REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECURITY BANK and TRUST COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 4784

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
JAN 12 1996

x - x

DECISION

This is a review of the 1983 deficiency documentary stamps tax (DST) assessment on sale of securities in the amount of P3,287,399.20 issued by the Bureau of Internal Revenue (BIR) against Security Bank and Trust Company (SBTC).

Petitioner is a duly registered domestic corporation engaged in commercial banking. It is a member of the Bankers Association of the Philippines (BAP).

It received from the B.I.R., sometime before March 19, 1987, a Pre-Assessment Notice, dated March 6, 1987, containing the following details, to wit:

1983 - Deficiency Documentary Stamps Tax

A. On Promissory Notes Issued

Promissory notes issued during the year - P 926,385,255.00

Documentary stamp tax due thereon :

P 926,386,255.00 / P200 * P0.65 = ... P3,010,752.08

B. On Sale of Securities under Repurchase Agreement

Securities sold during the year - P3,022,803,857.63

Documentary stamp tax due thereon :

P3,022,803,857.63 / P200 * P0.25 = ... 3,778,504.82

T o t a l	P6,789,256.90
Add : Compromise penalty	600.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P6,789,856.90

In a letter, dated March 19, 1987, petitioner disputed the above-quoted assessment on the grounds that:

(1) promissory notes issued by SBTC prior to October 15, 1984 or specifically in 1983, were non-negotiable and, therefore, not subject to documentary stamp tax; and

(2) sale of securities under Repurchase Agreement is not subject to DST.

Instead of answering this written protest, respondent sent petitioner an assessment letter, dated May 29, 1987, which was received by the latter on June 11, 1987. The assessment was a reiteration of the pre-assessment previously received by petitioner.

On June 23, 1987, as a reply to the assessment letter, petitioner clarified that his answer was already contained in his previous letter of March 19, 1987.

Pursuant to the Compromise Agreement entered into on April 8, 1988, by and between B.A.P. and the former Commissioner of Internal Revenue Bienvenido A. Tan, Jr., petitioner compromised on August 5, 1988 (p. 30, BIR records) the aforementioned assessments by paying the amount of P641,743.23 as full settlement of said assessments (Exh. "4", Respondent; p. 21, *Ibid.*)

The amount of P641,743.23 was computed (p. 146, BIR records) by adding the total amount of promissory notes issued during the year 1983, and the total amount of securities sold during the same year. The resulting sum constituted the compromise base, which if divided by 200, and then multiplied by P0.0325 would give the aforesaid compromised amount. Thus:

Promissory notes issued during the year 1983	P 926,385,255.00
Add: Securities sold under repurchase agreement	3,022,803,857.63
Compromise base	P3,949,189,112.63

$$\frac{\text{Compromise Base}}{200} \times P0.0325$$

$$= \frac{P3{,}949{,}189{,}112.63}{200} \times P0.0325$$

= P641,743.23 - compromised amount paid under P.O. No. C3252171 and C.R. No.

B14457384 both dated March 31, 1988.

Despite petitioner's availment of the compromise agreement, it still received from respondent a letter demanding payment of the amount of P3,287,399.20 as documentary stamp tax on securities sold under a repurchase agreement in 1983. Details of this amount are shown hereunder (Exh. "7", Resp., p. 51, BIR records):

1983
Deficiency Documentary Stamp Tax
On Sale of Securities Under Repurchase Agreement

Securities Sold During the Year -		P3,022,803,857.63
Documentary Stamp Tax Due Thereon -		
P3,022,803,857.63 / P200.00	x P0.25	P 3,778,604.82
Less: Partial Payment -		
P3,022,803,857.63 / P200.00	x P0.0325	491,205.62
TOTAL AMOUNT STILL DUE AND COLLECTIBLE		P 3,287,399.20

Through a letter, dated August 23, 1989, petitioner informed respondent that the assessment sought to be collected was already the subject of a compromise.

As the case was referred to respondent's Appellate Division, petitioner filed with this office on June 17, 1991, a letter disputing the reassessment of documentary stamp tax on the latter's sale of securities.

Protest to the reassessment was denied by respondent in a letter, dated January 29, 1992, which was received by petitioner on March 11, 1992.

Then on March 16, 1992, a request for reconsideration was filed by petitioner. However, although this letter, as borne by the records, came into the hands of the B.I.R., no action or answer has been received by petitioner up to the time the instant petition for review was filed with this Court on April 10, 1992.

Respondent's answer was filed on June 19, 1992 alleging as special and affirmative defenses the following:

> 1. The 1988 BIR-BAP DST Compromise Agreement covers only tax assessments involving documentary stamp tax on all types of promissory notes issued prior to October 15, 1984;
>
> 2. Petitioner's sale of securities under a Repurchase Agreement is not included or placed within the scope of the Compromise Agreement. The law is specific that the subject of a compromise comprises only those matters which are definitely stated therein (Article 2036, New Civil Code);
>
> 3. Petitioner, knowing fully well that documentary stamp taxes on sales of securities under Repurchase Agreement were not within the scope of the BIR-BAP DST Compromise Agreement, induced the respondent to enter into a compromise settlement thereof. A compromise in which there is a mistake, fraud, violence, intimidation, undue influence or falsity of documents may be rescinded or invalidated

(Article 2038 in relation to Article 1330 of the New Civil Code); and

4. The assessment is in accordance with law and regulation.

Issues having been joined, petitioner presented documentary and testimonial evidence to prove and/or support its case. After petitioner rested its case, respondent presented and offered only documentary evidence which were part of the BIR records. No testimonial evidence was offered by respondent.

The two issues that confront us in this case, are both purely legal. First issue is whether or not the reassessment, imposing DST on securities under a repurchase agreement, is covered by the compromise agreement of April 8, 1988. The second issue deals on whether or not subject reassessment has legal basis.

Respondent avers that the subject reassessment is not covered by the 1988 BIR-BAP DST Compromise Agreement, as it covers only tax assessment involving <u>documentary stamp tax on all types of promissory notes issued prior to October 15, 1984</u>. The best evidence of respondent's averment is the Compromise Agreement itself, which provides, among others, the following:

"SECURITY BANK AND TRUST COMPANY, hereinafter referred to as "the Bank," a member of the Bankers Association of the Philippines, ..., hereby <u>offer to compromise its Documentary Stamp Tax (DST) assessment relating to Non-negotiable Promissory Notes</u> issued prior to

October 15, 1984, under the following terms and conditions:

I. COMPROMISE RATE:

xxx

II. SCOPE:

The above-mentioned Documentary Stamp Tax Compromise contemplates and includes:

A. All years with assessments and pre-assessment notices;

B. Years where documentary stamp tax on <u>non-negotiable promissory notes</u> issued prior to October 15, 1984 were paid under protest;

C. Years where a case is presently with the Court of Tax Appeals; and

D. All open years, up to October 14, 1984, at the option of the Bank.

III. COMPROMISE BASE:

xxx

IV. COMPROMISE COMPUTATION:

xxx

V. MODE OF PAYMENT:

xxx

VI. EXCLUSIONS:

Other issues raised in the <u>tax assessments</u> or which may be raised for open and assessed/pre-assessed years respectively, <u>not involving documentary stamp tax on all types of promissory notes issued prior to October 15, 1984 are not included</u> in, nor affected by this compromise. xxx" (pp. 16-17, CTA records; underscoring supplied)

We concur with respondent's contention. The above-quoted provisions of the Compromise Agreement clearly show that it covers only DST assessment on all types of promissory notes issued prior to October 15, 1984. It does not cover DST assessment on securities sold under a repurchase agreement and all other documentary stamp tax assessments.

Petitioner's averment, that the subject reassessment imposing DST on securities sold under a repurchase agreement, is already covered by the compromise agreement, was based on its erroneous interpretation of Section 2(a) of the Revised Securities Act (Batas Pambansa Blg. 8), which states that:

> "xxx Securities shall include bonds, debentures, notes, evidences of indebtedness xxx or commercial papers evidencing indebtedness of any person, financial or non financial entity xxx such as promissory notes, repurchase agreements xxx." (underscoring supplied).

Based on the above-quoted provision, petitioner wrongfully equates "securities" with "promissory notes". Hence, even if the Compromise Agreement specifically mentioned that it covers only DST assessments on all types of promissory notes, DST assessments on securities are deemed included, following petitioner's interpretation that securities include promissory notes.

