REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF AMERICA NT & SA,
(Manila Branch),
Petitioner,

versus

C.T.A. CASE NO. 4865

THE COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUN 14 1995

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DECISION

This is an assessment case involving alleged deficiency income, branch profit remittance and documentary stamp taxes in the total amount of P37,153,818.69 for the year 1981.

Petitioner is a foreign banking institution duly licensed to do business in the Philippines.

On April 20, 1987, Petitioner received from the Respondent a demand letter and assessment notices, all dated April 10, 1987, assessing the former for alleged "deficiency income taxes (Other Issues: Per BIR-BAP Compromise Agreement, FCDU-all others, Offshore Income), branch profit remittance and documentary stamp taxes, inclusive of increments" in the total amount of P37,153,818.69 (Exh. B, CTA Records p. 9).

On April 30, 1987, Petitioner filed its protest letter, dated April 27, 1987, against the assessments on the grounds that:

> a) petitioner's availment of the income tax amnesty under E.O. No. 41 extinguished its alleged 1981 deficiency income tax on both its Regular Banking Unit (RBU) and Foreign Currency Deposit Unit (FCDU), alleged offshore income and 1981 deficiency branch profit remittance tax;
>
> b) the alleged 1981 15% profit remittance tax is covered by the income tax amnesty; and
>
> c) the 1981 non-negotiable promissory notes are not subject to documentary stamp tax based on Revenue Memorandum Circular No. 33-86 (October 15, 1986)
> (Petition for Review, p. 2 and Exh. C)

On October 2, 1992, Petitioner received a letter from the Respondent, dated September 21, 1992, denying Petitioner's protest on the deficiency income tax, deficiency documentary stamp tax and deficiency profit remittance tax since "your claim for the privilege of amnesty availment under EO No. 41 is also dismissed as not being <u>bonafide</u>, as required by law." (Exh. D)

Hence, this appeal.

The issues brought for resolution are the following:

1.) Whether or not Petitioner's availment of the tax amnesty extinguished its liability for the deficiency income and branch profits remittance taxes assessment.

2.) Whether or not Petitioner is liable for Documentary Stamp Tax.

As regards to the first issue, We find for the Petitioner.

This is not a case of first impression. In the case of R.O.H. AUTO PRODUCTS PHILIPPINES, INC., VS. THE COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 4318, August 20, 1990 and BAY FOODS SPECIALTIES, INC. VS. THE COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 4246, August 7, 1991, this Court ruled in favor of the petitioners. The pertinent portion of the decision is hereby quoted, thus:

> The intent of the given legislation, as always, is telling. A reading of this executive order giving amnesty shows the period covered - January 1, 1981 to December 31, 1985 (Section 1, Section 6, Executive Order No. 41, as amended). An amnesty affords <u>total pardon or forgiveness</u> (3 Words and Phrases 480, citing cases), as here promised by the order for <u>all unpaid income, estate, donor's taxes and business taxes, and all civil, criminal, administrative liability</u> that have arisen from non-payment of taxes in the above given period. (Underscoring supplied) On the other hand, an assessment is a notice of tax due with a demand for payment (**Alhambra Cigar & Cigarette Mfg. Co. v. Commissioner,** 105 Phil. 1337 unreported). An assessment can be abated or compromised on the administrative level (Section 295, National Internal Revenue Code, now Section 204) while an amnesty is an act of sovereign grace which obliterates an offense (Words and Phrases, supra) or as seen here, an act which relegates into oblivion all unpaid income, estate, donor's taxes and business taxes incurred during a given period. The impression created thus is that considering the nature of a tax assessment, its significance

could not be more than that of an amnesty properly availed of. An assessment, even a deficiency assessment as in the instant case, cannot defeat the intended effects of the amnesty because precisely, it is the purpose of the latter to forgive the non-payment of the taxpayer of his tax liabilities. The respondent who seeks to recover taxes due cannot demand something which, although previously done, is now non-existent or has been obliterated as a consequence of sovereign grace.

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Respondent failed to present any case or law which proves that an assessment can withstand or negate the force and effects of a tax amnesty. This burden of proof on the petitioner was created by the clear and express terms of the executive order's intention-qualified availers of the amnesty may pay an amnesty tax in lieu of said unpaid taxes which are forgiven (Section 2, Section 5, Executive Order No. 41, as amended). More specifically, the plain provisions in the statute granting tax amnesty for unpaid taxes for the period January 1, 1981 to December 31, 1985 shifted the burden of proof on respondent to show how the issuance of an assessment before the date of the promulgation of the executive order could have a reasonable relation with the objective periods of the amnesty, so as to make petitioner still answerable for a tax liability which, through the statute, should have been erased with a proper availment of the amnesty (Underscoring supplied).

