REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATION, ***Petitioner,***	**C.T.A. CASE NO. 6177** Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** JUN 3 0 2008 3:20 p.m.

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D E C I S I O N

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by Philippine Bank of Communication (hereafter "petitioner") praying for the cancellation of the assessments for deficiency income tax, percentage tax, withholding tax on compensation, 20% final tax, 10% onshore final tax and documentary stamp taxes for the years 1996 and 1997 and that respondent be ordered to desist from collecting said taxes from petitioner.

THE PARTIES

PBCom is a banking corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCom Building, Juan Luna Street, Binondo, Manila.

Respondent Commissioner of Internal Revenue, on the other hand, is the Chief of the Bureau of Internal Revenue ("BIR"), the government agency charged with the collection of national internal revenue taxes, with office at the BIR National Office Building, Diliman, Quezon City, where she may be served with summons and other processes.

THE FACTS

The facts of the case, as culled from the records, are as follows:

On December 14, 1999, PBCom received a Final Notice of Assessment dated November 5, 1999 and eight (8) Assessment Notices with Assessment Nos. ST-INC-96-0115-99; ST-GRT-96-0116-99; ST-WC-96-0117-99; ST-FT-97-0118-99; ST-OFT-0119-99; ST-OFT-97-1020-99; ST-DST-96-0121; and ST-DST-97-0122-99, all bearing the same date, from the BIR, through Asst. Commissioner-Enforcement Service, Percival T. Salazar, Esq., in connection with PBCom's alleged 1996 and 1997 internal revenue tax liabilities.

The total deficiency tax of petitioner for taxable years 1996 to 1997 amounts to P389,185,343.78[1], detailed as follows:

A. Income Tax	1996	1997	Total
Basic	P53,287,765.11	-	
Interest	29,278,666.50	-	
Compromise	-		
Amount Due & Collectible	P82,566,431.61	-	P82,566,431.61
B. Percentage Tax (Gross Receipt Tax)			
Basic	P5,528,106.44	-	
Interest	3,286,152.16	-	
Compromise	-	-	
Amount Due & Collectible	P8,814,258.60	-	P8,814,258.60
C. Withholding Tax on Compensation			
Basic	P3,637.46	-	
Interest	2,210.77	-	
Compromise	-	-	
Amount Due & Collectible	P5,848.23	-	P5,848.23
D. 20% Final Tax			
Basic	-	P10,668,737.52	
Interest	-	4,172,661.78	
Compromise	-	-	
Amount Due & Collectible			P14,841,399.30
E. 10% Onshore Final Tax			
Basic	P1,565,512.36	P548,382.36	P2,113,903.72
Interest	929,745.74	214,478.43	1,144,224.17
Compromise	-	-	45,000.00
Amount Due & Collectible	P2,495,267.10	P762,860.79	P3,303,127.89
F. Documentary Stamp Tax			
Basic	P154,454,966.84	22,295,384.20	176,750,351.04
Interest	93,874,296.51	9,029,630.60	102,903,927.11
Amount Due & Collectible	P248,329,263.35	P31,325,014.80	P279,654,278.15

(Annex "A", Petition for Review)

[1] In the Formal Notice dated November 5, 1999, the total assessment of deficiency tax is P389,140,343.78. There is a difference of P45,000.00 *vis-à-vis* the sum of the details of the deficiency assessment.

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On January 13, 2000, petitioner filed a protest letter to the Assessment Notices.

On March 13, 2000, petitioner filed with the BIR the supporting documents for such protest.

Since respondent failed to act on the protest within the 180-day period, on October 9, 2000, petitioner elevated its case to this Court by way of Petition for Review.

In his "Answer" filed on December 1, 2000, respondent, by way of special and affirmative defenses, alleged that: the worthlessness of the loans cannot be ascertained; the assessment for deficiency withholding tax on payment of compensation is based on *Section 34 (K) of the 1997 Tax Code*; the proceeds of petitioner's Initial Public Offering ("IPO") from previous years were placed in its trust department declared as income allegedly subjected to final tax. However, petitioner's allegation that correct taxes were withheld was not supported. Thus, respondent added said income placed in trust department to petitioner's taxable income, pursuant to *Sec. 2.57 (A) of Revenue Regulations No. 2-98*; the investigation conducted shows that petitioner failed to include other interest income in its gross income, which petitioner claimed to have already been subjected to the 20% final tax. Thus, petitioner was

assessed of deficiency gross receipts tax on the basis of *Section 121 of the Tax Code on Tax on Banks and Non-bank Financial Intermediaries*; the investigation conducted shows that there was a discrepancy in the 20% final withholding tax on interest expense for the year 1997; hence petitioner was assessed of deficiency tax; petitioner was assessed of the 10% deficiency onshore final withholding tax on the basis of *Section 27 (D) (3) of the 1997 Tax Code*, in relation to *Section 28 (a) (7) (b) of the same Code*. For 1996 and 1997, there is a discrepancy; the investigation conducted revealed that some of the bank transactions were not subjected to documentary stamp tax, under *Sections 180, 181, and 182 of the Tax Code*.

Petitioner presented Domingo Aure, Pepito Bravo, Rene Alejandrino, Rowena Ong Tan, Annabelle Yeo, Lorenzo Francisco, Richard Arvisu, Charisee Dolina, Leo Villanueva, Felimon Baltazar, Francisco Capalar, Ave Reyes, as witnesses, and Revenue Officer Edison Larin, as an adverse witness, and formally offered documentary evidence, marked as *Exhibits "A"* to *"RRR"*, inclusive of their submarkings, which were admitted by the Court in a Resolution dated May 18, 2005, except for *Exhibits "QQQ-5"* to *"QQQ-8"*, *"QQQ-12"*, *"QQQ-17"*, *"QQQ-19"* to *"QQQ-21"*, *"QQQ-23"* to *"QQQ-28"*, *"QQQ-31"* to *"QQQ-*

46", *"QQQ-49"*, *"QQQ-50"*, *"QQQ-51-b"*, *"QQQ-53"*, and *"QQQ-54"*, which were denied admission for failure to present their original copies.

On the other hand, respondent presented Revenue Officer Edison Larin, as witness, and formally offered documentary evidence, marked as *Exhibits "1"* and *"2"*, which were all admitted by this Court in a Resolution dated March 19, 2007.

Thereafter, both parties were granted thirty days from notice to file their simultaneous memoranda, afterwhich the case shall be deemed submitted for decision.

Petitioner having filed its memorandum, without respondent filing the same, the case was deemed submitted for decision.

Hence, the instant Petition for Review raising the following:

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER THE BIR CORRECTLY DISALLOWED THE ACCOUNTS WRITTEN OFF IN THE YEARS 1996 AND 1997.

II

WHETHER THE BIR CORRECTLY ASSESSED THE DEFICIENCY WITHHOLDING TAX ON PAYMENT OF COMPENSATION FOR 1996.

III

WHETHER THE BIR CORRECTLY COMPUTED THE TAXABLE INCOME OF PBCOM FOR 1997 AS BASIS FOR THE FINAL WITHHOLDING TAX.

IV

WHETHER THE BASIS USED BY THE BIR IN COMPUTING THE GROSS RECEIPT TAX WAS CORRECT.

V

WHETHER THE BASIS USED BY THE BIR IN COMPUTING THE FINAL WITHHOLDING TAX ON "INTEREST EXPENSE ON BORROWINGS" WAS CORRECT.

VI

WHETHER THE BIR CORRECTLY COMPUTED THE 1996 AND 1997 FINAL TAX ON ONSHORE INCOME.

VII

WHETHER THE BIR CAN LEGALLY ASSESS PBCOM FOR ALLEGED DOCUMENTARY STAMP TAX FOR 1996 AND 1997.

THE COURT'S RULING

The petition is partly meritorious.

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The First, Second and Third Issues

The first, second and third issues, being interrelated and pertain to deficiency assessment for income tax, will be discussed jointly.

A. Income Tax for Taxable Year 1996

Petitioner was assessed by respondent of deficiency income tax in the aggregate amount of P82,566,431.61, inclusive of interest, for taxable year 1996 *(Assessment No. ST-INC-96-0115-99)*, computed as follows:

Computation of Proposed Deficiency Income Tax		
For the Year 1996		
Net Income per Return		57,243,533.00
Add: Adjustments		
Salaries & Wages	18,765.46	
Interest income from trust	41,862,957.00	
Interest income from others (Note A)	67,536,016.29	
Accounts Written off	11,796,000.00	121,213,738.75
Adjusted Net Income		178,457,271.75
Rate of Tax		35.00%
Tax Due Thereon		62,460,045.11
Less: Payments		
Per Annual Return		
Per Quarterly Returns	2,729,700.00	
Creditable Withholding Tax	6,442,580.00	9,172,280.00
Sub-Total		53,287,765.11
Add: Penalties		
Interest (4-16-97 to 6-30-99)	29,278,666.50	
Compromise	-	29,278,666.50
Deficiency Income Tax Year 96		**82,566,431.61**

(Exhibit "2" and Exhibit "III")

From the above computations, it appears that the following items were added back to petitioner's net interest income per return:

a) Accounts written-off disallowed as an expense in taxable year 1996 amounting to P11,796,000.00;

b) Compensation not subjected to withholding tax, disallowed as an expense, amounting to P18,765.46;

c) Interest income from trust, for allegedly not being subjected to final tax, amounting to P41,862,957.00; and

d) Interest income from other sources, for allegedly not being subjected to final tax, amounting to P67,536,016.29.

While the amount of P6,442,580.00 was deducted as creditable withholding tax.

First Issue

a) Accounts written-off disallowed as an expense for taxable year 1996 amounting to P11,796,000.00.

Petitioner's Arguments

Petitioner avers that it complied with the requirements of write-off with respect to the amount of P11,296,000.00; that the borrowers have no leviable properties; the value of the mortgaged properties (collateral) is substantially less than the outstanding loan and the expenses that will be deducted if the property was to be foreclosed.

Respondent's Counter-Arguments

Respondent counters that pursuant to *Section 34 (E) of the NIRC of 1997, as amended*, the accounts written-off were disallowed as expense, although approved by the BSP, as said accounts could not be ascertained to be worthless based on the schedule submitted; that there are lands and checks used a collateral for the loans.

In this regard, *Section 29(e) of the NIRC of 1977, as amended,* provides, as follows:

> "SEC. 29. Deductions from gross income. – In computing taxable income subject to tax under Sections 21(a), 24(a), (b) and (c); and 25 (a)(1), there shall be allowed as deductions the items specified in paragraphs (a) to (i) of this section: Provided, however, That in computing taxable income subject to tax under Section 21 (f) in the case of individuals engaged in business or practice of profession, only the following direct costs shall be allowed as deductions:
>
> xxx xxx
>
> (e) Bad Debts. – In general. – Debts due to the taxpayer actually ascertained to be worthless and charged off within the taxable year except 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."

Pursuant to the foregoing provision, the requisites for deductibility of bad debts are:

1) There must be an existing indebtedness;

2) The debt must be ascertained to be worthless, as when the debtor is insolvent;

3) It must be actually charged off within the taxable year; and

4) The debt must be connected with one's profession, trade or business.

After a careful review of the evidence on record, the Court finds that petitioner failed to comply with the said requirements.

Being interrelated, the first and fourth requisites will be discussed jointly. Petitioner failed to prove that the amount of P11,796,000.00 constitutes existing indebtedness due to petitioner that are connected with its trade or business. Without petitioner's books of accounts and source documents, there is no way for the Court to determine whether the amount of P11,796,000.00 represents loans and advances that are valid, legally demandable and enforceable against the debtors, and that said amount was granted in the ordinary course of petitioner's business.

