REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

CHARTERED BANK (now named as Standard Chartered Bank),
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C. T. A. CASE NO. 4496

Promulgated:
DEC 23 1994

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D E C I S I O N

This is a petition for review of the final decision of respondent Commissioner of Internal Revenue denying the protest of Petitioner against assessments involving the amounts of P6,465,407.^{16} and P7,494,618.^{00} as deficiency income and documentary stamp taxes, respectively, for the year 1984.

Petitioner is a foreign bank organized and existing under the laws of England and is licensed to engage in the banking business in the Philippines (Exh. E). On November 27, 1984 the name of Petitioner bank was changed to Standard Chartered Bank (Exh. F).

On January 29, 1988, respondent through the Assistant Commissioner for Collection, issued a demand letter with the corresponding assessment notice, dated January 29, 1988, against petitioner demanding payment in the total amount of P13,960,025.16 representing deficiency income and documentary stamp taxes for the year 1984, including increments hereon, details of which are shown under (Annex "A") :

1984 DEFICIENCY INCOME TAX

Net income per return	P 70,787,231.00
Add: Unallowable deduction:	
Disallowed portion corresponding to non-taxable revenues	11,859,108.38
Net income per investigation	82,646,339.38
Income tax due thereon	28,916,219.00
Less: Income tax already paid	24,765,531.00
Deficiency income tax	4,150,688.00
Add: 20% int. fr. 4/16/85 to 1/29/88	2,314,719.16
TOTAL AMOUNT DUE & COLLECTIBLE	P 6,465,407.16

1984 DEFICIENCY DOCUMENTARY STAMP TAX

Total Promissory Notes issued ...	P 2,305,944,038.11
Tax due thereon (P0.65/P200) ...	7,494,318.00
Add: Compromise penalty	300.00
TOTAL AMOUNT DUE & COLLECTIBLE	P 7,494,618.00

Petitioner, through its auditors, Sycip, Gorres & Velayo Co. (SGV), protested the 1984 deficiency income tax and documentary stamp tax assessments of respondent in its letter, dated February 9, 1988 (Exh. "A"). This was followed by a more detailed supplementary letter, dated April 6, 1988, by the manager of SGV's Tax Division, for and in behalf of petitioner, reiterating its protest against the findings of the examiners of respondent Bureau (Exh. "B").

In a letter, dated June 7, 1990, respondent denied with finality the protest of the petitioner. Hence, the present appeal (Exh. "G").

In its petition for review, the position taken by petitioner is the fact that under Section 30 (now Section 29) of the National Internal Revenue Code (NIRC), deductions of business expenses regardless of whether or not such expenses are allocable to income are allowed. All that is required for a business expense to be deductible is for it to satisfy three requirements:

a) The expense must be both ordinary and necessary;
b) The expense must be paid or incurred within the taxable year; and
c) The expense must be paid or incurred in carrying on a trade or business.

With reference to the deficiency documentary stamp tax assessment, the same revolves on the taxability of non-negotiable promissory notes issued before October 15, 1984. Petitioner is availing of a BIR-Bankers Association of the Philippines (BAP) Compromise Agreement, dated March 14, 1988, covering this particular issue (Exh. "C"). It further added that while the scope of the BIR-BAP Compromise Agreement covers only issuances made by the petitioner from January 1, 1984 up to October 15, 1984, it had affixed and paid the documentary stamp tax from non-negotiable promissory notes issued after October 15, 1984 up to December 31, 1984.

In her Answer with Counterclaim, respondent made a general and blanket denial of petitioner's allegations in its petition for lack of legal and factual basis, and as part of her special affirmative defenses stated that: petitioner has no cause of action against respondent; the petition does not allege facts showing petitioner's legal capacity to sue; the expenses amounting to P11,859,108.38 claimed by petitioner as deductions from its taxable income for 1984 were disallowed by respondent because said expenses correspond to non-taxable income;

petitioner has not shown that its income constituted the carrying on of a trade or business so as to warrant the deductibility of the said expenses incurred in the realization of income; the deficiency documentary stamp tax assessed on petitioner's promissory notes issued in 1984 is in accordance with Section 223 (now Section 174) of the National Internal Revenue Code (NIRC); and there exists a presumption in favor of correctness of tax assessments.

