Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB CASE NO. 512
(CTA Case No. 6850)

-versus-

Present:
ACOSTA, P.J.,
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA,
COTANGCO-MANALASTAS, JJ.

PHILIPPINE NATIONAL BANK,
Respondent.

Promulgated:
SEP 2 1 2010

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *en banc* pursuant to Section 18 of Republic Act No. 1125, as amended by Republic Act No. 9282, of the Decision[1] dated March 3, 2009, rendered by this Court's former First Division in CTA Case No. 6850, and its Resolution[2] dated July 7, 2009.

Petitioner Commissioner of Internal Revenue (CIR) seeks a

[1] En Banc Docket, pp. 27-39
[2] En Banc Docket, pp. 40-44

reversal of both the aforesaid Decision and Resolution, the dispositive portions of which, respectively read as follows:

<u>Decision dated March 3, 2009:</u>

"**WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, the assessment for deficiency documentary stamp taxes on petitioner's Interbank Call Loans for taxable year 1997 is hereby **CANCELLED**. However, the assessment for deficiency documentary stamp tax on petitioner's Special Savings Account for taxable year 1997 is hereby **AFFIRMED**.

Petitioner is hereby **ORDERED** to **PAY** respondent the amount of **FOURTEEN MILLION SIX HUNDRED EIGHTY EIGHT THOUSAND FOUR HUNDRED SIXTY THREE PESOS AND FIFTEEN CENTAVOS (P14,688,463.15)**, representing deficiency documentary stamp tax for taxable year 1997, computed as follows:

Special Savings Account	<u>7,833,847,016.00</u>
Documentary Stamp Tax (0.30/200)	11,750,770.52
Surcharge – 25%	<u>2,937,692.63</u>
Total Amount Due	14,688,463.15

In addition, petitioner is hereby **ORDERED** to **PAY** a penalty equivalent to twenty five percent (25%) and a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P14,688,463.15 from February 15, 2004 until such amount is paid in full, pursuant to Sections 248 and 249 of the Tax Code.

SO ORDERED."

<u>Resolution dated July 7, 2009:</u>

"**WHEREFORE**, let this case be set for Commissioner's Hearing before Atty. Ma. Victoria P. Dural, on July 23, 2009, at 1:30 p.m. for the marking of petitioner's documents relating to its availment of Tax Abatement Program.

Thereafter, petitioner is **GRANTED** thirty (30) days from July 23, 2009 within which to file a **"Supplemental Formal Offer of Evidence"** as regards said documents. Respondent is likewise **GRANTED** fifteen (15) days from receipt of his copy, within which to file his **"Comment/Opposition"** thereto. Thereafter, petitioner's **"Supplemental Formal Offer of Evidence"** shall be submitted for resolution. Meanwhile, resolution of petitioner's **"Motion for Partial Reconsideration"** is held in abeyance.

However, respondent's **"Motion for Partial Reconsideration"** is hereby **DENIED** for lack of merit.

SO ORDERED."

The facts as narrated by this Court's former First Division[3] are undisputed.

Petitioner is the duly appointed CIR vested with the authority to exercise the functions of said office, including, *inter alia,* the power to administer and enforce National Internal Revenue Laws. He holds office at the Bureau of Internal Revenue (BIR) Building, Agham Road, Diliman, Quezon City.

Respondent Philippine National Bank (PNB) is a corporation duly organized and existing under the laws of the Philippines, with principal business address at the PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City.

On March 28, 2000, PNB received a Letter of Authority No. 00058992 dated March 23, 2000 issued by the CIR authorizing an investigation team of the Large Taxpayers Assessment Division[4] to examine PNB's books of accounts and other accounting records for all internal revenue taxes for the taxable year 1997.[5] Thereafter, on May

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[3] Former First Division of CTA, penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova, concurring.
[4] Composed of Revenue Officers J. Cueto, C. Costales, R. Gonzales, H. Catapia, and N. Divino of the Large Taxpayers Assessment Division.
[5] Exhibit "1", Docket, p. 380.

12, 2003, PNB received the Preliminary Assessment Notice (PAN)[6] with Details of Discrepancies for deficiency documentary stamp tax, withholding tax on compensation, and expanded withholding tax against PNB, issued by the CIR on March 31, 2003.

