REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BANK OF COMMERCE,
Petitioner,

C.T.A. CASE NO. 6332

Members:

- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 29 2005
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DECISION

ACOSTA, E., P.J.:

This case is an appeal for the cancellation of the deficiency tax assessments issued by the respondent against petitioner covering taxable years 1994 and 1995 in the aggregate amounts of P54,959,489.42 and P104,392,782.14, respectively, inclusive of interest and other penalties.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission, with principal business address at 6764 Ayala Avenue, Makati City.

On November 28, 2000, petitioner received from respondent a Formal Letter of Demand dated October 31, 2000, assessing petitioner of deficiency internal

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revenue taxes covering taxable years 1994 and 1995 in the amounts of P54,959,489.42 and P104,392,782.14, respectively, inclusive of interest and other penalties, broken down as follows:

		1994	1995
DEFICIENCY FCDU ONSHORE INCOME			
Basic		P 1,271,950.67	P 1,390,786.83
Add:	Increments		
	Interest	1,432,948.26	1,287,906.71
	Compromise Penalty	25,000.00	25,000.00
Amount Due & Collectible		P 2,729,898.93	P 2,703,693.54
DEFICIENCY FINAL WITHHOLDING TAX			
Basic		P 127,000.26	
Add:	Increments		
	Interest	148,990.45	
	Compromise Penalty	16,000.00	
Amount Due & Collectible		P 291,990.71	
DEFICIENCY DOCUMENTARY STAMP TAX			
Basic		P 23,793,666.90	P 51,343,142.26
Add:	Increments		
	Interest	28,043,932.88	50,245,946.34
	Compromise Penalty	100,000.00	100,000.00
Amount Due & Collectible		P 51,937,599.78	P 101,689,088.60
		P 54,959,489.42	P 104,392,782.14

On December 22, 2000, petitioner, through its external auditors, filed with the respondent its protest letter requesting for a reinvestigation/reconsideration of the alleged deficiency tax assessments for taxable years 1994 and 1995.

Alleging inaction on the part of the respondent, petitioner elevated its case before this Court on September 18, 2001. However, realizing that the amount of P78,251,221.21 it prayed for to be cancelled in the Petition for Review covered only the deficiency *basic* taxes and did not include the increments such as interests and compromise penalties being assessed by the respondent for 1994 and 1995, petitioner filed an Amended Petition for Review on November 27, 2001 which was admitted by the Court on January 11, 2002, in order to state in its prayer the correct amount of the deficiency tax assessments, *i.e.*, P54,959,489.42 for 1994 and P104,392,782.14 for 1995 both inclusive of interest and other penalties or a total amount of P159,352,271.56. Respondent, for his part, adopted his Answer to the original Petition for Review as his Answer to the Amended Petition for Review and raised therein the following Special and Affirmative Defenses:

> "**On the Issue of Prescription**
>
> 3. Respondent's right to assess deficiency taxes for taxable years 1994 and 1995 has not prescribed contrary to Petitioner's allegations. Petitioner waived its right to invoke prescription under Section 203, 1997 Tax Code. Where a waiver is not just an extension of the period of limitation, but a RENUNCIATION of his right to invoke the defense of prescription which was then available to him. Just like any other right, the right to avail of the defense of prescription is waivable *(Sinforosa Alca vs. Court of Tax Appeals, 26 SCRA 137).*
>
> **On the issue that the Assessments are without Factual and legal bases**
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> 4. The deficiency onshore income tax was computed on the basis of Section 24 (e)(3) of the 1993 Tax Code, as amended, which provides for the imposition of 10% final tax on interest income earned by a depository bank under the expanded foreign currency system on foreign currency loans granted to residents.
>
> 5. Petitioner is liable for deficiency onshore tax. The income payments in question were in the first place in the hands of Petitioner and, therefore, at its control and disposition. Section 52 (now Section 59) of the Tax Code provides:
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>> "Sec. 52. *Tax on profits collectible from owner or other persons.* – The tax imposed under this Title upon gains, profits and income not falling under the foregoing and not returned and paid by virtue of the foregoing or as otherwise provided by law shall be assessed by personal return ... shall be charged and assessed with the corresponding tax prescribed by this Title, and said tax shall be paid by the owners of such gains, profits, and income or **the proper person having the receipt custody, control of disposal of the same**. For the purpose of this Title, ownership of such gains, profits, and

> income or liability to pay the tax shall be determined as of the year for which a return is required to be rendered." (Emphasis supplied)

6. There is no showing that petitioner has already paid the final withholding tax due on the "unsupported interest incurred."

