REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TMBC INVESTMENT CORPORATION,
Petitioner,

- versus - C.T.A. CASE NO. 3994

COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - - - - x

4/15/91

D E C I S I O N

This has reference to petitioner's appeal to this Court from respondent's letter/decision dated November 15, 1984 denying petitioner's protest on the assessment, thus, reiterating the latter's liability for deficiency income tax in the amount of P3,934,156.49 and deficiency documentary and science stamp taxes in the amount of P4,073.16 for the year 1976, or in the total amount of P3,941,229.65 (Exhibit "C" pp. 70-71, CTA rec.).

In the letter of respondent dated December 28, 1981 which was received by petitioner on October 7, 1982, the former assessed and demanded from the latter the aggregate amount of P3,941,229.65 as deficiency income and documentary and science stamp taxes covering the taxable year 1976, (Exhibit A, pp. 66-67, CTA rec.) computed as follows:

1976 Deficiency Income Tax

Net Loss per return	(P 230,405.99)
Less: Management fees (mere book entry to transfer the income of a company to a sister company which is operating at a loss)	1,400,000.00
Net loss per investigation	(P1,630,405.99)
Add: Unallowable deductions:	
Interest expenses allocable to Manila Newtown Dev. Corp.	9,567,486.40
Withholding tax deducted under interest expense	13,335.10
Net income per review	P7,950,415.51
Income tax due thereon	P2,772,645.42
Add: 14% int. p.a. fr. 9/15/76-9/15/79 (maximum)	1,164,511.07
TOTAL AMOUNT DUE AND COLLECTIBLE	P3,937,156.49

1976 Deficiency Documentary & Science Stamp Tax

Confirmation of sale subject to documentary & science stamp tax:	P8,682,943.00	
Documentary stamp tax:		
P8,682,943.00 x .04 / P200.00	P 1,736.58	
Science stamp tax (equal amount)	P 1,736.58	
T o t a l	P 3,473.16	
Add: Compromise penalties:		
For failure to affix doc. stamps		300.00
For failure to affix science stamps		300.00
TOTAL DOCUMENTARY & SCIENCE STAMP TAX DEFICIENCY	P 4,073.16	
TOTAL DEFICIENCIES	P3,941,229.65	

The aforesaid assessments were brought about in view of respondent's disallowance of interest expenses claimed by petitioner, as well as from the imposition of documentary and science stamp taxes on negotiable promissory notes (see paragraph 3, petition, admitted by respondent in his Answer, pp. 2 and 28, CTA rec.)

The above-quoted assessments were protested by petitioner in its letter dated October 8, 1982 (Exhibit "B", pp. 68-69, CTA rec.), on the ground that the assessments were made after the prescription period, that is, five years after the income tax return was filed pursuant to Section 318 of the National Internal Revenue Code. As regards the disallowed interest expense in the amount of P9,567,486.40, it arose from petitioner's existing obligation which was paid or accrued within the taxable year on indebtedness and therefore deductible pursuant to Section 30 of the Tax Code (Exh. B, pp. 68-69, CTA rec.).

On November 15, 1984, respondent rendered its final decision on the aforesaid assessments which were received by petitioner on September 24, 1985 denying petitioner's protest on the ground that petitioner executed a waiver of prescription on the assessments, and as regards the disallowed interest expense in the amount of P9,567,486.40 it represents the interest expense of Manila Newtown Development Corporation, an affiliated company, and not that of the taxpayer, and reiterated his demand for the payment of the sum of P3,941,229.65 as deficiency income and documentary and science stamp taxes for the said year 1976 (Exhibit "C", pp. 70-71, CTA rec.).

In view of the said letter/decision of respondent, petitioner on October 23, 1985 interposed its appeal to this Court. In the case at bar, the mathematical computation of respondent in his issued assessments in not disputed by petitioner.

The issues posed for resolution of the Court are as follows:

> (1) Whether or not the right of respondent to assess petitioner has prescribed pursuant to Section 318 (prior to its amendment) of the Tax Code;
>
> (2) Whether or not the interest payment in the sum of P9,567,486.40 can be considered as deductible expense; and
>
> (3) Whether or not petitioner is liable for the payment of documentary and science stamp taxes in the total amount of P3,941,229.65.

As regards the first issue involving prescription, we believe that the right of respondent to assess petitioner on December 28, 1981 has not prescribed although issued beyond the five-year period prescribed for in Section 318 of the Tax Code. Also, said Section has no application in the deficiency documentary stamp and science taxes for the reason that there is no law which provides for the period of filing the documentary and science tax return.

It is worth noting that Section 318 relied upon by petitioner is the general law as to the period of limitation of assessment and collection of taxes. The exception, however, is Section 319 which provides:

> "Section 319(b). Where before the expiration of the time prescribed in the preceding section for the assessment of the tax, both the Commissioner and the taxpayer have consented in the writing to its assessment after such time, the tax may be assessed at any time prior to expiration period agreed upon. The period so agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon. (Underlining supplied)

Considering that in the case at bar, petitioner had executed a Waiver of the Statute of Limitations on March 10, 1981 (see p. 86, BIR rec.) prior to expiration of the five years to assess petitioner, the assessments issued by respondent has not prescribed, and the Court has jurisdiction on the instant case.

As regards the second issue as to whether or not interest expense in the total amount of P9,567,486.40 can be considered allowable deduction, petitioner contends that the interest expense claimed by it in the amount of P9,567,486.40 in the year 1976 arose out of its existing obligation and that under Section 30(b) of the Tax Code, the amount of interest paid or accrued within the taxable year on indebtedness are deductible (see paragraph 6(b), Petition for Review, p. 3, CTA rec.).

Respondent, on the other hand, raised the contention that the amount of P9,567,486.40 as interest expense was disallowed on the ground that it is an expense of Manila Newtown Development Corporation as a sister company (Respondent's memorandum, p. 143, CTA rec.). It is further argued that Newtown Development Corporation is an affiliated company of the petitioner, so that the provision of Section 44 of the Tax Code shall apply (see Memorandum of B. R. Madrasto dated August 21, 1981, p. 115, BIR rec; likewise, memorandum of Acting Commissioner of Internal Revenue, Ruben Ancheta to the Chief Section Audit Revenue Division dated November 18, 1981, p. 137, BIR rec.).

We adhere with respondent's contention. It is an established rule in this jurisdiction that the determination of the Commissioner of Internal Revenue is presumed correct. It behooves the taxpayer to rebut such presumption (***Tan Guan vs. Court of Tax Appeals and the Commissioner of Internal Revenue***, *G. R. No. L-23676, April 27, 1967, 19 SCRA 903; citing* ***Perez vs. Court of Tax Appeals, et. al.***, *L-10507, May 30, 1958;* ***Collector of Internal Revenue vs. Bohol Land Transportation Co.***, *L-13099, L-13462, April 29, 1960*). Likewise, the Supreme Court said that as a logical outgrowth of the presumption in favor of the validity of assessments, where such assessments are assailed, the burden of proof is upon the complaining party. It is incumbent upon the property owner to show clearly that the assessment was erroneous, in order to relieve himself from it (***Interprovincial Autobus Co., Inc., vs. Collector of Internal Revenue***, *G. R. No. L-6741, January 31, 1956, 98 Phil. 290*).

A close scrutiny of the records of the case shows respondent merely submitted his case on the basis of the pleadings and records of the instant case. The BIR records show that petitioner was incorporated and registered with the Security and Exchange Commission on January 31, 1969 while the Manila Newtown Development Corporation was incorporated and also registered with the Security and Exchange Commission on March 20, 1970 (see

Memorandum of B. R. Madrasto, Section Chief, Real Estate Section dated August 21, 1981, p. 115, BIR rec.) This Manila Newtown Development Corporation was set up by petitioner as a separate corporation by itself as the controlling stockholder owning 99% of the former's paid-up capital (Id.). The stocks of the petitioner corporation Manila Newtown Development Corporation were acquired in exchange for real properties situated in Barrio Sapang Palay, Sta. Maria, Bulacan, which properties were originally transferred by the Puyat Group to petitioner, also in exchange for shares of stock in TMBC Investment Corporation sometime in 1969 (Id.). The record likewise shows that these corporations, on the other hand had advanced funds to their affiliated companies, so it is but proper that the latter companies will have to share in the interest charges pursuant to Section 44, of the Tax Code. (Id.).

We cannot discard the fact that the BIR record is part of the evidence in connection with the instant case. Although respondent did not present witnesses in the hearing of the instant case, we believe that such findings on record (BIR rec.) are sufficient basis to assess petitioner for the aforesaid deficiencies, considering that petitioner does not deny, by any evidence documentary or testimonial, or even during the hearing that said Manila Newtown Development is a sister Company of herein petitioner and the former is an affiliate company of the latter and that the company is a family corporation. On the basis of the findings in the BIR record as well as the fact that petitioner does not deny those findings on the record during the hearing of the case on October 3, 1988 and April 13, 1988, and considering further, that proceedings in this Court shall not be governed strictly by technical rules of evidence (Section 8, Rep. Act No. 1125), we find the evidence of petitioner not sufficient to overcome the presumption of correctness of respondent's assessments pursuant to the aforecited cases.

Petitioner in its allegation in the petitioner for review (paragraph 7, p. 4, CTA rec.) as well as in its memorandum (p. 137, CTA rec.) merely alleged that it had properly paid the documentary and science stamp taxes on all documents issued that are subject to tax, and could not be held liable for additional assessment which pertained to bank notes issued for circulation or to other instruments of indebtedness which are not subject to any documentary and science stamp taxes.

We find petitioner's contention without merit. As We have said, in this jurisdiction settled is the rule that respondent's assessment is presumed correct and it is incumbent on the part of the taxpayer to rebut such presumption (*Tan Guan vs. Court of Tax Appeals and the Commissioner of Internal Revenue; Interprovincial Autobus Co., Inc., vs. Collector of Internal Revenue, supra; see also Investor Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 3482, June 29, 1990*).

A close scrutiny of the records of the instant case reveals that petitioner has not established any iota of evidence either documentary or testimonial to rebut the presumption of correctness of respondent's assessment. Hence, the Court is constrained to hold petitioner liable for the deficiency documentary stamp and science taxes pursuant to the above cited cases. As we have said, since the mathematical computation of the assessment is not being questioned by petitioner, We presume that said computation in the assessments is correct.

WHEREFORE, the decision appealed from is hereby AFFIRMED in toto, and petitioner is ordered to pay respondent the deficiency income tax in the amount of P3,937,156.49 as well as the deficiency documentary stamp and science taxes in the amount of P4,073.17 or a total of P3,941,229.65 covering the 1976 assessments.

SO ORDERED.

Quezon City, Metro Manila, April 15, 1991.

ALEX Z. REYES
Presiding Judge

WE CONCUR:

CONSTANTE A. ROAQUIN
Associate Judge

STELLA DADIVAS-FARRALES
Acting Associate Judge

C E R T I F I C A T I O N

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

ALEX Z. REYES
Presiding Judge
Court of Tax Appeals