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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CITYTRUST FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4465

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated :
JUL 19 1995

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DECISION

This is a petition for review filed by Citytrust Finance Corporation seeking the reversal of two assessments issued by respondent Commissioner of Internal Revenue against petitioner Citytrust Finance Corporation for alleged deficiency income taxes and deficiency documentary stamp taxes for taxable year 1981.

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

On November 12, 1982, Petitioner (then called Investor's Finance Corporation [FNCB Finance]) filed its annual income tax return for its fiscal year ending December 20, 1981 (Exhibit E). On February 20, 1987, the Bureau of Internal Revenue issued Assessment Notice Nos. FAS-1-81-87-001750 and FAS-5-81-87-001751 which

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respectively assessed Petitioner deficiency income taxes amounting to P795,859.20 and deficiency documentary stamp taxes amounting to P9,115,154.00 for the taxable year 1981. The amounts assessed were computed as follows:

1981 Deficiency Income Tax

Net Income per return		P5,684,438.00
Add: Disallowances		
Interest expense disallowed	P1,382,000.54	
Taxes and Licenses	39,177.99	1,421,178.53
Net Income per investigation		7,105,616.53
Income Tax due thereon		2,476,966.00
Less: Income tax already assessed		1,979,554.00
Deficiency Income Tax		497,412.00
Add: 20% int. fr. 4-16-82 to 4-15-85 (max)		298,447.20
TOTAL AMOUNT DUE AND COLLECTIBLE		P 795,859.20

1981 - Deficiency Documentary Stamp Tax

A.	Total value of certificate of indebtedness	P2,639,251,046.90	
	Tax due thereon	8,642,566.00	
	Add: Compromise penalty for late payment	P 300.00	P8,642.866.00
B.	Government and private securities sold under repurchase agreements	P 377,589,854.71	
	Tax due thereon	471,988.00	
	Add: Compromise penalty for late payment	P 300.00	472,288.00
	TOTAL AMOUNT DUE AND COLLECTIBLE		P9,115,154.00

(Exhibit G)

Petitioner received copies of the assessment notices on March 5, 1987 (Exhibit H). On April 3, 1987, Petitioner through its Vice President Carlos S. Nocon executed a waiver of its defense of prescription with

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respect to the assessment of deficiency documentary stamp taxes. Thereafter, on April 6 1987, Petitioner filed with the Bureau of Internal Revenue a protest against the assessment notices (Exhibit H), and on April 20, 1987 Petitioner filed a supplemental protest against the assessment for deficiency income tax.

On March 29, 1990, the Bureau of Internal Revenue issued warrants of distraint and levy against Petitioner. Copies of said warrant were served on Petitioner on May 15, 1990 (BIR Records, p. 159). At the same time, warrants of garnishment were issued against Petitioner and served on the President of City Trust Corporation on May 22, 1990 (BIR Records, p. 163).

On June 1, 1990, Petitioner wrote a letter to the Bureau of Internal Revenue manifesting its intention to enter into a compromise agreement with the BIR in respect with the disputed assessment for deficiency documentary stamp taxes, and requesting the BIR to lift the warrants of distraint and garnishment previously issued against Petitioner (BIR Records, pp. 165-166). On June 11, 1990, the BIR Commissioner Jose Ong, acting upon Petitioner's letter-request, issued an order directing the lifting of the warrant of distraint and/or levy issued against Petitioner with respect to the assessment for deficiency documentary stamp taxes (BIR Records, p. 167).

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Meanwhile, on June 14, 1990, Petitioner filed the instant petition questioning the issuance by Respondent of the warrants of distraint and levy against it. Petitioner treated Respondent's action of issuing the questioned warrants as the latter's final decision on its protest. We resolved to give due course to the petition and required respondent Commissioner to file her Answer.

After the issues were joined, Petitioner presented its evidence in support of its petition. Respondent, on the other hand, waived her right to present evidence and manifested that she was submitting this case for decision based on the pleadings. The Court then resolved to direct the parties to submit their respective memorandum but only Petitioner filed its memorandum. For failure of Respondent to submit her memorandum, the Court resolved to consider this case submitted for decision.

Petitioner raises the following arguments in support of its petition, namely:

I

Respondent Commissioner's right to collect the taxes being assessed has already prescribed.

II

Respondent Commissioner erred in disallowing interest expense for the year 1981 without any

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> evidence that said interest expense had been incurred or continued to purchase obligations the interest of which is exempt from taxation.

III

> Respondent Commissioner erred in disallowing deduction of gross receipt taxes for the year 1981 solely on the basis of a business tax return that covered a period shorter than the calendar year.

IV

> Respondent Commissioner erred in assessing deficiency documentary stamp taxes on repurchase agreements.

The instant petition has two components. One component pertains to Petitioner's protest against the assessment of deficiency income taxes against it for the taxable year 1981 amounting to P795,859.20, and the other component pertains to its protest against the assessment for deficiency documentary stamp taxes for the same taxable year amounting to P9,115,154.00.

As to the first component, Petitioner contends that Respondent's right to collect the taxes subject of the disputed assessment has already prescribed. In support of its position, petitioner points to the fact that whereas the notice of assessment was dated February 20, 1987 and was received by Petitioner on March 5, 1987 (Exhibit H), the warrants of distraint and levy were served on Petitioner only on May 15, 1990 (BIR Records, p. 160). In the case of the warrant of garnishment, the

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records show that the same was served on Citytrust Banking Corporation only on May 22, 1990. In both instances, the warrants were served after the lapse of more than three years from Petitioner's receipt of the disputed assessment. Hence, according to the Petitioner, the right of the Respondent to collect has already prescribed.

We find such conclusion devoid of merit as it is contrary to law.

In Revenue Memorandum Circular No. 33-84 Publishing Batas Pambansa Blg. 700 (Amending Section 318 and 319 of the National Internal Revenue Code, as amended, reducing the period of limitation for assessment and collection of Internal Revenue Taxes from five to three years) it was clearly stated in B.P. 700, thus:

> **SEC. 3.** The period of limitation herein prescribed shall apply to assessments of internal revenue taxes beginning taxable year 1984.

which only means that:

> B. *Effectivity of the prescriptive Periods of Assessment and Collection*
>
> 1. Assessment made *on or after April 5, 1984* (date of approval of BP 700) will still be governed by the original five-year period if the taxes assessed thereby cover taxable years prior to January 1, 1984.

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> Corollarily, assessments made *before April 5, 1984* shall still be governed by the original five-year period.
>
> However, assessments made *on or after April 5, 1984* covering taxable years beginning January 1, 1984 shall be under the new three-year period.
>
> 2. As regards collection, the institution of collection remedies either by judicial action or distraint and levy, if begun on or after April 5, 1984, shall still be governed by the five-year period if the taxes being collected are for taxable years prior to January 1, 1984.
>
> The collection of the three-year period shall apply to the collection of taxes for taxable years beginning January 1 1984.

(Revenue Memorandum Circular No. 33-84, supra)

Thus, Petitioner's contention that Respondent's issuance of the warrants for collection of taxes in 1981 has already prescribed is without merit as the prescriptive period is still five years and not three years as wrongly interpreted by the Petitioner.

As regards the disallowance by the Respondent of the interest expense and gross receipt taxes, records show that Petitioner has amply and substantially presented evidence to support its claim that it has paid correctly the corresponding taxes pertaining to its income which effectively shifted the burden to the Respondent for her

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to substantiate her charges. Yet, Respondent failed to substantiate said charges. Instead, her counsel submitted this case for decision without even offering a single evidence but only based on the pleadings and records of the case. Such actuation has already been frowned upon by this Court in the case of **Chartered Bank vs. The Commissioner of Internal Revenue**, CTA Case No. 4496, December 23, 1994, when We said, thusly:

> This is an assessment case, disputed by the petitioner, and it was incumbent upon respondent to prove the legal and factual basis of her assessment. The issue in the case is not merely "legal" as erroneously manifested by respondent. It cannot just rely on the presumption that said tax assessment is valid and correct. That presumption is disputable and in fact has been timely and effectively contested by petitioner. The assessment must be based on actual facts to stand the test of judicial scrutiny (see **Collector of Internal Revenue vs. Benipayo**, 4 SCRA 182). Petitioner has in fact presented substantial evidence that its entire deductions claimed amounting to P177,317,609.00 incurred in the generation of its taxable income and as a consequence of its business operations. It can be stated that the burden of proof has now shifted to the respondent to prove that her contested assessment was based on facts as well as the legal basis upon which such facts may be anchored. We need not cite rulings of the Supreme Court that has laid down the principle that "he who alleges a fact has the burden of proving it." But sad to state, respondent Bureau failed to present any evidence to buttress her disputed tax assessment against the petitioner. She merely made the representation of submitting her case for decision based on the pleadings and the records of the Bureau in this case. Not an iota of evidence was presented to give the Court the

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opportunity to examine and evaluate the "formula" or theory of respondent as to manner by which she arrived at the deficiency tax assessments, notwithstanding the financial records and other evidence submitted by the petitioner of which the corresponding taxes were duly paid. Not even the Revenue Examiner assigned to this case who presumably examined and audited the books of account and other financial records of the petitioner was presented to testify on his examination of the accounts and the report rendered as a result thereof. Without any evidence to look into, the Court is at a loss as to how and in what manner it could evaluate the disputed assessment. It cannot be expected to just delve into the records of the Bureau and search for the factual and legal basis of its assessment. The procedural rule dictate that "evidence not formally offered cannot be considered by the Court unless it has been duly identified by testimony duly recorded and second, it has itself been incorporated in the records of the cases" (**Tabuena vs. Court of Appeals**, 195 SCRA 567).

In fairness to the taxpayer, the failure of counsel for respondent to pin point or present the pertinent evidence on which he relies, does not sit well with this Court. We must also stress that the Court of Tax Appeals, being a court of records is not an administrative body. Although, it is denominated "Court of Tax Appeals," nevertheless, the procedure that is required to be followed is not like that of the Court of Appeals or the Supreme Court. Like the Court of First Instance (now RTC) whose jurisdiction over tax and custom cases this Court has acquired, it is required to conduct a formal trial where the parties must present their evidence accordingly if they desire the Court to take such evidence into consideration in the decision of the case. This Court cannot just decide cases based on the evidence presented before the Bureau of Custom as the Bureau of Internal Revenue, or the latter's Appellate Division without a formal presentation of such evidence. While it is true that Section 8 of Republic Act No. 1125, expressly provides that

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> our proceedings need not be governed strictly by technical rules of evidence, we must on the other hand set a definite rule that only evidence formally presented will be considered in the decision of the case. It is not expected go out of its way and dig into the records of the government agencies whose decisions it reviews to supply the deficiency of the evidence of the parties. That would expose us, much as we do it in good faith, to the charge of trying to favor one side or the other (See **Celestino Co and Co. vs. Collector of Internal Revenue**, CTA Case No. 195, October 14, 1956, G. R. L-8506).
>
> Admittedly, respondent submitted a memorandum to expound its thesis. But a memorandum is not evidence. It is merely a guide to assist the Court to clarify matters already presented before it. It cannot substitute for something that is not there.

Very well said. Thus, We do not intend to depart from the wisdom of said decision.

Anent the second component, this Court has already settled the issue of documentary stamp taxes on commercial papers specifically non-negotiable instruments in a number of decisions the latest of which was in the case of **Bank of America NT & SA, vs. Commissioner of Internal Revenue**, CTA Case No. 4865, June 14, 1995 wherein We ruled, thus:

> 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

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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 <u>before</u> October 15, 1984, <u>it should, therefore, not be liable for documentary stamp tax</u>.

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

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Agents, Inc., vs. Hinabangan, Samar L-18924, June 30, 1964).

As regards the issue of documentary stamp taxes on commercial papers termed as "repurchase agreements", We so hold that they are not taxable as they are not evidences of sale or transfer of credit contrary to the view held by the Respondent. Rather, they are debt instruments evidencing borrowing transactions. In other words, they are considered as deposit substitute instruments.

Section 1 of Article IV of Central Bank Circular No. 742 on "Rules and Regulations Governing Non-Bank Financial Intermediaries Authorized To Perform Quasi-Banking Functions", dated July 10, 1980, enumerated the standard deposit substitute instruments utilized for borrowing, as follows:

> Sec. 1. ***Standard Deposit Substitute Instruments.*** - Only the following types of instruments may be considered by NBQBS (non-bank quasi-banks), as evidence of deposit substitute liabilities in connection with their quasi-banking functions:
>
> a. Promissory Notes;
>
> b. Repurchase Agreements; and
>
> c. Certificates of assignment/repurchases with recourse;

Even the Securities and Exchange Commission considers repurchase agreements as debt instruments as it defines "commercial paper" as an "evidence of

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indebtedness of any Corporation to any person or entity x x x " [Section 2(a) SEC's "New Rules on Registration of Short-Term Commercial Papers (As Amended)".]

In fact, the Tax Code itself recognizes repurchase agreements as debt instruments when it defines "deposit substitute" as:

> (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.... (Underscoring supplied; Section 20(y) NIRC)

Thus, prior to Presidential Decree No. 1959, repurchase agreements were never subject to Documentary Stamp Tax in 1981 under then Section 193 of the Tax Code. It was only in 1984 when P.D. No. 1959 took effect that the Tax Code expanded the coverage of the Documentary Stamp Tax to include "repurchase agreements" by placing all debt instruments used as deposit substitutes under the coverage of Section 193. As amended, then Section 229 (now Section 180) of Tax Code provides, thus:

> "Sec. 229. *Stamp Tax on promissory notes, bills of exchange, drafts, certificates of deposit, debt instruments used for deposit substitutes and others not payable on sight or demand.* -- On all bills of exchange (between

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> points within the Philippines), drafts, or certificates of deposits, debt instruments used for deposit substitutes or orders for the payment of any sum of money otherwise than at sight or on demand, 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 twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, debt instrument or note."

Accordingly, it was only in 1984 that "repurchase agreements" were subjected to tax and not prior thereto. Well-settled is the rule that when the law is not clear as to their taxability, the same should be construed against the Government since tax laws impose special burdens.

Lastly, instead of substantiating Respondent's contention that Petitioner is liable for documentary stamp tax on repurchase agreements through presentation of evidences (documentary or otherwise), she opted to present her case based on the records and pleadings without even offering the same which in the above discussion, such actuation has already been frowned upon and therefore cannot be tolerated by this Court.

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 and documentary stamp taxes.

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SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Associate Judge

RAMON O. DE VEYRA
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

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