is hereby **REVERSED**, and judgment is hereby rendered **DISMISSING** the respondent's Petition for Review in C.T.A Case No. 5412.

SO ORDERED.

Hence, the present consolidated petitions.

The Commissioner's arguments in the two (2) petitions may be synthesized as follows:

first, there is no law which excludes the 20% FWT from the taxable gross receipts for the purpose of computing the 5% GRT;

second, the imposition of the 20% FWT on the bank's passive income and the 5% GRT on its taxable gross receipts, which include the bank's passive income, does not constitute double taxation;

third, the ruling by this Court in *Manila Jockey Club*,[12] cited in the *ASIAN BANK* case, is not applicable; and

fourth, in the computation of the 5% GRT, the passive income need not be *actually* received in order to form part of the taxable gross receipts.

In its Resolution[13] dated January 17, 2000, this Court adopted as Citytrust's Comment on the instant petition for review its Memorandum submitted to the CTA and its Comment submitted to the Court of Appeals. Citytrust contends therein that: *first*, Section 4(e) of Revenue Regulations No. 12-80 dated November 7, 1980 provides that the rates of taxes on the gross receipts of financial institutions shall be based only on all items of income **actually received**; and, *second*, this Court's ruling in *Manila Jockey Club*[14] is applicable. Asianbank echoes similar arguments.

We rule in favor of the Commissioner.

The issue of whether the 20% FWT on a bank's interest income forms part of the taxable **gross receipts** for the purpose of computing the 5% GRT is no longer novel. This has been previously resolved by this Court in a catena of cases, such as *China Banking Corporation v. Court of Appeals*,[15] *Commissioner of Internal Revenue v. Solidbank Corporation*,[16] *Commissioner of Internal Revenue v. Bank of Commerce*,[17] and the latest, *Commissioner of Internal Revenue v. Bank of the Philippine Islands*.[18]

The above cases are unanimous in defining **"gross receipts"** as **"the entire receipts without any deduction."** We quote the Court's enlightening ratiocination in *Bank of the Philippines Islands*,[19] thus:

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

x x x x x x

Additionally, we held in *Solidbank*, to wit:

> [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 operation 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."

In *China Banking Corporation*,[20] this Court further explained that the legislative intent to apply the term in its plain and ordinary meaning may be surmised from a historical perspective of the levy on gross receipts. From the time the GRT on banks was first imposed in 1946 under Republic Act No. 39[21] and throughout its successive re-enactments,[22] the legislature has not established a definition of the term "gross receipts." Under Revenue Regulations No. 12-80 and No. 17-84, as well as several numbered rulings, the BIR has consistently ruled that the term **"gross receipts" does not admit of any deduction**. This interpretation has remained unchanged throughout the various re-enactments of the present Section 121 of the Tax Code. 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, the reasonable conclusion is that the legislature has adopted the BIR's interpretation. In other words, the subsequent re-enactments of the present Section 121, without changes in the term interpreted by the BIR, confirm that its interpretation carries out the legislative purpose.

Now, bereft of any laudable statutory basis, Citytrust and Asianbank simply anchor their argument on Section 4(e) of Revenue Regulations No. 12-80 stating that *"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.**"* They contend that since the 20% FWT is withheld at source and is paid directly to the government by the entities from which the banks derived the income, the same cannot be considered **actually received**, hence, must be excluded from the taxable gross receipts.

The argument is bereft of merit.

First, Section 4(e) merely recognizes that income may be taxable either at the time of its **actual receipt** or its **accrual**, depending on the accounting method of the taxpayer. It does not really exclude accrued interest income from the taxable gross receipts but **merely postpones** its inclusion until **actual payment** of the interest to the lending bank. Thus, while it is true that Section 4(e) states that "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**," it goes on to distinguish actual receipt from accrual, i.e., that **"mere accrual shall not be considered, but once payment is received in such accrual or in case of prepayment, then the amount actually received shall be included in the tax base of such financial institutions."**

And *second*, Revenue Regulations No. 12-80, issued on November 7, 1980, had been superseded by Revenue Regulations No. 17-84 issued on October 12, 1984. Section 4(e) of Revenue Regulations No. 12-80 provides that only items of income **actually received** shall be included in the tax base for computing the GRT. On the other hand, Section 7(c) of Revenue Regulations No. 17-84 includes **all interest income** in computing the GRT, thus:

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

Revenue Regulations No. 17-84 categorically states that ***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.*** There is, therefore, an implied repeal of Section 4(e). There exists a disparity between Section 4(e) which imposes the GRT only on all items of **income *actually* received** (as opposed to their mere accrual) and Section 7(c) which includes **all interest income** (whether actual or accrued) in computing the GRT. As held by this Court in *Commissioner of Internal Revenue v. Solidbank Corporation*,[23] **"the exception having been eliminated, the clear intent is**

that the later R.R. No. 17-84 includes the exception within the scope of the general rule." Clearly, then, the current Revenue Regulations require interest income, whether actually received or merely accrued, to form part of the bank's taxable gross receipts.[24]

Moreover, this Court, in *Bank of Commerce*,[25] settled the matter by holding that "actual receipt may either be physical receipt or constructive receipt," thus:

> **Actual receipt of interest income is not limited to physical receipt. Actual receipt may either be physical receipt or constructive receipt. When the depositary bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld**. From the amount constructively received by the lending bank, the depositary bank deducts the final withholding tax and remits it to the government for the account of the lending bank. *Thus, the interest income actually received by the lending bank, both physically and constructively, is the net interest plus the amount withheld as final tax.*
>
> The concept of a withholding tax on income obviously and necessarily implies that the amount of the tax withheld comes from the income earned by the taxpayer. Since the amount of the tax withheld constitute income earned by the taxpayer, then that amount manifestly forms part of the taxpayer's gross receipts. Because the amount withheld belongs to the taxpayer, he can transfer its ownership to the government in payment of his tax liability. The amount withheld indubitably comes from the income of the taxpayer, and thus forms part of his gross receipts.

Corollarily, the Commissioner contends that the imposition of the 20% FWT and 5% GRT does not constitute double taxation.

We agree.

Double taxation means taxing for the same tax period the same thing or activity twice, when it should be taxed but once, for the same purpose and with the same kind of character of tax.[26] This is not the situation in the case at bar. The GRT is a percentage tax under Title V of the Tax Code ([Section 121], Other Percentage Taxes), while the FWT is an income tax under Title II of the Code (Tax on Income). The two concepts are different from each other. In *Solidbank Corporation*,[27] this Court defined that 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. 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. Thus, there can be no double taxation here as the Tax Code imposes two different kinds of taxes.

Now, both Asianbank and Citytrust rely on *Manila Jockey Club* [28] in support of their positions. We are not convinced. In said case, Manila Jockey Club paid amusement tax on its commission in the total amount of bets called wager funds from the period November 1946 to October 1950. But such payment did not include the 5 ½ % of the funds which went to the Board on Races and to the owners of horses and jockeys. We ruled that the gross receipts of the Manila Jockey Club should not include the 5 ½ % because although delivered to the Club, such money has been especially earmarked by law or regulation for other persons.

The *Manila Jockey Club*[29] does not apply to the cases at bar because what happened there is earmarking and not withholding. Earmarking is not the same as withholding. Amounts earmarked do not form part of gross receipts because these are by law or regulation reserved for some person other than the taxpayer, although delivered or received. 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.[30] The distinction was explained in *Solidbank*, thus:

> "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 (*Manila Jockey Club* merely held that these amounts were held in trust and did not form part of gross receipts). **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 (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. Court of Appeals*, supra, p. 27]).
>
> **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 (*Ibid*., p. 26). It is ownership that determines whether interest income forms part of taxable gross receipts (*Ibid*., p. 27). Being originally owned by these financial institutions as part of their interest income, the FWT should form part of their taxable gross receipts**.

In fine, let it be stressed that tax exemptions are highly disfavored. It is a governing principle in taxation that tax exemptions are to be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority and should be granted only by clear and unmistakable terms.

