498 Phil. 673

SECOND DIVISION

[G.R. NO. 149636, June 08, 2005]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF COMMERCE, RESPONDENT.

D E C I S I O N

CALLEJO, SR., J.:

This is a petition for review on *certiorari* of the Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 52706, affirming the ruling of the Court of Tax Appeals (CTA) [2] in CTA Case No. 5415.

The facts of the case are undisputed.

In 1994 and 1995, the respondent Bank of Commerce derived passive income in the form of interests or discounts from its investments in government securities and private commercial papers. On several occasions during the said period, it paid 5% gross receipts tax on its income, as reflected in its quarterly percentage tax returns. Included therein were the respondent bank's passive income from the said investments amounting to P85,384,254.51, which had already been subjected to a final tax of 20%.

Meanwhile, on January 30, 1996, the CTA rendered judgment in *Asia Bank Corporation v. Commissioner of Internal Revenue*, CTA Case No. 4720, holding that the 20% final withholding tax on interest income from banks does not form part of taxable gross receipts for Gross Receipts Tax (GRT) purposes. The CTA relied on Section 4(e) of Revenue Regulations (Rev. Reg.) No. 12-80.

Relying on the said decision, the respondent bank filed an administrative claim for refund with the Commissioner of Internal Revenue on July 19, 1996. It claimed that it had overpaid its gross receipts tax for 1994 to 1995 by P853,842.54, computed as follows:

Gross receipts subjected to Final Tax Derived from Passive Investment	*P85,384,254.51*
	x 20%
20% Final Tax Withheld at Source	*17,076,850.90*
	x 5%
	P 853,842.54

Before the Commissioner could resolve the claim, the respondent bank filed a petition for review with the CTA, lest it be barred by the mandatory two-year prescriptive period under Section 230 of the Tax Code (now Section 229 of the Tax Reform Act of 1997).

In his answer to the petition, the Commissioner interposed the following special and affirmative defenses:

...

5. The alleged refundable/creditable gross receipts taxes were collected and paid pursuant to law and pertinent BIR implementing rules and regulations; hence, the same are not refundable. Petitioner must prove that the income from which the refundable/creditable taxes were paid from, were declared and included in its gross income during the taxable year under review;

6. Petitioner's allegation that it erroneously and excessively paid its gross receipt tax during the year under review does not *ipso facto* warrant the refund/credit. Petitioner must prove that the exclusions claimed by it from its gross receipts must be an allowable exclusion under the Tax Code and its pertinent implementing Rules and Regulations. Moreover, it must be supported by evidence;

7. Petitioner must likewise prove that the alleged refundable/creditable gross receipt taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarter/s of the succeeding year nor included as creditable taxes declared and applied to the succeeding taxable year/s;

8. Claims for tax refund/credit are construed in *strictissimi juris* against the taxpayer as it partakes the nature of an exemption from tax and it is incumbent upon the petitioner to prove that it is entitled thereto under the law. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund/credit;

9. Furthermore, petitioner must prove that it has complied with the provision of Section 230 (now Section 229) of the Tax Code, as amended.[3]

The CTA summarized the issues to be resolved as follows: whether or not the final income tax withheld should form part of the gross receipts[4] of the taxpayer for GRT purposes; and whether or not the respondent bank was entitled to a refund of P853,842.54.[5]

The respondent bank averred that for purposes of computing the 5% gross receipts tax, the final withholding tax does not form part of gross receipts.[6] On the other hand, while the Commissioner conceded that the Court defined "gross receipts" as "all receipts of taxpayers excluding those which have been especially earmarked by law or regulation for the government or some person other than the taxpayer" in *CIR v. Manila Jockey Club, Inc.,*[7] he claimed that such definition was applicable only to a proprietor of an amusement place, not a banking institution which is an entirely different entity altogether. As such, according to the Commissioner, the ruling of the Court in *Manila Jockey Club* was inapplicable.

In its Decision dated April 27, 1999, the CTA by a majority decision[8] partially granted the petition and ordered that the amount of P355,258.99 be refunded to the respondent bank. The *fallo* of the decision reads:

> WHEREFORE, in view of all the foregoing, respondent is hereby **ORDERED** to **REFUND** in favor of petitioner Bank of Commerce the amount of P355,258.99 representing validly proven erroneously withheld taxes from interest income derived from its investments in government securities for the years 1994 and 1995.[9]

In ruling for respondent bank, the CTA relied on the ruling of the Court in *Manila Jockey Club*, and held that the term "gross receipts" excluded those which had been especially earmarked by law or regulation for the government or persons other than the taxpayer. The CTA also cited its rulings in *China Banking Corporation v. CIR*[10] and *Equitable Banking Corporation v. CIR.*[11]

The CTA ratiocinated that the aforesaid amount of P355,258.99 represented the claim of the respondent bank, which was filed within the two-year mandatory prescriptive period and was substantiated by material and relevant evidence. The CTA applied Section 204(3) of the National Internal Revenue Code (NIRC).[12]

The Commissioner then filed a petition for review under Rule 43 of the Rules of Court before the CA, alleging that:

> (1) There is no provision of law which excludes the 20% final income tax withheld under Section 50(a) of the Tax Code in the computation of the 5% gross receipts tax.
>
> (2) The Tax Court erred in applying the ruling in Collector of Internal Revenue vs. Manila Jockey Club (108 Phil. 821) in the resolution of the legal issues involved in the instant case.[13]

The Commissioner reiterated his stand that the ruling of this Court in *Manila Jockey Club*, which was affirmed in V*isayan Cebu Terminal Co., Inc. v. Commissioner of Internal Revenue*,[14] is not decisive. He averred that the factual milieu in the said case is different, involving as it did the "wager fund." The Commissioner further pointed out that in *Manila Jockey Club,* the Court ruled that the race track's commission did not form part of the gross receipts, and as such were not subjected to the 20% amusement tax. On the other hand, the issue in *Visayan Cebu Terminal* was whether or not the gross receipts corresponding to 28% of the total gross income of the service contractor delivered to the Bureau of Customs formed part of the gross receipts was subject to 3% of contractor's tax under Section 191 of the Tax Code. It was further pointed out that the respondent bank, on the other hand, was a banking institution and not a contractor. The petitioner insisted that the term "gross receipts" is self-evident; it includes all items of income of the respondent bank regardless of whether or not the same were allocated or earmarked for a specific purpose, to distinguish it from net receipts.

On August 14, 2001, the CA rendered judgment dismissing the petition. Citing Sections 51 and 58(A) of the NIRC, Section 4(e) of Rev. Reg. No. 12-80[15] and the ruling of this Court in *Manila Jockey Club*, the CA held that the P17,076,850.90

representing the final withholding tax derived from passive investments subjected to final tax should not be construed as forming part of the gross receipts of the respondent bank upon which the 5% gross receipts tax should be imposed. The CA declared that the final withholding tax in the amount of P17,768,509.00 was a trust fund for the government; hence, does not form part of the respondent's gross receipts. The legal ownership of the amount had already been vested in the government. Moreover, the CA declared, the respondent did not reap any benefit from the said amount. As such, subjecting the said amount to the 5% gross receipts tax would result in double taxation. The appellate court further cited *CIR v. Tours Specialists, Inc.*,[16] and declared that the ruling of the Court in *Manila Jockey Club* was decisive of the issue.

The Commissioner now assails the said decision before this Court, contending that:

> THE COURT OF APPEALS ERRED IN HOLDING THAT THE 20% FINAL WITHHOLDING TAX ON BANK'S INTEREST INCOME DOES NOT FORM PART OF THE TAXABLE GROSS RECEIPTS IN COMPUTING THE 5% GROSS RECEIPTS TAX (GRT, for brevity).[17]

The petitioner avers that the reliance by the CTA and the CA on Section 4(e) of Rev. Reg. No. 12-80 is misplaced; the said provision merely authorizes the determination of the amount of gross receipts based on the taxpayer's method of accounting under then Section 37 (now Section 43) of the Tax Code. The petitioner asserts that the said provision ceased to exist as of October 15, 1984, when Rev. Reg. No. 17-84 took effect. The petitioner further points out that under paragraphs 7(a) and (c) of Rev. Reg. No. 17-84, interest income of financial institutions (including banks) subject to withholding tax are included as part of the "gross receipts" upon which the gross receipts tax is to be imposed. Citing the ruling of the CA in *Commissioner of Internal Revenue v. Asianbank Corporation*[18] (which likewise cited *Bank of America NT & SA v. Court of Appeals*,[19]) the petitioner posits that in computing the 5% gross receipts tax, the income need not be actually received. For income to form part of the taxable gross receipts, constructive receipt is enough. The petitioner is, likewise, adamant in his claim that the final withholding tax from the respondent bank's income forms part of the taxable gross receipts for purposes of computing the 5% of gross receipts tax. The petitioner posits that the ruling of this Court in *Manila Jockey Club* is not decisive of the issue in this case.

The petition is meritorious.

The issues in this case had been raised and resolved by this Court in *China Banking Corporation v. Court of Appeals*,[20] and *CIR v. Solidbank Corporation*.[21]

Section 27(D)(1) of the Tax Code reads:

> **(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 corporations, and royalties, derived from sources within the Philippines: Provided, however, That interest income derived by a domestic corporation from a depository bank under the expanded foreign currency deposit system shall be subject to a final income tax at the rate of seven and one-half percent (7ï¿½%) of such interest income.

On the other hand, Section 57(A)(B) of the Tax Code authorizes the withholding of final tax on certain income creditable at source:

SEC. 57. **Withholding of Tax at Source. –**

(A) Withholding of Final Tax on Certain Incomes. – *Subject to rules and regulations, the Secretary of Finance may promulgate, upon the recommendation of the Commissioner, requiring the filing of income tax return by certain income payees, the tax imposed or prescribed by Sections 24(B)(1), 24(B)(2), 24(C), 24(D)(1); 25(A)(2), 25(A)(3), 25(B), 25(C), 25(D), 25(E); 27(D)(1), 27(D)(2), 27(D)(3), 27(D)(5); 28(A)(4), 28(A)(5), 28(A)(7)(a), 28(A)(7)(b), 28(A)(7)(c), 28(B)(1), 28(B)(2), 28(B)(3), 28(B)(4), 28(B)(5)(a), 28(B)(5)(b), 28(B)(5)(c); 33; and 282 of this Code on specified items of income shall be withheld by payor-corporation and/or person and paid in the same manner and subject to the same conditions as provided in Section 58 of this Code.*

(B) Withholding of Creditable Tax at Source. – *The Secretary of Finance may, upon the recommendation of the Commissioner, require the withholding of a tax on the items of income payable to natural or juridical persons, residing in the Philippines, by payor-corporation/persons as provided for by law, at the rate of not less than one percent (1%) but not more than thirty-two percent (32%) thereof, which shall be credited against the income tax liability of the taxpayer for the taxable year.*

The tax deducted and withheld by withholding agents under the said provision shall be held as a special fund in trust for the government until paid to the collecting officer.[22]

Section 121 (formerly Section 119) of the Tax Code provides that a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries shall be computed in accordance with the schedules therein:

(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 –	