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REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ASSOCIATED BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4673

Promulgated:
NOV 20 1996

x - x

DECISION

This is a petition for review praying for the cancellation of the assessment made by respondent on petitioner's alleged tax liabilities for the year 1995 in the total amount of P19,527,508.98.

Petitioner (now known as Westmont Bank) is a domestic corporation engaged in the general banking business and organized and existing under and by virtue of Philippine laws.

In a letter dated January 16, 1989, respondent assessed petitioner for tax liabilities in the total sum of P30,170,336.87 for the year 1985, detailed as follows:

Deficiency Withholding Tax on Savings and Time Deposits	P12,873,395.05
Deficiency Withholding Tax on Deposit Substitutes	9,495,800.21
Deficiency Gross Receipts Tax	4,217,692.61
Deficiency Documentary Stamps Tax	3,583,449.00
TOTAL	P30,170,336.87

As a consequence of the aforementioned assessment, respondent issued a warrant of garnishment against petitioner which was shortly lifted by the advance payment made by petitioner in the sum of P10,000,000.00 evidenced by CB Confirmation Receipt (Exhibits C to C-2) and BIR Payment Order dated April 11, 1990 (Exhibits D to D-2).

Petitioner also made known its objections to the assessment issued, in a protest letter dated July 9, 1990. This protest letter accompanied by documents in support of petitioner's position, paved the way for the issuance of a modified deficiency assessment, dated October 15, 1991, in the reduced sum of P19,527,508.98. This revised assessment which was received by the petitioner on November 6, 1991 served as a formal demand for payment of the tax and the final decision of the Commissioner on the protest filed by petitioner. The details of which are summarized below:

<u>Deficiency Withholding Tax on Savings and Time Deposits</u> -

Deficiency Withholding Tax	P 2,585,104.50
25% Surcharge	646,276.13
20% Interest per annum	1,551,062.70
Compromise penalty	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 4,782,743.33

Deficiency Withholding Tax on Interest on Deposit Substitutes -

Deficiency Withholding Tax	P 5,150,117.75
25% Surcharge	1,287,529.44
20% Interest per annum	3,090,070.65
Compromise penalty	300.00
T O T A L	P 9,528,017.84
Less: Net of the Partial Payment	2,584,093.80
TOTAL AMOUNT STILL DUE AND COLLECTIBLE	P 6,943,924.04

Deficiency Gross Receipts Tax -

Basic Deficiency Gross Receipts Tax	P 3,373,914.09
25% Surcharge	843,478.52
Compromise penalty	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 4,217,692.61

Deficiency Documentary Stamps Tax -

Basic Deficiency Doc. Stamps Tax	P 3,583,149.00
Compromise penalty	300.00
TOTAL AMOUNT DUE AND COLLECTIBLE	P 3,583,149.00
T O T A L	P19,527,508.98

Hence, petitioner, still unsatisfied with the revised assessment, elevated its case to this Court in a petition for review filed on November 29, 1991 seeking for the cancellation of the assessment on the ground that it is bereft of legal and factual bases.

For purposes of clarity, we find it apt to discuss the different alleged tax liabilities of the petitioner and their concomitant issues individually.

GROSS RECEIPTS TAX (GRT)

Petitioner contends that the deficiency assessment on its GRT liability for 1985 in the amount of P4,217,692.61 is erroneous because in computing the tax base upon which the GRT was imposed, the revenue examiners included the gross amount it received from its trading and foreign exchange transactions without deducting the losses incurred in subsequent transactions. It is the theory of the petitioner that Section 260 (a)(c) of the 1985 Tax Code imposing GRT on "royalties, rentals of property, real or personal, profits from exchange, and all other items treated as gross income under Section 29 of this Code" should be construed to mean net of deductions because the law speaks of "profits" (income net of deduction), not gross receipts. As a result, petitioner insists that the GRT due for 1985 is only P593,379.93 and not P4,217,692.62 (see Comparative Computation of petitioner's GRT deficiency for 1985, page 761 of the BIR records). Petitioner further maintains that its GRT liability of P593,379.93 should be credited against the P10,000,000.00 advance payment it made earlier as a condition for the lifting of the Warrant of Garnishment.

In addition to the above arguments raised by the petitioner with respect to its GRT liability, it also made mention that contrary to the claim of respondent, certain items of income received during 1985 were included as part of its gross receipts as evidenced by its Income Statement for the year 1985 (Exhibit "L"), enumerated as follows:

Trust Department Income	P 1,625,001.00
Safety Deposit Box Rental	163,305.00
Bank Premises and Equipment Rental	1,900,458.00
Income from Assets Acquired	1,109,830.00
Miscellaneous Income	8,409,138.00
Total	P13,207,732.00*

*Erroneously computed by petitioner as P12,086,992.00 in its memorandum.

Respondent, in her Answer, disagreed with petitioner's contention and declared that the 5% GRT is due from the moment an income is received computed on the basis of the gross amount received undiminished by deductions of losses incurred by the petitioner in subsequent transactions. She added that the term "gross receipts" is interpreted as the whole amount received without any deductions, otherwise it will be considered as net receipts.

The contention of the petitioner that the gross receipts as the basis of the GRT, should be computed net of losses incurred in subsequent transactions, goes against the very definition of the term "gross receipts" contemplated in Section 119 of the 1995 Tax Code. Section 119 of the Tax Code is quoted hereunder, thus:

SEC. 119. ***Tax on banks and non-bank financial intermediaries.*** - There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived.

Short-term maturity - not in excess of two (2) years	5%
Medium-term maturity - over two (2) years but not exceeding four (4) years	3%
Long-term maturity -	
(i) over four (4) years but not exceeding seven (7) years	1%
(ii) over seven (7) years	0%
(b) On dividends	0%
(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 28 of this Code	5%

Provided, however, That in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financial activities. (as amended by Pres. Decree No. 1734.)

The term "gross receipts" means the total amount as determined under the taxpayer's method of accounting received from all trades or businesses carried on by the taxpayer (Mertens Law of Federal Income Taxation; vol. 2, 16.44). The decision in the case entitled **National City Bank of New York vs. CIR, BTA Case No. 52, July 12, 1952** defined gross receipts as the "whole amount received without deductions, otherwise it will be considered as net receipts".

Petitioner would like Us to believe that the gross receipts as it pertains to "profits from exchange" means net receipts, thus should be computed net of deductions. In proposing such an argument, petitioner failed to distinguish between an income tax and gross receipts tax. In the imposition of income tax, the law specifically allows certain items to be deducted resulting in the net taxable income which will then be the basis of the income tax. The gross receipts tax provided for in Section 119 of the Tax Code does not allow deductions other than the capital invested because such tax is based on the income actually received by the taxpayer. Section 4 of the Revenue Regulations No. 12-80 provides for the following, thus:

> (e) *Gross receipts tax on banks, non-bank financial intermediaries, financing companies, and other non-bank financial intermediaries not*

> *performing quasi-banking activities.* - The rates of taxes to be imposed on the gross receipts of such financial institutions shall be based on all items of income actually received. Mere accrual shall not be considered, but once payment is received on such accrual or in cases of prepayment, then, the amount actually received shall be included in the tax base of such financial institutions, as provided hereunder. (Underscoring supplied)
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> xxx xxx xxx

Petitioner even cited the same National City Bank of New York case (BTA Case No. 52) to support its position because in this case, the capital was excluded from the computation of the taxpayer's gross receipts. The major flaw in petitioner's arguments is that the losses from subsequent transactions cannot be categorized as capital as enunciated in the recent case decided by this Court entitled "**Rizal Commercial Banking Corporation vs. Comm. of Int. Revenue, CTA Case No. 4672 dated February 12, 1996, thus:**

> Gross receipts "means all the receipts arising from or growing out of the employment of the corporation's capital in its designated business or otherwise." (State vs. Central Trust Co., 67 A. 267, 271, 106 Md. 268, cited in Words and Phrases 18, p. 769)
>
> Gross receipts is synonymous with gross earnings "which mean entire receipts without deduction for any expenditure, or any cost of operation, or other expense or cost of service." (Acts 1933, pp. 204, 207, 2, 8. Forth Smith Gas Co. vs. Wiseman, 74 S.W. 2d 789, 792, 189 Ark. 675; Ibid.) (Underscoring supplied)

> Based on the first definition, GRT is a tax on gross receipts less capital. Its tax base allows no other deductions like cost of operation or service pursuant to the second definition.
>
> Trading loss of herein petitioner is not capital and hence, not excludable from its gross receipts. It is a cost of operation or service which may be allowed as a deduction from gross income pursuant to Section 29 of the Tax Code. Respondent is therefore, correct in disallowing the claimed deduction of petitioner for trading loss. (Underscoring supplied)

With respect to the other issue involving its GRT liability, petitioner disputes the inclusion of the amount of P12,086,992.00 in the computation of its gross receipts for 1985. In its amended petitioner for review, petitioner claims that such amount corresponding to various kinds of income already formed part of its gross receipts for 1985, therefore the revenue examiners in assessing their GRT liability for the same period should not have added this amount in their computation.

We sustain the argument of the petitioner in this regard because the evidence presented has convinced Us that the amount of P12,086,992.00 was erroneously included by the revenue examiners in their computation of the gross receipts which served as the basis for the imposition of GRT. In making such a conclusion, We placed great weight on the fact that respondent did not contravene the evidence presented by the petitioner nor did she present any objections or propose contrary arguments to this particular issue raised by the petitioner.

DOCUMENTARY STAMP TAX (DST)

Petitioner manifested its objection to the assessed amount of P3,583,449.00 representing its DST liability for 1985 by declaring that this specific assessment corresponds to documents denominated as an "interbank loan transfer advice ticket" or more commonly known as a "call slip" which respondent misconstrued as a promissory note subject to DST under Section 229 of the 1985 Tax Code. Petitioner explains that these "call slips" serve as evidence of overnight lendings or borrowings between and among banks for the purpose of maintaining a minimum reserve against their deposit substitute liabilities. As claimed by the petitioner, these loan arrangements are requirements of the Central Bank in order for these banks to maintain a daily minimum percentage in reserves in the Central Bank against its deposit liabilities. Petitioner insists that a call slip on its face, does not qualify as a promissory note as this term is defined by Section 40 of Revenue Regulations No. 26, known as the DST Regulations, primarily because a call slip does not contain the following features peculiar to a promissory note, thus:

1) there is an unconditional promise by one person;

2) to pay a sum certain in money on demand or determinable future time;

3) to that other person, or to order, or to bearer.

In support of its theory, petitioner presented a photocopy of an interbank loan advice transfer ticket (Exhibit "E") as evidence to show that it is not a promissory note as erroneously identified by the respondent.

Respondent belittles the line of defense of petitioner and insists that the investigation showed that these call slips described by the petitioner are in reality promissory notes subject to DST under Section 180 and 181 (formerly Section 220 and 221) of the Tax Code. The same investigation, as claimed by the respondent, also revealed that the petitioner's interbank loan in the amount of P2,742,500,870.44 during 1985 was not a legitimate interbank loan, hence, it should be subject to documentary stamp tax.

A close scrutiny of the so-called call slip or interbank loan advice transfer ticket presented as Exhibit "E" convinces this Court that such a document is not a promissory note. it is merely an advice given by petitioner bank to the Central Bank requesting the latter to debit a certain sum from their deposit and to credit the same to the debtor bank. This call slip also contains information with respect to the rate of interest of the loan and its date of maturity.

We agree with the petitioner that this particular document called an interbank loan advice transfer ticket is not a promissory note because it lacks the basic features that should qualify it as one. We however believe that the presentation of only one interbank loan advice transfer ticket in the amount of P35,000,000.00 is not sufficient to destroy the presumption of the correctness of the assessment for documentary stamp tax in the total sum of P3,583,449.00. The issue that petitioner would like us to address is whether or not a call slip as shown by Exhibit "E" can be classified as a promissory note. Having concluded that it is not a promissory note, we are now confronted with the more pressing issue of whether or not the assessed amount of DST in the sum of P3,583,449.00 really corresponds to loans evidenced by mere call slips which were mistakenly identified as promissory notes by the revenue examiners. A single call slip presented as evidence is not sufficient to sway the presumption away from the taxing authority to favor the petitioner, especially so when the amount reflected therein is only P35,000,000.00. If it is true that the assessment for DST was due to respondent's insistence on treating these call slips as promissory notes, then it is incumbent upon the petitioner to show this Court by sufficient evidence the total amount of interbank loans corresponding to the assessed amount of P3,583,449.00. Based on this single piece of evidence, this Court can only deduct the amount of documentary stamp tax which corresponds to the sum of P35,000,000.00 indicated in the document presented as exhibit "E". What remains of the amount after the deduction shall subsist because in the face of the insufficiency of the evidence presented by the petitioner, the presumption of the correctness of the assessment shall prevail. In the case entitled Sy Po vs. **Court of Tax Appeals, 164 SCRA 524,** the Supreme Court declared:

> "Tax Assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed."

WITHHOLDING TAX ON INTEREST ON DEPOSIT SUBSTITUTES

Petitioner alleges that the deficiency withholding tax on interest on deposit substitutes in the amount of P9,442,165.38, which was the basis of the assessment, was in fact already paid by the Development Bank of the

Philippines (DBP). The withholding tax in dispute arose from the petitioner's payment of interest on a syndicated loan agreement it had entered into with the DBP. In accordance with such an agreement, petitioner claims that it was DBP as creditor who undertook the payment of the withholding tax due on the interest income it received. Such payments are evidenced by a certification issued by DBP dated June 8, 1990 to show that withholding taxes were remitted to the BIR (Exhibit "M"). Petitioner also presented CB Confirmation Receipts to show payment of withholding taxes by DBP. Petitioner concedes that as debtor, it is constituted by law as the withholding agent of the government, however, since its creditor DBP already paid the taxes by virtue of their agreement, then the issue of payment becomes moot and academic.

Respondent does not subscribe to the above proposition because the failure of the petitioner as debtor to withhold the tax on interest income it paid to its creditor DBP, was in violation of the Withholding Tax Regulations, hence, the payment made by DBP is not binding upon her office. It added that DBP being the recipient of interest income is not mandated by law to withhold the taxes.

Respondent's stand on this issue is bereft of merit. The fact that DBP as creditor withheld and remitted the taxes due on the interest income it received already amounts to a satisfaction of the tax obligation imposed by law on such an income. Respondent, in holding the view that payments made by a party not mandated by law to be the withholding agent are null and void, fails to see the law on withholding taxes in a broader perspective. Petitioner is correct when it declared that the withholding tax system was formulated to ensure the proper collection of taxes, thus the payment of the proper taxes made by either the creditor or the debtor satisfies the purpose of the government. In the instant case, petitioner presented as evidence, a certification issued by DBP to the effect that withholding taxes corresponding to its interest income for 1985 were paid and duly remitted to the BIR (Exhibit "M"). Petitioner also presented CB Confirmation Receipts and BIR Payment orders evidencing payments made.

In summary, we hereby uphold the payments made by DBP and consider the 1985 assessment on withholding taxes on interest on deposit substitutes cancelled.

WITHHOLDING TAX ON SAVINGS AND TIME DEPOSITS

Petitioner expressed its willingness to pay the assessed amount corresponding to the withholding tax on savings and time deposits but insisted that such payment should just be credited against the P10,000,000.00 advance payment it made on April 11, 1990.

Respondent, on the other hand, claims that the advance payment of P10,000,000.00 referred to by petitioner was already applied for the payment of petitioner's 1980 tax liabilities in the amount of P7,415,906.20 and the remaining balance of P2,584,093.00 was applied to the partial payment of petitioner's unpaid withholding tax on interest on deposit substitutes for 1985 resulting in the presently reduced assessed amount embodied in the revised assessment mentioned earlier. In effect, respondent is saying that the sum of P10,000,000.00 advanced by the petitioner has already been utilized and thus can no longer be a source of funds for the petitioner in paying its tax liabilities for 1985. Petitioner disputed this allegation made by respondent because the P10 million advance payment made was never really applied to its 1980 tax liabilities which to this date remains subsisting. Petitioner made the added allegation that the right of the respondent to collect its 1980 tax liabilities had already prescribed. We believe that the payment of the P10,000,000.00 made by petitioner on April 11, 1990 should be utilized to satisfy petitioner's tax liabilities for 1985, which is the subject of the instant petition. Records reveal that the payment of P10,000,000.00 was made in fulfillment of the condition for the lifting of the Warrant of Garnishment issued as a consequence of the 1985 tax assessment. Such payment is in the nature of a bond that would answer for the tax liabilities in case the assessment is found to be valid, hence it cannot be utilized to satisfy a previous tax assessment at the whim of the respondent.

Hereunder is a summary of petitioner's tax liabilities for 1985:

Deficiency Gross Receipts Tax

Gross receipts per BIR computation	P376,664,150.00
Less: Other income already reflected in petitioner's financial statements	12,086,992.00
Gross receipts per Court computation	P364,577,158.00

Tax Due:

Remaining Maturity	Gross Receipts	Tax Rate	
not over 2 years	P311,791,639.90	5%	P15,589,581.99
not over 4 years	6,579,104.67	3%	197,373.14
not over 7 years	37,035,300.96	1%	370,353.01
over 7 years	9,171,112.63	0%	-
TOTAL			P16,157,308.14
Less: Payments made			13,387,743.65
Basic deficiency, gross receipts tax			P 2,769,564.49
Add: 25% surcharge			692,391.12
Deficiency gross receipts tax			P 3,461,955.61

Deficiency Documentary Stamp Tax

Basic deficiency documentary stamp tax	P 3,583,149.00
Less: DST on Interbank loan advice transfer inset (Exhibit E) P35,000,000.00/200 x 0.20	35,000.00
Deficiency Documentary Stamp Tax Due	P 3,548,149.00

Deficiency Withholding Tax on Savings and Time Deposits

Deficiency withholding tax	P 2,585,104.50
25% Surcharge	646,276.13
20% Interest per annum	1,551,062.70
TOTAL AMOUNT DUE AND COLLECTIBLE	P 4,782,443.33

WHEREFORE, in view of the foregoing, petitioner is hereby **ORDERED** to **PAY** Gross Receipts Tax in the amount of P3,461,955.61 inclusive of the 25% surcharge. Petitioner is likewise **ORDERED** to **PAY** Documentary Stamps Tax in the amount of P3,548,149.00 and withholding tax on Savings and Time Deposits in the amount of P4,782,443.33 inclusive of the 25% surcharge and 20% interest.

The 1985 assessment for the withholding tax on interest on deposit substitutes is hereby **CANCELLED** for lack of merit.

Respondent is hereby ordered to utilize the P10,000,000.00 advance payment made to partially satisfy the above-mentioned tax liabilities of the petitioner for 1985.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

I hereby certify that this decision was reached after due consultation with 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