In support of its petition, petitioner offered and introduced the following documentary evidence:

a) Exh. A - Protest letter dated February 9, 1988, protesting the 1984 Deficiency Income Tax and DST Assessments levied by the BIR for being devoid of legal and factual basis;

b) Exh. A-1 portion of Exh. A - indicating date of receipt of the Bureau of Internal Revenue showing that its protest was filed within the 30-day reglementary period to protest assessment;

c) Exh. B - supplementary letter, dated April 6, 1988, addressed to the Bureau of Internal Revenue which refutes in detail the validity of the assessments;

d) Exh. B-1 - portion of Exh. B indicating date of receipt of the supplementary letter;

e) Exh. C - Individual Bank Agreement, dated March 14, 1988, showing the execution of a compromise agreement of Petitioner's DST assessment relating to non-negotiable promissory notes issued prior to October 15, 1984 (from January 1, 1976 to October 15, 1984);

f) Exh. D - CBP Confirmation Receipt No. B-14457379 dated May 31, 1988 as proof of payment of the compromise amount of documentary stamp tax assessment for the years 1976 to 1984;

g) Exh. D-1 - portion of Exh. D reflecting the amount of P1,934,794.22 in payment of its compromise settlement;

h) Exh. E - License to transact business in the Philippines issued by the then Executive Bureau of the Government showing that Petitioner is a foreign corporation licensed to engage in the banking business in the Philippines;

i) Exh. F - SEC certificate of filing of change of name of a foreign corporation showing that petitioner has changed its business name from "The Chartered Bank" to "Standard Chartered Bank";

j) Exh. G - BIR letter dated June 7, 1990 addressed to SGV & Co. which denied Petitioner's protest against the 1984 assessments;

k) Exh. G-1 - Portion of Exh. G indicating the date "August 31, 1990" as the date of receipt by SGV & Co. of the BIR's final decision on the protest;

l) Exh. H - Corporation's Annual Income Tax Return for the year ended December 31, 1984 indicating that Petitioner duly filed its Income Tax Return for the calendar year 1984;

m) Exh. H-1 - portion of Exhibit H showing the date "April 15, 1985" to show that petitioner seasonably filed its Annual Income Tax Return for 1984 and the same was received by the BIR on even date;

n) Exh. H-2 - portion of Exhibit H showing the amount of P70,787,231.00 which was the total amount subject to tax for the calendar year 1984;

o) Exh. H-3 - portion of Exhibit H showing the amount of P24,765,531.00 as the tax due;

p) Exh. H-4 - portion of Exhibit H showing the amount of P11,494,153.74 as the total amount of tax paid for the calendar year 1984 after crediting the quarterly payments and withholding tax;

q) Exh. H-5 - portion of Exh. H showing the earnings for calendar year 1984 including the breakdown and composition of the income earned by Petitioner for calendar year 1984;

r) Exh. I - CB Confirmation Receipt No. B-0710004 dated April 15, 1985 to show payment of the total amount of taxes paid for calendar year 1984;

s) Exh. J - part of Exh. H showing the scheduled deductions claimed by Petitioner for calendar year 1984 to prove the deductions claimed by Petitioner for income tax purposes;

t) Exh. J-1 - portion of exhibit J showing the amount of P20,439,402.00 to prove the total taxes, licenses and fees claimed as deductions for calendar year 1984;

u) Exh. J-2 - portion of Exh. J showing the amount of P2,556,856.00 to prove the total depreciation expense claimed as deduction for calendar year 1984;

v) Exh. J-3 - portion of Exh. J showing the amount of P 3,728,648.00 to prove the Petitioner's share in the London Head Office expenses claimed as deductions for calendar year 9184.

w) Exh. K - part of Exh. H showing the Schedule of Taxes and Licenses for calendar year 1984 to prove the breakdown and composition of the total taxes, licenses and fees claimed as deductions for calendar year 1984;

x) Exh. L - part of Exh. H showing the Schedule of Depreciation for the calendar year 1984 to prove the breakdown and computation of the total depreciation expense claimed as deduction for calendar year 1984;

y) Exh. M - part of Exh. H showing the computations of Petitioner's share in the London Head Office expenses for calendar year 1984 to prove the formula applied and the amount arrived at in said computations of Petitioner's share in said expenses for calendar year 1984;

z) Exh. N - National acknowledgement of the statement of computations of Petitioner's share in the London Head Office expenses for calendar year 1984 to prove the authentication of the statement as prepared and submitted by the independent Auditor of Standard Chartered Bank Head Office;

aa) Exh. N-1 - Part of Exh. N showing the computation of shares in London Head Office Expenses for calendar year 1984 and the conversion rate applied.

bb) Exh. O - Compromise Agreement between Chartered Bank and the Bureau of Internal Revenue on settlement of deficiency income tax liabilities as proof of said agreement arising from or attributable to disallowance of interest pertaining to obligations considered by the BIR as incurred or continued to purchase or carry securities the income of which is exempt from income tax.

Respondent failed to comment on petitioner's Formal Offer of Evidence. Consequently, the

Court admitted all of Petitioner's documentary evidence (Exhibits A to O, inclusive).

Respondent likewise did not present any evidence in support of her case. Respondent's counsel merely manifested that considering that the issue involved in the case is a "question of law" he submitted his case on the basis of the records and pleadings. Respondent did submit a memorandum. Petitioner likewise filed a memorandum and a supplemental memorandum in support of its case.

To be resolved by us is the validity of respondent's deficiency income tax assessment as well as the deficiency documentary stamp tax assessment for the year 1984.

For the taxable year 1984, petitioner reported in its annual income tax return a gross income in the amount of P248,104,840.00. It likewise reported as total expenses in the operation of its business the amount of P177,317,609.00 resulting in the taxable income of P70,787,231.00. After taking into account quarterly payments and domestic tax credits, the income tax paid by petitioner was in the amount of P11,495,153.74.

As regards the total deductions amounting to P177,317,609.$\underline{^{oo}}$, Petitioner presented its financial accounting records and other documentary evidence to prove that the same were business expenses incurred and directly attributable to the generation of its total taxable income. This is in consonance with Section 30 (now Section 29) of the National Internal Revenue Code which provides thus:

> "Deductions from Gross Income. - In computing taxable income subject to tax under Section 24 xxx, there shall be allowed as deductions the items specified in paragraph (a) to (i) of this section.
>
> x x x x
>
> (a) Expenses.- (1) Business Expenses.-
>
> (A) In general. - All ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; travelling expenses while away from home in pursuit of a trade, profession or business; rentals or other payments required to be made as condition to the continued use or possession, for the purpose of the trade, profession or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.
>
> x x x x
>
> (b) Interest. - (1) In general.- The amount of interest paid or accrued within a taxable year on indebtedness in connection with the taxpayer's profession, trade or business, except on indebtedness incurred

> or continued to purchase or carry obligation the interest upon which is exempt from taxation as income under this Title. xxx"

The aforesaid section of the Tax Code allow the deductions of business expenses provided the following requirements have been complied with, to wit:

1. The expense must be both ordinary and necessary;

2. They must be paid or incurred during the taxable year;

3. They must be paid or incurred in carrying on the trade or business of the taxpayer; and

4. They must be supported by records or pertinent papers.

No distinction is made as to the nature of the income, whether taxable or non-taxable, to which the business expense may be charged to be deductible for income tax purposes. Section 29 of the NIRC therefor allows deduction of business expenses regardless of whether or not such expenses are allocable to income.

"Where the law provided no qualification for the granting of the privilege, the court is not at liberty to supply any" (Republic Flour Mills vs. Commissioner of Internal Revenue, 31 SCRA 520).

This particular provision of the Tax Code has been interpreted and passed upon by the Supreme Court in two cases, namely: Zamora vs Collector, L-15280, May 13, 1953 and reiterated in Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, L-26911, January 27, 1981, 78 O.G. 393, wherein the Court ruled that:

> "The principle is recognized that when a taxpayer claims a deduction, he must point to some specific provision of the statute in which that deduction is authorized and must be able to prove that he is entitled to the deduction which the law allows. As previously adverted to, the law allowing expenses as deduction from gross income for purposes of the income tax in Section 29 (a) (11) of the National Internal Revenue Code which allows a deduction of all the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business. x x x "

The documentary evidence and testimonial evidence submitted by petitioner amply indicate that all expenses claimed and declared by it were incurred in the pursuit of its business.

As part of its evidence, petitioner likewise averted to the BIR-Bankers Association of the Philippines (BAP) Compromise Agreement, dated March 14, 1988, with reference to the taxability of non-negotiable promissory notes issued before October 15, 1984. And, as a consequence of this availment of the Compromise Agreement with the Bankers Association of the Philippines of which petitioner is a member of good standing, the corresponding payments were made by the petitioner. It is also of record that petitioner had affixed and paid the documentary stamp tax from non-negotiable promissory notes issued after October 15, 1984 up to December 31, 1984.

This is an assessment case, disputed by the petitioner, and it was incumbent upon respondent to prove the legal and factual basis of her assessment. The issue in the case is not merely "legal" as erroneously manifested by respondent. It cannot just rely on the presumption that said tax assessment is valid and correct. That presumption is disputable and in fact has been timely and effectively contested by petitioner. The assessment must be based on actual facts to stand the test of judicial scrutiny (Collector of Internal Revenue vs. Benipayo, 4 SCRA 182). Petitioner has in fact presented substantial evidence that its entire deductions claimed amounting to ₱177,317,609.00 incurred in the generation of its taxable income and as a consequence of its business operations. It can be stated that the burden of proof has now shifted to the respondent to prove that her contested assessment was based on facts as well as the legal basis upon which such facts may be anchored. We need not cite rulings of the Supreme Court that has laid down the principle that "he who alleges as fact has the burden of proving it." But sad to state, respondent Bureau failed to present any evidence to buttress her disputed tax assessment against the respondent. She merely made the representation of submitting her case for decision based on the pleadings and the records of the Bureau in this case. Not an iota of evidence was presented to give the Court the opportunity to examine and evaluate the "formula" or theory of respondent as to manner by which she arrived at the deficiency tax assessments, notwithstanding the financial records and other evidence submitted by the petitioner of which the corresponding taxes were duly paid. Not even the Revenue Examiner assigned to this case who presumably examined and audited the books of account and other financial records of the petitioner was presented to testify on his examination of the accounts and the report rendered as a result thereof. Without any evidence to look into, the Court is at a loss as to how and in what manner it could evaluate the disputed assessment. It cannot be expected to just delve into the records of the Bureau and search for the factual and legal basis of its assessment. The procedural rule dictate that "evidence not formally offered cannot be considered by the Court unless it has been duly identified by testimony duly recorded and second, it has itself been incorporated in the records of the cases" (Tabuena vs. Court of Appeals, 195 SCRA 567).

In fairness to the taxpayer, the failure of counsel for respondent to pinpoint or present the pertinent evidence on which he relies does not sit well with this Court. We must also stress that the Court of Tax Appeals is a court of record, with different procedures and rules than an administrative body. Although it is denominated "Court of Tax Appeals," nevertheless the required procedure is unlike that of the Court of Appeals or the Supreme Court. Like the Court of First Instance (now RTC) whose jurisdiction over tax and custom cases has been acquired by this Court, it is required to conduct a formal trial where the parties must present their evidence accordingly if they desire the

Court to take such evidence into consideration in the decision of the case. This court cannot just decide cases based on the evidence presented before the Bureau of Customs and the Bureau of Internal Revenue, or the latter's Appellate Division as the case may be, without a formal presentation of such evidence. While it is true that Section VIII of Republic Act 1125 expressly provides that our proceedings need not be governed strictly by technical rules of evidence, we must on the other hand set a definite rule that only evidence formally presented will be considered in the decision of the case. It is not expected to go out of its way and dig into the records of the government agencies whose decisions it reviews to supply deficiency of the evidence of parties. That would expose us, much as we may desire to do in good faith, to the charge of trying to favor one side or the other (see Celestino Co. and Co. vs Collector of Internal Revenue, CTA Case No. 195, October 14, 1956, G. R. L-8506).

Admittedly, respondent submitted a memorandum to expound its thesis. But a memorandum is not evidence. It is merely a guide to assist the Court to clarify matters already presented before it. It cannot substitute for something that is not there.

Petitioner has amply and substantially presented evidence to support its claim that it has paid correctly the corresponding taxes pertaining to its income, that the deductions pertaining to its expenses in the course of its business operations was necessary and correct and the documentary stamp tax pertaining to the period prior to October 21, 1984 was based on a compromise agreement. Such evidence was not controverted by respondent.

We therefore find for petitioner.

WHEREFORE, respondent's 1984 deficiency income tax and documentary stamp tax assessments levied against petitioner is hereby cancelled and set aside.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

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.

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals