REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECURITY BANK AND TRUST COMPANY,
Petitioner,

- versus -

C.T.A. CASE NO. 4663

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 06 1995

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DECISION

Before this Court is an assessment case for alleged deficiency documentary stamp tax in the amount of P480,249.38 for the year 1986.

Petitioner Security Bank and Trust Company (SBTC) is a commercial banking corporation duly organized and existing under and by virtue of the laws of the Philippines.

The records show that for the period April 28, 1986 to September 26, 1986, petitioner sold foreign bills of exchange to the Central Bank of the Philippines with total peso value of P255,973,000.00. (Exhs. "A", "B", "C", "D", "E", "F", "G", "H", "I", "J", "K", "L", "M", "N", "O", "P", "Q", "R", "S", "T", "U", "V", "W", "X", "Y", "Z", "AA", and "BB"). No documentary stamp tax was paid on said transaction neither by the seller nor the buyer. Thus, it became the basis of the issuance of an assessment under Demand Letter and Assessment Notice No. FAS-5-86-88-003061 by the Commissioner of the Internal Revenue on September 30, 1988 for alleged deficiency documentary stamp tax in the amount of P480,249.38 (Exh. "C"). This was sent by a registered mail under Postal Receipt No. 900-A on October 5, 1988 (Exh. "5-B") and was presumed by the respondent to have been received by petitioner in a regular course of mail pursuant to the provision of Sec. 5(v), Rule 131, Revised Rules of Court.

On December 5, 1990, petitioner was personally served with a Warrant of Distraint and/or Levy (Exh. "A") dated October 22, 1990 covering the subject deficiency documentary stamp tax assessment.

Surprised with the receipt of the warrant, SBTC sent representatives to the Bureau of Internal Revenue to investigate on the matter and therein secure copies of the final assessment and two demand letters.

On December 11, 1990, petitioner protested the warrant for lack of due process in view of non-receipt of any demand letter nor the final assessment. It likewise, protested on the assessment allegedly made and further stated that under market convention, the buyer is the one liable for documentary stamp tax and not the seller (Exh.

"G"). But despite of the pending protest, petitioner's account with the Central Bank was debited in the amount of P480,249.38 per debit advice dated December 26, 1990 (Exh. "B").

On October 3, 1991, SBTC received a letter from the Bureau of Internal Revenue (Exh. "I") informing the former of the ruling dated September 25, 1991 (Exh. "H"), declaring that inasmuch as the assessment was not subject of a seasonable administrative protest, the questioned assessment had become final and unappealable, and hence, ordered the payment of P480,249.38, exclusive of legal increments, to the Chief of Collection and Enforcement Division within ten (10) days from receipt thereof. Otherwise, respondent will be constrained to execute the warrant without further notice.

On October 11, 1991, petitioner SBTC invoked again respondent's violation of its right to due process in its letter-appeal to BIR (Exh. "J"). And on October 31, 1991, petitioner appealed with this Court.

During trial, petitioner submitted documentary evidence. On the other hand, respondent presented her witness Mr. Bonifacio L. Caringal, the Revenue Enforcement Officer who conducted the investigation of the herein tax case and Miss Ingrid Verzola, the Revenue mailing clerk of respondent's bureau, whose testimonies together with the BIR records made up the evidence for the respondent.

The issues posed in this case are:

1. whether or not the subject deficiency documentary stamp tax assessment is final and unappealable; and

2. whether or not petitioner is liable for deficiency documentary stamp tax.

Anent the first issue, respondent alleged that this Court lacks jurisdiction to take cognizance of the instant case. The same became final and executory in the absence of an administrative protest by petitioner when said assessment was allegedly sent on October 5, 1988. The protest was only filed on December 11, 1990 and October 11, 1991, a period of more than two years from the release and mailing of the assessment, hence filed beyond thirty days reglementary period allowed under Section 229 of the Tax Code, which provides:

> Sec. 229. Protesting of assessment. - When the Commissioner of Internal Revenue or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings. Within a period to be prescribed by implementing regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner shall issue an assessment based on his findings.
>
> <u>Such assessment may be protested administratively by filing a request for</u>

reconsideration or reinvestigation in such form and manner as may be prescribed by implementing regulations within thirty (30) days from receipt of the assessment; otherwise assessment shall become final and unappealable.

xxx xxx xxx.
(Underscoring supplied.)

Before We rule on such controversy, it is necessary to answer a corollary issue of whether or not the assessment issued by respondent was received by petitioner.

