REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PBP FINANCING AND
LEASING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF
INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4233

Promulgated:
OCT 28 1994

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DECISION

This is an appeal from the final decision of the respondent denying petitioner's protest on the deficiency tax assessments issued against it covering taxable years 1981 and 1982 in the amount of P597,825.96 and P3,538,839.77, respectively or a total amount of P4,136,664.73, inclusive of surcharge, interest and compromise penalties.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine laws.

On September 23, 1986, petitioner received a letter of demand dated July 31, 1986 and signed by Deputy Commissioner Romulo M. Villa assessing and demanding payment of the following alleged deficiency internal revenue taxes, inclusive of surcharge, interest and compromise penalties for the years 1981 and 1982 (Exhibit "B"):

1981		
Deficiency Income Tax	P 24,587.25	
Deficiency Gross Receipts Tax	7,038.80	
Deficiency Documentary Stamp Tax	566,199.91	P 597,825.96
1982		
Deficiency Income Tax	P1,065,334.21	
Deficiency Expanded Withholding Tax	145,404.00	
Deficiency Gross Receipts Tax	212,190.25	
Deficiency Documentary Stamp Tax	2,115,910.31	3,538,839.77
TOTAL		P4,136,664.73

In a letter dated October 21, 1986 and filed with respondent's office on October 22, 1986, petitioner through its auditor SGV and Company, duly protested said deficiency assessments and requested for the reconsideration thereof (Exhibit "C").

On January 29, 1988, petitioner's auditors received the respondent's denial of petitioner's protest and reiterated the previous deficiency assessments *in toto*. In said letter, respondent advised that if petitioner is not agreeable therewith, petitioner "may go to the Court of Tax Appeals within thirty (30) days from receipt thereof, otherwise, the assessment shall become final and unappealable" (Exhibit "D").

The instant petition for review was filed with this Court on February 29, 1988.*

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*The 30th day is February 28, 1988, a Sunday.

The issues submitted for resolution are as follows:

1. Whether the petitioner is liable for deficiency income tax for taxable years 1981 and 1982.

2. Whether the petitioner is liable for deficiency gross receipts tax.

3. Whether the petitioner is liable for deficiency expanded withholding tax.

4. Whether petitioner is liable for documentary stamp tax.

The assessments for deficiency income tax for 1981 and 1982 are allegedly without legal basis and void primarily for the reason that petitioner had availed itself of the income tax amnesty under Executive Order No. 41, as amended, covering the years 1981 to 1985. Petitioner's availment is evidenced by Tax Amnesty Return File No. 23-F-001247-4 (Exhibit "F") with the attached sworn Comparative Statement of Assets, Liabilities, Net Worth as of December 31, 1980 and December 31, 1985 and Central Bank Confirmation Receipt No. B10357402 and BIR Payment Order No. 9098816 both dated November 3, 1986[b] with the amount of P10,000.00. Petitioner's cash voucher showing tax amnesty payment of P10,000.00 was likewise offered as evidence (Exhibit "E").

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[b]Last day of availment - October 31, 1986 (Friday) but was declared a non-working special public holiday by Proclamation No. 39 dated October 27, 1986

The Supreme Court in the case of **Republic of the Philippines vs. Intermediate Appellate Court and Spouses Antonio and Clara Pastor**, 196 SCRA 335 (April 26, 1991) on the issue of whether or not tax amnesty payments bar an action for recovery of deficiency income taxes said:

> "Even assuming that the deficiency tax assessment xxx were correct, since the latter have already paid almost the equivalent amount to the Government by way of amnesty taxes xxx, and were granted not merely an exemption, but an amnesty, for their past failings, the Government is estopped from collecting the difference between the deficiency tax assessment and the amount already paid by them as amnesty tax.
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> "A tax amnesty, being a general pardon or intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of evasion or violation of a revenue or tax law, partakes of an absolute forgiveness or waiver by the Government of its right to collect what otherwise, would be due it, and in this sense, prejudicial thereto, particularly to give tax evaders, who wish to relent and are willing to reform a chance to do so and hereby become a part of the new society with a clean state (**Commissioner of Internal Revenue vs. Botelho Corp. and Shipping Co., Inc.**, 20 SCRA 487)."

We have consistently ruled in a number of cases[2] with similar facts and circumstances as the case at bar that a deficiency assessment cannot withstand or negate the force and effects of a proper availment of a tax

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[2]Eduardo M. Limcangco vs. CIR, CTA Case No. 4827 (Mar. 4, 1993); Bay Foods Specialties, Inc. vs. CIR, CTA Case No. 4246 (Aug. 7, 1991); R.O.H. Products Phils., Inc. vs. CIR, CTA Case No. 4318 (Aug. 20, 1990).

amnesty. Accordingly, petitioner's deficiency income tax assessment for 1981 and 1982 in the amount of P24,587.25 and P1,065,334.21, respectively are hereby cancelled with the availment of petitioner of the tax amnesty under Executive Order No. 41, as amended.

As to the assessment for deficiency gross receipts tax, We note that in the protest letter ("Exhibit "C"), petitioner offered to pay the 1981 deficiency gross receipt tax of P7,038.80 under compromise pursuant to Executive Order No. 44. The records of the case however do not show that the offer was accepted. By failing to contest the validity of the assessment within the time provided by law, the same has become final and demandable (Section 319-A, 1981 Tax Code). In assailing the 1982 deficiency gross receipts tax assessment, petitioner alleged erroneous computation since it was based on gross revenues accrued rather than revenues actually received. It was not however shown by petitioner during the trial which portion of the gross revenues were accrued and which portion were received. No evidence was likewise offered towards this end. The presumption of correctness of assessment has not therefore been overcome by petitioner. In the accrual method of accounting, which petitioner admitted to be using, revenues are recognized in the taxable year earned, though not yet received. The gross receipts tax as the term connotes is based on gross revenues. We cannot therefore find rhyme nor reason in petitioner's contention that its gross receipts tax should be computed based only on gross revenues actually received when it is using the accrual method of accounting. A fortiori, petitioner's assessment for deficiency gross receipts tax for 1981 and 1982 in the amount of P7,038.80and P212,190.25, respectively stand.

The assessment for deficiency expanded withholding tax is allegedly without basis on account that these were actually in consideration for the loan of personnel from Producers Bank of the Philippines and that they were paid to a bank and not a management consultant or agency whose principal business is to manage.

Jurisprudence on the issue at hand is well-settled as this is not of first impression. Quoted hereunder are the pertinent portions of the decision of the **Court of Appeals in the case of Anscor Container Corp. vs. CIR and CTA**, CA-G.R. SP No. 22912 (March 21, 1991):

> "We agree with the respondent that Revenue Memorandum Circular No. 51-79, dated June 25, 1979, and Revenue Regulations No. 6-79, dated June 4, 1979, amending Revenue Regulations No. 13-78, otherwise known as the Expanded Withholding Tax Regulations, provide for the withholding of creditable income, among other things, income payments made to persons, natural or juridical, residing in the Philippines as professional or talent fees. Management fees paid to a general manager is

income of the latter, i.e. income payment to the manager for his professional services. Management fees belong to and are of the same class or nature as professional, promotional and talent fees, which are income payment and which are subject to the expanded withholding tax (Section 1, pars. (a) and (b) of Revenue Regulations No.. 13-78)."

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"The intendment of the law to include managerial fees as subject to the withholding tax is made more clear and evident when it specifically provided that fees paid to management and technical consultants are included among those subject to the withholding tax."

"We are aware though of petitioner's claim that managers and consultants are not the same. Petitioner tried to explain to Us why these two terms are different particularly in the matter of functions. We find difficulty in seeing Our way clearly through petitioner's submission that while fees given to management and technical consultants are included among those subject to the withholding tax, professional fees paid to managers should be excluded, merely because of exact literal term, nomenclature or position of general manager is not found among those subject to withholding tax. Besides, no reason has been advanced by petitioner as to why fees paid to management consultants should be subject to the withholding tax, while those paid to persons who exercise managerial functions should not be. The explanation of why those two are different is too tenuous to inspire belief. On the other hand, on the basis of the above discussion, We are persuasively drawn to the conclusion that a concatenation and syncretism of the above observations produce the incapable result that fees paid to general managers for their professional services as such are subject to the withholding tax."

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Premises considered, petitioner's assessment for deficiency expanded withholding tax for 1982 in the amount of P145,404.00 is sustained.

The assessments for documentary stamp tax were claimed to be without basis for the reasons that non-negotiable promissory notes were not subject to DST prior to October 15, 1984 and that petitioner's sales of securities which consisted of PNs of corporate borrowers are not certificates of obligation, there being no specific provision in the Tax Code imposing a DST on the sale thereof.

Under the 1981 and 1982 Tax Code, non-negotiable promissory notes are not subject to DST. Only negotiable PNs are imposed the DST pursuant to Section 229 of the 1981 Tax Code. It was only when Presidential Decree No. 1959 took effect on October 15, 1984 that non-negotiable PNs became subject to DST. Since the herein case involve taxable years 1981 and 1982, no DST is due on non-negotiable PNs issued at that time.

Respondent's contention that non-negotiable PNs are "certificates of indebtedness" and therefore liable to DST under Section 223 of the 1981 Tax Code is not tenable in light of its definition under Section 9 of Revenue Regulations No. 26 (Revised Documentary Stamp Tax Regulations), viz:

> "Section 9. *Certificates of indebtedness.* - The term "certificate of indebtedness" includes only instruments having the general character of investment securities as distinguished from instruments evidencing debts arising from ordinary transactions between individuals."

American Jurisprudence, which has persuasive effect in this jurisdiction, is replete with cases[a] that hold that non-negotiable promissory notes are not investment securities.

Promissory notes of corporate borrowers cannot be equated with "certificates of obligation" for the simple reason that while a promissory note has a specific definition under Our law, "certificate of obligation" has not been defined in our Tax Code. It cannot therefore be said that since the sales of "certificates of obligation" is subject to DST, the sales of PNs is likewise subject to DST. Well-settled is the rule that taxes, being burdens should be construed liberally in favor of the taxpayer. When the language of a tax law is not clear, the same shall be construed in taxpayer's benefit. Had the legislature intended sales of promissory of notes to be subject to DST, they should have said so in

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[a]U.S. vs. Leslie Salt Co., 350 US 383; Emisco Industries, Inc. vs. Pro's Inc., et.al., 543 F. 2d 38; United American Bank of Nashville vs. Gunter, 620 F. 2d 1108; Great Western Bank and Trust vs. Kotz, 532 F. 2d 1252; Exchange National Bank of Chicago vs. Touche Ross and Co., 544 F. 2d 1126.

categorical terms since the term "promissory note" was also used in other sections of the documentary stamp tax law. Accordingly, We rule that the petitioner's assessments for deficiency documentary stamp tax in 1981 and 1982 in the amount of P566,199.91 and P2,115,910.31, respectively, lack merit.

WHEREFORE, respondent's assessments for deficiency taxes against petitioner are hereby modified and computed as follows:

1981	Deficiency Gross Receipts Tax:	
	Gross receipts subject to tax	P1,204,550.00
	Tax due (1,204,550.00 x 5%)	P 60,227.50
	Less: quarterly payments made	54,836.91
	Deficiency gross receipts tax	P 5,390.59
	Add: 25% surcharge [Sec. 193(a)(3)(i)]	1,347.65
	Total deficiency gross receipts tax	P 6,738.24*

1982	Deficiency Expanded Withholding Tax:	
	Management fees	P1,440,000.00
	Tax due (1,440,000.00 x 5%)	P 72,000.00
	Less: quarterly payments made	nil
	Deficiency expanded withholding tax	P 72,000.00
	Add: additions to tax (Sec. 54[e])	
	25% surcharge	18,000.00
	14% interest	
	(fr. 2-1-81 to 7-31-86)	55,404.00
	Total amount due and collectible	P 145,404.00

1982	Deficiency Gross Receipts Tax:		
	Gross receipts	Rate	Tax Due
	P7,929,277.59	5%	P396,463.88
	128,751.33	3%	3,862.54
	4,236.00	1%	42.36
	Total		P400,368.78
	Less: tax payments made		230,616.58
	Deficiency gross receipts tax		P169,752.20
	Add: 25% surcharge [Sec. 193(a)(3)(i)]		42,438.05
	Total deficiency gross receipts tax		P212,190.25*

Petitioner is hereby ordered to immediately pay the total amount of P218,928.49, as deficiency gross receipts tax for the years 1981 and 1982 plus 20% interest per annum from July 31, 1986 until fully paid pursuant to Section 193(a)(3)(i) of the 1977 Tax Code and the amount of P145,404.00 as deficiency expanded withholding tax for 1982, inclusive of 25% surcharge and 14% interest from February 1, 1981 to July 31, 1986 pursuant to Section 54(e) of the same Code.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

Ernesto D. Acosta

ERNESTO D. ACOSTA
Presiding Judge