On May 29, 2003, PNB received a Formal Assessment Notice (FAN)[7] together with Formal Letter of Demand[8] and Details of Discrepancies[9], issued by the CIR on May 26, 2003, requesting PNB to pay deficiency taxes computed as follows:

ASSESSMENT No. 97-000064
DEFICIENCY DOCUMENTARY STAMP TAX

(1) Interbank call loans – more than 5 days maturity	P 13,260,000,000.00
(2) Special Savings Account	7,833,847,016.00
Taxable base per audit	P 21,093,847,016.00
Documentary stamp tax (0.30/200)	31,640,770.80
Less: tax already paid	-
Def. Documentary stamp tax due	P 31,640,770.80
Surcharge – 25%	7,910,192.70
Total Amount Due	P 39,550,963.50

ASSESSMENT NO. 97-000067
DEFICIENCY EXPANDED WITHHOLDING TAX

Income Payments	Amount	Rate	Tax Due
(3) Security/Clerk/Janitorial	359,807,968.00	x 1%	3,598,079.68
(3) Advertising/Publication	11,325,314.00	x 1%	113,253.14
(3) Freight expense	10,024,549.00	x 1%	100,245.49
(3) Promotion & Special expense	91,927,926.00	x 1%	919,279.26
(3) Addition to Bank Premises, Furniture, Fixture & Equip.	319,326,116.00	x 1%	3,193,261.16
Rental expense (Real)	109,118,966.00	x 5%	5,455,948.30
Professional Fees	8,748,081.00	x 5 & 10%	614,434.70
Brokers/Commission			97,415.24
Expanded withholding tax due thereon			P 14,091,916.93
Less: Tax remitted/paid per return			
EWT for professional fees	614,434.70		

[6] Exhibit "7", Docket, p. 395.
[7] Exhibit "10", Docket, p. 416.
[8] Exhibit "9", Docket, p. 413.
[9] Exhibit "9-a", Docket, p. 415.

EWT for brokers/commission	97,415.24	
EWT rental for head office	265,967.22	
EWT for contractors	6,615,873.27	
EWT branches	1,301,674.90	
EWT rental for branches	4,154,273.34	13,049,638.67
Deficiency expanded withholding tax		P 1,042,278.26
Add: 20% interest per annum 1/26/98 to 5/3/03		1,111,693.99
Compromise penalty		20,000.00
Total deficiency expanded withholding tax		P 2,173,972.25

On May 30, 2003, PNB immediately paid the tax assessment for the expanded withholding taxes amounting to P2,173,972.25, inclusive of penalties.[10]

On June 23, 2003, however, PNB filed a letter of protest on the assessment notice insofar as the deficiency documentary stamp tax amounting to P39,550,963.50, inclusive of penalties, is concerned.[11]

On August 21, 2003, PNB submitted a letter reiterating the summary of its legal arguments to support its position that it is not liable for the alleged deficiency tax assessment. Petitioner likewise stated that it would not be filing further documents and that it would be submitting the case for resolution by the BIR on the basis of the documents thus filed.[12]

On January 16, 2004, PNB received the Final Decision on Disputed Assessment dated December 10, 2003, reiterating the

[10] Exhibit "C" & "D", Docket, pp. 205-206.
[11] Exhibit "E", Docket, pp. 207-215.
[12] Exhibit "F", Docket, pp. 223-238.

deficiency documentary stamp tax assessment amounting to P39,550,963.50.[13]

On the same date, January 16, 2004, PNB filed a Petition for Review before the CTA in order to preserve its rights in pursuit of its protest, under Section 7(1) of Republic Act (R.A.) No. 1125.

On January 23, 2004, PNB filed a Motion for Leave of Court to File and Admit Supplement to the Petition for Review, together with the Supplement to the Petition for Review, which was subsequently granted by this Court in an Order dated January 29, 2004.

After trial, this Court's former First Division rendered a Decision dated March 3, 2009, partially granting the Petition for Review. Thus, while this Court's former First Division cancelled the assessment for deficiency documentary stamp taxes on PNB's Interbank Call Loans for the taxable year 1997, it affirmed the assessment for deficiency documentary stamp tax on PNB's Special Savings Account for the taxable year 1997.

On March 20, 2009, PNB filed a Motion for Partial Reconsideration of aforesaid Decision,[14] with prayer to admit attached Tax Abatement Documents. The CIR, on his part, filed a Motion for Partial Reconsideration of the same Decision on March 24, 2009.