7. There is no showing that the recipients of the interest payments made by petitioner are tax-exempt entities.

8. In the audit of petitioner's documentary stamp tax liability, accounts subject to DST were identified and summarized and made known to petitioner. The corresponding DST rates were applied and the resulting DST per audit was compared with the payments made during the year.

9. There was no error on the part of Respondent when it subjected the deficiency Documentary Stamp Tax to interest. Under Section 248 (a)(1) and (3) and 249 of the Tax Code of 1993, as amended, the imposition of the surcharge and interest is mandatory. Strong reasons of policy support a strict observance of the rule regarding the payment of tax. The laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof (Jamora vs. Meer, 74 Phil. 22).

10. The assessments were issued in accordance with law and regulations.

11. All presumptions are in favor of the correctness of tax assessments."

The issues We are tasked to resolve are:

1. Whether or not the right of the respondent to assess deficiency taxes for taxable years 1994 and 1995 has already prescribed when it issued the Formal Letter of Demand and Assessment Notice covering the said taxable years dated October 31, 2000 and received by petitioner on November 28, 2000;

2. Whether or not petitioner is liable for deficiency FCDU onshore taxes for taxable years 1994 and 1995 in the amounts of P2,729,898.93 and P2,703,693.54, respectively;

3. Whether or not petitioner is liable for deficiency final withholding tax for taxable year 1994 in the amount of P291,990.71;

4. Whether or not petitioner is liable for deficiency documentary stamp taxes (DST) for taxable years 1994 and 1995 in the respective amounts of P51,937,599.78 and P101,689,088.60;

Anent the first issue, petitioner, in its protest dated December 20, 2000 (*Exhibit B;5*) asserts that respondent's right to assess had already lapsed considering that the waivers executed by the former did not validly extend the three-year prescriptive period pursuant to Section 203 in relation to Section 223(b) of the NIRC of 1977, as amended, quoted hereunder for easy reference:

> "**SEC. 203.** ***Period of limitation upon assessment and collection.*** - Except as provided in the succeeding section, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed. For purposes of this section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day.
>
> "**SEC. 223.** ***Exceptions as to period of limitation of assessment and collection of taxes.***-
>
> xxx xxx xxx
>
> "(b) If before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.

All the waivers signed by petitioner allegedly have no binding effect for lack of signature on the part of the BIR Commissioner indicating his consent thereto. Even granting that the Commissioner duly signed the said waivers, the same are still invalid because any waiver purported to extend the 3-year prescriptive period should be executed before the expiration of the said period. In the case at bar, such waivers were allegedly executed after the lapse of the prescriptive period, hence, there was no period left to extend.

Respondent, on the other hand, argues that his right to assess had not prescribed since petitioner executed several waivers of the statute of limitations extending the period to assess up to November 30, 2000. Thus, the assessment notices issued on October 31, 2000 were within the extension period of November 30, 2000. Moreover, with respect to the DST assessments, the right to assess is allegedly imprescriptible since no return was required for DST prior to the effectivity of the NIRC of 1997 on January 1, 1998.

We find against petitioner.

Indeed, under Section 222(b) and as implemented by Revenue Memorandum Order (RMO) 20-90, a waiver to be valid must be signed by both the taxpayer and the BIR Commissioner or his duly authorized official. Records show that petitioner executed several waivers starting December 1, 1997 for the purpose of extending up to November 30, 2000 respondent's right to assess petitioner of any deficiency business and income taxes for taxable years 1994 and 1995 (*pages 336-350, BIR Records*). The very first waiver executed by petitioner on December 1, 1997 which extended the period to assess business and income taxes for taxable years 1994 and 1995 until February 28, 1998 was not signed by the BIR Commissioner nor by his duly authorized official. Notwithstanding such infirmity in the waiver, petitioner paid the proposed assessment for 1994 deficiency GRT of P324,674.29 on October 24, 2000 (*pages 303-306, BIR Records*). Such action bars petitioner from questioning the validity of the same waiver covering the other deficiency tax assessments. Petitioner's act of paying the 1994 deficiency GRT assessment constitutes an admission on its part that the waiver covering the same was valid. This Court cannot allow petitioner to adopt inconsistent postures regarding the said waiver (***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, dated December 15, 2004).*** Therefore, this Court holds that petitioner is estopped from questioning the validity of the said waivers.

We shall now dwell on the second issue.

Respondent assessed petitioner for deficiency FCDU onshore income taxes for taxable years 1994 and 1995 in the respective amounts of P2,729,898.93 and P2,703,693.54, computed as follows:

DEFICIENCY FCDU ONSHORE INCOME – 1994

Gross Onshore Income per F/S	P 26,985,850.00
Less: Tax Exempt	
Taxable Onshore Income	P 26,985,850.00
Less: Amount of tax absorbed by borrowers for which Final Withholding Tax was paid per Annual Information Return (1743-IR)	14,266,343.30
Onshore Income not subjected to Final Tax	P 12,719,506.70
Multiply by tax rate	0.10
Basic Deficiency Tax	P 1,271,950.67
Interest (4/16/1995 - 11/30/2000)	1,432,948.26
Compromise Penalty	25,000.00
Amount Due and Collectible	P 2,729,898.93

DEFICIENCY FCDU ONSHORE INCOME – 1995

Gross Onshore Income per F/S	P 43,485,563.00
Less: Tax Exempt	-
Taxable Onshore Income	P 43,485,563.00
Less: Amount subjected to Final Tax	29,577,694.70
Onshore Income not subjected to Final Tax	P 13,907,868.30
Multiply by Rate	0.10
Basic Deficiency Tax	P 1,390,786.83
Interest (4/16/1996 to 11/30/2000)	1,287,906.71
Compromise Penalty	25,000.00
Amount Due and Collectible	P 2,703,693.54

As regards the 1994 deficiency FDCU onshore income tax assessment, petitioner contends that the same was without factual and legal bases. First, the onshore income of P13,631,929.00 upon which the 1994 deficiency 10% final tax was based allegedly refers to the interest income earned by petitioner from the syndicated loan obtained by Philippine Airlines, Inc. (PAL) from petitioner and other lenders. Under the loan agreement, PAL allegedly agreed to shoulder the interest and other payable sums "free and clear of any tax" (including the 10% withholding tax on foreign currency deposit units) thereby assuming the burden of paying all taxes incident to the payment of the interest. Under Section 13 of its franchise, Presidential Decree 1590, PAL is allegedly liable for the basic corporate income tax based on its annual net taxable income computed in accordance with the provisions of the Tax Code or a franchise tax of 2% of the gross revenues from all sources, whichever is lower. The tax paid by PAL was allegedly in lieu of all other taxes, duties, royalties, registration, license and other fees and charges of any kind, nature or description imposed or collected by any municipality, city, provincial or national authority or government agency, including specifically all taxes on interest, fees, and other charges on foreign loans obtained and other obligations incurred by PAL where it assumes the payment thereof. Since PAL had allegedly assumed the payment of the onshore tax, petitioner's treatment of the 1994 interest income of P13,631,929.00 as tax-exempt was allegedly correct and in accordance with the OBU/FCDU Regulations.

Second, petitioner posits that even assuming that it was not proper to treat the said interest income as tax-exempt, it is still not liable for the 10% FCDU onshore tax due thereon. Pursuant to Section 50(a) of the 1993 Tax Code, taxes imposed or prescribed under Section 24(e)(3), among others, shall be withheld by payor-corporation and/ or person and paid in the same manner and subject to the same conditions as provided in Section 51 of the same Code. In the case at bar, the borrower PAL is and should allegedly be responsible for withholding and remitting the FCDU onshore income tax to the BIR and not the petitioner/lender-bank.

We disagree.

Regarding petitioner's argument that it correctly treated the interest income it derived from PAL's syndicated loan as tax-exempt, it is to be emphasized that it was petitioner which earned the said income and not PAL. It is explicit from the provisions of Section 24(e)(3) of the NIRC of 1977, as amended, that such interest income from foreign currency loans granted by petitioner under the expanded foreign currency deposit system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) like PAL shall be subject to a 10% tax. Even if PAL is exempt from the said withholding tax by virtue of its franchise, such exemption does not extend to petitioner.

As correctly pointed out by the respondent, in instances of non-withholding of the tax, two courses of action are available to the taxing authority. The first is against the withholding agent for the imposition of the penalty in not withholding the tax as required by law and the second is for the collection of the tax against the taxpayer against whom the tax is imposed. In the recent case entitled ***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, dated December 15, 2004,*** this Court ruled, thus:

> While it is true that the payor-borrower is the one constituted by law to withhold and remit the 10% final tax on onshore income, the obligation of paying the 10% final tax on onshore income rests on

petitioner being the one directly liable for it pursuant to Section 24(e)(3) of the National Internal Revenue Code of 1993.

In the case of ***Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999***, the Supreme Court elucidated the operation of the withholding tax system in this wise:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax xxx (Underlining supplied).

The law and the jurisprudence do not dispense the liability of the taxpayer with respect to the payment of 10% final tax on onshore income if the withholding agent fails to deduct and remit the same to the Bureau of Internal Revenue. After all, it is the taxpayer who earns the income. Truly, the obligation to pay the 10% onshore tax lies with petitioner because the onshore income was earned by it (ING BANK N.V. MANILA BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6187, August 9, 2004). Corollarily, if the withholding agent is also assessed for the same kind of tax, such assessment was not for the payment of the required tax but as a penalty for failure to withhold as required by law. The penalty is imposed on the withholding agent for failure to fulfill an obligation to withhold as distinguished from the taxpayer's liability for the payment of tax.

Accordingly, this Court upholds the 1994 deficiency FCDU onshore income tax assessment except for the compromise penalty of P25,000.00 as there was no compromise agreement between the parties (***Industrial Inspection (Int'l.) Incorporated vs. Liwayway Vinzons Chato in her capacity as The***

Commissioner of the Bureau of Internal Revenue, CTA Case No. 5152, May 19, 1997). Petitioner is liable to pay the reduced amount of P2,704,898.93, computed as follows:

Gross Onshore Income per F/S	P26,985,850.00
Less: Tax Exempt	
Taxable Onshore Income	P26,985,850.00
Less: Amount of tax absorbed by borrowers for which Final Withholding Tax was paid per Annual Information Return (1743-IR)	14,266,343.30
Onshore Income not subjected to Final Tax	P12,719,506.70
Multiply by tax rate	0.10
Basic Deficiency Tax	P 1,271,950.67
Interest (4/16/1995 - 11/30/2000)	1,432,948.26
Amount Due and Collectible	P 2,704,898.93

As regards the 1995 deficiency FDCU onshore income tax assessment, petitioner again stressed that it should not be held liable therefor. Of the total onshore income of P13,907,868.30 on which the deficiency FCDU onshore tax was imposed, the amount of P3,901,902.00 pertains to the interest income derived from PAL's syndicated loan while the remaining amount of P10,005,966.30 refers to the interest income which was accrued in 1995 but collected in 1996. Under the OBU/FCDU Regulations, onshore interest income is subject to 10% final tax only when the same becomes due for payment, and the tax is payable on the 10th day of the following month. Consequently, the final tax corresponding to the interest income of P10,005,966.30 was only remitted in 1996.

As in the 1994 deficiency FCDU onshore income tax assessment, this Court holds that petitioner is liable to pay deficiency 10% FCDU onshore tax on the interest income of P3,901,902.00 it earned from PAL's syndicated loan for taxable year 1995. With respect to the alleged accrual in 1995 of the interest income of P10,005,966.30 and the alleged remittance in 1996 of the final tax due thereon, this Court agrees with petitioner that under Revenue Regulations No. 14-77, the withholding tax shall be withheld and remitted only after the payment of the interest incurred by an onshore borrower regardless of whether the accounting method of an OBU-creditor is cash or accrual basis. However, records show that petitioner was able to substantiate the accrual in 1995 of only the interest income of P2,191,462.09 and the remittance in 1996 of the related final tax of P219,146.21 (*pages 156-183, BIR Records*). Therefore, petitioner is still liable for the 1995 deficiency FCDU onshore income tax in the amount of P2,255,969.94, computed as follows:

Gross Onshore Income per F/S	P 43,485,563.00
Less: Tax Exempt	-
Taxable Onshore Income	P 43,485,563.00
Less: Amount subjected to Final Tax	29,577,694.70
Onshore Income not subjected to Final Tax per BIR's audit	P 13,907,868.30
Less: Onshore Income accrued in 1995 but the related final tax was remitted in 1996	2,191,462.09
Onshore Income not subjected to Final Tax per this Court's verification	P 11,716,406.21
Multiply by tax rate	0.10
Basic Deficiency Tax	P 1,171,640.62
Interest (4/16/1996 to 11/30/2000)	1,084,329.32
Amount Due and Collectible	P 2,255,969.94

There being no compromise agreement between the parties, this Court cancels the compromise penalty of P25,000.00 originally imposed by the respondent.

We proceed to the third issue.

Citing Section 24(e)(1) of the 1993 Tax Code which provides that the interest payments on local currency deposits are subject to a final withholding tax of 20%, respondent assessed petitioner for deficiency final withholding tax of P291,990.71 for taxable year 1994, computed as follows:

Interest Expense per Financial Statements		P 294,964,601.00
Less: Interests Incurred Exempt from Final Tax		
FCDU Interest Expense	P 47,588,567.62	
Interest on Interbank Borrowings	24,098,436.82	
Interest paid on RPA-CB	2,217,194.42	
Interest paid on CB Rediscounts	1,506,653.45	
Interest paid on CB Advances	58,255,596.00	
Interest paid on FX – Banks	937,571.53	
Interest paid on DBP Rediscounts	36,237,776.94	

	Interest paid on FX – Others	202,558.85	
	Interst paid – Others	4,819,410.68	175,863,766.31
Interest Expense Subject to Final Tax			P 119,100,834.69
Add:	Unsupported Interest Incurred		
	Interest on IBCL per Books	P 24,098,436.82	
	Less: Interest IBCL per Audit	24,082,723.44	15,713.38
Total Interest Payments subject to Final Tax per Audit			P 119,116,548.07
Multiply by Tax Rate			0.20
Final Withholding Tax per Audit			P 23,823,309.61
Less:	Payments		23,696,309.35
Basic Deficiency Final Tax			P 127,000.26
Interest (1/11/1995 - 11/30/2000)			148,990.45
Compromise Penalty			16,000.00
Amount Due and Collectible			P 291,990.71

As found by the respondent's examiners, out of the final tax due for the year 1994 amounting to P23,823,309.61, only P23,696,309.35 was paid and remitted to the Bureau of Internal Revenue, thus, the assessment for deficiency final tax of P291,990.71.

Petitioner, on the other hand, argues that respondent erroneously assessed deficiency final withholding tax on the interest income it paid to tax-exempt entities. In support thereof, petitioner presented various Income Statements, BIR Rulings, Notice for Tax-exempt Status and Letters of Exemptions of tax-exempt entities (*Exhibits M to CC-2*).

Upon a careful scrutiny of the preceding documents, this Court finds that petitioner actually made the following interest income payments to tax-exempt entities in the total amount of P124,924.78 on which respondent erroneously imposed a 20% final tax:

Exhibits	Paid to	Amount of Interest
M to M-2	Advtg. Associates, Inc. – Employees Ret Fund	P 2,126.60
N to N-2	Angeles Electric Corp. Employees Ret Fund	1,220.00
O, O-1, S	CAP Family of Companies Ret Fund	4,050.18
P, P-1, S	Correspondence Accred Programs for Coll Found, Inc. Ret Plan	19.21
Q, Q-1, S	College Assurance Plan Phils., Inc. Ret Plan	3,069.95
R, R-1, S	CAPHEALTH Maint Organization, Inc. Ret. Plan	47.28
T to T-2	Asia Industries Group of Companies	343.37
U to U-3	Dr. C. P. Ramos Office Employees Ret Fund	3,157.21

	Dr. C. P. Ramos Office Employees Ret Fund	1,085.56
V to V-2	First National Bank of Boston - Manila	4,384.57
W to W-2	Marsman Plantation, Inc. Retirement Fund	8,675.74
X to X-2	Pilipino Telephone Corporation Retirement Fund	8,648.82
Z to Z-2	Univ. of St. La Salle Employees Retirement Plan	1,186.59
AA to AA-2	Luisita Marketing Corporation	4,475.91
CC to CC-2	Southeast Asian Fisheries Devt Center - Aquaculture Dept Retirement Fund	6,981.00
	Southeast Asian Fisheries Devt Center - Aquaculture Dept Retirement Fund	75,452.79
		P 124,924.78

Nonetheless, after taking into account petitioner's tax-exempt interest payment of P124,924.78, this Court holds that petitioner is still liable for deficiency final withholding tax for taxable year 1994 in the amount of P222,253.63, computed as follows:

Total Interest Payments subject to Final Tax per BIR's Audit	P 119,116,548.07
Less: Interest Payments to Tax-Exempt Entities per this Court's verification	124,924.78
Should-be Total Interest Payments subject to Final Tax	P 118,991,623.29
Multiply by Tax Rate	0.20
Final Withholding Tax Due	P 23,798,324.66
Less: Final Withholding Tax Remitted	23,696,309.35
Basic Deficiency Final Withholding Tax	P 102,015.31
Add: Interest (1/11/1995 – 11/30/2000)	120,238.32
Total Amount Due	P 222,253.63

As there was no compromise agreement entered into by petitioner with the respondent, this Court cancels the compromise penalty of P16,000.00 included by the respondent in the deficiency final tax assessment.

Anent the fourth issue, respondent assessed petitioner for deficiency documentary stamp taxes (DST) for taxable years 1994 and 1995 in the respective amounts of P51,937,599.78 and P101,689,088.61, computed as follows:

DEFICIENCY DOCUMENTARY STAMP TAXES – 1994

Loans and Discounts	P 29,345,691,533.67
Add: Unaccounted Re-allowed Issue	1,196,594,402.00
Amount Subject to DST	P 30,542,285,935.67
Multiply by Rate	.30/P200
DST due on Loans and Discounts	P 45,813,428.90
Add: DST on ROPOA	25,290.00
Total DST Due	P 45,838,718.90

Less: Payments		22,045,052.00
Basic Deficiency DST	P	23,793,666.90
Interest (1/11/1995 - 11/30/2000)		28,043,932.88
Compromise Penalty		100,000.00
Amount Due and Collectible	P	51,937,599.78

DEFICIENCY DOCUMENTARY STAMP TAXES – 1995

Loans and Discounts	P	49,789,559,267.35
Multiply by Rate		30/P200
DST Due on Loans and Discounts	P	74,684,338.90
Add: DST Due on ROPOA		28,803.36
Total DST Due	P	74,713,142.26
Less: Payments		23,370,000.00
Basic Deficiency DST	P	51,343,142.26
Interest (1/11/1995 - 11/30/2000)		50,245,946.34
Compromise Penalty		100,000.00
Amount Due and Collectible	P	101,689,088.61

As to the 1994 deficiency DST assessment of P51,937,599.78, petitioner questions the imposition of the DST on its "Unaccounted Re-allowed Issue" amounting to P1,196,594,202.00. Petitioner alleges that this figure merely represents accounting adjustments and reclassifications due to erroneous book entries made, including transfers of loans from the different branches to the head office of petitioner and back to the respective branches. These branch loans allegedly were used as collateral on the emergency loan obtained by petitioner's head office from the Bangko Sentral ng Pilipinas (BSP) as a consequence of the BANCAP scam. The documentary stamp taxes on the loans prior to their transfer or reclassification were allegedly paid in full. Contrary to the examiners' finding, the amount of P1,196,594,202.00 allegedly does not represent new loan agreements or promissory notes.

We are not convinced. The Schedule of Loans & Discounts, Bills Purchased (*Exhibit F*) and photocopies of sample Monthly General Ledger Movement Report (*Exhibit KK*) as well as the testimony of petitioner's PRO Manager-Section Head of Tax Management and Financial Analysis, are insufficient to support petitioner's allegations (1) that the amount of P1,196,594,202.00 merely represents accounting adjustments and reclassifications due to erroneous book entries made including transfers of loans from the different branches to the head office of petitioner and back to the respective branches and (2) that the DST on the said loans prior to their transfer or reclassification were already paid in full. Petitioner should have presented source documents to establish the original entries made as well as the corresponding correcting entries made for the same loan transactions.

Likewise, petitioner disputed the validity of the deficiency DST assessments for taxable years 1994 and 1995 on the ground that the revenue examiners computed the assessment by simply applying the DST rates to the alleged taxable documents. There is allegedly no way by which petitioner can determine the factual basis of the said computations since the revenue examiners allegedly made no explanation as to which particular taxable documents are involved. Petitioner avers that the examiners simply made a sweeping statement lumping everything under "Loans and Discounts".

We disagree.

The Details of Discrepancies attached to the assessment notices states that "In the audit of said tax, accounts subject to DST were identified and were then summarized. Thereafter, the corresponding DST rates were applied and the resulting DST per audit was compared with the payments made during the year as evidenced by the ATAPs issued by the Bureau." Clearly, petitioner was informed on how the deficiency DST tax assessments for 1994 and 1995 were arrived at. In fact, petitioner in its protest letter, even made its own recomputations of the deficiency DST taxes for 1994 and 1995 thereby admitting that it is liable for the said taxes. In so computing, petitioner adopted the figures used by the respondent as tax base but deducted certain amounts which petitioner deemed excluded from the imposition of the DST. Petitioner could not have deducted the said amounts without knowing the composition of the tax base amounts. Thus, petitioner cannot allege that it was not aware of the factual basis of the DST tax assessments for 1994 and 1995.

Thus, this Court upholds the 1994 and 1995 assessments for deficiency DST except for the compromise penalty of P100,000.00 imposed by the respondent for each of the said years. Petitioner is liable to pay deficiency DST for taxable years 1994 and 1995 in the respective amounts of P51,837,599.78 and P101,589,088.61, computed as follows:

DEFICIENCY DOCUMENTARY STAMP TAXES – 1994

Loans and Discounts	P 29,345,691,533.67
Add: Unaccounted Re-allowed Issue	1,196,594,402.00
Amount Subject to DST	P 30,542,285,935.67
Multiply by Rate	.30/P200
DST due on Loans and Discounts	P 45,813,428.90
Add: DST on ROPOA	25,290.00
Total DST Due	P 45,838,718.90
Less: Payments	22,045,052.00
Basic Deficiency DST	P 23,793,666.90
Interest (1/11/1995 - 11/30/2000)	28,043,932.88
Amount Due and Collectible	P 51,837,599.78

DEFICIENCY DOCUMENTARY STAMP TAXES – 1995

Loans and Discounts	P 49,789,559,267.35
Multiply by Rate	30/P200
DST Due on Loans and Discounts	P 74,684,338.90
Add: DST Due on ROPOA	28,803.36
Total DST Due	P 74,713,142.26
Less: Payments	23,370,000.00
Basic Deficiency DST	P 51,343,142.26
Interest (1/11/1995 - 11/30/2000)	50,245,946.34
Amount Due and Collectible	P 101,589,088.61

In fine, this Court finds petitioner liable for the following deficiency taxes for taxable years 1994 and 1995 in the sums of P54,764,752.34 and P103,845,058.54, detailed as follows:

	1994	1995	Total
DEFICIENCY FCDU ONSHORE INCOME	P 1,271,950.67	P 1,171,640.62	
Basic Tax Due	1,432,948.26	1,084,329.32	
Interest	P 2,704,898.93	P 2,255,969.94	
Total Amount Due			
DEFICIENCY FINAL WITHHOLDING TAX			
Basic Tax Due	P 102,015.31		
Interest	120,238.32		
Total Amount Due	P 222,253.63		
DEFICIENCY DOCUMENTARY STAMP TAX			
Basic Tax Due	P23,793,666.90	P 51,343,142.26	
Interest	28,043,932.88	50,245,946.34	
Total Amount Due	P51,837,599.78	P101,589,088.60	
Total	P54,764,752.34	P103,845,058.54	P158,609,810.88

IN VIEW OF THE FOREGOING, the Petition for Review is hereby **DENIED** and the assessments for deficiency FCDU onshore income, final withholding tax and documentary stamp taxes are hereby **UPHELD.** Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of P54,764,752.34 representing deficiency FCDU onshore income, final withholding and documentary stamp taxes for taxable year 1994 and the amount of P103,845,058.54 representing deficiency FCDU onshore income and documentary stamp taxes for taxable year 1995. In addition, petitioner is liable to pay 20% delinquency interest on the aforesaid amounts computed from December 29, 2000 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice