562 Phil. 575

SECOND DIVISION

[G.R. NO. 158175, October 18, 2007]

PHILIPPINE NATIONAL BANK, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

QUISUMBING, J.:

Before us is a petition for review on certiorari assailing the Decision[1] dated May 12, 2003 of the Court of Appeals in CA-G.R. S.P. No. 58230, which had reversed both the Decision[2] and Resolution[3] dated January 26, 2000 and March 21, 2000, respectively, of the Court of Tax Appeals (CTA) in C.T.A. Case No. 5406, entitled *Philippine National Bank v. Commissioner of Internal Revenue* and, accordingly, denied petitioner's claim for tax refund.

The facts are undisputed.

For the eight taxable quarters for the period June 30, 1994 up to March 31, 1996, petitioner filed its Quarterly Percentage Tax Returns and paid the corresponding 5% gross receipts tax (GRT)[4] on its gross receipts, inclusive of interest income derived from investments, deposits and loans which were already subjected to the 20% final withholding tax (FWT).

On July 19, 1996, petitioner filed amended Quarterly Percentage Tax Returns for the said taxable quarters excluding the 20% FWT, invoking CTA Case No. 4720, entitled *Asian Bank Corporation v. Commissioner of Internal Revenue*, promulgated on January 30, 1996, wherein the tax court ruled that the 20% FWT on interest income should not form part of the bank's taxable gross receipts for GRT purposes. Petitioner's amended Quarterly Percentage Tax Returns reflected a lesser amount of taxable gross receipts resulting to an overpayment of GRT of P17,504,775.48, to wit:

Period Covered (Quarter – End)	Tax Due Per Original Return	Tax Due Per Amended Return	Overpayment For Refund
June 30, 1994	[P]107,483,285.27	[P] 105,127,122.33	[P] 2,356,162.94

September 30, 1994	114,292,729.36	111,817,191.57	2,475,537.79
December 31, 1994	118,443,383.42	116,573,108.77	1,870,274.65
March 31, 1995	127,781,909.47	125,733,423.93	2,048,485.54
June 30, 1995	105,615,948.79	102,932,534.56	2,683,414.23
September 30, 1995	136,977,975.85	134,253,099.12	2,724,876.73
December 31, 1995	137,565,078.91	135,893,668.65	1,671,410.26
March 31, 1996	133,260,982.62	131,586,369.28	1,674,613.34
TOTAL	P 981,421,203.69*	[P] 963,916,518.21	[P] 17,504,775.48[5]

Simultaneous with the filing of the amended Quarterly Percentage Tax Returns, petitioner also filed a written claim for tax refund or credit of P17,504,775.48 with the Commissioner of Internal Revenue and a petition for review with the CTA in order to toll the running of the two-year prescriptive period to judicially claim for the refund of overpaid GRT for the taxable quarters ending June 30, 1994 and September 30, 1994.

On January 26, 2000, the CTA rendered a decision, the decretal portion of which reads,

> **WHEREFORE**, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Respondent [Commissioner of Internal Revenue] is hereby **ORDERED** to **ISSUE a TAX CREDIT CERTIFICATE** in the amount of **P13,785,413.38** to the petitioner [Philippine National Bank] immediately.
>
> **SO ORDERED.**[6]

Respondent sought reconsideration, but it was denied. On May 12, 2003, the Court of Appeals reversed the CTA decision and resolution, and accordingly denied petitioner's claim for tax refund. The Court of Appeals held that the 20% FWT on interest income should be included in petitioner's taxable gross receipts for GRT purposes. The *fallo* of the decision reads,

> WHEREFORE, the assailed [decision and resolution] of the Court of Tax Appeals dated…January 26, 2000…and March 21, 2000… [respectively,] in CTA Case No. 5406 (S.P. No. 58230), are hereby REVERSED and SET ASIDE and the claims for tax refund by… Philippine National Bank are hereby DENIED for lack of merit.
>
> SO ORDERED.[7]

Hence, this instant petition, raising the following as issues:

I.

WHETHER OR NOT [COMM.] OF INTERNAL REVENUE VS. MANILA JOCKEY CLUB, [INC.] (108 PHIL. 821) IS APPLICABLE IN RESOLVING THE ISSUE OF WHETHER OR NOT THE 20% FINAL WITHHOLDING TAX ON THE BANK'S INTEREST INCOME SHOULD FORM PART OF TAXABLE GROSS RECEIPTS.

II.

WHETHER OR NOT CTA RULINGS SHOULD BE DISTURBED[,] BEING A COURT OF SPECIAL JURISDICTION.[8]

Simply stated, the issues are: (1) Does the 20% FWT on interest income form part of the taxable gross receipts in computing the 5% GRT on banks? (2) Is *Comm. of Internal Revenue v. Manila Jockey Club, Inc.*[9] *(Manila Jockey Club, Inc.)* applicable in this case? (3) What is the weight of authority of CTA rulings?

According to petitioner, the 20% FWT on interest income should be excluded from petitioner's taxable gross receipts for GRT purposes because under Section 51(g)[10] (now Section 58A) of the 1977 National Internal Revenue Code (Tax Code), as amended and Section 7(a)[11] of Revenue Regulations No. 12-80,[12] taxes withheld are merely held in trust for the government. Citing Section 4(e)[13] of Revenue Regulations No. 12-80, petitioner likewise avers that the FWT never formed part of its income because it does not actually receive such amount. Petitioner also invokes *Manila Jockey Club, Inc.*, where we ruled that "gross receipts of the proprietor of the amusement place should not include any money which although delivered to the amusement place has been especially earmarked by law or regulation for some person other than the proprietor."[14] Finally, petitioner avers that the CTA, being a court of special jurisdiction, its findings and conclusions should not be disturbed and must be respected.

On the other hand, respondent contends that *Manila Jockey Club, Inc.* is not applicable, but what should be applicable is *China Banking Corporation v. Court of Appeals,*[15] where we ruled that the 20% FWT on interest income should form part of the bank's taxable gross receipts.

The issues raised herein are not novel. In a catena of cases,[16] we categorically ruled that the 20% FWT on a bank's interest income forms part of the taxable gross receipts for purposes of computing the 5% GRT.[17] The 5% GRT, as imposed by Section 119 (now

Section 121)[18] of the Tax Code, by its nature applies to all the receipts without any deduction, unless otherwise provided by law. Any deduction, exemption or exclusion from gross receipts is inconsistent with the policy of the law and is not normally allowed in a gross receipts tax, to maintain simplicity in tax collection, and to assure a steady source of state revenue even during periods of economic slowdown.[19] It also changes the result and meaning of gross receipts to net receipts.[20]

Petitioner asserts that under Section 51(g) of the Tax Code and Section 7(a) of Revenue Regulations No. 12-80, taxes withheld are merely held in trust for the government. This assertion, however, does not suffice. The fact that the FWT is a special trust fund for the government does not justify its exclusion from the computation of interest income subject to GRT.[21] The concept of a withholding tax on income necessarily implies that the amount of tax withheld comes from the income earned by the taxpayer. Because the amount withheld belongs to him, he can transfer its ownership to the government in payment of its tax liability.[22] This constitutes payment which would extinguish a bank's obligation to the government. The bank can only pay the money it owns, or the money it is authorized to pay.[23]

Petitioner also contends that under Section 4(e) of Revenue Regulations No. 12-80, the amount of taxes withheld cannot be considered as actually received by the bank, hence, the same must be excluded from the taxable gross receipts. This argument is bereft of merit. Revenue Regulations No. 12-80 had been superseded on October 12, 1984 by Revenue Regulations No. 17-84.[24] While Section 4(e) of Revenue Regulations No. 12-80 states that *"the rates of taxes to be imposed on the gross receipts of financial institutions shall be based on all items of income* ***actually received****,"* Section 7(c)[25] of Revenue Regulations No. 17-84 includes ***all interest income*** in computing the GRT.[26] Moreover, in *Commissioner of Internal Revenue v. Bank of Commerce*, we had already pronounced that actual receipt of interest is not limited to physical receipt. It may either be physical receipt or constructive receipt. When the depository bank withholds the final tax to pay the tax liability of the lending bank, there is prior to the withholding a constructive receipt by the lending bank of the amount withheld.[27]

Also, the *Manila Jockey Club, Inc.* does not apply in this case. There 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.[28] What happened in *Manila Jockey Club, Inc*. is earmarking and not withholding. Earmarking is different from withholding. Amounts earmarked, whether delivered or received, do not form part of gross receipts, because 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 the constructive possession of the income earner and not subject to any reservation, the withholding agent, being merely, a conduit in the collection process.[29]

Now, petitioner avers that CTA rulings should not be disturbed, the CTA being a court of special jurisdiction. This, however, is only the general rule. CTA rulings will generally not be disturbed on appeal as long as the CTA does not commit gross error in the appreciation of facts.[30] But in this case, the CTA, like in *China Banking Corporation*, relied erroneously on *Manila Jockey Club, Inc*., thus, its pronouncement that the 20% FWT on interest income of banks should not form part of the taxable gross receipts subject to GRT cannot be sustained.

WHEREFORE, the petition is **DENIED** for lack of merit. The Decision dated May 12, 2003 of the Court of Appeals in CA-G.R. S.P. No. 58230 is **AFFIRMED**. Costs against the petitioner.

SO ORDERED.

Carpio, Carpio-Morales, Tinga, and *Velasco, Jr., JJ.,* concur.

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[1] *Rollo*, pp. 43-60. Penned by Associate Justice Salvador J. Valdez, Jr., with Associate Justices Bienvenido L. Reyes and Danilo B. Pine concurring.

[2] Id. at 76-83.

[3] Id. at 91-94.

[4] Imposed by Section 119 (now Section 121) of the National Internal Revenue Code.

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	3%

exceeding four [4] years)

Long-term maturity –

(1) Over four (4) years but not exceeding seven (7) years	1%
(2) Over seven (7) years	0%
(b) On dividends	0%
(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code	5%

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru 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.

* Total should be P981,421,293.69.

[5] *Rollo*, p. 167.

[6] Id. at 83.

[7] Id. at 59.

[8] Id. at 167.

[9] 108 Phil. 821 (1960).

[10] SEC. 51. **Returns and payment of taxes withheld at source. –** …

x x x x

(g) All taxes withheld pursuant to the provisions of this Code and its implementing regulations are hereby considered trust funds and shall be maintained in a separate account

and not commingled with any other funds of the withholding agent.

x x x x

[11] SEC. 7. *Nature and Treatment of Taxes Imposed Under These Regulations* –

(a) All withholding taxes deducted and withheld by the withholding agent in accordance with these regulations shall be held as a special fund in trust for the government until paid to the collecting officer.

x x x x

[12] TAXATION OF CERTAIN INCOME DERIVED FROM BANKING ACTIVITIES, issued on November 7, 1980.

[13] Section 4. *Manner of Computation of Tax Base. – ...*

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 taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received**. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder: (Emphasis supplied.)

x x x x

[14] Supra at 825-826.

[15] G.R. Nos. 146749 and 147938, June 10, 2003, 403 SCRA 634.

[16] *Commissioner of Internal Revenue v. Citytrust Investment Phils., Inc.,* G.R. Nos. 139786 and 140857, September 27, 2006, 503 SCRA 398; *Commissioner of Internal Revenue v. Bank of Commerce*, G.R. No. 149636, June 8, 2005, 459 SCRA 638; *Commissioner of Internal Revenue v. Bank of the Philippine Islands,* G.R. No. 147375, June 26, 2006, 492 SCRA 551; *Commissioner of Internal Revenue v. Solidbank Corporation*, G.R. No. 148191, November 25, 2003, 416 SCRA 436; *China Banking Corporation v. Court of Appeals,* supra.

[17] *China Banking Corporation v. Court of Appeals*, supra at 642.

[18] Supra note 4.

[19] *China Banking Corporation v. Court of Appeals*, supra at 652.

[20] Id. at 647.

[21] *Commissioner of Internal Revenue v. Bank of Commerce,* supra at 651.

[22] Id. at 653.

[23] Supra note 21.

[24] INCOME TAXATION OF INTEREST DERIVED FROM BANK DEPOSITS AND YIELD FROM DEPOSIT SUBSTITUTES.

[25] SEC. 7. *Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes* –

x x x x

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.

[26] *Commissioner of Internal Revenue v. Citytrust Investment Phils., Inc.*, supra note 16, at 412.

[27] *Commissioner of Internal Revenue v. Bank of Commerce,* supra note 21, at 653.

[28] *Commissioner of Internal Revenue v. Solidbank Corporation,* supra note 16, at 453.

[29] *Commissioner of Internal Revenue v. Citytrust Investment Phils., Inc.,* supra note 16, at 415.

[30] *Commissioner of Internal Revenue v. Court of Appeals,* G.R. No. 124043, October 14, 1998, 298 SCRA 83, 91.