This Court's former First Division, in a Resolution dated July 7, 2009, denied the CIR's Motion for Partial Reconsideration while the resolution

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[13] Exhibit "G", former First Division Docket, pp. 246-247.
[14] Promulgated on March 3, 2009.

of PNB's Motion for Partial Reconsideration was held in abeyance pending the latter's submission of the Supplemental Formal Offer of Evidence of tax abatement documents.[15]

Hence, the CIR filed a Petition for Review *en banc* on August 10, 2009.[16]

The issue is whether PNB's Interbank Call Loans (IBCL) is subject to DST for the taxable year 1997.

The issue is answered negatively.

PNB maintains that IBCLs are classified as deposit substitutes under Section 20(y) of the 1997 Tax Code and the same are not among those enumerated as subject to DST under Section 180 of the 1993 Tax Code.[17]

However, the CIR vigorously argues that PNB's IBCLs exceeding five (5) days for the taxable year 1997 fall under the term "Loan Agreements" which are subject to DST under Section 180 of the 1977 NIRC, as amended by Republic Act (RA) No. 7660 and not under

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[15] On March 2, 2010, this Court's former First Division granted PNB's Motion for Partial Reconsideration and cancelled the assessment notice for deficiency DST on Special Savings Account in the total amount of P14,688,463.15, inclusive of surcharge, interest, and compromise penalty, for the taxable year 1997 in view of PNB's availment of the Abatement Program under Revenue Regulations No. 15-2006.

[16] Resolving CIR's Motion for Extension of Time to file Petition for Review dated July 24, 2009, the CTA *en banc*, in a minute resolution, granted a final and non-extendible period of fifteen (15) days from July 25, 2009 or until August 9, 2009 within which to file the Petition for Review. Considering that August 9, 2009 fell on a Sunday, the Petition for Review was filed on time.

[17] CIR's Petition for Review filed on August 10, 2009 before the CTA en banc, p. 7 (EB Docket, p. 14).

"deposit substitutes" because the latter term was deleted from the 1977 Tax Code by RA No. 7660.[18]

The CIR argues further that in IBCLs, a creditor-debtor relationship is established between the parties. In case of default of one of the parties, the creditor will eventually seek relief from the courts on a cause of action for collection of the loaned amount. Invariably, the DST is imposed on such transactions because of the privilege granted to the parties to enter into such an agreement, and the enforcement action to be sought in case of breach thereof.[19]

PNB asserts that IBCLs exceeding five (5) days should not be construed as "Loan Agreement" under Section 180 of the 1977 NIRC, as amended, because these IBCLs were used to cover PNB's deficiency in reserve requirements regardless of the maturity dates stated therein.[20] Thus, PNB claims that IBCLs for the taxable year 1997 are not subject to DST as these IBCLs, being classified as Deposit Substitute under Section 20(y) of the 1977 NIRC, is not one of the documents subject to DST under Section 180 of the 1977 NIRC, as amended by RA No. 7660.[21]

This Court's former First Division correctly cancelled the DST assessment on IBCLs for the taxable year 1997.

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[18] *Ibid.*
[19] CIR's Petition for Review before the CTA en banc filed on August 10, 2009, p. 9 (EB Docket, p. 16).
[20] PNB's Comment to the Petition for Review before the CTA en banc, p. 18 (EB Docket, p. 79).
[21] PNB's Comment to the Petition for Review before the CTA en banc, p. 22 (EB Docket, p. 83).

The applicable statute for the taxable year 1997 is Presidential Decree (PD) No. 1158, otherwise known as the National Internal Revenue Code (NIRC) of 1977, as amended by PD No. 1959, and RA No. 7660, which took effect on October 10, 1984 and January 14, 1994, respectively.

Section 180 of the NIRC of 1977, as amended by RA No. 7660, reads:

> "*Sec. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: provided, that only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: provided, however, that loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section."

Based on the above provision, it is pristine clear that the term "Interbank Call Loan" is not among those enumerated as subject to documentary stamp tax. In ***Commissioner of Internal Revenue vs.***

Solidbank Corporation (Now: First Metro Investment Corporation),[22] this Court had occasion to enumerate the documents subject to DST under the aforequoted provision, to wit:

1.) Loan agreements;
2.) Promissory notes;
3.) Bills of exchange;
4.) Drafts, instruments and securities issued by the Government or any of its instrumentalities;
5.) Certificates of deposit bearing interest; and
6.) Other orders for the payment of any sum of money otherwise than at sight or demand.

Further, this Court's former First Division aptly explained that IBCLs are within the legal definition of "deposit substitutes" under Section 20 (y) of the 1977 NIRC, as amended by PD No. 1959, which provides:

> "Section 20. Definitions. — When used in this Title —
>
> xxx xxx xxx
>
> y) "Deposit substitutes" shall mean 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 promissory notes, repurchase agreements, certificates of assignment or participation and similar instruments with recourse as may be authorized by the Central Bank of the Philippines, for banks and non-bank financial intermediaries or by the Securities and Exchange Commission of the Philippines for commercial, industrial, finance companies and other non-financial companies: ***Provided, however, That only debt instruments issued for interbank call loans to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments.*** " **[Emphasis supplied]**

Significantly, it was in the advent of PD No. 1959, as above-quoted, that the term "deposit substitutes" was inserted and clearly

[22] CTA EB Case No. 114 (CTA Case No. 6557), February 22, 2007.

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defined. Similarly, the term "interbank call loans" was first introduced and mentioned in the proviso thereof which reads:

> *"Provided, however, that only debt instruments issued for* ***interbank call loans*** *to cover deficiency in reserves against deposit liabilities including those between or among banks and quasi-banks shall not be considered as deposit substitute debt instruments*". [Emphasis supplied]

Hence, this Court, in several cases,[23] has consistently ruled that the terms "deposit substitutes debt instruments" and/or "debt instrument used for deposit substitutes" are not included among the objects/instruments mentioned in Section 180 of the 1977 NIRC, as amended by RA No. 7660.

Consequently, considering that IBCLs fall under the term "deposit substitutes" as it is within the ambit of the latter's definition, but are not among the instruments enumerated in Section 180 as quoted earlier, therefore, these are not subject to DST under the aforesaid section.[24] It is a well-settled principle that in order for any tax to be due, there must be a law or legislative enactment that mandates the imposition thereof.[25]

The CIR, however, insists that IBCLs exceeding five (5) days for the taxable year 1997 are considered "Loan Agreements" subject to DST under Section 180 of the 1977 NIRC, as amended by RA No. 7660, and

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[23] See *Prudential Bank v. Bureau of Internal Revenue represented by the Commissioner of Internal Revenue*, CTA Case No. 6396, February 10, 2006; *Banco de Oro Universal Bank v. Commissioner of Internal Revenue*, CTA Case No. 6401, September 19, 2005; *ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue*, CTA Case No. 6187, August 9, 2004.
[24] *Commissioner of Internal Revenue v. SolidBank Corporation (Now: First Metro Investment Corporation*, CTA EB Case No. 114, February 22, 2007 (CTA Case No. 6557).
[25] ***Ibid.***

not "deposit substitutes" because the latter term was deleted from the 1977 Tax Code by RA No. 7660.

The CIR's argument is misplaced.

The relevance of the five (5)-day maturity period distinction on IBCLs came into existence only under Section 22(y) of the 1997 NIRC, which reads:

> "(Y) The term *"deposit substitutes"* shall mean an alternative form of obtaining funds from the public (the term 'public' means borrowing from twenty (20) or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrowers 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 bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: ***Provided, however, That debt instruments issued for interbank call loans with maturity of not more than five (5) days to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-banks, shall not be considered as deposit substitute debt instruments."*** **[Emphasis supplied]**

Considering that the NIRC of 1997 took effect only on January 1, 1998, Sections 22(y) and 180 of the NIRC of 1997 cannot be made to apply retroactively to PNB's IBCLs for the taxable year 1997. It is an elementary rule that a tax law can only have a retroactive application in cases where no right of taxpayer is prejudiced.[26] Consequently,

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[26] *Metropolitan Bank & Trust Co. v. Commissioner of Internal Revenue*, CTA Case No. 6504, October 25, 2006.

PNB's IBCLs, maturing more than 5 days during the taxable year 1997, are not subject to DST.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. The assailed Decision dated March 3, 2009 and Resolution dated July 7, 2009 insofar as the cancellation of the assessment for Documentary Stamp Taxes on PNB's Interbank Call Loans for the taxable year 1997 is concerned, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

(On Leave)
ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice