

## FIRST DIVISION

[ G.R. No. 148191, November 25, 2003 ]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.  
SOLIDBANK CORPORATION, RESPONDENT.

### DECISION

PANGANIBAN, J.:

Under the Tax Code, the earnings of banks from "passive" income are subject to a twenty percent final withholding tax (20% FWT). This tax is withheld at source and is thus not *actually* and physically received by the banks, because it is paid directly to the government by the entities from which the banks derived the income. Apart from the 20% FWT, banks are also subject to a five percent gross receipts tax (5% GRT) which is imposed by the Tax Code on their gross receipts, including the "passive" income.

Since the 20% FWT is *constructively* received by the banks and forms part of their gross receipts or earnings, it follows that it is subject to the 5% GRT. After all, the amount withheld is paid to the government on their behalf, in satisfaction of their withholding taxes. That they do not *actually* receive the amount does not alter the fact that it is remitted for their benefit in satisfaction of their tax obligations.

Stated otherwise, the fact is that if there were no withholding tax system in place in this country, this 20 percent portion of the "passive" income of banks would *actually* be paid to the banks and then remitted by them to the government in payment of their income tax. The institution of the withholding tax system does not alter the fact that the 20 percent portion of their "passive" income constitutes part of their *actual* earnings, except that it is paid directly to the government on their behalf in satisfaction of the 20 percent final income tax due on their "passive" incomes.

### The Case

Before us is a Petition for Review<sup>[1]</sup> under Rule 45 of the Rules of Court, seeking to annul the July 18, 2000 Decision<sup>[2]</sup> and the May 8, 2001 Resolution<sup>[3]</sup> of the Court of Appeals<sup>[4]</sup> (CA) in CA-GR SP No. 54599. The decretal portion of the assailed Decision reads as follows:

"WHEREFORE, we **AFFIRM** *in toto* the assailed decision and resolution of the Court of Tax Appeals."<sup>[5]</sup>

The challenged Resolution denied petitioner's Motion for Reconsideration.

### The Facts

Quoting petitioner, the CA<sup>[6]</sup> summarized the facts of this case as follows:

"For the calendar year 1995, [respondent] seasonably filed its Quarterly Percentage Tax Returns reflecting gross receipts (pertaining to 5% [Gross Receipts Tax] rate) in the total amount of P1,474,691,693.44 with corresponding gross receipts tax payments in the sum of P73,734,584.60, broken down as follows:

Period Covered	Gross Receipts	Gross Receipts Tax
January to March 1994	P 188,406,061.95	P 9,420,303.10
April to June 1994	370,913,832.70	18,545,691.63
July to September 1994	481,501,838.98	24,075,091.95
October to December 1994	<u>433,869,959.81</u>	<u>21,693,497.98</u>
<b>Total</b>	<b><u>P 1,474,691,693.44</u></b>	<b><u>P 73,734,584.60</u></b>

"[Respondent] alleges that the total gross receipts in the amount of P1,474,691,693.44 included the sum of P350,807,875.15 representing gross receipts from passive income which was already subjected to 20% final withholding tax.

"On January 30, 1996, [the Court of Tax Appeals] rendered a decision in CTA Case No. 4720 entitled *Asian Bank Corporation vs. Commissioner of Internal Revenue*[,] wherein it was held that the 20% final withholding tax on [a] bank's interest income should not form part of its taxable gross receipts for purposes of computing the gross receipts tax.

"On June 19, 1997, on the strength of the aforementioned decision, [respondent] filed with the Bureau of Internal Revenue [BIR] a letter-request for the refund or issuance of [a] tax credit certificate in the aggregate amount of P3,508,078.75, representing allegedly overpaid gross receipts tax for the year 1995, computed as follows:

Gross Receipts Subjected to the Final Tax		
Derived from Passive [Income]		P
	350,807,875.15	
Multiply by Final Tax rate		<u>20%</u>
20% Final Tax Withheld at Source	P 70,161,575.03	
Multiply by [Gross Receipts Tax] rate		<u>5%</u>
Overpaid [Gross Receipts Tax]	<b><u>P 3,508,078.75</u></b>	

"Without waiting for an action from the [petitioner], [respondent] on the same day filed [a] petition for review [with the Court of Tax Appeals] in

order to toll the running of the two-year prescriptive period to judicially claim for the refund of [any] overpaid internal revenue tax[, ] pursuant to Section 230 [now 229] of the Tax Code [also `National Internal Revenue Code'] x x x.

x x x x x x x x

"After trial on the merits, the [Court of Tax Appeals], on August 6, 1999, rendered its decision ordering x x x petitioner to refund in favor of x x x respondent the reduced amount of P1,555,749.65 as overpaid [gross receipts tax] for the year 1995. The legal issue x x x was resolved by the [Court of Tax Appeals], with Hon. Amancio Q. Saga dissenting, on the strength of its earlier pronouncement in x x x *Asian Bank Corporation vs. Commissioner of Internal Revenue* x x x, wherein it was held that the 20% [final withholding tax] on [a] bank's interest income should not form part of its taxable gross receipts for purposes of computing the [gross receipts tax]."<sup>[7]</sup>

### **Ruling of the CA**

The CA held that the 20% FWT on a bank's interest income did not form part of the taxable gross receipts in computing the 5% GRT, because the FWT was not actually received by the bank but was directly remitted to the government. The appellate court curtly said that while the Tax Code "does not specifically state any exemption, x x x the statute must receive a sensible construction such as will give effect to the legislative intention, and so as to avoid an unjust or absurd conclusion."<sup>[8]</sup>

Hence, this appeal.<sup>[9]</sup>

### **Issue**

Petitioner raises this lone issue for our consideration:

"Whether or not the 20% final withholding tax on [a] bank's interest income forms part of the taxable gross receipts in computing the 5% gross receipts tax."<sup>[10]</sup>

### **The Court's Ruling**

The Petition is meritorious.

#### **Sole Issue:**

#### **Whether the 20% FWT Forms Part of the Taxable Gross Receipts**

Petitioner claims that although the 20% FWT on respondent's interest income was not actually received by respondent because it was remitted directly to the government, the fact that the amount redounded to the bank's benefit makes it part of the taxable gross receipts in computing the 5% GRT. Respondent, on the other hand, maintains that the CA correctly ruled otherwise.

We agree with petitioner. In fact, the same issue has been raised recently in *China*

*Banking Corporation v. CA*,<sup>[11]</sup> where this Court held that the amount of interest income withheld in payment of the 20% FWT forms part of gross receipts in computing for the GRT on banks.

**The FWT and the GRT:**  
**Two Different Taxes**

The 5% GRT is imposed by Section 119<sup>[12]</sup> of the Tax Code,<sup>[13]</sup> which provides:

"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<sup>[14]</sup> 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."

The 5% GRT<sup>[15]</sup> is included under "Title V. Other Percentage Taxes" of the Tax Code and is not subject to withholding. The banks and non-bank financial intermediaries liable therefor shall, under Section 125(a)(1),<sup>[16]</sup> file quarterly returns on the amount of gross receipts and pay the taxes due thereon within twenty (20)<sup>[17]</sup> days after the end of each taxable quarter.

The 20% FWT,<sup>[18]</sup> on the other hand, falls under Section 24(e)(1)<sup>[19]</sup> of "Title II. Tax on Income." It is a tax on passive income, deducted and withheld at source by the payor-corporation and/or person as withholding agent pursuant to Section 50,<sup>[20]</sup> and paid in the same manner and subject to the same conditions as provided for in Section 51.<sup>[21]</sup>

A perusal of these provisions clearly shows that two types of taxes are involved in the present controversy: (1) the GRT, which is a percentage tax; and (2) the FWT, which is an income tax. As a bank, petitioner is covered by both taxes.

A *percentage tax* is a national tax measured by a certain percentage of the gross selling price or gross value in money of goods sold, bartered or imported; or of the gross receipts or earnings derived by any person engaged in the sale of services.<sup>[22]</sup> It is not subject to withholding.

An *income tax*, on the other hand, is a national tax imposed on the net or the gross income realized in a taxable year.<sup>[23]</sup> It is subject to withholding.

In a withholding tax system, the payee is the taxpayer, the person on whom the tax is imposed; the payor, a separate entity, acts as no more than an agent of the government for the collection of the tax in order to ensure its payment. Obviously, this amount that is used to settle the tax liability is deemed sourced from the proceeds constitutive of the tax base.<sup>[24]</sup> These proceeds are either actual or constructive. Both parties herein agree that there is no *actual* receipt by the bank of the amount withheld. What needs to be determined is if there is *constructive* receipt thereof. Since the payee -- not the payor -- is the real taxpayer, the rule on constructive receipt can be easily rationalized, if not made clearly manifest.<sup>[25]</sup>

### **Constructive Receipt Versus Actual Receipt**

Applying Section 7 of Revenue Regulations (RR) No. 17-84,<sup>[26]</sup> petitioner contends that there is *constructive* receipt of the interest on deposits and yield on deposit substitutes.<sup>[27]</sup> Respondent, however, claims that even if there is, it is Section 4(e) of RR 12-80<sup>[28]</sup> that nevertheless governs the situation.

Section 7 of RR 17-84 states:

"SEC. 7. Nature and Treatment of Interest on Deposits and Yield on Deposit Substitutes. -

`(a) The interest earned on Philippine Currency bank deposits and yield from deposit substitutes subjected to the withholding taxes in accordance with these regulations need