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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 -
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> (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:
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> > **(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%**
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> > Medium-term maturity (over two [2] years but not exceeding four [4] years) 3%
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> > Long-term maturity -
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> > > **(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.
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> 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.**
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> **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.**
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> **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).
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> **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.**
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> x x x
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> 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**