REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ING BANK N.V. MANILA BRANCH,
Petitioner,

- versus -

C.T.A. CASE NO. 6187

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 09 2004
[signature]

x - x

DECISION

This Petition for Review seeks for the cancellation of the thirteen (13) deficiency tax assessments issued by respondent against herein petitioner in the total amount of P672,576,939.18 (originally in the amount of P672,652,691.65) allegedly representing deficiency income tax, withholding tax on compensation, onshore tax, branch profit remittance tax, documentary stamp tax, compromise penalty and final tax, for the calendar years 1996 and 1997.

Petitioner ING Bank N.V. Manila Branch is the Philippine branch of Internationale Nederlanden Bank N.V., a foreign banking corporation incorporated in the Netherlands. It is duly authorized by the Bangko Sentral ng Pilipinas to operate as a branch with full banking authority in the Philippines with principal office address at 20th Floor, Tower I, Ayala Triangle, Ayala Avenue, Makati City.

447

For the calendar year 1996, petitioner simultaneously filed on April 14, 1997, its Corporation Annual Income Tax Returns for Offshore Banking Unit, Foreign Currency Deposit Unit and Regular Banking Unit *(paragraphs 5, 6 and 7, Joint Stipulation of Facts and Issues).* Likewise, for calendar year 1997, petitioner filed its Corporation Annual Income Tax Returns for its Foreign Currency Deposit Unit and Regular Banking Unit on April 15, 1998 *(paragraphs 8 and 9, Joint Stipulation of Facts and Issues).*

On January 3, 2000, petitioner received a Final Assessment Notice (FAN) with the Details of Assessment and thirteen (13) Assessment Notices, all dated December 3, 1999, issued by the Enforcement Service of the Bureau of Internal Revenue through its Assistant Commissioner Percival T. Salazar *(Exhibits A, A-1 to A-14),* covering the following deficiency tax assessments:

Particulars	Basic Tax	Surcharge	Interest	Total
Deficiency Income Tax				
1996 (ST-INC-96-0174-99)	P 20,916,785.03		P 11,346,639.55	P 32,263,424.58
1997 (ST-INC-97-0185-99)	133,533,114.54		45,730,518.68	179,263,633.22
Deficiency Withholding Tax on Compensation				
1996 (ST-WC-96-0175-99)	1,027,267.20		602,288.17	1,629,555.37
1997 (ST-WC-97-0184-99)	2,505,925.25		968,042.36	3,473,967.61
Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	8,267,437.54		4,847,209.95	13,114,647.49
Deficiency Branch Profit Remittance Tax				
1996 (ST-RT-96-0177-99)	39,215,700.00		22,992,218.63	62,207,918.63
1997 (ST-RT-97-0182-99)	92,587,381.60	P 6,729,180.18	40,799,690.39	140,116,252.17
Deficiency Documentary Stamp Tax				
1996 (ST-DST-96-0178-99)	3,838,753.06	959,688.27		4,798,441.33
1997 (ST-DST-97-0181-99)	1,569,990.18	392,497.55		1,962,487.73
1997(ST-DST-97-0180-99)	186,997,288.84	46,749,322.21		233,746,611.05
Compromise Penalty				
1996 (ST-CP-96-0179-99)	1,000.00			1,000.00
1997 (ST-CP-97-0186-99)	1,000.00			1,000.00
Deficiency Final Tax				
1997 (ST-FT-97-0183-99)	53,200.89		20,551.58	73,752.47
TOTALS	P490,514,844.13	P54,830,688.21	P 127,307,159.31	P 672,652,691.65

448

On February 2, 2000, petitioner paid the deficiency assessments for 1996 compromise penalties, 1997 deficiency documentary stamp tax and 1997 deficiency final tax in the respective amounts of P1,000.00, P1,000.00 and P75,013.25[1] *(paragraph 1, Joint Stipulation of Facts and Issues).* However, petitioner protested the remaining ten (10) deficiency tax assessments in the total amount of P672,576,939.18 on the same date *(Annex E, Petition for Review).*

On March 31, 2000, petitioner submitted documentary evidence in support of its protest pursuant to Section 228 of the National Internal Revenue Code of 1997 *(paragraph 4, Facts, Joint Stipulation of Facts and Issues).*

On October 26, 2000, within thirty days from the lapse of 180-day period given to respondent to decide on the protest, reckoned from March 31, 2000, the day when petitioner submitted its supporting documents with the respondent, petitioner filed the instant petition for review.

The jointly stipulated issues to be resolved by the court are the following:

1. Whether or not the amounts of P109,392,349.95 and P385,864,274.39 representing Interest Expense reimbursement paid to Head Office and other ING Branches for deposit and borrowed funds, are deductible from petitioner's gross income in taxable years 1996 and 1997, respectively, for income tax purposes;

2. Whether or not the assessment of deficiency withholding tax on compensation for taxable years 1996 and 1997 is proper;

3. Whether or not petitioner can be held liable for deficiency onshore tax in taxable year 1996;

---

[1] Originally in the amount of P73,752.47 but was increased to P75,013.25 due to additional interest.

449

4. Whether or not the remittances of branch profits in taxable years 1996 and 1997, respectively, are subject to branch profits remittance tax;

5. Whether or not the Special Savings Account (SSA) deposits are subject to DST under Section 180 of the Tax Code;

6. Whether or not Interbank Call Loans (IBCLs) with tenors exceeding five days are subject to DST under Section 180 of the Tax Code; and

7. Whether or not the assessments for alleged deficiency taxes for taxable years 1996 and 1997 conform with the requirements set forth under Section 228 of the 1997 Tax Code.

We shall tackle first the seventh issue, inasmuch as the resolution thereof would determine the necessity of discussing some of the issues posed by the parties.