As regards the second requisite, although the Bangko Sentral ng Pilipinas ("BSP") ascertained the worthlessness and uncollectibility of the accounts and authorized that the same be written-off *(Exhibits "B", "B-1" to "B-6")*, under the *NIRC of 1977, as amended*, which is the applicable law to the instant case, the approval of the BSP is not one of the requirements for the deductibility of bad debts. Moreover, well-settled is the rule that the burden of proof is on the taxpayer to show not only that the debt is worthless but also that it became worthless during the taxable year. The burden accorded the taxpayer can be overcome if the taxpayer can point

to some certain event or events occurring within the taxable year which evidences the worthlessness of the debt *(Hunsaker vs. Comm, 615 F.2d 1253)*.

In the present case, although petitioner claims that the amount of P11,796,000.00 represents worthless and uncollectible accounts, and petitioner presented notices, demand letters and complaints against its creditors *(Exhibits "F to "PP")* to support its claim; however, some of the documents presented by petitioner do not show any connection to the accounts subject of write-off. Specifically, *Exhibit "EE"*, which is an "Application With Motion To Recall Warrant of Arrest" in Crim. Case No. 3636, entitled *"People of the Philippines vs. Clarita de Guzman"*, does not show any iota of connection with the account of Clarita de Guzman amounting to P1,140,000.00 and P3,670,000.00, respectively, subject of write-off in the instant case. While *Exhibit "CC"* is an Order of the Regional Trial Court of San Fernando, La Union in Civil Case No. 5073, entitled *"Philippine Bank of Communication vs. Cynthia de Guzman"*, declaring defendant in default. But, nowhere in the said Order was it indicated that the said case was filed against Cynthia de Guzman in connection with the amount of P200,000.00, subject of write-off in the instant case. Moreover, petitioner failed to establish the worthlessness and uncollectibility of the following accounts:

	NAME OF BORROWER	AMOUNT REQUESTED FOR WRITE-OFF
1)	Abat, Ernesto	P150,000.00
2)	Chan, Ernesto	100,000.00
3)	Chan, Laureano	100,000.00
4)	Guzman, Antonio de	150,000.00
5)	Guzman, Gerardo de	140,000.00
6)	Jallorena, Miguel	100,000.00
7)	Lucero, Domingo	100,000.00
8)	Tan, Melchor	100,000.00

In other words, other than the mere schedule of Accounts Requested for Write-Off *(Exhibits "B-2" and "B-3")*, showing the name of the borrowers, booking unit, collateral, date turned past due, amount requested for write-off and justification for write-off, petitioner did not present any proof that notices and/or demand letters were sent and/or actions were instituted against the aforementioned accounts.

Even assuming *arguendo* that the accounts composing of the amount of P11,796,000.00 were indeed worthless and uncollectible, it bears stressing that in the schedule of Accounts Requested for Write-Off *(Exhibits "B-2" and "B-3")*, the dates the accounts subject of write-off turned passed due were as early as 1983, 1984, 1993. The latest is only in 1994. With said schedule showing that the component accounts in the aggregate amount of P11,796,000.00 became past due as early as 1983, 1984, 1993 and 1994, petitioner failed to prove that said accounts had

become worthless in taxable year 1996, the year when said bad debts were claimed as expenses.

Contrary to petitioner's claim that the accounts contained in the Schedule of Accounts Requested for Write-Off are worthless and uncollectible, however, petitioner's witness, Pepito Bravo, on direct examination testified that petitioner was able to collect the collectible accounts from the following persons: Ernesto Chan, Romano Chan, Antonio de Guzman, Gerano de Guzman, Miguel Jallorina, Rolando de Jesus, Domingo Lucero, Ernesto Abad and Ariel Galvez *(TSN dated October 4, 2001, p. 28)*.

Petitioner, therefore, failed to comply with the second requisite.

As regards the third requisite, although petitioner presented a Secretary's Certificate regarding a Resolution dated March 26, 1996 approving the write-off of various accounts in the sum of P13,040,474.97 *(Exhibit "C")* and Letter dated April 26, 1996 informing the BSP of the write-off of the total accounts of P13,040,416.97, consisting of 20 accounts with individual balances of P100,000.00 or more amounting to P11,796,000.00, and 38 accounts with individual balances of less than P100,000.00 amounting to P1,244,474.97 *(Exhibit "E")*, petitioner failed to

prove that said accounts were actually written-off from its books of accounts during the taxable year 1996.

Considering that petitioner failed to comply with the prescribed requisites for the deductibility of bad debts, We uphold respondent's disallowance, as expense, the accounts written-off amounting to P11,796,000.00 for taxable year 1996.

a-1) Accounts Written-off disallowed as expense for taxable year 1997 amounting to P22,255,863.18.

As to respondent's disallowance of accounts written-off for the year 1997 in the amount of P22,255,863.18, the same is erroneous and has no relevance to the instant case. Petitioner was not assessed of any deficiency income tax for taxable year 1997 in the Final Notice dated November 5, 1999 *(Annex "A", Petition for Review)*.

Second Issue

b) Compensation not subjected to withholding tax, disallowed as an expense, amounting to P18,765.46.

Anent the second issue, respondent partly disallowed the salaries and wages amounting to P18,765.46 incurred by petitioner for taxable year 1996 due to alleged non-compliance with the Revenue Regulations on withholding tax on compensation, pursuant to *Section 34 (k) of the Tax Code.*

Petitioner counters that respondent arbitrarily imputed an alleged variance of P18,765.46, without explaining how said amount was arrived at.

After a careful examination of the records of the case, the Court finds that in respondent's Analysis of Withholding Taxes on Compensation For Taxable Year 1996 *(Exhibit "2", BIR Records, p. 99),* respondent erroneously used the amount of "Compensation and Fringe Benefit", per FS in comparing with petitioner's salaries and compensation, per alphalist to arrive at the alleged salaries and wages expense not subjected to withholding tax in the amount of P18,765.46. Since what is being disallowed is petitioner's claimed compensation expense allegedly not subjected to withholding tax, respondent should have compared the compensation per alphalist with petitioner's claimed "Salaries and Wages", per Account Information Form *(BIR Form 1702AIF-1, BIR Records, p. 380)*. This is so, because the amount of "Salaries and Wages", per Account Information Form, is the one that is being deducted in the computation of petitioner's taxable income.

Considering that respondent used an erroneous basis in determining whether petitioner's salaries and wages expense was indeed subjected to withholding tax, it necessarily follows that the amount of

P18,765.46 found by respondent, as salaries and wages allegedly not subjected to withholding tax, is also erroneous. Thus, respondent's disallowance of the amount of P18,765.46, as deduction from gross income, is without factual and legal basis.

c) Interest income from trust, added to the taxable income for allegedly not being subjected to final tax, amounting to P41,862,957.00.

Respondent added the taxable income from trust amounting to P41,862,957.00 for taxable year 1996 to petitioner's taxable income for petitioner's failure to submit proof that said amount was subjected to final tax.

Petitioner, on the other hand, counters that respondent's inclusion of the interest income from trust of P41,862,957.00 to petitioner's income subject to corporate income tax is tantamount to double taxation for the following reasons: (1) said interest income not subjected to income tax was earnings from investment of petitioner's capital (equity) funds generated from the public offering of its shares; (2) said interest income was previously subjected to final withholding tax of 20%, which the BSP withheld; and (3) said interest income was already added, as an adjustment to the account "other income" in petitioner's audited financial

statement, as evidenced by petitioner's Working Profit and Loss for Taxable Year 1996 *(Exhibits "DDD" and "DDD-1")*.

An examination of the records shows that other than petitioner's bare allegation that the amount of P41,862,957.00 pertains to earning from investment of petitioner's capital (equity) funds generated from the public offering of its shares, petitioner did not present any documentary evidence that will determine the nature of the amount of P41,862,957.00. Said proof of the nature of the amount of P41,862,957.00 is material for purposes of determining the applicable tax/tax rate, considering that petitioner claims that the amount of P41,862,957.00 has been previously subjected to final tax.

Petitioner's allegation that the amount of P41,862,957.00 is subject to final tax and therefore should not form part of its taxable income is even contrary to its own averments and actuations. Petitioner averred, also tried to prove during trial *(TSN dated September 16, 2004, pp. 9-11)*, and even presented documentary evidence *(Exhibits "DDD" and "DDD-1")* that the amount of P41,862,957.00 was added as an adjustment to petitioner's "net interest earnings" reflected in its audited Financial Statements ("FS"). Petitioner's act of adjusting its net interest earnings per FS by adding the amount of P41,862,957.00 clearly shows that said amount

was not subjected to final tax, since petitioner believes that an income subject to final withholding tax is not required to be reported in the income tax return of the taxpayer *(Petitioner's Memorandum dated May 10, 2007, p. 12)*.

In fact, during the trial, petitioner's witness, Annabelle Yeo, testified that petitioner did not submit documentary evidence to prove that correct taxes were withheld and remitted to respondent on the interest income from trust (*TSN dated September 16, 2004, pp. 17-18*).

Petitioner's contention that since the amount of P41,862,957.00 was already added to petitioner's net interest earnings per FS, as shown in its Working Profit and Loss for Taxable Year 1996 *(Exhibits "DDD" and "DDD-1")*, respondent's inclusion in the computation of petitioner's deficiency income tax is tantamount to double taxation, is devoid of merit.

A perusal of said Working Profit and Loss for the Taxable Year 1996 shows that the amount of P32,685,333.00 was added as an adjusting entry to the account "Interest Income on Trading and Investment Securities".

A careful examination of Part V of petitioner's Account Information Form (BIR Form 1702AIF-1), attached to the Annual Income

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Tax Return for 1996, reveals that the amount of interest income on "trading account securities" subjected to corporate income tax reflected only the amount of P1,736,876.00. A comparison of the trading account securities, per Account Information Form with petitioner's Schedule of Interest Income and Other Income for the period ending December 31, 1996 *(Exhibit "FFF")* shows that the amount of P1,736,876.00 trading account securities reflected in petitioner's Account Information Form (subjected to corporate income tax), consisted only of the following accounts:

(1)	Interest income – taxable investment	P 538,020.83
(2)	Interest income – reverse repo (RRP)	1,181,894.60
(3)	Interest income on trading and investment sec – branches	16,960.00
Total		**P1,736,875.43**
	Rounded off to	**P1,736,876.00**

The adjusting entry of P32,685,333.00 (forming part of the P41,862,957.00 alleged income from trust) was not reported in petitioner's Account Information Form, as interest income on trading account receivables.

Clearly, notwithstanding said petitioner's adjustment of the alleged income from trust to form part of its net interest earnings per FS, the adjustment of P41,862,957.00 (consisting of addition to interest on trading and investment account in the amount of P32,685,333.00 and

deduction in the interest expense in the amount of P9,177,624.00 *(Exhibits "DDD" and "DDD-1")*, was still not reported in petitioner's Account Information Form, as one of the taxable incomes. Therefore, contrary to petitioner's claim, the adjustment of P41,862,957.00 was not subjected to corporate income tax.

Considering that under *Section 28 of the NIRC of 1977, as amended*, gross income is defined as "all income from whatever source derived, including (but not limited to) the following items: xxx (4) Interest; xxx", respondent's addition of the amount of P41,862,957.00 to petitioner's net income per return for purposes of computing petitioner's deficiency income tax for taxable year 1996 *(Exhibit "III")* has therefore legal and factual basis.

Accordingly, We sustain respondent's inclusion of the amount of P41,862,957.00 to petitioner's income subject to corporate income tax.

d) Interest income from other sources, also added to the taxable income for allegedly not being subjected to final tax, amounting to P67,536,016.29.

Respondent avers that petitioner failed to submit documents to prove that the amount of P67,536,016.29, computed as follows, was not subjected to final tax:

Interest income per Reconciliation of Income & Retained Earnings		
	On Trading Account Securities	P 71,106,609.28
	On Tax Paid Investment	124,117,261.66
	On Tax Paid Investment (Acctg)	199,750.69
	On Interbank Call Loans	171,472,905.66
	On Tax Paid Trading Gain	23,100,380.00
		837,320.00
		P390,834,227.29
Less: Interest income per F/S		
	On trading & investment	P233,767,718.00
	On deposit with banks	89,530,493.00
		P323,298,211.00
Understatement of Interest Income		P67,536,016.29

(Note A, Exhibits "2" and "III")

Petitioner counters that (1) respondent misclassified certain items of interest and erroneously applied the corresponding tax rate; (2) in computing the alleged deficiency income tax for the taxable years 1996 and 1997, respondent failed to properly consider the sub-accounts classified respectively under the account Interest Income, namely: (i.) Interest Income on Receivables from Customer; (ii.) Interest Income on Deposit with Banks; and (iii.) Interest Income on Trading and Investment Securities *(Exhibit "JJJ-1")*; (3) the BIR examiners unjustifiably failed to include in their analysis of petitioner's interest income the account "Interest Income on Receivables from Customers". The only items considered and included were "Interest Income on Deposit with Banks" and "Interest Income on Trading and Investment Securities"; and (4)

during the trial, petitioner proved that what the BIR examiners did was to obtain some of the component accounts (or sub-accounts) of the "Interest Income on Deposit with Banks" and "Interest Income on Trading and Investment Securities" only. That, in making said comparison or reconciliation, the account "Interest Income on Receivables from Customer" was not taken into consideration. Thus, a variance would definitely and logically result therefrom. Hence, it is erroneous for the BIR examiners to treat such variance, which they themselves had created, as deficiency income tax for the years 1996 and 1997.

1. Interest Income on Receivables from Customers, including Interbank Call Loans of P171,472,905.66.

While We agree with petitioner that its account "Interest Income" consists of the following sub-accounts: (i.) Interest Income on Receivables from Customer; (ii.) Interest Income on Deposit with Banks; and (iii.) Interest Income on Trading and Investment Securities *(Exhibit "JJJ-1")*, We, however, do not agree with petitioner that respondent examiner's non-inclusion of the account "Interest Income on Receivables from Customers" in its comparison/reconciliation of petitioner's interest income is unjustifiable.

Respondent is correct in not deducting the account "Interest Income on Receivables from Customers" from the said amount of P390,834,227.29, consisting of the sum of interest income items found by respondent that were not subjected to corporate income tax.

A review of the records reveals that the account "Interest Income on Receivables from Customers" is composed of the following sub-accounts: *(Exhibit "FFF")*:

	Head Office	Branches	Total-Regular	FCDU	Total Per Books	Adjusting Entries	Audited Balance
Interest Income-Discount Earned	P518,236,828.14						
Interest Income-Demand Loans	9,462.50						
Interest Income-Time Loans	176,356,037.40						
Interest Income-Past Due/ITL	38,742,232.74						
Interest Income-Import Bills & Acceptances	93,208,595.27						
Interest Income-Interbank Call Loans Receivable	3,156,990.50						
Interest Income-Interbank Loans Receivable-Tx Pd	171,472,905.66						
INTEREST INCOME ON RECEIVABLES FROM CUSTOMERS	1,001,183,052.21	911,853,689.00	1,913,036,741.21	125,936,342.00	2,038,973,083.21	25,455,717.79	2,064,428,801.00

A comparison of the above audited balance of Interest Income on Receivables from Customers with the Interest Income on Receivables from Customers, as reported in petitioner's Account Information Form, subjected to corporate income tax, shows a difference of P297,409,248.00

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(P2,064,428,801.00 - P1,767,019,553.00). Said difference was accounted by this Court, as follows:

		Amount	Exhibit
	Interest income receivable –FCDU (subject to a separate return)	125,936,342.00	"FFF"
	Interest Income-Interbank Loans Receivable-Tx Pd	171,472,905.66	"FFF"
	Total	P297,409,247.66 rounded off into **P297,409,248.00**	

On the basis of the foregoing, it is clear that the amount of P171,472,905.66, representing interest income-Interbank Loans Receivable-Tx Pd was not declared by petitioner, as income subject to corporate income tax. Hence, respondent is correct when it did not deduct the total amount of interest income on receivables from customer from the sum of interest income items found by respondent that were not subjected to corporate income tax.

Petitioner, however, contends that the above interest income on interbank lendings (Interbank Loans Receivable-Tx Pd) was subjected to 20% final withholding tax by petitioner's borrowers; hence, the same should not be subjected to corporate income tax.

Further verification of the records reveals that out of the interest income from Interbank Loans Receivable of P171,472,905.66, only the amount of P128,518,452.48 was subjected to 20% final withholding tax,

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as certified by the Court-Commissioned Independent CPA *(Exhibit "AAA-3", TSN dated Jan. 22, 2003, p. 15)*. This is evidenced by BIR Forms No. 1745 and certifications from various banks *(Annexes "B-1" to "B-24" of Exhibit "AAA-3")* that the total amount of P25,703,690.00, representing 20% final tax, was withheld on the amounts due from them *(Exhibit "AAA-3")*.

The Court, therefore, finds that the Interest Income - Interbank Loans Receivables – Tax Pd that was not subjected to final withholding tax and was not included in the income subjected to corporate income tax and should therefore be added to petitioner's income subject to corporate income tax is only P42,954,453.18 (P171,472,905.66 – P128,518,452.48), and not the whole amount of P171,472,905.66, as computed by the respondent.

2. Interest Income on Trading Account Securities of P71,106,609.28, on Tax Paid Investment of P124,117,261.66, on Tax Paid Investment (Acctg) of P199,750.69, and on Tax Exempt Investment of P837,320.00.

In the reconciliation of petitioner's income *(Note A, Exhibits "2" and "III")*, respondent deducted the amount of P233,767,718.00 representing Interest Income per F/S on Trading and Investment Securities, from the amount of P390,834,227.29, the sum of interest income items found by

respondent that were not subjected to income tax. Considering that in petitioner's Schedule of Interest Income and Other Income *(Exhibit "FFF")*, the accounts interest income on Trading Account Securities of P71,106,609.28, Tax Paid Investment of P124,117,261.66, Tax Paid Investment (Acctg) of P199,750.69 and Tax Exempt Investment of P837,320.00 are component accounts of Interest Income on Trading and Investment Sec of P233,767,717.08, respondent's findings that said accounts were not subjected to corporate income tax was deemed offset. Respondent, having accounted said understatement of interest income, the deficiency assessment on Trading Account Securities of P71,106,609.28, Tax Paid Investment of P124,117,261.66, Tax Paid Investment (Acctg) of P199,750.69 and Tax Exempt Investment of P837,320.00 are hereby ordered cancelled.

3. Interest Income on Tax Paid Trading Gain of P23,100,380.00 vis-a-vis Deposit with Banks of P89,530,493.00.

In respondent's computation of petitioner's understatement of interest income *(Note A, Exhibits "2" and "III")*, respondent found that the amount of P23,100,380.00 interest income on tax paid trading gain was not subjected to corporate income tax. In reconciling said deficiency assessment, respondent compared the amount of P23,100,380.00,

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allegedly pertaining to tax paid trading gain, with the amount of P89,530,493.00, representing interest income per F/S on deposit with banks, by deducting the amount of P89,530,493.00 from the amount of P390,834,227.29, consisting of the sum of interest income items found by respondent that were not subjected to income tax. We find this erroneous considering that per petitioner's Schedule of Interest Income and Other Income *(Exhibit "FFF")*, interest income on tax paid trading gain is not a component account of the interest income on deposit with banks. The account interest income on deposit with banks with a total amount of P89,530,493.00 consists only of the following accounts: Interest income with foreign banks and interest income-deposit with BSP.

Since the interest income on tax paid trading gain of P23,100,380.00 is not a component of the account interest income on deposit with banks of P89,530,493.00, the Court finds that there is a mismatching in respondent's computation of petitioner's understatement of interest income with respect to these two accounts. Further examination of the records shows that respondent failed to provide a computation on how the deficiency assessment on tax paid trading gain of P23,100,380.00 was arrived at.

We, therefore, cancel the deficiency income tax assessment with respect to the amount of P23,100,380.00 for lack of factual and legal basis.

In sum, out of the understated interest income of P67,536,016.29 found by the respondent, the Court finds that petitioner is liable to pay deficiency income tax of P42,954,453.18 only, computed as follows:

	PER RESPONDENT'S FINDINGS	PER THIS COURT'S FINDINGS	
Interest Income		Ordered Cancelled/ Excluded from the Assessment	Deficiency Income Tax
(1) On Interbank Call Loans	P171,472,905.66	P128,518,452.48	P42,954,453.18
(2) On Trading Account Securities	71,106,609.28	71,106,609.28	
On Tax Paid Investment	124,117,261.66	124,117,261.66	
On Tax Paid Investment (Acctg)	199,750.69	199,750.69	
On Tax Exempt Govt Securities	837,320.00	837,320.00	
(3) On Tax Paid Trading Gain	23,100,380.00	23,100,380.00	
Total	P390,834,227.29	P347,879,774.11	P42,954,453.18
Less: Interest income per F/S			
On trading & investment	233,767,718.00	233,767,718.00	
On deposit with banks	89,530,493.00	89,530,493.00	
Sub-total	323,298,211.00	323,298,211.00	
Understatement of Interest Income	**P67,536,016.29**	**P24,581,563.11**	**P42,954,453.18**

e) Creditable withholding tax of P6,442,580.00.

Petitioner contends that respondent failed to recognize the creditable withholding tax in favor of petitioner in the amount of

P21,945,212.29 *(Exhibits "QQQ"and "RRR")*. As a result, petitioner's income tax liability has increased by P21,945,212.29.

A perusal of the records shows that most of the amounts claimed as creditable withholding tax by petitioner pertain to capital gains tax assumed and paid by petitioner's buyers. Petitioner contends that pursuant to *Revenue Memorandum Circular ("RMC") No. 7-90*, all sales, exchanges, or transfers of real properties (whether classified as ordinary or capital asset) by corporations, consummated on or after January 1, 1990, are subject to creditable withholding tax. That the amount of withholding tax paid is creditable against its income tax liability for the quarter in which payment or remittance of tax was made. Thus, petitioner claims that it is entitled to deduct those creditable withholding taxes for the sale of its assets in 1996 from its income tax liability for the same taxable year.

Paragraph 2 of RMC No. 7-90, however, provides:

> "2. When tax deducted and withheld creditable. In case of a corporation all sales or exchange of real property, whether classified as ordinary or capital asset, shall be subject to the expanded withholding tax. The amount of withholding tax paid during the quarter to the BIR evidenced by Confirmation/Official Receipts (CR/ROR) and covered by BIR Form Nos. 1743W and 1743-B, is creditable against its income tax liability for the quarter in which payments or remittance of taxes were made.

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> On the other hand, the sale or exchange of real property by an individual, estate, or trust becomes subject to withholding tax only if the property is classified as an ordinary asset. The corresponding withholding taxes deducted and withheld, which are paid or remitted to the BIR (CR/ROR and BIR Form Nos. 1743W and 1743-B, may be credited against his income tax liability for the taxable year.
>
> No withholding of tax is required where the real property sold by an individual is a capital asset subject to the 5% capital gains (final) tax."

Pursuant to the foregoing provision, all sales of real property, whether classified as ordinary or capital asset, by a corporation, shall be subject to the expanded withholding tax. The amount of withholding tax paid during the quarter, as evidenced by Confirmation/Official Receipts (CR/ROR) and covered by BIR Form Nos. 1743W and 1743-B shall be creditable against its income tax liability.

In this regard, in *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, 519 SCRA 99*, the Supreme Court ruled as follows:

> "Petitioner also asserts that the confusion or difficulty in the implementation of Revenue Memorandum Circular 7-90 was the reason why CDB took upon itself the task of withholding the taxes arising from the sale, to ensure accuracy. Assuming this were true, CDB should have, nevertheless, accomplished the necessary returns to clearly identify the nature of the payments made and file the same with the BIR. Section 2 of the circular clearly provides that the amount of withholding tax paid by a corporation to the BIR during the quarter on sales or exchanges of property and which are creditable against the corporation's tax liability are

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> evidenced by Confirmation/Official Receipts and covered by BIR Form Nos. 1743W and 1743-B. On the other hand, Revenue Regulation 6-85 states that BIR Form No. 1743.1 establishes the fact of withholding. Since no competent evidence was adduced by petitioner, the failure to offer these returns as evidence of the amount of petitioner's entitlement during the trial phase of this case is fatal to its cause".

A perusal of the documentary evidence presented by petitioner shows that most of them are Capital Gains Tax Returns (BIR Form 1701-E/A), and not BIR Form Nos. 1743W and 1743-B, as prescribed by RMC No. 7-90. Petitioner, therefore, failed to comply with the provisions of RMC 7-90. Pursuant to the aforecited case, failure to offer competent evidence is fatal to petitioner's case.

Also, it bears stressing that in a Resolution dated May 18, 2005, this Court denied admission most of the documentary evidence offered by petitioner in support of its claim for creditable withholding tax of P21,945,212.29 for petitioner's failure to present the originals thereof. In this regard, it is with more reason that We should deny the amounts claimed by petitioner as creditable against its income tax liability with regard to those exhibits that were denied admission.

Finally, further verification shows that some of the amounts included in petitioner's Schedule of Creditable Withholding Tax were not supported by documentary evidence.

For all the foregoing, this Court allows the amount of **P8,683,575.00** only, as creditable withholding tax against petitioner's income tax liability. The Schedule of Creditable Withholding Tax Allowed and Disallowed, as found by this Court, is hereby made part and parcel of this decision as Annex "A".

In sum, petitioner is liable to pay deficiency income tax for taxable year 1996 in the reduced amount of **P64,154,921.34** (inclusive of deficiency interest), computed as follows:

Net Income per Return			P57,243,532.00
Add:	Adjustments		
	Accounts Written-off	P11,796,000.00	
	Interest Income from trust	41,862,957.00	
	Interest Income from others	42,954,453.18	P96,613,410.18
Adjusted Net Income			P153,856,943.18
Rate of Tax			35%
Tax Due Thereon			P53,849,930.11
Less:	Payments		
	Prior years credit (1995 Corporate Annual Income Tax Return, BIR Records, p. 368)	P2,729,700.00	
	Creditable Withholding Tax (Hereto attached as ***Annex "A"***)	8,683,575.00	11,413,275.00
Basic deficiency Income Tax			P42,436,655.11
	Add: Interest (4-16-97 to 11-5-99)		21,718,266.23
Deficiency Income Tax Liability for 1996			**P64,154,921.34**

Fourth Issue

Whether the basis used by the BIR in computing the gross receipts tax is correct.

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B. Percentage Tax (Gross Receipts Tax) For Taxable Year 1996

Respondent alleged that the deficiency gross receipts tax for 1996 amounting to P8,814,258.61 represents the discrepancy between the GRT returns filed and the computation based on audit, pursuant to *Section 121 of the Tax Code*. Respondent's computation of said deficiency is reproduced hereunder, to wit *(Exhibit "HHH")*:

Interest Income		
On Receivable from customer	2,064,428,801.00	
On Trading and investment securities	233,767,718.00	
On deposits with banks	89,530,493.00	2,387,727,012.00
Other Income		
Other income (see income notes)	67,536,016.29	
Interest income from trust	41,862,957.00	
Service charges	117,904,601.00	
Trading foreign exchange gains	36,171,770.00	
Miscellaneous	205,222,337.00	468,697,681.29
Gross Income per FS		2,856,424,693.29
Less:		
20% Final Tax paid on Income	33,939,448.31	
Tax exempt income	837,320.00	
Dividend Income	345,604.00	
FCDU	202,981,061.00	
Share in subsidiary	371,578.00	238,475,011.31
Net Taxable Income		2,617,949,681.98
Add:		
Unearned discount, end	34,986,542.00	
Advance rental received	973,803.00	
Accrued interest receivable, beg	43,490,997.00	79,451,342.00
Sub-total		2,697,401,023.98
Less:		
Unearned discount, beg	29,332,574.00	
Advance rental 1995	1,019,703.00	
Accrued interest receivable, end	58,053,686.00	88,405,963.00
Tax base per verification		2,608,995,060.98
Tax base per GRT		2,498,432,932.11
Difference		110,562,128.87
Rate of Tax		5%
		5,528,106.44
Add: Interest		3,286,152.16
Compromise		-
Deficiency on GRT		8,814,258.61

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Petitioner claims that (1) in computing the GRT for the year 1996, the basis used by the BIR was erroneous; (2) the BIR examiners committed a double inclusion of certain income that was already included under its account "Interest Income". The "Analysis of GRT for the Year Ended 1996" demonstrates that the BIR considered twice the accounts "Interest Income from Trust" amounting to P41,862,957.00 and "Other Income" amounting to P67,536,016.29, which already formed part of the account "Interest Income" reflected in its audited financial statements *(Exhibit "HHH")*; (3) in order to properly determine the tax base for GRT, only the account "Interest Income on Receivable from Customer" must be considered in the computation, and the variance of P67,536,016.29 for 1996 and P12,781,130.78 for 1997 must not be added anymore because they are already part of the said account; and (4) as proved during the trial, the main reason for the assessment of deficiency GRT was the double counting of "Other Income" and "Interest Income from Trust" *(Exhibit "KKK")*.

Other Income of P67,536,016.29.

We agree with the petitioner that respondent's addition of the amount of P67,536,016.29 to petitioner's income subject to GRT is tantamount to subjecting to GRT said income twice. In respondent's

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computation of deficiency GRT *(Exhibit "HHH")*, respondent already added the following items of interest income reflected in petitioner's audited FS:

Interest Income		
On Receivable from customers	P2,064,428,801.00	
On Trading and investment securities	233,767,718.00	
On Deposit with banks	89,530,493.00	2,387,727,012.00
Other Income		
Service Charges	P117,904,601.00	
Trading foreign exchange gains	36,171,770.00	
Miscellaneous	205,222,337.00	359,298,708.00
Gross Income per FS		P2,747,025,720.00

It is well to note that the amount of P67,536,016.29 *(Exhibit "III")* is composed of the above-mentioned accounts, namely: (1) interest income on receivable from customers, specifically interest income-interbank loans receivable-txpd amounting to P171,472,905.66 *(Exhibit "FFF")*; (2) interest income on trading and investment sec, specifically, (i) interest income-trading account securities-tx pd amounting to P71,106,609.28, (ii) interest income-tax paid investment amounting to P124,117,261.66, (iii) interest income-tax exempt investment amounting to P837,320.00, and (iv) interest income-tax paid investment (Acctg) amounting to P199,750.69 *(Exhibit "FFF")*; and (3) trading foreign exchange gain or tax paid foreign gain amounting to P23,100,380.00. Clearly, the amount of P67,536,016.29 already formed part of the above gross income per FS.

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To add the amount of P67,536,016.29 again to petitioner's gross income per FS would be tantamount to subjecting said amount twice to GRT.

Interest Income from Trust of P41,862,957.00.

As regards the interest income from trust, petitioner contends that said amount was already adjusted by its external auditors to form part of the account "Interest Income" reflected in its audited financial statements *(Exhibit "HHH")*. However, a perusal of petitioner's Working Profit and Loss Statement *(Exhibit "DDD")* shows that out of the total interest income from trust of P41,862,957.00, only the amount of P32,685,333.00 was added to trading and investment securities to arrive at the audited amount of P233,767,718.00, reflected in petitioner's FS *(Column 6, Row 4, Exhibit "DDD")*. The remaining amount of P9,177,624.00 was adjusted to interest expense *(Column 6, Row 7, Exhibit "DDD")*. Thus, what was added by the external auditors to petitioner's gross interest income was only the net amount of P32,685,333.00, and not the whole/gross amount of P41,862,957.00. Since petitioner failed to prove that the balance of P9,177,624.00 (P41,862,957.00 – P32,685,333.00) was included to form part of petitioner's gross income, then said amount must be added to the tax base for purposes of computing the deficiency GRT.

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20% Final Tax Deducted from the Gross Income per FS

Petitioner contends that respondent understated the item "20% Final Tax Paid on Income", representing the 20% final withholding tax on income from its investment in government securities, trading securities, etc; the BIR examiners erroneously recorded or deducted the amount of P33,939,448.31, instead of P74,206,854.00, thereby resulting to an understatement by P40,267,406.00 of the amount of final tax actually paid.

Petitioner's contention is without merit. It must be noted that for purposes of computing the GRT, the 20% final withholding tax is not excluded from the tax base. In *China Banking Corporation vs. Court of Appeals, 403 SCRA 643*, involving the issue of whether the 20% final withholding tax on interest income should form part of CBC's gross receipts in computing the GRT on banks, the Supreme Court categorically ruled in the negative, to wit:

> "We rule that the amount of interest income withheld in payment of the 20% final withholding tax forms part of CBC's gross receipt in computing the gross receipts tax on banks."

Pursuant to the above jurisprudence, We find that there is no understatement of P40,267,406.00 by the respondent. In fact, the final

withholding tax on treasury bills withheld by the Bureau of the Treasury in the amount of P33,939,448.31 should not be deducted from the gross income per FS. To do otherwise would be contrary to the above settled doctrine.

Petitioner, therefore, is liable for deficiency GRT for 1996 in the reduced amount of **P3,450,218.30** (inclusive of deficiency interest), computed as follows:

Interest Income			
	On Receivable from customers	P2,064,428,801.00	
	On Trading and investment securities	233,767,718.00	
	On deposit with banks	89,530,493.00	P2,387,727,012.00
Other Income			
	Interest income from trust	P9,177,624.00	
	Service charges	117,904,601.00	
	Trading foreign exchange gains	36,171,770.00	
	Miscellaneous	205,222,337.00	368,476,332.00
Gross Income per FS			P2,756,203,344.00
Less:			
	Tax exempt income	837,320.00	
	Dividend income	345,604.00	
	FCDU	202,981,061.00	
	Share in subsidiary	371,578.00	204,535,563.00
Net Taxable Income			2,551,667,781.00
Add:			
	Unearned discount, end	34,986,542.00	
	Advance rental received	973,803.00	
	Accrued interest receivable, beg	43,490,997.00	79,451,342.00
Sub-total			2,631,119,123.00
Less:			
	Unearned discount, beg	29,332,574.00	
	Advance rental 1995	1,019,703.00	
	Accrued interest receivable, end	58,053,686.00	88,405,963.00
Tax base per verification			2,542,713,160.00
Tax base per GRT			2,498,432,932.11
Difference			44,280,227.89
Rate of Tax			5%
Basic deficiency GRT			P2,214,011.39
Add: Interest (01-21-97 to 11-05-99)			1,236,206.91
Deficiency GRT for 1996			**P3,450,218.30**

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Fifth Issue

Whether the basis used by the BIR in computing the final withholding tax on "Interest Expense on Borrowings" is correct.

C. 20% Final Tax For Taxable Year 1997

Respondent computed the 20% final tax on interest expense from savings, time deposits and other deposit substitutes for taxable year 1997 based on *Section 24(e) of the Tax Code*, which resulted to the deficiency final tax on interest expense amounting to P14,841,399.30 *(Exhibit "2")*, computed as follows:

Interest Expense on Deposits (Per FS)		1,758,458,712.00
Interest Expense on Borrowed Funds		768,283,055.00
Total		2,526,741,767.00
Less: Interest Expense (FCDU)		395,844,643.00
Interest Expense on RBU		2,130,897,124.00
Less: Tax Exempt (EI & RP)	44,156,250.30	
Agri Loan Fund	13,413.97	44,169,664.27
Tax Base		2,086,727,459.73
Rate of Tax		20%
Final Tax Due		417,345,491.95
Less: Tax Paid per Return		
1st Quarter	73,456,512.08	
2nd Quarter	85,133,854.16	
3rd Quarter	111,645,831.08	
4th Quarter	136,440,557.11	406,676,754.43
Sub-total		10,668,737.52
Interest (1-26-96 to 12-31-99)	4,172,661.78	
Compromise		4,172,661.78
Deficiency 20% Final Tax		**P14,841,399.30**

Petitioner contends that the basis of the BIR's computation of the Final Withholding Tax is overstated. Accordingly, this computation includes the following types of interest expense, which are not subject to 20% final withholding tax, but to ordinary income tax, namely:

a) Interest paid on Bills Payable (Borrowed Funds) – Private Firms and Individuals;

b) Interest paid on Borrowed Funds – Interbank Call Loans;

c) Other Expense – Premium Paid.

Petitioner claims that (1) the interest paid on Bills Payable represents the interest payments on direct borrowings it obtained from private firms (other than banks and non-bank financial intermediaries) and individuals for the limited purpose of financing its needs, hence, not subject to the 20% final tax; (2) the interest payments on the inter-bank call loans cover the deficiency in reserves are not considered as deposit substitute, hence, any interest thereon is not subject to the 20% withholding tax; and (3) the other expense account represents premium paid on foreign exchange forward contracts with clients, which is different from interest income.

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Petitioner further argues that of the interest expense incurred in Foreign Exchange Forward Contracts for 1997, a total of P2,251,698.91 represents revaluation gains that were not subject to income or other taxes *(Exhibit "AAA-4")*.

Although petitioner contends that respondent's computation of deficiency final tax is overstated since there are expenses that are allegedly not subject to final tax, but to ordinary income tax, petitioner failed to establish how much of said interest expense computed by the respondent was not subject to interest income. Petitioner only made a general statement that part of the interest expense of P2,526,741,767.00 was not subject to final tax for the aforesaid reasons stated by petitioner. Without presentation of concrete documentary proof to support its claim, there is no way for the Court to determine the veracity of petitioner's claim. Hence, We are constrained to uphold respondent's assessment on deficiency final withholding of **P14,841,399.30**.

D. 10 % Onshore Final Taxes for Taxable Years 1996 and 1997

Respondent assessed petitioner of deficiency final taxes on onshore income for taxable years 1996 and 1997, in the amounts of P2,495,267.10 and P762,860.79, respectively, pursuant to *Section 27(D)(3) of the Tax Code*, computed as follows:

Taxable Year 1996			
Onshore Income Subject to 10% Final Tax			P125,936,342.00
Rate of Tax			10%
Tax Due Thereon			12,593,634.20
Less:	Tax Absorb by Borrower		-
Sub-total			12,593,634.20
Less:	Payments		
	First Quarter		
	Second Quarter		
	Third Quarter		
	Fourth Quarter		11028,112.84
Sub-total			1,565,521.36
Add:	Penalties		
	Interest (1-26-97 to 12-31-99)	929,745.74	
	Compromise	-	929,745.74
Deficiency 10% Final Tax			**P2,495,267.10**

(Exhibit "2")

Taxable Year 1997			
Onshore Income Subject to 10% Final Tax			P407,806,947.00
Rate of Tax			10%
Tax Due Thereon			P40,780,694.70
Less:	Tax Absorb by Borrower		-
Sub-total			P40,780,694.70
Add: All others			1,736,834.00
Sub-total			P42,517,528.70
Less:	Tax Payments (FCDU QRT)		
	First Quarter	237,661.85	
	Second Quarter	534,842.77	
	Third Quarter	381,969.39	
	Fourth Quarter	582,360.00	1,736,834.00
Onshore Income Subject to 10% Final Tax			P40,780,694.69
Less:	Payments (Per 1743w WC190 [10%]		
	January	2,553,065.27	
	February	2,215,864.13	
	March	2,565,927.26	
	April	2,680,966.54	
	May	2,783,696.75	
	June	2,786,634.62	
	July	3,507,267.01	
	August	3,649,330.23	
	September	4,033,713.61	
	October	4,628,649.66	
	November	4,180,792.88	
	December	4,646,404.38	P40,232,312.34
Sub-total			548,382.36
Add:	Penalties		
	Interest (1-26-98 to 9-15-99)	214,478.43	
	Compromise	-	214,478.43
Deficiency 10% Final Tax			**P762,860.79**

(Exhibit "2")

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Petitioner avers that (1) in computing the 1996 and 1997 Final Taxes on Onshore Income, respondent included certain incomes which were already subjected to Final Withholding Tax; and (2) the deficiency final tax resulted from respondent's failure to consider the taxes already withheld by borrowers/clients amounting to P763,980.52 and P661,142.61 for the years 1996 and 1997, respectively, as shown in the "Comparison of the BIR Assessment and the Bank's Verification of the 10% Final Tax" for the taxable years 1996 and 1997.

As summarized and certified by the Court-Commissioned Independent CPA, the amounts of P763,980.52 and P661,142.61, corresponding to 10% final withholding taxes for 1996 and 1997, respectively, were assumed and paid by petitioner's borrowers, to wit:

Date Remitted	Withholding Agent	TIN of Withholding Agent	10% Tax Withheld in US$	10% Tax Withheld in Peso
1996				
10-Apr	Philippine Global Communications, Inc.	000-665-693	4,976.56	130,346.12
10-Jul	Philippine Global Communications, Inc.	000-665-693	4,695.83	123,040.23
10-Oct	Philippine Global Communications, Inc.	000-665-693	4,732.67	124,317.72
24-Apr	Manila Electric Company	350-000-101-528	3,133.90	82,061.10
25-Jul	Manila Electric Company	350-000-101-528	2,642.77	69,171.97
25-Oct	Manila Electric Company	350-000-101-528	2,396.64	62,910.47
1997				
10-Apr	Philippine Global Communications, Inc.	000-665-693	4,419.25	116,305.79
27-Jan	Manila Electric Company	350-000-101-528	2,123.35	55,827.12
TOTAL FOR 1996			**$29,120.97**	**763,980.52**
1997				
25-Apr	Manila Electric Company	350-000-101-528	1,788.46	47,074.16
25-Jul	Manila Electric Company	350-000-101-528	1,496.40	39,451.01
25-Oct	Manila Electric Company	350-000-101-528	1,254.17	38,064.03
10-Apr	Philippine Global Communications, Inc.	000-665-693	3,972.22	104,727.64
10-Jul	Philippine Global Communications, Inc.	000-665-693	4,038.16	106,607.31
10-Oct	Philippine Global Communications, Inc.	000-665-693	3,791.67	134,850.63

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1998				
12-Jan	Philippine Global Communications, Inc.	000-665-693	3,515.19	157,810.99
24-Jan	Philippine Global Communications, Inc.	000-665-693	929.89	32,556.84
TOTAL FOR 1997			**$20,786.16**	**661,142.61**

(Exhibit "AAA-7").

A careful examination of the records shows that indeed the amounts of P763,980.52 and P661,142.61 corresponding to 10% final withholding taxes for 1996 and 1997, respectively, were assumed and paid by Philippine Global Communications, Inc. and Manila Electric Company, as evidenced by their Summary of Interest Payments and Withholding Tax and Monthly Remittance Return of Income Taxes Withheld *(Annexes "F-1" to "F-35" of Exhibit "AAA-7").*

Hence, petitioner is liable for deficiency onshore final tax for taxable year 1996 in the reduced amount of **P1,246,890.11**, computed as follows:

Deficiency Final Tax on Onshore Income for Taxable Year 1996		
Onshore Income Subject to 10% Final Tax		P125,936,342.00
Rate of Tax		10%
Tax Due Thereon		P12,593,634.20
Less: Tax Assessed and Paid		763,980.52
Sub-total		P11,829,653.68
Less: Payments		11,028,112.84
Sub-total		P801,540.84
Add: Interest (1-26-97 to 11-5-99)		445,349.27
Deficiency 10% Final Tax		**P1,246,890.11**

However, for taxable year 1997, considering that the amount of P661,142.61 final withholding tax on onshore income that was withheld

and paid by petitioner's borrowers is more than the basic 10% final tax deficiency assessment of P548,382.36, as computed by the respondent, the 10% final tax deficiency assessment in the amount of P762,860.79 (basic: P548,382.36 + interest: P214,478.43), is without factual and legal basis, and is hereby ordered cancelled.

E. Documentary Stamp Taxes for Taxable Years 1996 and 1997

Respondent assessed petitioner of deficiency documentary stamp taxes in the amounts of P248,329,263.35 and P31,325,014.80 for taxable years 1996 and 1997, respectively, pursuant to *Sections 175, 179, 180, 181, 182, 195 and 196 of the Tax Code*, computed as follows:

Computation of Proposed Deficiency DST-HO			
For the Taxable Year 1996			
Beginning Balance			P1,091,032.50
Add: Purchases			63,300,000.00
Total Available for Use			P64,391,032.50
Less: Ending Balance			1,832,853.05
Total Documentary Stamp Used			P62,558,179.45
Less: Documentary stamp tax due ***(Hereto attached as Annex "B")***			217,013,146.29
Sub-total			P154,454,966.84
Add:	Penalties		
	Interest	P93,874,296.51	
	Compromise	-	93,874,296.51
Deficiency documentary stamp tax			**P248,329,263.35**

(Exhibit "2")

Computation of Proposed Deficiency DST-HO		
For the Taxable Year 1997		
Beginning Balance		P3,586,184.27
Add: Purchases		64,690,495.89
Total Available for Use		P68,276,680.16
Less: Ending Balance		3,119,819.84
Total Documentary Stamp Used		P48,010,417.02

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Less: Documentary stamp tax due ***(Hereto attached as Annex "C")***			70,305,801.22
Sub-total			P22,295,384.20
Add:	Penalties		
	20% Interest Sec. 249		9,029,630.60
Deficiency documentary stamp tax			**P31,325,014.80**

(Exhibit "2")

On the other hand, petitioner counter-argues that the deficiency DST assessments for 1996 and 1997 is without factual and/or legal basis on the ground that respondent's computation of the taxable base is patently overstated.

The Court will now determine the validity of the assessments for deficiency DST.

1996 DST

a) DST on sale of real properties.

Petitioner contends that the amount of P1,981,654.00 DST was assumed and paid by its buyers.

A review of the records reveals that out of P1,981,654.00 DST certified by the Court-Commissioned Independent CPA *(Exhibit "AAA-2")*, as having been assumed and paid by petitioner's buyers, only the amount of P1,948,654.00 was duly supported and substantiated by petitioner *(Annexes "A-93" to "A-106", "A-147" to "A-211" of Exhibit "AAA-2", Exhibits "QQQ-57" to "QQQ-61")*.

Considering that petitioner's buyers had already remitted to the BIR the DST in the amount of P1,948,654.00, the deficiency DST assessment of P1,563,115.00 has clearly no basis and is hereby ordered cancelled.

b) DST on letters of credits.

Petitioner contends that the DST was improperly and unjustifiably imposed on each stage of a single letter of credit transaction considering that the cycle of a letter of credit consists of three stages. On the alleged first stage, when the buyer applied with petitioner for the opening of a letter of credit, petitioner booked the approved letters of credit for domestic transactions in "Unused letter of credit-domestic" and "Letter of Credit Foreign" for importations.

On the alleged second stage, when petitioner forwarded the approved letters of credit to the advising bank and the advising bank paid the seller/exporter after the latter delivered the goods to the buyer/importer, petitioner used the "Customer Liability Foreign Account".

The third or final stage according to petitioner happens when the applicant has insufficient funds with petitioner, thus requires the

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recording of the "trust receipts account". In 1996, petitioner used the account "Import Bill under TR" and "Domestic Bill under TR".

Petitioner's contention cannot be sustained. Petitioner did not present any evidence to support its claim. The same are pure allegations. The settled rule is that bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules *(Manzano vs. Perez, 362 SCRA 439).* Without any documentary evidence showing that indeed the accounts "Unused Letter of Credit-Domestic" and "Letter of Credit Foreign", "Customer Liability Foreign Account", and "Import Bill under TR" and "Domestic Bill under TR" arose from only one transaction - letter of credit transaction, We sustain respondent's imposition of DST on each of the foregoing accounts.

In fact, a simple reading of the foregoing accounts will readily show that there is a great disparity in the amounts and the accounts under each of the alleged stages. In the alleged first stage, the account "Unused LC Domestic" has a balance of P189,031,227.47, and the account "LC Foreign" has a balance of P3,038,308,281.03. For the alleged second stage, petitioner has only the account "Customer Liability Foreign" with a balance of only P780,122,658.76. While in the alleged third stage, there are again two accounts, one is "Domestic Bills under TR" with a balance

of P211,252,710.15, and another "Import Bill under TR" with a balance of P1,907,449,852.17. If petitioner's allegation is true that all said four different accounts only constitute stages and pertain to one transaction – the letter of credit transaction, it is incomprehensible why in the alleged first stage, there are two accounts, one for the alleged domestic transactions and another for the alleged foreign importations, while in the alleged second stage there is only one account, the "Customer Liability Foreign", which by its title obviously pertains to importations. But, in the alleged third stage there are again two accounts, one denominated as domestic bill and another import bill. Said denomination of accounts is inconsistent with petitioner's averments. Moreover, the balances of the accounts appearing on every stage do not reconcile with one another. For this alone, petitioner's contention cannot be given credence.

Furthermore, a letter of credit and a trust receipt are two distinct and separate documents. A letter of credit is an engagement by a bank or other person made at the request of a customer that the issuer will honor drafts or other demands for payment upon compliance with the conditions specified in the credit. Through a letter of credit, the bank merely substitutes its own promise to pay for the promise to pay of one of its customers who in return promises to pay the bank the amount of funds

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mentioned in the letter of credit, plus credit or commitment fees mutually agreed upon *(Prudential Bank vs. Intermediate Appellate Court, 216 SCRA 267).* Thus, there is in effect a loan agreement between the buyer and the issuing bank in a letter of credit *(Notes and Cases on Banks, Negotiable Instruments and Other Commercial Documents, Aquino, 1st ed., p. 512).* Letters of credit are, therefore, subject to DST under *Section 182 of the NIRC of 1977, as amended*, if they are drawn in but payable out of the Philippines.

A "trust receipt", on the other hand, is defined as an agreement by virtue of which a banker advances money to a person for the importation of goods, the former taking full title to the goods at the very beginning and continuing to do so until he is paid, or if the goods have been sold, until the proceeds of the sale are turned over to him by the importer or successors in interest. The ownership of the merchandise continues to be vested in the owner thereof or in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale be turned over to him by the importer or by his representative or successor in interest *(Philippine National Bank vs. Viuda e Hijos de Angel Jose, 63 Phil. 821).* A trust receipt is considered, therefore, as a security transaction intended to aid in financing importers and retail dealers who do not have sufficient funds or resources to finance the

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importation or purchase of merchandise, and who may not be able to acquire credit except through utilization, as collateral, of the merchandise imported or purchased *(53 Am. Jur. 961, cited in Samo vs. People, 115 Phil. 349)*. Trust receipt therefore, is a contract distinct from the letters of credit. Settled is the rule that a trust receipt, executed to secure an indebtedness, accomplished and effected as a security for the payment of an account, with authority to sell the property or merchandise to pay the debt or obligation, requires no further argument to show that, as in deeds of trusts, they are subject to the affixture of DST, pursuant to *Section 195 of the NIRC of 1977, as amended.*

Considering that DST is an excise tax on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto, petitioner's use of the facility of the trust receipt is a privilege subject to DST. Said privilege of using the facility of trust receipt for purposes of security is distinct and separate from the privilege of using the facility of the letters of credit, which is for the purpose of obtaining loan. Accordingly, letters of credit are subject to DST, separate and distinct from the DST imposed on trust receipts.

c) DST on Interbank Call Loans

Petitioner contends that interbank call loans entered into by banks not for a lending purpose, but primarily, to cover its cash position at the end of the day shall not be considered as deposit substitutes; that under the *1993 Tax Code*, they are exempt from DST; and even if they are considered deposit substitutes under *Section 180 of the 1993 Tax Code*, deposit substitutes are not one of the enumerated items subject to DST.

While We cannot give credence to petitioner's allegation that the interbank call loans were entered into by petitioner only for the purpose of covering its deficiency in reserves, absent any documentary evidence to substantiate its claim, We agree, however, with petitioner that under *Section 180 of the NIRC of 1977, as amended*, deposit substitutes are not one of the enumerated items subject to DST.

The provision subjecting deposit substitutes to DST appeared only in the *NIRC of 1997,* which took effect on January 1, 1998. Considering that the taxable period involved in this case is 1996, the applicable law is the *NIRC of 1977, as amended,* and not the *NIRC of 1997, as amended.*

In *Section 2, h(a) of Revenue Regulations 17-84*, otherwise known as *"Income Taxation of Interest Derived from Bank Deposits and Yield from Deposit Substitutes"*, one of the implementing regulations of the

NIRC of 1977, as amended, interbank borrowings by or among banks and non-bank financial institutions, shall be considered as deposit substitutes. Since deposit substitutes are not one of the enumerated items in *Section 180 of the NIRC of 1977, as amended*, subject to DST, petitioner's interbank call loans are, therefore, not subject to DST.

Hence, respondent's imposition of deficiency DST on interbank call loans is hereby ordered cancelled.

d) DST on Reverse Repurchase Agreement

Like in the case of interbank call loans, the provision regarding the reverse repurchase agreement, appeared only in the *NIRC of 1997, as amended*, when the definition of deposit substitutes was expanded to include not only repurchase agreements, but "repurchase agreements including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank xxx".

However, prior to the passage of the *NIRC of 1997*, *Section 20(y) of the NIRC of 1977, as amended*, which is the governing law in the present case, defines deposit substitutes, to wit:

> "xxx an alternative form of obtaining funds from the public, other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own

> needs or the needs of their agent or dealer. These instruments may include but need not be limited to banker's acceptances, promissory notes, ***repurchase agreements***, certificates of assignments or participation and similar instruments with recourse xxx. *(emphasis supplied)*

Since reverse repurchase agreement was not considered as one of the deposit substitutes under the *NIRC of 1977, as amended*, the same is likewise not subject to DST, by express mandate of *Section 180 of the NIRC of 1977, as amended*, that deposit substitutes is not one of the enumerated items subject to DST.

Accordingly, respondent's imposition of DST on reverse repurchase agreement is hereby ordered cancelled.

e) Bills Payable-Deposit Substitutes amounting to P84,851,004,023.15.

Petitioner contends that the amount of Bills-Payable indicated in the schedule of DST for 1996 is exorbitantly and grossly overstated; the financial records of petitioner recognized and reported only Bills Payable Account of P5,151,376,708.02 for taxable year 1996 *(Exhibits "PPP" and "PPP-1")*; however the amount of Bills Payable, as computed by respondent amounted to P84,851,004,023.15.

We agree with petitioner that the amount of P84,851,004,023.15 Bills Payable computed by respondent is grossly overstated. This Court cannot ascertain how respondent was able to arrive at said amount of

P84,851,004,023.15, when petitioner's bills payable in 1994 amount to P7,925,821,223.16 only *(Exhibits "OOO" and "OOO-1")*; in 1995 to P8,240,952,078.38 only *(Exhibits "OOO-2" and "OOO-3")*; and in 1997 to P7,448,979,091.53 only *(Exhibit "MMM")*. Moreover, in the daily posting of petitioner's Bills Payable for the whole year of 1996, the total amount of Bills Payable recorded by petitioner is P5,151,376,708.02 only *(Exhibits "PPP and "PPP-1")*. Said amount is more correct, taking into consideration the amount of petitioner's Bills Payable appearing in its Schedule of DST for the years 1994 to 1997, compared with respondent's computation, which has no basis at all.

Finally, as heretofore ruled, deposit substitutes under the *NIRC of 1977, as amended,* were not yet subject to DST. Since petitioner's Bills Payable partake of deposit substitutes, pursuant to *Section 180 of the NIRC of 1977, as amended*, the same is not subject to DST.

Thus, respondent's assessment of DST on Bills Payable-deposit substitute is hereby ordered cancelled.

By and large, the Court finds the following assessments against petitioner without factual and legal basis:

	Items/Accounts	Amount	Rate	DST Amount
1)	Bills Payable	P84,851,004,023.15	.30 on each P200 or .15%	P127,276,506.03
2)	Interbank loan	23,043,000,000.00	.30 on each P200 or .15%	34,564,500.00

3)	Sale of real properties	104,207,666.67	P15.00 for every P1,000.00 or 1.50%	1,563,115.00
4)	Reverse repurchase agreement	12,198,575,780.18	.30 on each P200 or .15%	18,297,863.67
Total				P181,701,984.70

Considering that the above disallowed DST assessment, as found by this Court, is higher that the basic deficiency DST assessment of P154,454,966.84, as computed by the respondent, clearly the deficiency DST assessment for 1996 against petitioner in the amount of P248,329,263.35 (basic: P154,454,966.84 + interest: P93,874,296.52) is without factual and legal basis, and is hereby ordered cancelled.

1997 DST

a) DST on sale of real properties.

Respondent assessed petitioner of deficiency DST on sale of real properties in the amount of P733,910.22 *(Exhibit "2").*

Petitioner contends that for petitioner's sale of real property in 1997, the amount of P4,591,748.00 DST was assumed and paid by its buyers.

The Court-Commissioned Independent CPA, in its Schedule of Creditable Withholding Tax Remitted, Capital Gains Tax Paid and Documentary Stamp Tax Paid *(Exhibit "AAA-2")*, certified that the total

amount of DST assumed and paid by its buyers for 1997 is P4,591,748.00.

However, a review of the records reveals that the Court-Commissioned Independent CPA committed an error in adding the total DST assumed and paid by petitioner's buyers. As verified by this Court, the total DST assumed and paid by petitioner's buyers amounts to P628,440.00 only, and not P4,591,748.00. Further verification of the documentary evidence adduced by petitioner *(Annexes "A-2" to "A-92" of Exhibit "AAA-2", "A-108" to "A-142" of Exhibit "AAA-2", Exhibits "QQQ-26-a" and "QQQ-24-a")* shows that the amount of P628,440.00 DST was indeed paid and remitted to the BIR.

