

THIRD DIVISION

[G.R. No. 175108, February 27, 2013]

**CHINA BANKING CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

PERALTA, J.:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court which seeks the review and reversal of the Decision^[1] dated June 16, 2006 and Resolution^[2] dated October 17, 2006 of the former Fifth Division of the Court of Appeals (CA).

The factual antecedents follow.

For the four quarters of 1996, petitioner paid P93,119,433.50 as gross receipts tax (GRT) on its income from the interests on loan investments, commissions, service and collection charges, foreign exchange profit and other operating earnings.

In computing its taxable gross receipts, petitioner included the 20% final withholding tax on its passive interest income,^[3] hereunder summarized as follows:

<u>1996</u>	<u>Exhs.</u>	<u>Date of Filing Return/Payment of Tax to the BIR</u>	<u>Taxable Gross Receipts</u>	<u>Gross Receipts Tax Paid</u>
1 st qtr.	A	22-Apr-96	P 534,500,491.61	P 24,055,944.08
2 nd qtr.	A-1	22-Jul-96	582,985,457.89	26,394,956.47
3 rd qtr.	A-2	21-Oct-96	427,801,196.81	18,427,999.31
4 th qtr.	A-3	20-Jan-97	<u>552,378,276.18</u>	<u>24,240,533.64</u>
Total:			P	P
			<u>2,097,665,422.49</u>	<u>93,119,433.50</u>

On January 30, 1996, the Court of Tax Appeals (CTA) rendered a Decision entitled *Asian Bank Corporation v. Commissioner of Internal Revenue*,^[4] wherein it ruled that the 20% final withholding tax on a bank's passive interest income should not form part of its taxable gross receipts.

On the strength of the aforementioned decision, petitioner filed with respondent a claim for refund on April 20, 1998, of the alleged overpaid GRT for the four (4)

quarters of 1996 in the aggregate amount of P6,646,829.67, detailed as follows:

<u>1996</u>	<u>Gross Receipts</u> <u>Tax Paid</u>	<u>Corrected Gross</u> <u>Receipts Tax</u>	<u>Excess GRT</u> <u>Payment</u>
1 st qtr.	P 24,055,944.08	P 22,114,548.10	P 1,941,395.99
2 nd qtr.	26,394,956.45	25,050,429.40	1,344,527.06
3 rd qtr.	18,427,999.33	17,087,138.98	1,340,860.34
4 th qtr.	<u>24,240,533.64</u>	<u>22,219,487.36</u>	<u>2,021,046.28</u>
Total:	<u>P 93,119,433.50</u>	<u>P 86,471,603.84</u>	<u>P 6,646,829.67</u>

On even date, petitioner filed its Petition for Review with the CTA.

The CTA, on November 8, 2000, rendered a Decision^[5] agreeing with petitioner that the 20% final withholding tax on interest income does not form part of its taxable gross receipts. However, the CTA dismissed petitioner's claim for its failure to prove that the 20% final withholding tax forms part of its 1996 taxable gross receipts. The Decision states in part:

Moreover, the Court of Appeals in the case of *Commissioner of Internal Revenue vs. Citytrust Investment Philippines, Inc., CA G.R. Sp No. 52707, August 17, 1999*, affirmed our stand that the 20% final withholding tax on interest income should not form part of the taxable gross receipts. Hence, we find no cogent reason nor justification to depart from the wisdom of our decision in the Asian Bank case, supra.

x x x x

Lastly, since Petitioner failed to prove the inclusion of the 20% final withholding taxes as part of its 1996 taxable gross receipts (passive income) or gross receipts (passive income) that were subjected to 5% GRT, it follows that proof was wanting that it paid the claimed excess GRT, subject of this petition.

x x x x

IN THE LIGHT OF ALL THE FOREGOING, the instant Petition for Review is DISMISSED for insufficiency of evidence.

SO ORDERED.^[6]

Not in conformity with the CTA's ruling, petitioner interposed an appeal before the CA.

In its appeal, petitioner insists that it erroneously included the 20% final withholding tax on the bank's passive interest income in computing the taxable gross receipts. Therefore, it argues that it is entitled, as a matter of right, to a refund or tax credit.

In a Decision^[7] dated June 16, 2006, the CA denied petitioner's appeal. It ruled in this wise:

x x x Unfortunately for China Bank, it is flogging a dead horse as this argument has already been shot down in *China Banking Corporation vs. Court of Appeals* (G.R. No. 146749 & No. 147983, June 10, 2003) where it was ruled the Tax Court, which decided *Asia Bank* on June 30, 1996 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 Regulation 12-80.

x x x x

WHEREFORE, the instant petition is DENIED DUE COURSE and DISMISSED.

SO ORDERED.^[8]

Petitioner sought reconsideration of the aforementioned decision arguing that Section 4 (e) of Revenue Regulations (RR) No. 12-80 remains applicable as the basis of GRT for banks in taxable year 1996.

On October 17, 2006, the CA issued a Resolution^[9] denying petitioner's motion for reconsideration on the ground that no new or compelling reason was presented by petitioner to warrant the reversal or modification of its decision.

Hence, this petition wherein petitioner contends that:

THE COURT OF APPEALS ERRED IN HOLDING THAT PETITIONER HAS FAILED TO POINT TO THE LEGAL BASIS FOR THE EXCLUSION OF THE AMOUNT OF TAX WITHHELD ON PASSIVE INCOME FROM ITS GROSS RECEIPTS FOR PURPOSES OF TAXATION.^[10]

In essence, the issue to be resolved is whether the 20% final tax withheld on a bank's passive income should be included in the computation of the GRT.

Petitioner avers that the 20% final tax withheld on its passive income should not be included in the computation of its taxable gross receipts. It insists that the CA erred in ruling that it failed to show the legal basis for its claimed tax refund or credit, since Section 4 (e) of RR No. 12-80 categorically provides for the exclusion of the amount of taxes withheld from the computation of gross receipts for GRT purposes.

We do not agree.

In a catena of cases, this Court has already resolved the issue of whether the 20% final withholding tax should form part of the total gross receipts for purposes of

computing the GRT.

In *China Banking Corporation v. Court of Appeals*,^[11] we ruled that the amount of interest income withheld, in payment of the 20% final withholding tax, forms part of the bank's gross receipts in computing the GRT on banks. The discussion in this case is instructive on this score:

The gross receipts tax on banks was first imposed on 1 October 1946 by Republic Act No. 39 ("RA No. 39") which amended Section 249 of the Tax Code of 1939. Interest income on banks, without any deduction, formed part of their taxable gross receipts. From October 1946 to June 1977, there was no withholding tax on interest income from bank deposits.

On 3 June 1977, Presidential Decree No. 1156 required the withholding at source of a 15% tax on interest on bank deposits. This tax was a creditable, not a final withholding tax. Despite the withholding of the 15% tax, the entire interest income, without any deduction, formed part of the bank's taxable gross receipts. On 17 September 1980, Presidential Decree No. 1739 made the withholding tax on interest a final tax at the rate of 15% on savings account, and 20% on time deposits. Still, from 1980 until the Court of Tax Appeals decision in *Asia Bank* on 30 January 1996, banks included the entire interest income, without any deduction, in their taxable gross receipts.

In *Asia Bank*, the Court of Tax Appeals held that the final withholding tax is not part of the bank's taxable gross receipts. The tax court anchored its ruling on Section 4(e) of Revenue Regulations No. 12-80, which stated that the gross receipts "shall be based on all items actually received" by the bank. The tax court ruled that the bank does not actually receive the final withholding tax. As authority, the tax court cited *Collector of Internal Revenue v. Manila Jockey Club*, which held that "gross receipts of the proprietor should not include any money which although delivered to the amusement place had been especially earmarked by law or regulation for some person other than the proprietor. x x x

Subsequently, the Court of Tax Appeals reversed its ruling in *Asia Bank*. In *Far East Bank & Trust Co. v. Commissioner and Standard Chartered Bank v. Commissioner*, both promulgated on 16 November 2001, the tax court ruled that **the final withholding tax forms part of the bank's gross receipts in computing the gross receipts tax**. The tax court held that Section 4(e) of Revenue Regulations 12-80 did not prescribe the computation of the gross receipts but merely authorized "the determination of the amount of gross receipts on the basis of the method of accounting being used by the taxpayer.

The tax court also held in *Far East Bank and Standard Chartered Bank* **that the exclusion of the final withholding tax from gross receipts operates as a tax exemption which the law must expressly grant. No law provides for such exemption. In addition, the tax court pointed out that Section 7(c) of Revenue Regulations No. 17-84**