REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

APC GROUP, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6155

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAR 1 1 2002

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DECISION

Petitioner comes to Us by way of a judicial appeal seeking for the cancellation and/or withdrawal of an assessment for deficiency documentary stamp tax, inclusive of surcharge, in the total amount of Ten Million Seven Hundred Fourteen Thousand Five Hundred Forty-Five Pesos and Fifty-Seven Centavos (P10,714,545.57), for inter-company advances made by Petitioner for the taxable year 1997.

The facts are undisputed. Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines.

On July 27, 1998, Respondent served Letter of Authority No. 000018598 on Petitioner authorizing the examination of Petitioner's books of accounts and other accounting records for "all internal revenue taxes" for "1997 and unverified prior years." (Annex A, Petition for Review; par. 3, Joint Stipulation of Facts).

In the course of the examination, documents requested by Respondent were submitted by Petitioner and formed part of BIR records (par. 4, Joint Stipulation of Facts).

On November 22, 1999, Respondent issued an assessment notice (Exhibit H) with an accompanying demand letter (Exhibit I) and an explanation of the deficiency documentary stamp tax (Exhibit I-1), which Petitioner received on December 24, 1999. The assessment notice indicates a deficiency documentary stamp tax in the amount of P10,714,545.57, inclusive of increments, as follows:

Particulars	*Basic Tax*	*Surcharge*	*Total*
Deficiency documentary stamp tax	P8,571,636.46	P2,142,909.11	P10,714,545.57

In a letter dated January 24, 2000, received by the Respondent on even date, Petitioner protested the said assessment by requesting for reconsideration thereof (Exhibit J).

To date, the Respondent has made no decision on the protest notwithstanding the lapse of the one hundred eighty (180) day period since the filing of the protest on January 24, 2000. Consequently, to be well within the 30-day period from the earlier 180-day period given to the Respondent to decide the protest, the Petition for Review was filed for the purpose of having the assessment cancelled and/or withdrawn (par. 7, Joint Stipulation of Facts).

The parties conceded that the issue to be resolved in this case is whether or not BIR Ruling No. 108-99 dated July 15, 1999 can apply retroactively to Petitioner's inter-company advances made in 1997.

However, Respondent contends that there is another issue of whether or not Petitioner's inter-company advances are subject to documentary stamp tax under Section 180 of the Tax Code. We believe this to be the principal issue to be resolved here.

A brief background on BIR Ruling No.108-99 dated July 15, 1999 is in order. In undated BIR Ruling No. 116-98, Respondent, in reply to a query by taxpayer ASB Development Corp. dated April 30, 1998, ruled that an inter-company memo covering advances made by an affiliate company is not subject to documentary stamp tax under Sections 180, 174 and 176 of the Tax Code, respectively. BIR Ruling No. 116-98 states in pertinent part:

> On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings/borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are more or less categorized as "securities", is not subject to documentary stamp tax imposed under Sections 180, 174 and 176 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.

However, BIR Ruling No. 108-99 issued on July 15, 1999 subsequently reversed BIR Ruling No. 116-88. BIR Ruling 108-99 states in pertinent part:

> After a careful restudy of the aforementioned ruling, this Office is of the opinion as it hereby holds that inter-office memo covering the

> advances granted by a corporation affiliate company, i.e. or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to the documentary stamp tax imposed under Section 180 of the Tax Code of 1997.
>
> This modifies BIR Ruling No. 116-98 dated July 30, 1998 insofar as inter-office memo covering the advances granted by a corporation affiliate company, i.e. or inter-office memo evidencing lendings/borrowings is concerned which shall be subject to the documentary stamp tax imposed under Section 180 of the Tax Code of 1997.

Obviously, both BIR Ruling No. 116-98 and BIR Ruling 108-99 clearly involve an interpretation of Section 180 of the Tax Code of 1997 (as amended by Republic Act No. 8424), which took effect on January 1, 1998. For purposes of this case which involves a documentary stamp tax assessment for the year 1997, this is substantially the same as the applicable Section 180 of the Tax Code, as amended by Republic Act No. 7660 and prior to its amendment by Republic Act No. 8424, which provides in pertinent part:

> **SEC. 180.** *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* - On <u>all loan agreements</u> signed abroad wherein the object of the contract is located or used in the Philippines; <u>bill of exchange</u> (between points within the Philippines), <u>drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight of on demand, or on all promissory notes</u>, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: x x x.

Parenthetically, the later BIR Ruling No. DA-666-A-99, issued on December 3, 1999, held:

> In reply, please be informed that since the inter-company advances are not covered by loan agreements, promissory notes, debit and credit memos nor by inter-company loan memos and since the only documents relating to the inter-company advances are the board resolutions of the lenders and the cash vouchers issued by the lenders which are acknowledged by the borrowers, the said inter-company advances are not subject to documentary stamp tax. Such board resolutions of the lenders and the cash voucher acknowledged by the borrowers are not in the nature of promissory note subject to documentary stamp tax under Section 180 of the Tax Code of 1997.

The aforequoted BIR Ruling No. DA-666-A-99 involves a situation where inter-company advances are not covered by inter-company loan memos, which is a situation different from that obtaining in BIR Ruling No. 116-98 and BIR Ruling No. 108-99 wherein the inter-company loan is evidenced by inter-office memo.

Respondent here seeks to tax Petitioner for inter-company advances evidenced exclusively by board resolutions, or by inter-office memoranda, letters of instruction, journal or cash vouchers pursuant to Section 180 of the Tax Code, as interpreted by BIR Ruling No. 108-99.

There is nothing in Section 180 that provides that board resolutions, inter-office memoranda, letters of instruction, journal or cash vouchers evidencing lending/borrowings are subject to documentary stamp tax. Clearly, what Section 180 taxes are loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities or certificates of deposits drawing interest and others not payable on sight or demand.

We believe that the prior BIR Ruling No. 116-98 is correct when it notes that "inter-office memo evidencing the lendings/borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are more or less categorized as "securities", is not subject to documentary stamp tax under Section 180" of the Tax Code.

The subsequent BIR Ruling No. 108-99 is therefore mistaken when it reversed said BIR Ruling No. 116-98 by holding that "inter-office memo covering the advances granted by a corporation affiliate company, i.e. or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to the documentary stamp tax imposed under Section 180 of the Tax Code".

Rulings issued by the Commissioner of Internal Revenue command respect and weight. However, such rulings are not conclusive upon the courts and will be ignored if found to be erroneous. Hence, in the case of **Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999,** our Supreme Court, in disregarding a Revenue Memorandum Circular issued by the Commissioner of Internal Revenue, held:

> It bears repeating that Revenue memorandum-circulars are considered administrative rulings (in the sense of more specific and less general interpretations of tax laws) which are issued from time to time by the Commissioner of Internal Revenue. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent with, the law they seek to apply and implement.

> In the case of *People vs. Lim*, it was held that rules and regulations issued by administrative officials to implement a law cannot go beyond the terms and provisions of the latter.
>
> > x x x Of course, in case of discrepancy, the basic Act prevails, for the reason that the regulation or rule issued to implement a law **cannot go beyond** the terms and provisions of the latter. x x x In this connection, the attention of the technical men in the offices of Department Heads who draft rules and regulations is called to the importance and necessity of closely following the terms and provisions of the law which they are intended to implement, this to avoid any possible misunderstanding or confusion as in the present case.
>
> Further, fundamental is the rule that the State cannot be put in estoppel by the mistakes or errors of its officials or agents. x x x
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> x x x
>
> Article 8 of the Civil code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same. Moreover, the non-retroactivity of rulings by the Commissioner of Internal Revenue is not applicable in this case because the nullity of RMC No. 7-85 was declared by the respondent courts and not by the Commissioner of Internal Revenue. [Underscoring ours.]

The doctrine in the aforementioned case applies *a fortiori* in the present case where Respondent has conflicting views on the matter.

At the end of the day, neither BIR Ruling No. 116-98 nor BIR Ruling No. 108-99, which reversed it, is controlling. What prevails is the law itself, Section 180 of the Tax Code in this case.

Section 180 of the Tax Code imposes documentary stamp tax on loan agreements and promissory notes. Respondent posits that inter-office memoranda evidencing Petitioner's inter-company advances are in the nature of promissory notes subject to documentary stamp tax therein.

Respondent's latest stand on this matter as embodied in BIR Ruling No. 108-99, which reversed the previous BIR Ruling No. 116-98, is inconsistent with Respondent's own issued regulations, which We believe are applicable in this case.

Section 40 of the Documentary Stamp Tax Regulations (Revenue Regulations No. 26, as amended), originally issued on March 26, 1924, defines "promissory note" and "vales" akin to promissory notes as follows:

> Sec. 40. "Promissory note" defined. – A promissory note is an unconditional promise in writing by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to such other person or to order or bearer, free from restrictions as to registration or transfer and usually without coupons.
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> Sec. 41. "Vales." – A "vale" which <u>contains all the necessary elements of a promissory note</u> is subject to the documentary stamp tax as such a note and under the same condition in which the latter becomes liable to the tax. [Underscoring ours.]

Moreover, Section 3 of Revenue Regulations No. 9-94, dated March 8, 1994, which implements those provisions on documentary stamp tax in the Tax Code as amended by Republic Act No. 7660, including Section 180 thereof, provides in pertinent part:

> Sec. 3. Definition of Terms. – For purposes of these Regulations, the following terms shall mean:
>
> x x x

> (b) "Loan Agreement" shall refer to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid.
>
> x x x
>
> (f) "Promissory note" – refers to an instrument, whether negotiable or non-negotiable, whereby the maker agrees (promises) to pay a sum certain in money or its equivalent at a definite time.
>
> x x x

What is to be noted here is the fact that only a "vale" containing all the necessary elements of a promissory note is subject to documentary stamp tax. Also, there are various requirements before a document may be considered a promissory note or a loan agreement subject to documentary stamp tax. In the case of a promissory note, there is promise in writing to pay a sum certain in money or its equivalent at a definite time. In the case of a loan agreement, there is a contract in writing whereby one party delivers to the other party money or other consumable thing subject to repayment.

Obviously, Respondent here has not demonstrated that Petitioner executed any document that may be considered a loan agreement or promissory note as defined in either the Documentary Stamp Tax Regulations or in Revenue Regulations No. 9-94. The inter-office memoranda that Respondent seeks to subject to the documentary stamp tax do not contain the necessary elements of either a promissory note or a loan agreement. They are neither promises nor contracts in writing to pay a loan.

Settled is the rule that, in case of doubt, tax laws must be construed strictly against the State and liberally in favor of the taxpayer. This is because taxes, as burdens which must be endured by the taxpayer, should not be presumed to go beyond what the law expressly and clearly declares. **Lincoln Philippine Life Insurance Co., Inc. vs. Court of Appeals, G.R. No. 118043, July 23, 1998; Commissioner of Internal Revenue vs. Fireman's Fund Insurance Company, 148 SCRA 315 (1987); Collector of Internal Revenue vs. La Tondena, Inc., 5 SCRA 665 (19620; Manila Railroad Co. vs. Collector of Customs, 52 Phil. 950 (1929).**

There is nothing in Section 180 of the Tax Code or in its implementing regulations (Documentary Stamp Tax Regulations and Revenue Regulations No. 9-94) that clearly and expressly declares inter-office memoranda covering inter-company advances made by Petitioner as subject to the documentary stamp tax therein.

ACCORDINGLY, premises considered, the Petition for Review is hereby **GRANTED.** Assessment No. ST-DST-97-0123-99 imposing deficiency documentary stamp tax in the amount of P10,714,545.57 for taxable year 1997 is **CANCELLED AND SET ASIDE**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

AMANCIO Q. SAGA
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