Petitioner averred that some of the present assessments do not conform with the requirements of Section 228 of the National Internal Revenue Code of 1997, particularly, the Pre-assessment Notice dated September 22, 1999 *(Exhibit 2)* which allegedly does not include any findings with respect to the 1996 deficiency assessments for withholding tax on compensation and branch profit remittance tax and the 1997 deficiency documentary stamp tax on petitioner's interbank call loans exceeding five days. It further complained that the Final Assessment Notice dated December 3, 1999 failed to state the law and the facts upon which the deficiency assessments for documentary stamp tax and special savings account and interbank call loans were based *(Exhibit A)*. Hence, the aforesaid deficiency assessments are considered void.

Respondent, on the other hand, asserted that petitioner was informed of the law and the facts from which the assessments were based. This is evident in its protest letter dated February 1, 2000 *(Annex E, Petition for Review)* wherein petitioner was able to

450

dispute the remaining ten (10) deficiency tax assessments individually which included the foregoing questioned assessments.

We find the arguments of respondent meritorious.

After a careful scrutiny of the records of the case, we noted that the procedures prescribed by law and its implementing rules and regulations were substantially followed by the respondent.

Section 228 of the National Internal Revenue Code of 1997 partly provides:

> SEC. 228. *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:
>
> xxx xxx xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

In consonance with the above provisions of law, respondent issued RMO No. 62-99 entitled the "Prescribed Procedures in the Review and Reporting of Cases; Preparation, Approval and Release of Pre-assessment Notices, Assessment Notices and Demand Letters; and the Preparation of BIR Form No. 40, for All Cases under the Enforcement Service Including Special Teams". Pertinent portions of which read as follows:

> 3. PROCEDURES
>
> 3.1 Reports of Investigation
>
> 3.1.1 Upon termination of audit, a Conference Letter signed by the Assistant Commissioner (ACIR) of Enforcement

451

Service or the Division Chief of the investigating office concerned shall be issued to the taxpayer inviting him/her for a conference thereby giving him/her the chance to know the nature of the findings and to refute the same. Should the taxpayer needs more time to study and consolidate his position or gather documentary evidences to substantiate his claim, a second conference may be granted.

3.1.2 After due consideration of the taxpayer's explanations or of the documents submitted during the conference, the revenue officer concerned shall submit a report of investigation which shall include a duly accomplished "Revenue Officer's Audit Report (BIR Form 1717 or 0500 Series)". The audit report shall include the basic reporting requirements prescribed under applicable audit manuals and other regulations.

3.1.3 If, after the conference, the taxpayer is agreeable to the audit findings or some items in the audit findings, he shall be required to execute an Agreement Form specifying the kind of tax, the nature of findings and the amount involved. An Authority to Accept Payment (ATAP) shall then be issued by the ACIR, Enforcement Service to cover the payment. For taxpayers under computerized District Offices, Payment Order Form 0605 shall be used in lieu of ATAP.

3.1.4 A copy of the receipt of payment and agreement form shall form part of the docket of the case.

3.1.5 In case the taxpayer fails to appear during the conference, a report of investigation shall be prepared at once for submission to immediate supervisor within 15 days from failure of the taxpayer to appear, unless the ACIR for Enforcement or the Division Chief concerned agreed, upon request of taxpayer, to extend the conference period.

3.2 Review and Approval of Reports and Service of Pre-Assessment Notices

3.2.1 All reports of investigation shall be reviewed by the Enforcement Service subject to final approval by the Office of the Commissioner.

452

3.2.2 The Enforcement Service, after having reviewed the report of investigation, **shall** send a pre-assessment notice to the taxpayer, indicating therein the factual and legal basis of the assessment, and a definite time frame (15 days from receipt) within which he may protest the same, if he is not agreeable. The "Revenue Officer's Audit Report (BIR Form 1717 or 0500)" prepared by the investigating officer, as reviewed and corrected by the Enforcement Service, shall be the basis of the pre-assessment notice.

3.2.3 If the taxpayer files his protest within 15 days from receipt of the pre-assessment notice, the same reviewing office shall likewise decide whether the protest conforms with the existing requirements and whether or not to give due course to the protest. The reviewing office shall then act on the protest following guidelines under 2.4 of this Order and inform the taxpayer in writing of the result of his protest and the actions taken.

3.2.4 If the pre-assessment notice is not protested within the prescribed period, the reviewing office shall then forward the report of investigation to the Office of the Commissioner for final review and approval.

3.2.5 After final review and approval of the report, the Office of the Commissioner shall forward the docket of the case to the Enforcement Service for issuance of a letter of demand and assessment notice.

3.2.6 No report shall be considered approved unless all questions of the reviewing offices have been resolved by the investigating officer and agreed to by the reviewing offices. The reviewing office (Enforcement Service/CIR Office) shall return the docket to the investigating officer for inclusion in the report any findings/corrections made during the review.

3.3 Preparation of Demand Letters and Assessment Notices

3.3.1 All letters of demand and assessment notices shall be prepared, approved and issued by the Enforcement Service stating completely the facts and the law, jurisprudence, rules and regulations on which said assessment is based.

453

3.3.2 Demand letters and assessment notices shall be based on the "Revenue Officer's Audit Report (BIR Form 1717/0500)" as reviewed by the Enforcement Service and approved by the Office of the Commissioner.

Contrary to its position, records show that petitioner was given an opportunity to controvert the initial findings of the examiners as evidenced by the Pre-Assessment Notice (PAN) issued by the respondent on September 22, 1999 *(Exhibit 2, pages 1655 to 1665, BIR records)* which was received by petitioner on October 7, 1999. In the said letter, petitioner was asked to communicate with the Assistant Commissioner of Enforcement Service to clarify the issues arising from the tax investigation for years 1996 and 1997. Despite the invitation, petitioner protested the said pre-assessment notice in a letter dated October 21, 1999 posing explanations to negate the factual and legal bases of respondent's initial findings *(pages 1969 to 1983, BIR records)*. This court even noted that the same arguments stated in the protest letter to the PAN were adopted by petitioner in its protest letter to the Final Assessment Notice issued by the respondent.

Had it not been informed of the law and the facts upon which the assessments were based, it could not have interposed any written objection or comment thereon. Moreover, the computations attached to the pre-assessment notice and to the final assessment notice clearly show the specific provisions of law on which the assessments were based and the facts on how the amounts of the questioned deficiency taxes were arrived at *(pages 1655 to 1664, BIR records)*. Therefore, petitioner's defense that the procedures under the law have not been observed by the respondent has no leg to stand

454

on. As can be gleaned from the records, respondent substantially complied with the mandate of the law in issuing the subject deficiency tax assessments.

It bears stressing that the purpose of Section 228 of the National Internal Revenue Code of 1997 that "(T)he taxpayer be informed of the law and facts on which assessment is made" is to give the taxpayer the opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s) ***(Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5930, April 4, 2002).*** The purpose of the said law having been served in the instant case, Section 228 of the National Internal Revenue Code of 1997 is deemed to have been complied with. The assessments for 1996 deficiency withholding tax on compensation and branch profit remittance tax as well as the 1997 deficiency documentary stamp tax on petitioner's interbank call loans exceeding five days are valid.

We now proceed to the merits of the disputed assessments.

1. DEFICIENCY INCOME TAX

The assessments for deficiency income taxes for 1996 and 1997 were arrived at after the interest expense (incorporated in the account of Due to Head Office and Other Branches) in the respective amounts of P109,392,349.95 and P385,864,274.39 were disallowed by the respondent. The computation of the 1996 and 1997 deficiency income taxes are as follows:

	1 9 9 6	1 9 9 7
	ST-IC-96-0174-99	ST-IC-97-185-99
Net Income/(Loss) per ITR-RBU	P (49,630,107.00)	P (4,341,090.00)
Adjustment:		
Interest Expense-reimbursement paid to Head Office of the other		

455

branches funding cost [Sec.29(b)]	109,392,349.95	385,864,274.39
Net Income/(Loss) as adjusted	P 59,762,242.95	P 381,523,184.39
Rate of Tax	0.35	0.35
Tax Due	P 20,916,785.03	P 133,533,114.54
Less: Tax Paid per Return	-	-
Basic Tax Due	P 20,916,785.03	P 133,533,114.54
Interest (Sec. 249)	11,346,639.55	45,730,518.68
Income Tax Deficiency	P 32,263,424.58	P 179,263,633.22

Petitioner argued that the interest expenses disallowed by the respondent represent interest payments on the deposits of and borrowings from the Head Office and other ING branches. Petitioner claimed that the said interest payments were deductible expenses for income tax purposes pursuant to paragraphs three (3) and four (4) of Article 7 of the RP-Netherlands Tax Treaty. To quote:

Article 7

Business Profits

1. The profits of an enterprise of one of the States shall be taxable only in that State unless the enterprise carries on business in the other State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

xxx xxx xxx

3) In the **determination of the profits of a permanent establishment**, there shall be **allowed as deductions** expenses which are incurred for the purposes of the permanent establishment including executive and administrative expenses so incurred, whether in the State in which the permanent establishment is situated or elsewhere.

4) In the application of paragraph 3, no deduction shall be allowed in respect of amounts charged – otherwise than with respect to expenses actually incurred – by the head office of the enterprise or any of its other offices to the permanent establishment, by way of royalties, fees or other similar payments in return for the use of patents or other rights, or by way of commission, for specific services performed or for management, or, **except in the case of a banking enterprise, by way**

456

> **of interest on moneys made available to the *permanent establishment*.** Likewise, no account shall be taken, in the determination of the profits of a permanent establishment, for such amounts charged – otherwise than with respect to expenses actually incurred – by the permanent establishment to the head office of the enterprise or any of its offices. *(Emphasis supplied).*

Article 5 of the treaty defines permanent establishment as:

Article 5
Permanent Establishment

1) For the purpose of this Convention, the term "permanent establishment" means a fixed place of business in which the business of the enterprise is wholly or partly carried on.

2) The term "**permanent establishment" includes** especially:

a) a place of management;
b) a branch;

xxx xxx xxx

Respondent, for his part, opined that the account "Due to Head Office and Other Branches" is part of the capital account of foreign branches. The alleged interbank borrowings cannot be considered as loans because the borrower (petitioner) and the lenders (ING, head office and other branches) are but single entity. The payments made by petitioner to Head Office and other branches are mere reimbursements of funding cost and are not within the meaning of interest deductible under Section 29(b) of the National Internal Revenue Code of 1993.

We agree with the respondent that the account "Due to Head Office and Other Branches" is a real account. It is reflected in the 1996 and 1997 audited Statement of Assets and Liabilities *(Exhibits I, GG and MM)* as liability account. This account is used

457

to monitor charges or expenses made by the head office and other branches to petitioner as a permanent establishment in the Philippines.

This court, however, observed that the real issue is the disallowance of 1996 and 1997 interest expenses in the respective amounts of P109,392,349.95 and P385,864,274.39 which according to respondent were actually reimbursements of other branches' funding costs. Respondent is of the opinion that these expenses are not deductible against petitioner's gross income but should form part of the capital account "Due to Head Office and Other Branches" *(pages 487 and 1003, BIR records)*.

Petitioner, on the other hand, explained that the said amounts were interest payments on the deposits and borrowings from the Head Office and other ING branches deductible against business profits pursuant to the afore-quoted paragraphs 3 and 4 of Article 7 of the RP-Netherlands Tax Treaty. They were reported under the account "Due to Head Office and Other Branches".

We find both explanations of the parties valid, but in a different perspective.

Both parties are correct that the account "Due to Head Office and Other Branches" is a real account or a balance sheet account.

What should be settled in the instant case is the correctness of the disallowance of the 1996 and 1997 interest expenses made by the respondent.

A careful reading of the afore-quoted applicable provisions of the RP-Netherlands Tax Treaty would show that interest expense is a deductible item from the amount charged by the head office and other branches to petitioner as permanent establishment. Simply put, interest expense on moneys made available to a permanent establishment

458

(which should be a banking institution as herein petitioner) is deductible from the amounts charged by the Head Office and other branches for purposes of computing the business profit. As such, petitioner is no longer allowed to claim it as an expense for purposes of computing its Philippine income tax liability. However, we hold that the deficiency income tax assessments for the years 1996 and 1997 should be cancelled.

Records disclose that respondent based his disallowance on the 1996 and 1997 audited financial statements without having a full grasp that the said amounts of P109,392,349.95 for 1996 and P385,864,274.39 for 1997 were not claimed by petitioner as interest expense in its income tax returns for each corresponding year. This is evident in the working papers found on *pages 487 and 1003 of the BIR records* where such amounts were already deducted from the total amounts of interest expense reflected in the audited financial statements in order to reflect the net interest expense allowable for income tax purposes, to wit:

1996 20% Final Tax	Audited Financial Statement (AFS) for 1997*	Income Tax Return (ITR) 1997*	
INTEREST EXPENSE	183,357,079.11	2,752,493.15	
	20.00%	20.00%	
	36,671,415.82	550,498.63	36,120,917.19

	Audited Financial Statement (AFS) for 1997*	Income Tax Return (ITR) 1997*	Unaccounted Difference
INTEREST EXPENSE	183,357,079.11	2,752,493.15	
Less Interest expense Exempted to 20% Final Tax:			
Reimbursement of other branches' funding cost	*(109,392,349.95)*		

459

Interest on Interbank Call Loans not subject to 20% Tax (CALL LOANS WITH TENOR OR NOT MORE THAN 5 DAYS)	(1,828,687.34)		
Premium on FX Swaps presented in AFS as Interest expense	(69,383,548.67)		
Balances	2,752,493.15	2,752,493.15	0.00

(*Should be 1996)

1997 20% Final Tax	Audited Financial Statement (AFS) for 1997	Income Tax Return (ITR) 1997	
INTEREST EXPENSE	580,004,393.00	45,722,612.80	
	20.00%	20.00%	
	116,000,878.60	9,144,522.56	106,856,356.04

	Audited Financial Statement (AFS) for 1997	Income Tax Return (ITR) 1997	Unaccounted Difference
INTEREST EXPENSE	580,004,393.00	45,722,612.80	
Less Interest expense Exempted to 20% Final Tax:			
Reimbursement of other branches' funding cost	*(385,864,274.39)*		
Interest on Interbank Call Loans not subject to 20% tax (CALL LOANS WITH TENOR OR NOT MORE THAN 5 DAYS)	(16,521,311.78)		
Premium on FX Swaps presented in AFS as Interest expense	(131,630,189.60)		
Balances	45,988,617.23	45,722,612.80	266,004.43

It can be seen from the above data that petitioner no longer claimed the 1996 and 1997 interest expense on reimbursement of other branches funding cost as evidenced by the adjustments made on the audited financial statements for the years 1996 and 1997.

460

The amounts of P109,392,349.95 for 1996 and P385,864,274.39 for 1997 were deducted from the total claimed interest expenses for the covered years. What remain reported in the income tax returns for years 1996 and 1997 as interest expenses were net of respondent's disallowance.

It can be clearly deduced that respondent mistakenly referred to the reconciling items of the audited financial statements without really verifying that the said items were already deducted by petitioner as interest expense in its income tax returns.

Inasmuch as the said expenses were no longer claimed by petitioner in its 1996 and 1997 income tax returns as deductions from its gross income, the assessments for deficiency income taxes for the said years will necessarily fail.

2. DEFICIENCY WITHHOLDING TAX ON COMPENSATION

Respondent maintained that petitioner failed to withhold and remit some withholding taxes on accrued bonuses of its employees for the years 1996 and 1997. Thus, deficiency withholding taxes on compensation in the respective amounts of P1,629,555.37 and P3,473,967.61 were assessed for the years 1996 and 1997, broken down as follows:

		1 9 9 6		1 9 9 7
		ST-WC-96-0175-99		ST-WC-97-184-99
Bonus Accruals	P	40,982,450.20	P	55,526,858.75
Bonus Subjected to Withholding Tax		37,103,042.35		46,522,456.12
Bonus- No Withholding [Sec.73(a)]	P	3,879,407.85	P	9,004,402.63
Tax Rate		26.48%		27.83%
Basic Withholding Tax Due Thereon	P	1,027,267.20	P	2,505,925.25
Interest (Sec. 249)		602,288.17		968,042.36
Deficiency Withholding Tax on Compensation	P	1,629,555.37	P	3,473,967.61

461

Petitioner questioned the validity of the above assessments on the following grounds:

(1) Respondent failed to issue a pre-assessment notice on petitioner's alleged deficiency compensation withholding tax for taxable year 1996 in direct contravention of the requirement under Section 228 of the 1997 Tax Code. Hence, the assessment is void;

(2) The accrued bonuses subjected to deficiency withholding tax were not distributed to the employees in 1996 and 1997. Hence, petitioner is not liable to withhold the tax thereon, if any, in the afore-mentioned taxable years;

(3) The respective portions of the accrued bonuses for taxable years 1996 and 1997 subjected to deficiency withholding tax were actually disbursed to the senior officers as reimbursement of representation, travel and entertainment expenses incurred in connection with trade or business in the following year of accrual, *i.e.*, in 1997 and 1998, respectively. Thus, the amounts are not even subject to withholding tax on compensation when these were actually disbursed in 1997 and 1998, respectively.

With respect to the argument of petitioner that respondent failed to issue a pre-assessment notice for alleged 1996 deficiency withholding tax on compensation, records reveal that petitioner, on October 7, 1999, received the Pre-Assessment Notice dated September 22, 1999. Said notice detailed the result of investigation conducted by the revenue examiners under Letter of Authority No. 000020401 covering all (possible) internal revenue tax liabilities of petitioner for the calendar years 1996 and 1997 *(Exhibit 2, pages 1655 to 1665, BIR records)* for attached therewith was the detailed computation of 1996 deficiency withholding tax on compensation in the initial amount of P1,571,718.81 *(see page 1660 of the BIR records)*. Thus, petitioner cannot assert that it was not notified of the respondent's findings. Moreover, in its protest to the said preliminary assessment notice dated October 21, 1999, petitioner was able to question

462

and even quote how the said assessment was arrived at *(see pages 1979-1980, BIR records)*. Thus, petitioner's defense that no pre-assessment notice was issued with respect to 1996 deficiency withholding tax on compensation holds no water.

Further, we are not convinced that petitioner's obligation to remit withholding taxes on accrued bonuses fell when the said bonuses were actually distributed to its employees.

Petitioner averred that for the year 1996, the bonuses were merely accrued and distributed only in 1997. The same is true with the 1997 bonuses. They were merely accrued in that year but were distributed in 1998. Since the bonuses were yet not distributed in the respective years 1996 and 1997, petitioner is not liable to withhold the tax due thereon because its duty to withhold tax falls at the time of payment, not at the time of accrual.

Petitioner misinterpreted the ruling of the respondent in BIR Ruling No. 555-88, pertinent portions of which read:

> "2. The withholding tax on bonuses should be deducted *upon distribution of the same to the officers and employees* entitled thereto and remitted to the Bureau of Internal Revenue within ten (10) days after the end of each calendar month (Revenue Regulations No. 5-85);
>
> 3. Since individuals used the cash method of accounting, the bonus received by the officers and employees of your client should be reported in *their income tax returns* **<u>in the year the same is actually received</u>** by them. xxx" (Emphasis and underlining supplied).

It also misapplied Section 2.78 of Revenue Regulations No. 2-98 in its favor, to wit:

> Sec. 2.78. Withholding Tax on Compensation. – The withholding tax on compensation income is a method of collecting the income tax at source **upon receipt of the income**. It applies to all employed individuals

463

> whether citizens or aliens, deriving income from compensation for services rendered in the Philippines. The employer is constituted as the withholding agent. (Emphasis supplied)

The factual milieu of BIR Ruling No. 555-88 is different from that of petitioner. In that ruling, bonuses are determined and distributed in the succeeding year "[A]fter the audit of each company is completed (on or before April 15 of the succeeding year)". The withholding and remittance of income taxes were also made in the year they were distributed to the employees. The ruling also emphasized the cash method adopted by the employees in reporting their income. Necessarily, since the bonuses were distributed in the year the audited financial statements become available, the withholding of income tax can only be done in the same year. Thus, the employer can claim the bonus as legitimate business expense for the current year.

In petitioner's case, bonuses were determined during the year but were distributed in the succeeding year. No withholding of income tax was effected but the bonuses were claimed as an expense for the year. Under Section 29(j) of the National Internal Revenue Code of 1993, an expense cannot be claimed as a deduction from gross income unless the **tax due to be withheld** therefrom has been remitted to the Bureau of Internal Revenue. This is an explicit provision of Section 29(j) of the National Internal Revenue Code of 1993, to quote:

> (j) *Additional requirement for deductibility of certain payments.* - **Any amount paid or payable** which is otherwise **deductible from**, or taken into account in computing **gross income** or for which depreciation or amortization may be allowed under this section, **shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid** to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code. (Emphasis supplied).

464

Since the bonuses were not subjected to withholding tax during the year they were claimed as an expense, the same should be disallowed pursuant to the above-quoted law.

With the preceding defense notwithstanding, petitioner now maintained that the portion of the disallowed bonuses in the amounts of P3,879,407.85 and P9,004,402.63 for the respective years 1996 and 1997, were actually payments for reimbursements of representation, travel and entertainment expenses of its officers. These expenses according to petitioner are not considered compensation of employees and likewise not subject to withholding tax.

In order to prove that the discrepancy in the accrued bonuses represents reimbursement of expenses, petitioner availed of the services of an independent CPA pursuant to CTA Circular No. 1-95, as amended. As a consequence, Mr. Ruben Rubio was commissioned by the court to verify the accuracy of petitioner's position and to check its supporting documents.

In a report dated January 29, 2002, the commissioned independent CPA noted the following pertinent findings: *(Exhibit MM)*

Findings and Observations	1997	1996
Supporting document is under the name of the employee	P 930,307.56	P 1,849,040.70
Supporting document is not under the name of the Bank nor its employees (addressee is "cash"/blank)	537,456.37	53,384.80
Supporting document is under the name of the Bank	7,039,976.36	1,630,292.14
Supporting document is in the name of another person (other than the employee claiming the expense)	362,919.59	62,615.91
Supporting document is not dated within the period (i.e, 1996 and 1997)	13,404.00	423,199.07

465

Date/year of transaction is not indicated	31,510.00	26,126.49
Amount is not supported by liquidation document(s)	313,319.09	935,044.28
TOTAL	**P 9,228,892.97**	**P 4,979,703.39**

Based on the above report, only the expenses in the name of petitioner's employee and those under its name can be given credence. Therefore, the following expenses are valid expenses for income tax purposes:

	1996	1997
Supporting document is under the name of the employee	P 1,849,040.70	P 930,307.56
Supporting document is under the name of the Bank	1,630,292.14	7,039,976.36
TOTAL	**P 3,479,332.84**	**P 7,970,283.92**

Consequently, petitioner is still liable for the amounts of P167,384.97 and P397,157.70 representing deficiency withholding taxes on compensation for the respective years of 1996 and 1997, computed as follows:

	1996	1997
Total Disallowed Accrued Bonus	P 3,879,407.85	P 9,004,402.63
Less: Substantiated Reimbursement of Expense	3,479,332.84	7,970,283.92
Unsubstantiated	P 400,075.01	P 1,034,119.43
Tax Rate	26.48%	27.83%
Basic Withholding Tax Due Thereon	P 105,939.86	P 287,795.44
Interest (Sec. 249)	61,445.11	109,362.26
Deficiency Withholding Tax on Compensation	P 167,384.97	P 397,157.70

3. DEFICIENCY ONSHORE TAX

Petitioner was also assessed of deficiency onshore tax for the year 1996 on the portion of onshore income which was allegedly not subjected to 10% final tax pursuant to

Section 25(a)(4) and (a)(6)(B) of the National Internal Revenue Code of 1993, computed as follows:

		1 9 9 6
		ST-OT-96-0176-99
Onshore Income	P	121,748,090.00
10% Final Tax on Onshore Income	P	12,174,809.00
Less: Tax absorbed by borrowers with proof of remittance		(2,435,434.72)
Tax Remitted per 1743-Interest on on foreign loans		(1,471,936.74)
Basic Tax Still Due Sec. 25(a)(4) and 25(a)(6)(B) of the Tax Code & RR 10-76	P	8,267,437.54
Add Interest (Sec. 249)		4,847,209.95
Deficiency Onshore Tax	P	13,114,647.49

Petitioner disputed the above assessment by claiming that it is not liable to 10% onshore tax. The 10% final tax on onshore income is a liability of the payor-borrower who is the constituted withholding agent of the respondent. Petitioner advanced the view that it is the payor-borrower who has the obligation to deduct, withhold and remit the said tax to the Bureau of Internal Revenue pursuant to Section 50 [now Section 57(A)] of the National Internal Revenue Code of 1993. Petitioner, being the lending OBU/FCDU, cannot be held liable for deficiency onshore tax even if the withholding agent/s failed to remit the tax to respondent.

Lastly, petitioner invoked that the assessment for deficiency onshore tax was based on the mere presumption that its borrowers-withholding agents did not remit the tax. Hence, the assessment was devoid of merit because assessment must be based on actual facts, and not on mere presumption.

We agree with petitioner that the payor-borrower is the one constituted by law to withhold and remit the 10% final tax on onshore income. However, the obligation of paying the 10% final tax on onshore income rests on petitioner being the one directly liable therefor pursuant to Section 25(a)(4) and (a)(6)(B) 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, *viz*:

> 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 impose (sic) 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, <u>because the income tax is still imposed on and due from the latter</u>. 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)*.

Indubitably, the law and 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 obviously earned by it.

We now proceed to the evaluation of evidence and the proper computation of 1996 deficiency onshore tax.

468

Petitioner also questioned the manner of computation of the deficiency onshore tax.

Based on the report of the commissioned independent CPA, there are onshore income which have no proof of payment of final withholding tax, to wit: *(Exhibit MM)*

List of Borrowers Without Proof of Withholding, LBF, Remittance From Bank, or Prospectus	Amount
Bacnotan Construction	P 784.00
Edicom	172,898.00
Fortune Tobacco	591,137.00
National Power Corp.	938,327.00
PNOC	153,281.00
Phinma	565,905.00
Smart	503,092.00
Western Mindanao	1,492,148.00
Bacnotan Consolidated Inc.	78,614.00
Engineering Equipment, Inc.	356,209.00
San Miguel Corp.	697,517.00
Total	P 5,549,912.00

Corollarily, petitioner should pay the amount of P997,333.89 as deficiency onshore tax including surcharge, computed as follows:

	1 9 9 6
Onshore Income not subjected to 10% Withholding Tax	P 5,449,912.00
10% Final Tax on Onshore Income	P 544,991.20
Add: Surcharge	136,247.80
Interest (Sec. 249)	316,094.89
Deficiency Onshore Tax	P 997,333.89

Thus, the grounds raised by petitioner are of no consequence. The court had already recomputed the deficiency onshore tax due based on the documents evaluated by the independent CPA and verified by the court as in order.

469

4. DEFICIENCY BRANCH PROFIT REMITTANCE TAX

Respondent, after investigation of petitioner's books, ascertained that not all the amounts of petitioner's 1996 and 1997 branch profit remittances to its Head Office were subjected to 15% branch profit remittance tax pursuant to Section 25(a)(5) of the National Internal Revenue Code of 1993.[2] The assessments are detailed below:

	1 9 9 6 ST-RT-96-0177-99	1 9 9 7 ST-RT-97-182-99
Remitted Profits to Head Office [Sec. 25(a)(5)]	P 392,157,000.00	P1,195,041,023.00
Tax Due 10% per Phil-Netherlands Tax Treaty	P 39,215,700.00	P 119,504,102.30
Less: Tax Payments		26,916,720.70
Basic Deficiency Branch Profit Remittance Tax	P 39,215,700.00	P 92,587,381.60
Interest on Deficiency (Sec. 249)	22,992,218.63	35,766,632.34
Interest on Late Payment of P26,916,720.70 from 1/25/98 to 10/26/98		5,033,058.05
25% Surcharge Late Payment of P26,916,720.70 (Sec. 248)		6,729,180.18
Deficiency Branch Profit Remittance Tax	P 62,207,918.63	P 140,116,252.17

Petitioner raised two main arguments why it should not be held liable for the above deficiency assessments. First, respondent failed to issue a pre-assessment notice on petitioner's alleged deficiency branch profit remittance tax for taxable year 1996 in violation of the requirement of Section 228 of the National Internal Revenue Code of 1997. Second, the amounts remitted to the Head Office in 1996 and 1997 were sourced from the earnings of the Offshore Banking Unit/Foreign Currency Deposit Unit (OBU/FCDU). The said remittances of income are exempt from the branch profit remittance tax pursuant to Section 25(4) and 6(B) [now Section 28(A)(4) and 7(B)] of the 1977 Tax Code, as implemented by Revenue Regulations No. 10-76.

[2] Lowered to 10% pursuant to the RP-Netherlands Tax Treaty.

470

Earlier, we have discussed that respondent substantially complied with the mandate of Section 228 of the National Internal Revenue Code of 1997 and we remain steadfast on such ruling. Nonetheless, we find that the present assessments for 1996 and 1997 deficiency branch profit remittance tax should be cancelled.

Section 25(a)(6)(B) of the National Internal Revenue Code of 1993 provides:

> (B) *Income derived under the Expanded Foreign Currency Deposit System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system *shall be exempt from all taxes*, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: *Provided,* That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax *(Underlining supplied).*

The exemptions mentioned in the above law include all taxes including *branch profit remittance tax* ***(Bank of Tokyo-Mitsubishi, Ltd. (Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 5697, July 26, 2000).*** It must be pointed out, however, that this ruling is applicable only to cases involving the period before the 1997 Tax Code took effect.[3] The present law deletes the phrase "exempt from all taxes" in Section 28(A)(7)(b). Thus, the payment now of 10% final tax on FCDU income does not exempt a bank from the payment of branch profit remittance tax or other taxes ***(ING Bank (Manila Branch) vs. Commissioner of Internal Revenue, C.T.A. CASE NO. 6017, March 11, 2002).***

471

Inasmuch as the income remitted by petitioner to its Head Office in 1996 and 1997 were sourced from the profits of the OBU/FCDU, the same are exempt from branch profit remittance tax. Therefore, the 1996 and 1997 assessments for deficiency branch profit remittance tax are devoid of merit.

5. DEFICIENCY DOCUMENTARY STAMP TAX

The deficiency documentary stamp tax arose from the two source documents – the special savings accounts and the interbank call loans (IBCLs) exceeding five (5) days. According to the respondent, transactions pertaining to the above documents should be taxed pursuant to Section 180 of the National Internal Revenue Code of 1993.

We shall tackle the foregoing items individually.

a. Deficiency Documentary Stamp Tax on Special Savings Accounts

Respondent opined that special savings accounts (SSAs) are classified as time deposits subject to documentary stamp tax as certificate of deposits drawing interest pursuant to Section 180 of the National Internal Revenue Code of 1993. Respondent computed the 1996 and 1997 deficiency documentary stamp taxes on SSAs of petitioner as follows:

	1 9 9 6	1 9 9 7
	ST-DST-96-0178-99	ST-DST-97-180-99
Special Savings Account	P 2,559,168,709.58	P124,664,859,224.14
Documentary Stamp Tax Due Thereon (Sec.180)	P 3,838,753.06	P 186,997,288.84
Surcharge (Sec. 248)	959,688.27	46,749,322.21
Deficiency Documentary Stamp Tax	P 4,798,441.33	P 233,746,611.05

[3] January 1, 1998.

472

Petitioner, on the contrary, insisted that in both form and substance, the SSA cannot be classified as a time deposit. The SSA is neither a promissory note nor a bill of exchange. Nor can it be classified as a loan agreement, draft or security issued by the government. Therefore, SSA is not subject to documentary stamp tax under Section 180 of the National Internal Revenue Code of 1993.

We find against petitioner.

We have already ruled in several occasions[4] that special savings account is subject to documentary stamp tax. In ***Traders Royal Bank vs. Commissioner of Internal Revenue, supra***, we ruled in this wise:

> In the case at bar, petitioner, as earlier mentioned, claims that the bank's Special Savings Account is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit.
>
> We do not agree.
>
> The following definitions would be helpful in the disposition of this case.
>
>> **Certificate of Deposit**. A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some person or to his order. Bank document evidencing existence of a time deposit, normally paying interest. ***(Underscoring supplied)***
>>
>> **Time Deposit**. Another term for a savings account or certificate of deposit in a commercial bank. It is so called because in theory **(though no longer in practice)** a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings. Certificates of

[4] Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6560, June 23, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, dated April 28, 2004; and United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, dated April 21, 2004.

deposit usually carry penalties for early withdrawal. ***(Emphasis supplied) (Black's Law Dictionary, 6th Edition)***

From the above-quoted definitions, in relation to then Section 180 of the 1977 Tax Code, it is clear that a certificate of deposit is a taxable document. Petitioner also admitted in its pleadings that a time deposit falls under Section 180. Since the SSA falls within the definition of a time deposit, then, this court believes that said SSA is also subject to documentary stamp tax.

In its attempt to convince the court that the special savings account is not a time deposit, petitioner advances the argument that an SSA is withdrawable anytime and the interest of which depends on how long the money is kept by the depositor with the bank; while in the case of a time deposit, there is a specific maturity date evidenced by a certificate of deposit ***(TSN, page 11, August 8, 2002).*** It bears stressing though that petitioner's witness himself, Mr. Bayani R. Navarro, admitted that for a depositor under a Special Savings Deposit or Mega Savings Deposit to be able to avail of the higher rate of interest offered by the said kinds of deposit, the money should have been kept by the bank for a period not less than thirty (30) days ***(TSN, pages 14-16, August 8, 2002);*** otherwise, the deposit earns interest pertaining to a regular savings deposit which is comparatively smaller.

It is to be noted that the same holds true in the case of a time deposit. A depositor is still allowed to withdraw his time deposit even before its maturity subject to pretermination charges and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest likewise pertaining to a regular savings deposit. Clearly, petitioner's argument that one is withdrawable anytime and the other is not has no leg to stand on. The fact is: in both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit.

But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx (**Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801**). The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time Deposits are akin to each other in such a way that the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.

473

> Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook clear evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax.

We find the above pronouncement in all fours with the case at bar. Indeed, the SSA of petitioner is subject to documentary stamp tax.

In fact, petitioner's Deposit Confirmation that evidenced its SSA *(Exhibit S)* explicitly acknowledged the liability of its depositor to documentary stamp tax. Number three (3) of the Terms and Condition of the said confirmation provides: *(page 417, CTA records)*

> 3. Any and all taxes, including but not limited to documentary stamp tax, fees and costs resulting from the transaction, shall be for your sole account.

Hence, petitioner should be liable for 1996 and 1997 deficiency documentary stamp tax in the respective amounts of P4,798,441.33 and P187,389,786.39 as assessed by the respondent.

b. Deficiency Documentary Stamp Tax on Interbank Call Loans Exceeding Five (5) Days

Additionally, petitioner was assessed of documentary stamp tax on interbank call loans (IBCLs) exceeding five (5) days. Respondent contended that the IBCLs are borrowings from banks and non-bank financial intermediaries engaged in quasi-banking activities. They are actually loans as evidenced by Deal Tickets and Confirmation Advices and subject to documentary stamp tax pursuant to Section 180 of the National

474

Internal Revenue Code. The 1997 assessment for deficiency documentary stamp tax was arrived at as follows:

		1 9 9 7
		ST-DST-97-181-99
Interbank Call Loan Exceeding five (5) Days	P	1,046,660,122.60
Documentary Stamp Tax Due Thereon (Sec.180)	P	1,569,990.18
Surcharge (Sec. 248)		392,497.55
Deficiency Documentary Stamp Tax	P	1,962,487.73

Petitioner contested the above assessment on the following points:

1. That respondent failed to issue a pre-assessment notice on petitioner's alleged deficiency documentary stamp tax on IBCLs exceeding five days for taxable year 1997 in violation of the requirement under Section 228 of the 1997 Tax Code. Hence, the assessment is void.

2. The IBCLs with tenors exceeding 5 days are not documented by any of the taxable documents mentioned under then Section 180 of the 1977 Tax Code. Hence, the IBCLs are not subject to DST under then Section 180 of the 1977 Tax Code.

First, we agree with the petitioner that the pre-assessment notice of respondent failed to include the assessment for 1997 deficiency documentary stamp tax on IBCLs exceeding five days. However, we hold that respondent observed substantial compliance with Section 228 when petitioner was given an opportunity to protest the said assessment upon issuance of the assessment notice. But even though there was substantial compliance with Section 228 by the respondent, we still rule that petitioner should not be liable for the said deficiency.

In coming up with such an assessment, respondent categorized the interbank call loan exceeding five days of petitioner as deposit substitute debt instrument contemplated

475

under Section 180 of the National Internal Revenue Code of 1997 subject to documentary stamp tax, to wit:

> SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities,* ***Deposit Substitute Debt Instruments****, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those 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, deposit substitute debt instruments, certificates of deposits drawing interest, 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 Thirty centavos (P0.30) on each Two hundred pesos (P200), 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 notes issued to secure such loan, whichever will yield a higher tax: xxx

The deposit substitutes have been defined under Section 22(Y) of the National Internal Revenue Code of 1997 as:

> (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. xxx. *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 *(Underlining supplied).*

476

Since the interbank call loans exceeds five days, respondent subjected the same to documentary stamp tax. Clearly, respondent based his assessment on Section 180 of the National Internal Revenue Code of 1997.

It is a common knowledge that the National Internal Revenue Code of 1997 became effective only on January 1, 1998. However, the taxable year under investigation is 1997. Thus, the same should not be applied.

Under the then Section 180 of the National Internal Revenue Code of 1993, the term "deposit substitute debt instruments" was not among the enumerated instruments subject to documentary stamp tax. The said phrase was only inserted in Section 180 of the present National Internal Revenue Code.

Section 180 of the National Internal Revenue Code of 1993 reads as follows:

> 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 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 their loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: xxx

477

In view thereof, the assessment for 1997 deficiency documentary stamp tax on IBCLs exceeding five days has no basis in law. Consequently, the 1997 interbank call loans exceeding five days of petitioner are not subject to documentary stamp tax.

WHEREFORE, the assessments for 1996 and 1997 deficiency income tax, 1996 and 1997 deficiency branch profit remittance tax and 1997 deficiency documentary stamp tax on IBCLs exceeding five days are hereby CANCELLED and WITHDRAWN. However, the assessments for 1996 and 1997 deficiency withholding tax on compensation, 1996 deficiency onshore tax and 1996 and 1997 deficiency documentary stamp tax on special savings accounts are hereby UPHELD in the following amounts:

Particulars	Basic Tax	Surcharge	Interest	Total
Deficiency Withholding Tax on Compensation				
1996 (ST-WC-96-0175-99)	P 105,939.86		P 61,445.11	P 167,384.97
1997 (ST-WC-97-0184-99)	287,795.44		109,362.26	397,157.70
Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	544,991.20	P 136,247.80	316,094.89	997,333.89
Deficiency Documentary Stamp Tax				
1996 (ST-DST-96-0178-99)	3,838,753.06	959,688.27		4,798,441.33
1997(ST-DST-97-0180-99)	186,997,288.84	46,749,322.21		233,746,611.05
TOTALS	P191,774,768.40	P47,845,258.28	P 486,902.26	P 240,106,928.94

Accordingly, petitioner is ORDERED to PAY the respondent the aggregate amount of P240,106,928.94, plus 20% delinquency interest per annum from February 3, 2000 until fully paid, pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

478

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CERTIFICATION

I hereby certify that the above 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 Justice

479