The Court brushes aside petitioner's interpretation and/or definition of the term "securities." The aforequoted provision of the Revised Securities Act did not properly define or describe the term "securities." What has been done by the said provision, was merely to cite examples, or enumerate different forms of securities, and one of those given was promissory notes. The proper and more acceptable definitions are those quoted hereinbelow, stating that:

> "Securities are generally defined as <u>written assurances for the return or repayment of money</u> or evidences of indebtedness." **(Jaffe v. Goldner,** 251 Ill. App. 188; <u>Words and Phrases</u>, Vol. 38, p. 469).
>
> The term security has no exactly defined legal definition. Generically, the word has reference to written instruments, usually for the payment of money or evidences of a debt, <u>and being more than a mere promise of the debtor of a general liability on his part, but having as collateral to it a pledge of property or some additional obligation</u>.
>
> Webster defines it as <u>anything given or deposited to secure the payment of a debt or the performance of a contract</u>, as a bond with surety, a mortgage, the indorsement of a responsible man, or a pledge. It is that which renders a matter sure; an instrument which renders certain the performance of a contract." **(Storm v. Wanddell,** N.Y., 2 Sandf. Ch. 494, 507, citing 2 Bouv. Law Dict. 493; <u>Words and Phrases</u>, Vol. 38, p. 471)

It is manifestly clear from all the definitions given, that "securities" are not synonymous with promissory notes. For while a "<u>promissory note</u> is a written promise by one person to pay another person therein named or order a fixed sum of money at all events and at a time specified therein or at a time which must certainly arise" (**Clarke v. Hunter,** 83 Ill. App. 100; Words and Phrases, Vol. 34, p. 303), a security is more than mere promise to pay, as it has a collateral to such promise, a pledge of property or some additional obligation. Hence, if the subject Compromise Agreement specifically provided, that it would cover only DST assessments on all types of promissory notes, definitely, it would not cover DST assessments on securities sold under a repurchase agreement. It is a well-settled rule that:

> "A compromise agreement must be strictly interpreted and must be understood as including only matters specifically determined therein or which, by necessary inference from its wording must be deemed included." (**Ferrer vs. Ignacio,** 39 Phil;. 446; Underscoring supplied)

Petitioner's plea for the cancellation and withdrawal of the subject DST assessment was anchored not only on the ground that the assessment was already compromised, but also on account that it lacks legal basis (see p. 13, Petitioner's Memorandum; p. 191, CTA records). Petitioner holds the view, that only conveyance of instruments mentioned in Sections 223 and 224 (now Sections 174 and 175) of the Tax Code, are subject to DST imposed by Section 225 (now Section 176) of the same Code. Conveyances of instruments covered by other sections of the Code, such as the instruments covered by Section 229 (now Section 180), are not subject to DST imposed by Section 225.

In other words, only transfer or sale of bonds, debentures, certificates of indebtedness (instruments mentioned in Section 223) and certificates of stocks (instrument mentioned in Section 224), are subject to DST imposed by Section 225. However, transfer or sale of instruments mentioned in Section 229 such as promissory notes, bills of exchange, drafts, certificates of deposit are not subject to DST imposed by Section 225.

The Court does not uphold petitioner's view. Respondent's revised reassessment properly finds legal basis in Section 225 of the Tax Code, which provides:

> "Section 225. Stamp Tax on Sales, Agreement to Sell, Memoranda of Sales, Deliveries of Transfer of Bonds, Due Bills, Certificates of Obligation, or Shares or Certificates of Stock. - On <u>all sales or agreements to sell</u>, or memoranda of sales, or deliveries, or transfer of bonds, due bills, certificates of obligation, or shares or certificates of stock, in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper, or agreement, or memorandum or <u>other evidences of transfer or sale</u> whether entitling the holder in any manner to the benefit of such bonds, due bills, certificates of obligation or stock, or to secure the future payment of money, or for the

> future transfer of any bond, due bills, certificate of obligation or stock, <u>there shall be collected a documentary stamp tax of twenty-five centavos on each two hundred pesos, or fractional part thereof, of the par value of such bond, due bill, certificates of stock or obligation or stock</u>. xxx xxx xxx xxx xxx." (Underscoring supplied.)

As expressly stated in the above-quoted provision, transfer of securities is clearly subject to DST at the rate of P0.25 on each P200.00 or fractional part of the par value thereof. It is manifestly erroneous for petitioner, to insist again that its securities sold under repurchase agreement, are synonymous to "promissory notes" mentioned in Section 229. The Court has previously explained that securities are different from promissory notes. Although as provided in the Revised Securities Act, that securities may include promissory notes, it does not follow that promissory notes include securities. Hence, if Section 229 specifically provides that it covers promissory notes, this will not mean to include securities sold under a repurchase agreement.

As aptly put by respondent, petitioner's sale of securities under a repurchase agreement, rightfully falls under Section 225, which imposes DST not on the issuance, but on the sale or transfer of instruments mentioned therein, among them are securities. And under Section 222 (now Section 173) of the Tax Code, the person transferring the securities is liable for payment of DST.

This was the decision laid down in the case of "BPI Family Bank vs. CIR and Court of Tax Appeals", CA-G.R. SP No. 29853, September 19, 1994, which ruled that:

> "Without any doubt, having the general character of investment securities, T-Bills and CB-Bills cannot be considered as mere promissory notes. In fact, the primary function of CB-Bills and T-Bills are quite different from that of instruments evidencing debts in ordinary transactions between individuals (Article 19, U.S. Reg. No. 71, Treasury Department, cited in Arañas, Updated National Internal Revenue Code, p. 770; Revised Documentary Stamp Tax Regulation, Department of Finance, September 16, 1924;[xxx II, O.G. 112, p. 2335, Section 27). Instruments evidencing debts in ordinary transactions between individuals are more in the nature of promissory notes which are treated separately and distinctly from government securities that are issued by authority of the Central Bank. Consequently, the issuance and the subsequent transfer and sale of government securities should be subject to payment of documentary stamp taxes pursuant to Section 173, as amended by P.D. No. 1994, of the NIRC which specifically states:
>
> > 'Section 173. Stamp Taxes upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person, making, signing, issuing, accepting or transferring the same, and at the same time such act is done or transaction had; Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the

> other party thereto who is not exempt shall be the one directly liable for the tax.' (Underscoring supplied)

It is not likewise correct for petitioner to state that the instant reassessment has no factual basis. A careful review of the computation of subject reassessment reveals, that the figure of P3,022,803,857.63 denominated as "securities sold during the year", was the same figure supplied or given by petitioner to respondent during the Compromise Agreement. This amount of sale of securities under a repurchase agreement, was properly subjected to DST at the rate of P0.25 on each P200.00 or fractional part thereof, pursuant to Section 225 of the Tax Code. The result was P3,778,604.82 which represents the amount of DST due on the aforesaid sale of securities. However, as the same amount of sale of securities was erroneously included in the Compromise Agreement, at the compromised rate of P0.0325 on each P200.00 or fractional part thereof, the resulting amount of P491,205.62 was considered as partial payment, and the same was deducted from P3,778,604.82 leaving the net figure of P3,287,399.20 as the amount of DST still due and collectible from petitioner.

Finally, the Court considers respondent's revised assessment as correct, following the time-honored principle that:

"Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties an assessment will not be disturbed. All presumptions are in favor of tax assessments (**Interprovincial Autobus Co., Inc. v. Collector**, 98 Phil. 290; **Cecilia Teodoro Dayrit v. Hon. Fernando Cruz and Commissioner**, L-39910, Sept. 26, 1988; **Bonifacia Sy Po v. CTA and Commissioner**, G.R. No. 81446, Aug. 18, 1988). Failure to present proof of error in the assessment will justify judicial affirmance of said assessment (**Delta Motors Co. v. Commissioner**, CTA Case No. 3782, May 21, 1986)."

WHEREFORE, in view of all the foregoing, instant petition for review is found to be without merit and the same is hereby **DISMISSED. ACCORDINGLY**, petitioner is hereby **ORDERED to PAY** to respondent the amount of ₱3,287,339.82, without any surcharge and interest thereon, as deficiency documentary stamp tax due on petitioner's sale of securities under repurchase agreement for the year 1983.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

(on leave)
ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

MANUEL K. GRUBA
Associate Judge
Court of Tax Appeals