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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.
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> "'[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