The records show that respondent on October 5, 1988 registered the final assessment letter under Registry Receipt No. 900-A for mailing to petitioner SBTC. Since the latter did not respond on said assessment, a warrant of distraint and/or levy was issued on December 11, 1990, as a remedy, to enforce collection. The issuance of a warrant was anchored on the presumption that the final assessment was received by petitioner. It was presumed by the respondent that under the law "a letter duly directed and mailed was received in the regular course of mail" [Sec. 5(v), Rule 131, Revised Rules of Court, supra]. However, she failed to realize that such presumption is disputable - subject to controversion, and a direct denial of the receipt thereof shifts the burden upon the party favored by the presumption to prove that the mailed letter was indeed received by the addressee **(Republic of the Philippines v. Court of Appeals and**

Neilson & Company Inc., 149 SCRA 351; Arnoldus Woodworks International, Inc. v. The Comm. of Internal Revenue Bienvenido Tan, et al, CTA Case No.4269, March 18, 1994).

Petitioner SBTC denies that it had ever received Notice of Assessment dated September 30, 1988 (Exh. "F"). Therefore, it is incumbent upon the respondent to prove by contrary evidence that petitioner indeed received the assessment for Us to consider that this Court has no jurisdiction on the instant case.

A careful scrutiny of the evidence at hand, however, reveals that respondent failed to prove her presumption. What is clear from the record is that respondent registered the assessment notice. There was no evidence to prove that it was indeed received by the petitioner.

In fact, respondent's witness Miss Ingrid Verzola only testified as to the alleged sending of the assessment but disclaimed having knowledge if petitioner received the assessment. (TSN, November 5, 1994, pp. 13-16). It would have been better if respondent produced the registry return card which is the best evidence of proof of service if petitioner received the assessment. However, the same is not presented nor can be found in the BIR record. Therefore, it is but proper for the petitioner to file administrative protest only on December 11, 1990, after a copy of the assessment was secured from the bureau (as a consequence of receiving the warrant of distraint and/or levy on December 5, 1990) which is well-within the thirty day period prescribed under Sec. 229 of the Tax Code. And thereafter file a petition for review on October 31, 1991 after receiving a copy of the BIR ruling dated October 3, 1991 which contained a copy of the memorandum of the Deputy Commissioner dated September 25, 1991 recommending the denial of the protest.

As to the second issue, petitioner alleged that it was not liable to pay for the documentary stamp tax. It stressed that under market convention it was the buyer who is liable to pay and not the seller. Although, petitioner is not questioning the legal basis or the manner by which the amount of assessment was arrived at but it seriously questioned the applicability of Section 222 (now Section 173) of the Tax Code which reads:

> Sec. 222. Stamp taxes upon documents, instruments, and papers. - 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 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. (As amended by PD No. 1994)

The above-cited provision was the legal basis of respondent in assessing petitioner for deficiency documentary stamp tax. The Central Bank being a tax-exempt entity is not liable to pay the documentary stamp tax on its purchase of foreign bill of exchange but the petitioner being a taxable enterprise.

This argument has already been settled by the Court of Appeals in the case of **China Banking Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 33651, dated September 23, 1994** where it held:

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>
> Petitioner claims that the Central Bank, as buyer of the foreign bill of exchange, is liable for the documentary stamp tax thereon, pursuant to the prevailing business practice in the banking industry which is allegedly recognized by the Central Bank.
>
> We cannot sustain the above claim of petitioner.
>
> During the period from 11 June 1984 until 9 March 1987, the Central Bank enjoyed tax exemption privilege pursuant to Resolution No. 35-85 dated 3 May 1985 of the Fiscal Incentive Review Board. As such, the documentary stamp tax on the 1986 sale transactions of foreign bill of exchange between petitioner and the Central Bank, shall be borne by petitioner in accordance with Pres. Decree No. 1994, which took effect on 1 January 1986, amending Sec. 222 (now Sec. 172) of the NIRC, thus:
>
> > Whenever on 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 to the tax.
>
> xxx xxx xxx
> (Underscoring supplied)

Accordingly, petitioner SBTC should shoulder the documentary stamp tax in line with the above decision. However, inasmuch as the records show that petitioner's account with the Central Bank has already been debited, in compliance with the warrant of garnishment served upon it (CB), in the amount of P480,249.38 per debit advice dated December 26, 1990 (Exh. "B"), respondent can now execute the warrant and thereby demand the amount so garnished by the latter bank. In addition, petitioner should pay 20% interest per annum pursuant to Sec. 283 of the Tax Code, as amended.

WHEREFORE, finding the petition for review unmeritorious, petitioner is hereby ordered to pay the sum of P480,249.38, inclusive of the increments thereon, plus 20% interest pursuant to Sec. 283 of the Tax Code, as amended. The respondent Commissioner of Internal Revenue is hereby ordered to enforce collection pursuant to Sec. 3 of the same code.

Cost against petitioner.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

MANUEL K. GRUBA
Associate Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA.
Presiding Judge

Court of Tax Appeals