Petitioner, therefore, is liable to pay deficiency DST on sale of real properties in the reduced amount of P105,470.22 (assessment of P733,910.22 - assumed and paid of P628,440.00).

b) DST on letters of credits.

Petitioner claims that the deficiency DST was improperly and unjustifiably imposed on each of the three stages of a single letters of credit transaction; that in the alleged first stage consisting of approved letters of credit, petitioner allegedly used the account "Unused Letter of Credit Domestic"; while in the alleged second stage, petitioner used

accounts such as "Inward Bills for Collection", "Outward Bills for Collection – Domestic", and "Outward Bills for Collection – Foreign"; and in the alleged third stage, petitioner used the accounts "Loans under TR – Local" and "Loans under TR – Foreign".

Petitioner's contention is unmeritorious, being pure allegations. Petitioner failed to present any evidence to support its claim that indeed the accounts "Unused Letter of Credit Domestic", "Inward Bills for Collection", "Outward Bills for Collection – Domestic", "Outward Bills for Collection – Foreign", "Loans under TR – Local", and "Loans under TR – Foreign" arose from only one transaction – the letter of credit transaction.

Furthermore, a simple reading of the foregoing accounts and a comparison of the Schedule of the DST for the year 1997 *(Exhibit "MMM")* with the Schedule of DST for the year 1996 *(Exhibit "LLL")*, clearly shows inconsistency in petitioner's contention. The accounts "Inward Bills for Collection", "Outward Bills for Collection – Domestic", and "Outward Bills for Collection – Foreign", purportedly the accounts used in the second stage of its 1997 letters of credit transaction, were also present in the Schedule of DST for the year 1996 *(Exhibit "LLL")*; yet, in 1996 the same were not part of the alleged second stage. According to petitioner,

for the second stage it used the account "Customer Liability Foreign Account". With such inconsistencies in petitioner's averments, this Court cannot give evidentiary weight to its argument that the aforesaid accounts partake of only one transaction – the letter of credit transactions.

To reiterate, a trust receipt is separate and distinct from a letter of credit. Petitioner's use of the facility of a trust receipt is a privilege subject to DST, separate and distinct from the privilege of using the facility of a letter of credit, which accordingly, is also subject to a different DST.

Hence, We sustain respondent's imposition of DST on each of the accounts: "Unused Letter of Credit Domestic", "Inward Bills for Collection", "Outward Bills for Collection – Domestic", "Outward Bills for Collection – Foreign", "Loans under TR – Local", and "Loans under TR – Foreign".

c) DST on Interbank Loans

As heretofore discussed in the related assessment for 1996 deficiency DST, under *Revenue Regulations 17-84,* interbank loans are considered as deposit substitutes. Since *Section 180 of the NIRC of 1977, as amended*, the governing law in this assessment, does not impose DST

on deposit substitutes, petitioner's interbank loans in the amount of P19,387,500,000.00 are, therefore, not subject to DST.

As such, respondent's imposition of deficiency DST on interbank loans is hereby ordered cancelled.

d) DST on Reverse Repurchase Agreement.

As previously discussed, reverse repurchase agreement under the *NIRC of 1977, as amended,* is not one of the items subject to DST. It is only in the *NIRC of 1997* that reverse repurchase agreement was considered as deposit substitute subject to DST.

We, therefore, cancel the deficiency DST assessment on reverse repurchase agreement.

e) DST on Assets Held In Trust – Loans.

Petitioner argues that the imposition of DST on assets-held-in-trust is without legal basis on the ground that they are not deposits accounts or deposit substitutes.

We agree with petitioner that assets-held-in-trust are not subject to DST. Trust agreements or assets-held-in-trust accounts do not fall under the term "certificates of deposit" because no debtor-creditor relationship arises in both transactions. What is established, rather, is a trustor-trustee relationship. In a trust agreement, no absolute transfer of ownership over

the money or property happens. What is merely extended to the trustee-bank is the right to manage and invest the object of the trust under the instructions of the trustor-client. Therefore, the trustee-bank is not obliged to guarantee a positive return on the money or property subject of the trust.

Considering that assets-held-in-trust does not fall under the term "certificate of deposit", respondent's assessment against petitioner for deficiency DST on its assets-held-in-trust transactions is without factual and legal basis, and is hereby ordered cancelled.

f) Mathematical error in respondent's computation of petitioner's deficiency DST for 1997.

We agree with petitioner that respondent committed a mathematical error in computing petitioner's alleged DST liability for taxable year 1997. In deducting the ending balance of P3,119,819.94 from the total available for use of P68,276,680.16, respondent came up with a difference of P48,010,417.02, pertaining to the total documentary stamp used. But, the same is erroneous. As a result, petitioner was assessed of basic deficiency DST of P22,295,384.20, plus 20% deficiency interest of P9,029,630.60, or for a total amount of P31,325,014.80.

However, as correctly pointed out by petitioner, the correct documentary stamp used should be P65,156,860.32 (P68,276,680.16 - P3,119,819.94), and not P48,010,417.02, as computed by respondent. Thus, the correct computation of the basic deficiency DST assessment for 1997 should be:

Beginning Balance	P3,586,184.27
Add: Purchases	64,690,495.89
Total Available for Use	68,276,680.16
Less: Ending Balance	(3,119,819.94)
Total Documentary Stamp Used	**P65,156,860.32**
Less: Documentary Stamp Tax Due	(70,305,801.22)
Deficiency DST	**₱ 5,148,941.10**

In sum, in addition to the above erroneous computation, the Court finds the following DST assessment against petitioner without factual and legal basis:

	Items/Accounts	Amount	Rate	DST Amount
1)	Interbank loan	P19,387,500,000.00	.30 on each P200 or .15%	P29,081,250.00
2)	Sale of real properties			P628,440.00 (pertains to DST assumed and paid by petitioner's buyers
3)	Reverse repurchase agreement	P3,468,898,307.74	.30 on each P200 or .15%	P5,203,347.46
4)	Assets-held-in-trust	P3,160,305,925.70	.30 on each P200 or .15%	P4,740,458.89
Total				P39,653,496.35

Since the above disallowed DST assessment found by this Court is more than the deficiency DST assessment of P31,325,014.80, as

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computed by the respondent, the deficiency DST assessment for 1997 against petitioner in the amount of P31,325,014.80 is without factual and legal basis, and is hereby ordered cancelled.

WHEREFORE, premises considered, the present Petition For Review is **PARTIALLY GRANTED**. Accordingly, petitioner is hereby ORDERED to pay respondent Commissioner of Internal Revenue the reduced amounts of SIXTY FOUR MILLION ONE HUNDRED FIFTY FOUR THOUSAND NINE HUNDRED TWENTY ONE AND 34/100 PESOS (**P64,154,921.34**), representing deficiency income tax; THREE MILLION FOUR HUNDRED FIFTY THOUSAND TWO HUNDRED EIGHTEEN AND 30/100 PESOS (**P3,450,218.30**), representing deficiency gross receipts tax; and ONE MILLION TWO HUNDRED FORTY SIX THOUSAND EIGHT HUNDRED NINETY AND 11/100 PESOS (**P1,246,890.11**), representing deficiency 10% final tax on onshore income, all for taxable year 1996, or the total amount of SIXTY EIGHT MILLION EIGHT HUNDRED FIFTY TWO THOUSAND TWENTY NINE AND 75/100 PESOS (**P68,852,029.75**); and FOURTEEN MILLION EIGHT HUNDRED FORTY ONE THOUSAND THREE HUNDRED NINETY NINE AND 30/100 PESOS (**P14,841,399.30**), representing deficiency 20% final tax for taxable year

1997, or the aggregate amount of **P83,693,429.05** for both taxable years 1996 and 1997, broken down as follows:

DEFICIENCY TAX DUE				
1996				
	Income Tax	**GRT**	**10% Final Tax**	**Total**
Basic	P42,436,655.11	P2,214,011.39	P801,540.84	P45,452,207.34
Interest	21,718,266.23	1,236,206.91	445,349.27	23,399,822.41
Total	**P64,154,921.34**	**P3,450,218.30**	**P1,246,890.11**	**P68,852,029.75**
1997				
20% Final Withholding Tax				
Basic				P10,668,737.52
Interest				4,172,661.78
Total				**P14,841,399.30**
AGGREGATE AMOUNT (1996 and 1997)				**P83,693,429.05**

In addition, petitioner is hereby **ORDERED** to pay respondent 20% delinquency interest per annum on the total amount of **P83,693,429.05**, computed from December 14, 1999, until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

The deficiency assessments of **P762,860.79,** representing 10% final tax on onshore income for taxable year 1997, **P248,329,263.35**, representing DST for taxable year 1996, and **P31,325,014.80**, representing DST for taxable year 1997, are hereby ordered cancelled.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

Annex "A" Schedule of Creditable Withholding Tax Allowed and Disallowed Per this Court's Findings

Particulars	Supporting Document/Nature	Exhibit Number	Admitted/ Allowed	Denied/ Disallowed	Reason
1) Juanito Lim	Monthly Remittance Return of Income Taxes Withheld (BIR Form 1743-W)	"QQQ-1"	P31,250.00		
2) Adela Rulloda	BIR Form 1743-W	"QQQ-2"	34,620.00		
3) Leonardo Sia	BIR Form 1743-W	"QQQ-3"	15,000.00		
4) Southwest Lines Limqueco Compound Culiat, T. Sora, Q.C.	Capital Gains Tax Return	"QQQ-4"		83,250.00	Ruling in *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals (519 SCRA 99)*
5) Sps. Severino & Aniceta Francisco	Capital Gains Tax Return	"QQQ-5"		P89,897.58	Resolution dated May 18, 2005 – failure to present original copy, and ruling in *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, supra*
6) Raul Jose Go	Capital Gains Tax Return	"QQQ-6"		81,241.80	Same reason as No. 5
7) Sps. Rosendo & Emma Lopez	Capital Gains Tax Return	"QQQ-7"		206,131.51	Same reason as No. 5
8) Sps. Antonio & Filma Galla	Capital Gains Tax Return	"QQQ-8"		101,558.10	Same reason as No. 5
9) Nat'l Conciliation & Mediation Board	Certificate of Creditable Tax Withheld at Source for the period Jan. to Sept. 1995	"QQQ-9"		4,595.76	Pertains to prior year
10) Phil. Spring Water	Certificate of Creditable Tax Withheld at Source for the period April 95 to December 95	"QQQ-10"		2,250.00	Pertains to prior year
11) Wenelita R. Pamatong	BIR Form 1743-W	"QQQ-11"	71,250.00		
12) Philip Paul Trading	BIR Form 1743-W	"QQQ-12"		5,475,000.00	Resolution dated May 18, 2005 – failure to present original copy.
13) Oscar Cruz	BIR Form 1743-W	"QQQ-13"	39,300.00		

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14) Phil. Spring Water Resources	Certificate of Creditable Tax Withheld at Source for the period Jan. to March 96	"QQQ-14"	800.00		
15) Bo. Mapulang Lupa, Valenzuela, M.M.	BIR Form 1743-W	"QQQ-15"	608,025.00		
16) Ulpiano Tamayo	BIR Form 1743-W	"QQQ-16"	140,000.00		
17) Sps. Florencio & Rigor Javier	Capital Gains Tax Return	"QQQ-17"		182,770.22	Same reason as No. 5
18) Sps. Elpidio & Milagros Apo	Capital Gains Tax Return	"QQQ-18"		278,755.55	Same reason as No. 4
19) I. Pelaez	Capital Gains Tax Return	"QQQ-19		21,485.47	Same reason as No. 5
20) Sps. Lino and A. Lim	Capital Gains Tax Return	"QQQ-20"		40,078.25	Same reason as No. 5
21) Sps. Antonio & L. Asok	Capital Gains Tax Return	"QQQ-21"		37,268.46	Same reason as No. 5
22)Lawrence Chan	Capital Gains Tax Return	"QQQ-22"		206,215.18	Same reason as No. 4
23) Sps. Macario Balaan & Aida Balaan	Capital Gains Tax Return	"QQQ-23"		31,628.22	Same reason as No. 5
24) Sps. Leng Leng Castillo Uy & Mariano Loo	Capital Gains Tax Return	"QQQ-24"		246,533.39	Same reason as No. 5
25) Phil. Water Resources	Certificate of Creditable Tax Withheld at Source	"QQQ-25"	900.00		
26) Nestor Mendoza	Capital Gains Tax Return	"QQQ-26"		48,205.88	Same reason as No. 5
27) 100th Century Townhouse, 20th Ave., Cubao	BIR Form 1743-W	"QQQ-27"		165,000.00	Same reason as No. 12
28)Emmanuel Caballero & Spouse	BIR Form 1743-W	"QQQ-28"		33,750.00	Same reason as No. 12
29) Phil. Spring Water Resources	Certificate of Creditable Tax Withheld at Source for the period Aug. to Oct. 96	"QQQ-29"	900.00		
30)Clavall Properties, Inc.	BIR Form 1743-W/ Certificate of Creditable Tax Withheld at Source	"QQQ-30"	6,439,680.00		
31) Mr. Benito Ang as A/F of Felomina Arancon	Capital Gains Tax Return	"QQQ-31"		11,511.68	Same reason as No. 5
32) Mr. Nathaniel Dela Pena & Sps. Richard/Prescila Sabillo, as	Capital Gains Tax Return	"QQQ-32"		36,362.86	Same reason as No. 5

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A/F of Agapitl Dela Pena					
33) Sps. Eusebio/Victor Buchan	Capital Gains Tax Return	"QQQ-33"		237,663.23	Same reason as No. 5
34) Sps. Eusebio/Victor Buchan	Capital Gains Tax Return	"QQQ-34"		150,457.40	Same reason as No. 5
35) Sps. Alfredo/Erlinda Marcos	Capital Gains Tax Return	"QQQ-35"		50,235.30	Same reason as No. 5
36) Sps. Alfredo/Erlinda Marcos	Capital Gains Tax Return	"QQQ-36"		32,157.23	Same reason as No. 5
37) Sps. Paganono/Lourdes Ursua	Capital Gains Tax Return	"QQQ-37"		12,205.45	Same reason as No. 5
38) Mr. Benito Ang, as A/F of Sps. Licerio/Araceli Pagdilao	Capital Gains Tax Return	"QQQ-38"		29,591.05	Same reason as No. 5
39) Sps. Carmelito/Teresita Obrero	Capital Gains Tax Return	"QQQ-39"		112,315.10	Same reason as No. 5
40) Sps. Benito/Betty Ang	Capital Gains Tax Return	"QQ-40"		47,737.37	Same reason as No. 5
41) Sps. Paganini/Lourdes Ursula	Capital Gains Tax Return	"QQQ-41"		194,666.27	Same reason as No. 5
42) Sps. Daniel/Leticia Salanga	Capital Gains Tax Return	"QQQ-42"		30,356.60	Same reason as No. 5
43) Sps. Jacinto/Rosalinda Indong	Capital Gains Tax Return	"QQQ-43"		44,843.00	Same reason as No. 5
44) Sps. Rainer/Mary Beth Garay	Capital Gains Tax Return	"QQQ-44"		21,307.00	Same reason as No. 5
45) Sps. Wilfredo/Vangie Montero	Capital Gains Tax Return	"QQQ-45"		25,217.11	Same reason as No. 5
46) Sps. Bonifacio/Salome Yuson	Capital Gains Tax Return	"QQQ-46"		4,603.23	Same reason as No. 5
47) Tan Kam Enterprises/ Toppers Knitting Corporation	BIR Form 1743-W	"QQQ-47"	1,200,000.00		
48) Jose T. Cabrera	Certificate of Withholding Tax at Source	"QQQ-48"	16,770.00		
49) Cirilo Basalo, Jr.	Capital Gains Tax Return	"QQQ-49"		28,724.72	Same reason as No. 5
50) Sps. Ronald Dennis & Helen Joseph Arellano	Capital Gains Tax Return	"QQQ-50"		23,962.17	Same reason as No. 5
51) Sps. Alejandro/Joselita Lim	Capital Gains Tax Return	"QQQ-51"		623,598.73	Same reason as No. 4
52) Phil Spring Water Resources	Certificate of Creditable Tax Withheld at Source (BIR Form No. 1743/750)	"QQQ-52"	300.00		
53) Sps. Conrado/Neriza Elcamel	Capital Gains Tax Return	"QQQ-53"		120,665.46	Same reason as No. 5
54) Teodoro Legal & Spouse	Capital Gains Tax Return	"QQQ-54"		84,660.57	Same reason as No. 5
55) Sps. Emmanuel Caballero				33,750.00	No supporting documentary evidence

56) Gonzalo Brillantes III	Capital Gains Tax Return	"QQQ-55"		12,265.00	Same reason as No. 4
57) Suzanne Berba	Certificate Authorizing Registration	"QQQ-58"	12,967.50		Certificate Authorizing Registration states that it was subject to withholding tax withheld and remitted to the BIR under Official Receipt indicated therein as evidenced by BIR Nos. 1743W/1743B
58) Milagros Canieso	Certificate Authorizing Registration	"QQQ-59"	11,407.50		Same reason as No. 57
59) Fidel Gemudiano	Certificate Authorizing Registration	"QQQ-60"	15,405.00		Same reason as No. 57
60) Ma. Nemia Lizada	Certificate Authorizing Registration	"QQQ-61"	45,000.00		Same reason as No. 57
61) Jaime & Evelyn Uy				1,233,119.22	No supporting documentary evidence
62) Mrs. Jamili (Pueblo Concepcion)				52,061.00	No supporting documentary evidence
63) Aty. Builders				158,514.00	No supporting documentary evidence
64) CA Square				722,535.03	No supporting documentary evidence
65) Miller Construction/ Betty Go	Capital Gains Tax Return	"QQQ-62"		344,686.94	Same reason as No. 4
66) Eastern Global Corp.				130,400.00	No supporting documentary evidence
67) ETY DTD 11.18.96				32,066.70	No supporting documentary evidence
Total Creditable Withholding Tax-Allowed/Disallowed			**P8,683,575.00**	**P11,977,854.79**	
Error on petitioner's addition (attributed to creditable tax withheld on Suzanne Berba, which was reflected as P12,96750, but per verification, the correct amount should be P12,967.50)				1,283,782.50	
Total Creditable Withholding Tax per Schedule			**P8,683,575.00**	**P13,261,637.29**	**P21,945,212.29**

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Annex "B" – Schedule of DST for 1996, as computed by the BIR

Schedule of DST		
For the Year 1996		
	Transaction	**Amount**
A.		
092 -	Bills Discounted	P7,679,602,822.12
093 -	Time Loans-Clean	1,362,681,355.24
111 -	Other Agri-Credit Loan	2,263,620,003.33
121 -	Export Bills Purchase	595,739,846.61
122 -	Domestic Bills Purchase	49,475,276.76
123 -	Foreign Bills Purchase	24,586,783.54
131 -	Customers Liability (Import Bill)	1,893,850,213.66
132 -	Import Bill under TR	1,907,449,852.17
133 -	Domestic Bills under TR	211,252,710.15
142 -	Customer Liability Foreign	780,122,658.76
281 -	Time Certificate of Deposit	2,715,873,190.22
290 -	TCD Special Financing	9,000,000.00
371 -	Bills Payable – Deposit Substitute	84,851,004,023.15
390 -	Cash LC	495,950,502.51
500 -	Unused LC Domestic	189,031,227.47
510 -	LC Foreign	3,038,308,281.03
530 -	Inward Bills for Collection	70,488,558.96
540 -	Outward Bills for Collection – Domestic	33,139,780.05
550 -	Outward Bill for Collection – Foreign	220,601,327.52
Interbank Loan		23,043,000,000.00
Total		P131,434,778,413.25
Rate		0.15%
Documentary Stamp Tax Due		P197,152,167.62
B. On proceeds from sale of real property		
Total Amount		P104,207,666.67
Rate of Tax		1.50%
Basic Tax Due		P1,563,115.00
C. Industry Issue		
RRP		P12,198,575,780.18
Rate		0.15%
Basic Tax Still Due		P18,297,863.67
D. Capital Stocks		
Subscribed 1995		8,391,977.00
Subscribed 1996		8,391,977.00
Additional Subscribed Capital Stock		-
Rate of Tax		1.00%
Tax Due		-
Tax Paid		0
Tax Deficiency		-
Total Tax Due		P217,013,146.29

Annex "C" – Schedule of DST for 1997, as computed by the BIR

Schedule of DST		
For the Tax Year 1997		
	Transaction	**Amount**
A.		
12500 -	Export Bills Purchase – Reg	P828,709,882.49
12510 -	PDO	2,614,600.64
12600 -	Domestic Bills Purchase	31,066,739.19
12601 -	Foreign Bills Purchase	10,762,769.35
12800 -	Loans under TR – Domestic	764,164,989.86
12801 -	Local CY	2,959,459,552.12
12802 -	Foreign	2,039,069,386.21
20200 -	Time Certificate of Deposit – Dom	404,541,116.77
20300 -	TCD Special Financing	33,904,583.29
21202 -	Bills Payable – Domestic & Priv Firm	7,448,979,091.53
21700 -	Cash LC	393,883,237.56
51000 -	Unused LC Domestic – Sight	483,484,595.11
51001 -	Unused LC Domestic – Usance	2,422,976.50
51002 -	Unused LC Domestic – Standby	5,097,670.00
51100 -	Unused Comm LC Foreign – Sight	3,058,778,361.90
51101 -	Unused Comm LC Foreign – Usance	1,190,602,938.35
51102 -	Unused Comm LC Foreign – Standby	233,788,454.63
52001 -	Inward Bills for Collection	39,519,064.72
52100 -	Outward Bill for Collection – Domestic	42,413,571.83
52101 -	Outward Bill for Collection – Foreign	391,129,550.73
11603 -	Interbank Loan	19,387,500,000.00
Total		P39,751,893,132.78
Rate		0.15%
Documentary Stamp Tax Due		P59,627,839.70
B. On sale of Real Properties		
Proceeds from disposal of real properties (F/S)		48,927,348.00
Rate of tax		1.50%
		P733,910.22
C. Industry Issue		
13600 -	Govt Sec. Purchase under RRP	3,468,898,307.74
55200 -	Assets held in Trust – Loans	3,160,305,925.70
Total		P6,629,204,233.44
Rate		0.15%
Basic Tax Still Due		9,943,806.35
D. Capital Stocks		
Subscribed 1996		839,197,700.00
Subscribed 1997 per F/S		2,629,482,795.00
Additional Subscribed Capital Stock		1,790,285,095.00
Rate of Tax		1.00%
Tax Due		P17,902,850.95
Tax Deficiency		17,902,606.00
		244.95
TOTAL DST DEFICIENCY (Incl of Industry issue)		P70,305,801.22