"Additionally, the exceptions enumerated in Section 4 of Executive Order No. 41, as amended, do not indicate any reference to an assessment or pending investigation aside from one arising from information furnished by an informer.

'Section 4. Exceptions- The following taxpayers may not avail themselves of the amnesty herein granted:

a) Those falling under the provisions of Executive Order Nos. 1, 2 and 14;

b) Those with income tax cases already filed in the Court as of the effectivity hereof;

c) Those with criminal cases involving violations of the income tax law already filed in Court as of the effectivity hereof;

d) Those that have withholding tax liabilities under the National Internal Revenue Code, as amended, insofar as the said liabilities are concerned;

e) Those with tax cases pending investigation by the Bureau of Internal Revenue as of the effectivity hereof as a result of information furnished under Section 316 of the National Internal Revenue Code, as amended;

f) Those with pending cases involving unexplained or unlawfully acquired wealth before the Sandiganbayan.'

In its very recent Decision, dated January 20, 1995, the Supreme Court in affirming this Court's Decision in the R.O.H. Case said, thus:

> We agree with both the Court of Appeals and Court of Tax Appeals that Executive Order No. 41 is quite explicit and requires hardly anything beyond a simple application of its provisions.

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> xxx the conclusion is unavoidable, and it is that the executive order has been designed to be in the nature of a general grant of tax amnesty subject only to the case <u>specifically excepted</u> by it.

The Petitioner not being one of those <u>specifically excepted</u> by E.O. 41, it should not therefore be deprived from availing said tax amnesty in accordance with the above Supreme Court ruling.

This practice of the Bureau of Internal Revenue of enjoining taxpayers to avail of the tax amnesty, accepting payment thereof but assess them later on is repugnant to the sense of equity and fair play and certainly run counter to the true wisdom of the Tax Amnesty Law. We cannot allow such transgression of the law to happen.

As to the second issue, Respondent opined that "the basis for the assessment of documentary stamp taxes on commercial papers issued by the taxpayer is the treatment of such debt instrument usually denominated as 'non-negotiable promissory notes' as investment securities and not as promissory notes whether negotiable or non-negotiable" (Memorandum by BIR examiner Exh. M, M-2 CTA Records p. 100) "The nearest term we can apply to the commercial papers is that of certificates of indebtedness subject to documentary stamp tax as such" (ibid.) under Section 223 of the 1977 Tax Code.

The core of the issue therefore is: Whether or not commercial papers issued by a corporation to raise funds from the general public for use in its business operations be considered as investment security, specifically, certificate of indebtedness as opined by the Respondent or should they be considered as non-negotiable promissory note as argued by the Petitioner.

We are not prepared to accept the proposition of the Respondent as it lacks basis in law and jurisprudence. In fact, the BIR examiner herself was not sure about her stand and relied purely on mere interpretation as she admitted, thus: "Inasmuch as money market debt instruments are only a few decades old, they could not have been classified by specific description in the Tax Code; hence, it is a matter of determining their true nature and placing them in their proper category." (ibid.)

There is no room for interpretation here as the law under Section 229 of the Tax Code, prior to its amendment by P.D. 1959 on October 15, 1984 provides that promissory notes are subject to the stamp tax <u>only if negotiable</u>. It should be remembered therefore, that it was only <u>after</u> October 15, 1984 (effectivity date of P.D. 1959) that non-negotiable promissory notes became subject to documentary stamp tax. But since the above-subject non-negotiable promissory notes were issued by the Petitioner before October 15, 1984, it should, therefore, not be liable for documentary stamp tax.

Moreover, needless to state that a tax cannot just be imposed by mere implication or without clear and express words for that purpose. Thus, "if the intent or meaning of the tax statute is not clear, or is doubtful as whether a taxpayer is covered by the tax obligation, the tax law shall be construed against the Government because revenue laws impose special burdens." (Marinduque Iron Mines Agents, Inc., vs. Hinabangan, Samar L-18924, June 30, 1964).

WHEREFORE, in all the foregoing, the assessments issued by the Respondent is hereby **CANCELLED**, the Petitioner not being liable to any of the alleged 1981 deficiency income tax, branch profit remittance tax and documentary stamp tax.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals