REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FEB STOCKBROKERS, INC.,
Petitioner,

- versus - C.T.A. CASE NO. 6181

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
DEC 17 2003

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DECISION

This case involves assessments for alleged deficiency income tax, stock transaction tax and documentary stamp tax in the total amount of P10,100,218.21 for the calendar year ended December 31, 1997.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at 12th Floor, FEBTC Bldg., Sen. Gil Puyat Avenue, Makati City *(Paragraph 1, Facts, Joint Stipulation of Facts)*.

On April 15, 1998, petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1997 *(page 803, BIR records)*.

On January 14, 2000, petitioner received three (3) formal assessment notices *(Exhibits A, B, C)* demand letter *(Exhibit D)*, and an explanation of the findings *(Exhibits D-a to D-d)* all dated December 29, 1999, issued by Enforcement Service of the Bureau of Internal Revenue, through its Assistant Commissioner, Percival T. Salazar, covering the following deficiency tax assessments:

272

Particular	Exh.	Basic	Interest	Compromise	Total
Income Tax	A,A-1,A-2	P 2,634,582.86	P 943,757.90	P 25,000.00	P 3,603,340.76
Transaction Tax	B,B-1,B-2	4,450,266.36	1,804,491.37	25,000.00	6,279,757.73
Documentary Stamp Tax	C,C-1,C-2	153,695.78	38,423.94	25,000.00	217,119.72
Totals		P 7,238,545.00	P 2,786,673.21	P 75,000.00	P 10,100,218.21

On February 11, 2000, petitioner, through its tax counsel, SGV & Co., filed its protest letter of even date with the Enforcement Service of the respondent's bureau contesting each of the aforementioned deficiency tax assessments *(Exhibit E)*. On April 11, 2000, petitioner submitted with the same office all the relevant documents supporting its protest *(Exhibit F, inclusive of submarkings)*.

On October 17, 2000, after obtaining no decision from the respondent with respect to its protest, petitioner filed the instant petition for review pursuant to Section 228 of the Tax Code.

On November 28, 2000, respondent filed his Answer claiming by way of Special and Affirmative Defenses that:

> "4. Investigation of the petitioner's internal revenue tax liabilities for the year 1997 revealed a tax obligation of P10,100,218.000 as deficiency income, stock transaction and documentary stamp taxes inclusive of surcharge and interest
>
> 5. Subject deficiency income tax assessment No. ST-INC-97-60060-2000, stock transaction tax assessment No. 97-0061-2000 and documentary stamp tax assessment No. ST-DST-97-0062-2000 were issued in accordance with law and pertinent regulations;
>
> 6. The disallowed bad debt expense was taken from the customer's ledgers of the petitioner showing that certain Mr. Edmund Lim and Mr. Simon Co incurred a debt of P1,628,646.11 and P2,715,770.03, respectively, which were written off as tax deductible expenses from petitioner's book of account. Investigation conducted disclosed that petitioner failed to submit proof of indebtedness, such as purchase

invoice, to establish that said transactions took place. Further, as per certification issued by the PECABAR Law Office, there was no evidence showing that Mr. Lim made any order in his accound and in fact, Mr. Lim's purported Reference Card does not bear his signature;

7. Per investigation conducted by Revenue Officers of the respondent, it was clearly established that the alleged interest expense was not incurred in the ordinary and usual trade or business of the petitioner. Hence, the same cannot be claimed as a deductible expense;

8. The deficiency stock transaction tax assessment has factual and legal basis. Although petitioner submitted the various exemption certificates of the pension and trust funds, said certificates unequivocally state, however, that retirement and pension funds are exempt only from income tax. Tax exemptions are not presumed (Floro Cement vs. Gorospe, 200 SCRA 480) and, when granted are strictly construed against the grantee (Luzon Stevedoring vs. Court of Tax Appeals, 163 SCRA 647). This considering, the deficiency stock transaction tax is classified as other percentage tax under Title V of the Tax Code;

9. As regards stock transaction tax on petitioner's broker account, investigation revealed that petitioner failed to show proof that the questioned transaction was really coursed through another agent and that the corresponding stock transaction tax was indeed remitted. In the absence of any proof, respondent's action in assessing the petitioner for the corresponding stock transaction tax is justified;

10. Likewise, the assessment for deficiency documentary stamp tax is valid as there was no showing that the alleged "Buy and Sell Thru" transaction was actually coursed through another agent independent of the petitioner; and

11. All presumptions are in favor of the correctness of tax assessments (Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc., 145 SCRA 671).

The jointly stipulated issues for this court's determination are as follows:

1. Whether or not the disallowance of bad debts and interest expense as deductible items from the taxable income of the petitioner is proper;

274

2. Whether or not the pension and retirement/trust funds, though exempt from income tax, are subject to stock transaction tax;

3. Whether or not petitioner is liable to pay stock transaction tax for its "broker-to-broker" transactions;

4. Whether or not stock transactions which were not subjected to Documentary Stamp Taxes were coursed through another broker; and

5. Whether or not petitioner is liable to pay documentary stamp taxes for stock transactions which were coursed though another broker.

DEFICIENCY INCOME TAX – P3,603,340.76

We shall rule first on the validity of deficiency income tax assessment in the amount of P3,603,340.76 which arose from the disallowance of bad debt expense of P4,913,146.93 and interest expense of P2,753,589.68, computed as follows:

Net Taxable Income/(Loss) per Return		P (139,357.00)
Add: Additional Revenues/Unallowable Deductions		
1. Unsupported Bad Debts written off		4,913,146.93
2. Interest Expense- Back-to-Back transaction		
Interest Expenses on loan obligation	P 8,138,824.80	
Less: Interest income on Money Market	6,335,570.73	
Placement (MMP) & deposit	P 1,803,254.07	
Unallowable Interest		
Add: Interest expense on 15% margin		
on w/tax (6,335,570.73 @ 15%)	950,335.61	2,753,589.68
Taxable Income per Investigation		P 7,527,379.61
Multiply by tax rate		0.35
Tax Due		P 2,634,582.86
Less: Income Tax Paid		-
Basic Income Tax Deficiency		P 2,634,582.86
Add: Interest from 4-15-98 to 11-30-99		943,757.90
Compromise Penalty		25,000.00
TOTAL AMOUNT PAYABLE		P 3,603,340.76

275

Specifically, we have to tackle if the disallowances made by the respondent were proper.

a.) BAD DEBTS WRITTEN OFF - P4,913,146.93

Respondent opines that the bad debt expense should be disallowed due to the following reasons: *(Exhibit D-a)*

> The above amount was not fully substantiated with documents in compliance with the deductibility of the deductions in accordance with Section 29(e) of the NIRC.
>
> The taxpayer was requested to submit proof of indebtedness, such as the purchase invoice which will shows (sic) that there was indeed a transaction and court proceeding that there was really a demand of collection from the particular clients Messrs. Simon V. Co and Edmund Lim. The taxpayer submitted only the memorandums from their Credit Investigation Department for tracing the whereabouts of the above-client and from their President recommending write-off of accounts receivable which considerably a self-serving documents (sic). Since the taxpayer could not fully substantiate the required documents in compliance with the deductibility to income in accordance with Section 29(e) of the NIRC, the above amount is unallowable deduction to income.
>
> Under Section 102, RR No. 2 of NIRC, Thus-Bad Debts may be allowed as deduction in computing the net income, there should accompany the return a statement showing the propriety of any deduction claimed for bad debts, before a taxpayer may charge off and deduct a debt, he must ascertain and be able to demonstrate with reasonable degree of certainty the uncollectibility. In determining whether a debt is worthless, the Commissioner of Internal Revenue will consider all pertinent evidence, including the value of collateral, if any, securing the debt and the financial condition of the debtor. It is only proper that the said amount be disallowed for income tax purposes.

Petitioner, on the other hand, believes that its right to deduct the bad debts from its gross income is justified under Section 29(e) of the Tax Code, as amended, in relation with Section 102 of the BIR Revenue Regulations No. 2, which provide:

> (e) **Bad debts**. – (1) **In general.** – Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except

276

those not connected with profession, trade or business and those sustained in a transaction entered into between parties mentioned under Section 30(b) of this Code.

xxx xxx xxx

Section 102. Bad Debts. – Where all the surrounding and attending circumstances indicate that a debt is worthless, and the debt is charged off on the books of the taxpayer within the year, the same may be allowed as a deduction in computing net income. There should accompany the return a statement showing the propriety of any deduction claimed for bad debts. Before a taxpayer may charge off and deduct a debt, he must ascertain and be able to demonstrate, with a reasonable degree of certainty, the uncollectibility of the debt. Any amount subsequently received on account of a bad debt previously charged off and allowed as a deduction for income tax purposes must be included in gross income for the taxable year in which it is received. In determining whether a debt is worthless, the Commissioner of Internal Revenue will consider all pertinent evidence, including the value of the collateral, if any, securing the debt and the financial condition of the debtor.

Where the surrounding circumstances indicate that a debt is worthless and uncollectible and that legal action to enforce payment would in all probability not result in the satisfaction of execution on a judgment, a showing of those facts will be sufficient evidence of the worthlessness of the debt for purposes of deduction. Bankruptcy is generally an indication of the worthlessness of at least a part unsecured and unpreferred debt. Actual determination of worthlessness in bankruptcy is sometimes possible before and at the other times only when a settlement in bankruptcy shall have been had. Where a taxpayer ascertained a debt to be worthless and charged it off on one year, the mere fact that bankruptcy proceedings instituted against the debtor are terminated in a later year, confirming the conclusion that the debt is worthless, will not authorize shifting the deduction to such later year. If a taxpayer computes his income upon the basis of valuing his notes or accounts receivable at their fair market value when received, which may be less than their face value, the amount deductible for bad debts is any case is limited to such original valuation.

We do not find disagreement with the foregoing altercations of both parties. Indeed, bad debt expense is an allowable business expense pursuant to Section 29(e) of the Tax Code and amplified by Section 102 of Revenue Regulations No. 2. However, as

277

correctly pointed out by the respondent, before a debt can be written off, the same must be supported by evidence to prove its validity and existence.

Settled is the rule that before a receivable can be written-off and charged against current's year income, a taxpayer must comply with certain requisites which are determined by the following guidelines:

(1) there is a valid and subsisting debt;

(2) the debt must be actually ascertained to be worthless and uncollectible during the taxable year;

(3) the debt must be charged off during the taxable year; and

(4) the debt must arise from the business or trade of the taxpayer.

Additionally, before a debt can be considered worthless, the taxpayer must also show that it is indeed uncollectible even in the future ***(Collector vs. Goodrich International Rubber Co. (L-22265, December 26, 1967, 21 SCRA 1336; cited in Philippine Refining Company (now known as "Unilever Philippines [PRC], Inc.") vs. Court of Appeals and Court of Tax Appeals and The Commissioner of Internal Revenue, G.R. No. 118794 May 8, 1996).***

While respondent does not question the efforts of petitioner in pursuing the collection of the unpaid accounts as evidenced by collection and memorandum letters *(pages 759 to 768, BIR records)*, however, he asserts that the documents supporting the existence of the bad debts were not enough.

Consequently, petitioner in order to prove existence of the subject bad debts expense presented to this court the following doccuments, to wit:

1. The Customer Ledgers *(Exhibits K, K-1, L, and L-1)*;

278

2. Memorandum letter of its president recommending to the chairman the writing-off of certain uncollectible accounts in the sum of P4,635,272.57 *(Exhibits M, M-1 and M-2)*.

Despite the above presentation, respondent is still unconvinced that the aforementioned documents are sufficient to prove that the subject debts exist. Respondent believes that petitioner should have presented the sales invoices covering the transactions of the questioned uncollectible accounts.

We agree with the respondent.

In proving that there is a valid and subsisting debt, the sales invoices are the best evidence to prove that such transactions exist. The sales invoices are binding documents to prove that the transactions existed and took place. The customer ledgers presented by petitioner carry little probative value and are not conclusive evidence. Granted that ledgers are documents resorted to by taxpayers in recording their business transactions. But in order for the entries made in the regular course of business to be admissible, it is necessary that the entries should have been made contemporaneously or nearly so with the fact or transaction recorded ***(Francisco, Evidence, Rules of Court in the Philippines, 1994, 2nd edition)***. The statements of past transactions made after the completion of the act recorded or after the regular recording thereof creates a serious doubt as to the veracity, accuracy and truthfulness of the entries made. Such that resort to other supporting documents is needed to verify their contents. True enough, entries in the general ledger are already the result or summation of petitioner's detailed transaction on passive investments. A substantial period of time has lapsed between the occurrence of the transaction and the act of recording said transaction ***(Equitable Banking Corporation***

279

vs. Commissioner of Internal Revenue, C.T.A. Case No. 5575, June 27, 2000). Thus, the raw data entered in the ledger should be corroborated by the production of the best evidence obtainable which in the present case, are the sales invoices. Moreover, in order for the court to verify if in deed the amounts reflected in the ledgers are accurate, production of the source documents (i,e., sales invoices) is very vital. In the absence of these important documents, the court cannot vouch the correctness, validity and subsistence of the questioned bad debts expense. Therefore, disallowance of bad debts expense in the amount of P4,913,146.93 made by the respondent is proper.

b.) INTEREST EXPENSE - P2,753,589.68

Records show that petitioner secured a loan in the total amount of P100,000,000.00 *(pages 751 to 758, BIR records)* which respondent claims was not used in the ordinary course of business of the taxpayer as the same was invested in money market placements. Therefore, respondent disallowed the corresponding portion of petitioner's interest expense in the sum of P2,753,589.68 allegedly representing "back to back" loan transactions. The aforesaid amount was not allowed because respondent avers that petitioner should not be benefited by the 15% spread between income tax benefit of 35% from the interest expense deduction with that of the 20% final tax on interest income *(page 1520, BIR records)*. Simply put, the interest used to earn income subject to final tax should not be deducted from income subject to the normal corporate rate of tax. The unallowable interest expense is computed as follows:

(Exhibit D-b-1)

Interest Expenses on Loan Obligation	P8,138,824.80
Less: Interest Income on Money Market Placement and Deposit	6,335,570.73

280

Unallowable Interest Expense		P1,803,254.07
Add: Interest Expense on 15% margin of W/Tax		
Interest expense benefited on 35% income tax deduction	P2,217,449.76	
Income subjected to 20% W/Tax	1,267,114.15	
Difference between corporate Income tax and final W/Tax		950,335.61
Total Unallowable Interest Expense		P2,753,589.68

Petitioner questions the above finding of the respondent on the grounds that: (1) it was based on mere allegation or presumption; (2) the assessment failed to state any fact or circumstance that would indicate that the said loan was used in money market placement; and (3) that "the presumption of correctness of assessment being a mere assumption cannot be made to rest on another presumption ***(Comissioner of Internal Revenue vs. Benipayo, G.R. No. L-13656, January 31, 1962).***

We find the arguments posed by petitioner untenable.

A perusal of the assessment notice for deficiency income tax, the demand letter and the respondent's explanation of findings *(Exhibits A, D and D-a)* would readily reveal that petitioner was informed of the law and fact on which the disallowance of interest expense was based. On the faces of the aforementioned documents, Sections 29(b) and 249 of the Tax Code (which are the bases in law) were evidently typed-written. And in the "Explanation on Findings", the examiners elaborately explained the reason for the disallowance (which is the basis in fact). In addition, petitioner cited the foregoing reason of the examiners in its protest which it rebutted and even questioned the validity of the computation of the disallowance of the interest expense.

It bears stressing that the purpose of Section 228 of the Tax Code in requiring that "(t)he taxpayer be informed of the law and the facts on which assessment is made" is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment ***(Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5930, April 4, 2002).*** The purpose of the said law having been served in the instant case, Section 228 of the Tax Code is deemed complied with.

We also do not find merit in petitioner's argument that the respondent has no basis in stating that the loan proceeds were used in the investment in money market placements. Records show that the loans secured by petitioner were indeed invested in money market placements as found out by the examiners and as verified by the court, to wit:

Date of Loan	Amount	BIR Records (Page)	Date of Investment	Amount	BIR Records (Page)
02-10-97	P 50,000,000.00	757,758	02-25-97	P 50,000,000.00	746
05-19-97	46,200,000.00	754,755	05-1997	40,538,313.65	744
08-07-97	3,800,000.00	756	05-1997	9,461,246.91	744
	P100,000,000.00			P 99,999,560.56	

Clearly, the arguments of petitioner have no leg to stand on.

As regards the finding of the respondent that the investment in money market placements is not within the ordinary course of petitioner's business, this court does not agree. We are convinced that investment in money market placements is within petitioner's course of stock brokering. In fact, the examiners in their report to the respondent wrote: *(Exhibit 2, page 841, BIR records)*

> "**FEB BROKERS, INC.** is a domestic corporation duly registered with the Securities and Exchange Commission in September 9, 1994. It is primarily engaged *as dealer*, as agent in the business of buying and selling securities of all kinds and other transactions relative to stocks. *(Emphasis supplied).*

282

The above result of investigation negates respondent's own view that petitioner's investment in money market placement is not within its trade. The report draws a solid conclusion that the investment made by petitioner in money market placements is within its trade of stock brokering. Since the records are clear that the proceeds of the loan were used to finance its investment in money market placements, the interest expense relative to the loans is therefore a deductible business expense.

We are also not swayed with the respondent's ratiocination that the disallowed portion of interest expense falls within the purview of "back to back" loan transaction wherein the interest expense used to earn income subject to final tax should not be deducted from income subject to the normal corporate rate of tax. Such issue has already been addressed by this court in the case of ***Sime Darby Philippines, Inc., (Formerly Sime Darby International Tire Co., Inc.) vs. The Commissioner of Internal Revenue, CTA Case No. 4448, August 8, 1994,*** wherein we ruled in this wise:

> "The respondent claims that since the petitioner also earned income from interests and money market placements, it should allocate a certain part of its operating cost to the generation of such passive income, thus in effect, disallowing a proportionate amount of deductible expenses from the petitioner's income in the manufacture and recapping of tires.
>
> However, the undisputed claim of the petitioner is that no expenses were incurred in the production of its passive income such as income earned in bank deposits. Moreover, these income had already been subjected to a final withholding tax of 20%. By the very nature of a final tax, the income is tax based on its gross amount, without consideration of any deductions or costs that may have been actually been incurred in their production.
>
> We therefore, **cannot find any valid reason** for the respondent's allocation of deductible expenses to the petitioner's income that has been subject to a final tax. **Neither can we find any legal basis** for adopting the abovementioned formula in view of the unrefuted testimony of the petitioner's witness that during the examination on its accounting records, all the pertinent journals, ledgers and documents covering both taxable and

283

non-taxable revenues were duly presented to the respondent." (Affirmed by the Court of Appeals in the case of Commissioner of Internal Revenue vs. Sime Darby Philippines, Inc., et al., CA G.R. SP No. 35191, February 28, 1995.)

Clearly, as petitioner is engaged in stock brokering business, its investments in money market placements are within its ordinary course of its trade or business. Therefore, the interest expense it incurred in the payment of the bank loan which was used to finance the investment in money market placement, is a legitimate business expense pursuant to Section 29(g) of the Tax Code. Therefore, the disallowance of respondent of the amount of P2,753,589.68 is invalid.

Based on the foregoing court's adjustments, the 1997 deficiency income tax of petitioner is recomputed as follows:

Net Taxable Income/(Loss) per Return	P (139,357.00)
Add: Unsupported Bad Debts written off	4,913,146.93
Taxable Income	P 4,773,789.93
Multiply by tax rate	0.35
Tax Due	P 1,670,826.48
Less: Income Tax Paid	-
Basic Income Tax Deficiency	P 1,670,826.48
Add: Interest from 4-15-98 to 01-30-00	599,666.49
TOTAL AMOUNT PAYABLE	P 2,270,492.97

The court does not impose compromise penalty due to the absence of an agreement freely entered into between petitioner and respondent ***(Collector of Internal Revenue vs. UST, GR L-11274 & L-11280, November 28, 1958; and M.R. Arick vs. Commissioner, CTA 1679, May 30, 1969; both cited in Industrial Inspection (Int'l.)Incorporated vs. Liwayway Vinzons Chato in her capacity as The Commissioner of the Bureau of Internal Revenue, CTA Case No. 5152, May 19, 1997)***

STOCK TRANSACTION TAX - P6,279,757.73

284

Respondent is of the opinion that petitioner is liable for stock transaction tax in the amount of P6,279,757.73 on various exempt transactions, particularly pension, trust funds and broker accounts. Respondent alleges that the exemption certificates of various pension and trust funds only exempt the funds from income tax and not from other business and percentage taxes. Furthermore, with regard to the stock transaction on petitioner's broker account, investigation revealed that it failed to show proof that the questioned transaction was really coursed through another agent and that the corresponding stock transaction tax was actually remitted.

The deficiency stock transaction tax assessment was arrived at as follows: *(Exhibits B-1 and C)*

Taxable Sales per Sales Tax Return	P 536,472,277.94
Add: Unsupported Exempt Sales on Various sale transactions	890,053,272.02
Total Taxable Sales per Investigation	P1,426,525,549.96
Tax Rate	0.0050
Sales Tax Due	P 7,132,627.75
Less: Sales Tax Paid Per Return	2,682,361.39
Basic Sales Tax Deficiency	P 4,450,266.36
Add: Interest from 1-20-98 to 01-30-00	1,804,491.37
Compromise Penalty	25,000.00
TOTAL AMOUNT PAYABLE	P 6,279,757.73

Petitioner, on the other hand, questions the validity of the stock transaction tax assessment on the ground that it violates Section 228 of the Tax Code for failure to state the facts and law on which the assessment was based. It further argues that the exemption certificates of the various funds include also the exemption of those funds from stock transaction tax.

285

We will settle the foregoing arguments of the parties in the light of the existing law and jurisprudence.

We do not agree with the contention of petitioner that it was not informed of the law and fact on which the deficiency transaction tax was based.

In the face of the assessment notice for stock transaction tax *(Exhibit B)*, the bases in law which are Sections 124A and 249 and 249 of the Tax Code were evidently typed-written. Moreover, petitioner was also informed of the basis in fact as manifested in its protest. Consequently, the purpose of Section 228 of the Tax Code was served with in the instant case.

Despite of the above findings, the court is still unconvinced that the assessment for deficiency stock transaction tax should be upheld. The court noted that the very legal basis of respondent in arriving at the subject deficiency stock transaction tax runs against its assessment.

Under Section 124(A) of the Tax Code, petitioner "***as dealer,*** as agent in the business of buying and selling securities of all kinds and other transactions relative to stocks" is not liable for stock transaction tax, to wit:

> Section 124-A. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.*- (a) Tax on sale, barter or exchange of shares of stock listed and traded through the local stock exchange – There shall be levied, assessed, and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange ***other than the sale by a dealer in securities***, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged, or otherwise disposed which shall be paid by the seller or transferor." *(Emphasis Supplied).*

286

With the above-quoted law, respondent should refrain in assessing petitioner of deficiency stock transaction tax because under Section 124(A) of the Tax Code, a dealer in securities is not liable for stock transaction tax ***(BPI Securities, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 5716, February 16, 2001).*** Therefore, the assessment for deficiency stock transaction tax should be cancelled and set aside for lack of merit.

DOCUMENTARY STAMP TAX - P217,119.72

Lastly, petitioner was assessed of deficiency documentary stamp tax which was arrived at by respondent by getting the difference between the documentary stamp tax paid and the total documentary stamp tax due per book, computed as follows:

Month	DST Due Per Purchase Book	DST Paid	(Over)/Under DST Paid
January	P 335,493.04	P 306,648.00	P 28,845.04
February	235,753.30	307,287.00	(71,533.70)
March	1,321,825.27	1,301,257.50	20,567.77
April	339,575.61	265,339.50	74,236.11
May	306,379.58	329,119.00	(22,739.42)
June	175,754.43	144,910.50	30,843.93
July	170,644.02	140,280.00	30,364.02
August	325,919.51	307,439.25	18,480.26
September	132,906.29	122,971.00	9,935.29
October	189,427.03	167,146.50	22,280.53
November	135,758.36	128,542.50	7,215.86
December	95,297.59	50,902.50	44,395.09
Total	P 3,764,734.03	P3,571,843.25	P192,890.78
Less: Remitted on due date			39,195.00
DST on buy and sell thru transaction			P153,695.78
Basic DST Deficiency			P 153,695.78
Add: 25% Interest (Sec. 248)			38,423.94
Compromise Penalty			16,000.00
Total amount due			P 217,119.72

(Exhibits C and D-d)

287

Petitioner disputed the above assessment. It posits that the difference was due to "Buy and Sell Thru" transactions wherein the unremitted documentary stamp taxes were transferred to the buying agent. The "buy and sell thru" transaction was elaborated by petitioner, *viz*:

> This means that the "buy and sell" transactions are coursed through another independent broker. The purpose is to protect the integrity of the stock market; to allay fears of stock manipulation especially when the brokerage firm is a subsidiary of another firm whose shares are being traded. In this case, it is not disputed that petitioner is a subsidiary of Far East Bank and Trust Co. (FEBTC, now merged with BPI). In transactions falling within the Buy and Sell Thru Scheme, petitioner in fact remits the commission to its buying/selling agent, as the case may be. Thus, the buyers and sellers of stock are dealing with petitioner's buying/selling agents, and not with other clients. Therefore, the actual buying/selling agent has the obligation to remit the tax to the BIR, not petitioner.

While we believe that the above reason of petitioner may have some legal truth, nonetheless, we cannot verify said statement in the absence of evidence that will support such position. Petitioner failed to introduce during trial nor in the administrative level, documents that would prove that the difference in the amount paid for the documentary stamp tax with that of the amount reflected in its book represents the so-called "buy and sell" through transactions. As petitioner agreed that the assessment involves a factual aspect *(see Exhibit E)*, its failure to present evidence renders its claim nugatory. Therefore, the assessment for deficiency documentary stamp tax should be upheld *in toto* except for compromise penalty ***(Industrial Inspection (Int'l.) Incorporated vs. Liwayway Vinzons Chato in her capacity as The Commissioner of the Bureau of Internal Revenue, supra)*** computed hereunder:

Basic DST Deficiency	P 153,695.78
Add: 25% Interest (Sec. 248)	38,423.94
Total Amount due	P 192,119.72

288

IN VIEW OF THE FOREGOING, the 1997 deficiency tax assessments issued against the petitioner for income and documentary stamp tax are hereby **UPHELD** in the respective amounts of P2,270,492.97 and P192,119.72, inclusive of interest plus 20% delinquency interest from February 13, 2000 until the amount is fully paid, pursuant to Section 249(C) of the Tax Code. The assessment for 1997 deficiency stock transaction tax is hereby **CANCELLED** and **WITHDRAWN** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

289