WHEREFORE, in G.R. No. 139786, we **GRANT** the petition of the Commissioner of

Internal Revenue and **REVERSE** the Decision of the Court of Appeals dated August 17, 1999 in CA-G.R. SP No. 52707.

In G.R. No. 140857, we **DENY** the petition of Asianbank Corporation and **AFFIRM *in toto*** the Decision of the Court of Appeals in CA-G.R. SP No. 51248. Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Corona, Azcuna and *Garcia, JJ.,* concur.

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[1] Also referred to as "**interest income**" as it pertains to **interest** from bank deposits and yield or any other monetary benefit from deposit substitutes and from trust funds and similar arrangements and royalties.

[2] Entitled *Commissioner of Internal Revenue v. Citytrust Investment Phils., Inc.*, penned by Associate Justice Romeo J. Callejo, Sr. (now a member of this Court) and concurred in by Associate Justice Quirino D. Abad Santos, Jr. and Associate Justice Mariano M. Umali (both retired).

[3] CTA Case No. 5403, entitled *Citytrust Investment Philippines, Inc. v. Commissioner of Internal Revenue*, penned by Associate Justice Ramon O. De Veyra.

[4] Entitled *Commissioner of Internal Revenue v. Asianbank Corporation*, penned by Associate Justice Hector L. Hofileña (retired) and concurred in by Associate Justice Omar U. Amin (retired) and Associate Justice Jose L. Sabio, Jr.

[5] CTA Case No. 5412.

[6] 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. (*Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436.)

[7] CTA Decision in CTA Case No. 4720.

[8] On April 19, 1999, the Court of Tax Appeals rendered a Decision, the dispositive portion of which reads:

> "**WHEREFORE**, in view of the foregoing, Respondent is hereby **ORDERED** to **REFUND** or to **ISSUE** a tax credit certificate in favor of Petitioner in the

> amount of P39,629.44 representing overpaid gross receipts tax for the taxable year 1994."

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

[10] 108 Phil. 821 (1960).

[11] The amount as alleged in the petition; **P1,345,749.01**, as it appears in the CA decision.

[12] *Supra*, footnote 10.

[13] *Rollo*, p. 50.

[14] *Supra*.

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

[16] *Supra*, footnote 6.

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

[18] G.R. No. 147375, June 26, 2006.

[19] *Id*.

[20] *Supra*, footnote 15.

[21] Republic Act No. 39 amended Section 249 of the Tax Code of 1939 (effective October 1, 1946), which states:

> "Sec. 249. Tax on banks. - There shall be collected a tax of five *per centum* on the gross receipts derived by all banks doing business in the Philippines from interests, discounts, dividends, commissions, profits from exchange, royalties, rentals of property, real and personal, and all other items treated as gross income under section twenty-nine of this Code."

[22] Since 1 October 1946 when R.A. No. 39 first imposed the gross receipts tax on banks under Section 249 of the Tax Code, the legislature has re- enacted several times this section of the Tax Code. On 24 December 1972, Presidential Decree No. 69, which enacted into law the *Omnibus Tax Bill of 1972*, re-enacted Section 249 of the Tax Code. Then on 11 June 1977, Presidential Decree No. 1158, otherwise known as the *National Internal Revenue Code of 1977*, re-enacted Section 249 as Section 119 of the Tax Code. Finally, on

11 December 1997, Republic Act No. 8424, otherwise known as the *Tax Reform Act of 1987*, re-enacted Section 119 as the present Section 121 of the Tax Code. (See *China Banking Corporation v. Court of Appeals*, supra).

[23] *Supra*, footnote 6.

[24] *Supra*, footnote 18.

[25] *Supra*, footnote 17.

[26] Tax Law and Jurisprudence, by Justice Jose C. Vitug and Judge Ernesto D. Acosta, Second Edition, 2000.

[27] *Supra*, footnote 6.

[28] *Supra*, footnote 10.

[29] *Id*.

[30] Supra, footnote 6.