REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

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BANK OF THE PHILIPPINE ISLANDS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2126
(CTA Case No. 9692)

Present:

DEL ROSARIO, ***P.J.,***
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, ***JJ.***

Promulgated: JUN 16 2021 10:30am

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RESOLUTION

BACORRO-VILLENA, J.:

For the Court's resolution is petitioner Bank of the Philippine Islands' (**petitioner**'s/**BPI**'s) "Motion for Reconsideration (of the Decision promulgated on 2 December 2020)"[1] (**MR**) posted on 23 December 2020 and received on 07 January 2021, without comment from respondent Commissioner of Internal Revenue (**respondent/CIR**) *per* Records Verification dated 03 March 2021[2].

[1] *Rollo*, pp. 115-133.
[2] *Rollo*, p. 139.

It seeks the reversal of this Court's Decision[3] (**assailed Decision**) in the above-captioned case. The dispositive portion of which reads:

> ...
>
> **WHEREFORE**, premises considered, petitioner Bank of the Philippine Islands' Petition for Review filed on 13 September 2019 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated 31 May 2019 and the Resolution dated 13 August 2019, respectively, of the Special Second Division in CTA Case No. 9692, entitled *Bank of the Philippine Islands v. Commissioner of Internal Revenue*, are hereby **AFFIRMED**.
>
> **SO ORDERED.**
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> ...

In the instant motion, petitioner essentially offers a rehash of its previous arguments. Of particular note is petitioner's argument that, in its Amended and Restated Peso Loan Agreement[4] and Omnibus Notes Facility and Security Agreement[5] (**the loan agreements**) with SN Aboitiz Power-Benguet, Inc. (**SNAP-BI**) and Hedcor Bukidnon (**Hedcor**), respectively (and collectively referred to herein as, **"the debtors"**), these entities voluntarily assumed liability of the Documentary Stamp Tax's (**DST**'s) payment.

Petitioner also argues that the debtors, as the makers and issuers of the promissory notes (in relation to their loan agreement), are liable for the payment of DST. In support thereof, petitioner cites the case of *ING Bank, N.V., Engaged in Banking Operations in the Philippines as ING Bank N.V. Manila Branch v. Commissioner of Internal Revenue*[6] (**ING Bank**) wherein the Supreme Court held:

> ...
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> This Court has previously declared a special savings account or special savings deposit account to be a certificate of deposit drawing interest subject to the documentary stamp tax. A certificate of deposit is "a written acknowledgment by a bank of the receipt of a sum of money on deposit which the bank promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor or creditor between the bank and the depositor is created."

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3 Promulgated on 02 December 2020, id., pp. 81-89.
4 Exhibit "P-8", Division Docket, Volume I, pp. 401-441.
5 Exhibit "P-3", id., pp. 156-390.
6 G.R. No. 167679, 20 April 2016.

> Petitioner is directly liable for the documentary stamp tax as the maker and issuer of the instrument or any written memorandum evidencing the special savings account transaction.[7]
>
> ...

According to petitioner, in *ING Bank*, the bank's liability for the DST's payment was not based on Revenue Regulation (**RR**) No. 9-2000[8] but on the simple ground that the bank was the issuer of the certificate of deposit. Petitioner further points out that the bank in *ING Bank* was the debtor as regards the deposit agreement. Therefore, by analogy, petitioner claims that SNAP-BI and Hedcor, as the debtors and issuers of the promissory notes, should be liable for DST in its loan agreements.

Additionally, petitioner argues that *ING Bank* is a more recent jurisprudence and should take precedence over the case of *Metropolitan Bank and Trust Co. v. Commissioner of Internal Revenue*[9] (**MBTC**) relied upon in the assailed Decision.

We resolve.

After a careful scrutiny and review of the case records and despite the commendable arguments put forth by petitioner, the Court is still unable to subscribe to its views. The reasons are stated below.

Firstly, the Court sees the need to clarify the source of petitioner's liability for the payment of the DST, subject of this case. Section 173 of the National Internal Revenue Code[10] (**NIRC/Tax Code**) of 1997, as amended, reads:

> ...
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> **Sec. 173.** *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* - Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the

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7 Citations omitted.

8 Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions dated 22 November 2000.

9 G.R. No. 178797, 04 August 2009.

10 Republic Act No. 8424.

> transaction so had or accomplished, **the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same** wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party who is not exempt shall be the one directly liable for the tax.[11]
>
> ...

Section 3 of RR No. 9-2000[12] on the other hand, states:

> ...
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> SECTION 3. *Mode of Payment and Remittance of the Tax.* –
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> ...
>
> (c) *Persons liable to remit DST.* – **In general, the full amount of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction**, except in the following cases:
>
> ...
>
> > (4) **When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such entity shall be responsible for the remittance of the stamp tax prescribed under Title VII of the Code**: Provided, however, that if such entity is exempt from the tax herein imposed, it shall remit the tax as a collecting agent, pursuant to the preceding paragraph 3(b)(2) hereof, any provision of these Regulations to the contrary notwithstanding:
> >
> > > (a) A **bank,** a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company.[13]
>
> ...

We agree with petitioner that RR No. 9-2000 cannot expand or limit the purview of Section 173 of the NIRC of 1997, as amended, to

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11 Emphasis supplied.
12 Supra at note 8.
13 Emphasis supplied.

make the bank solely liable for the payment of DST on the loan agreements it entered into.

An examination of the foregoing provisions discloses that, pursuant to Section 173 of the NIRC of 1997, as amended, the DST on the loan agreement shall be borne by "the person making, signing, issuing, accepting, or transferring the same". While, Section 3 of RR No. 9-2000 provides that any party to the transaction may remit the subject DST except if one of the parties is a bank among others. Likewise, neither provision specifies a definite party liable for DST on loan agreements, only that the sole responsibility for its remittance remains that of the party-bank.

Although SNAP-BI and Hedcor can voluntarily agree to assume the liability of paying the DST, petitioner's obligation to remit the same remains unchanged. At this point, petitioner is reminded that the law is deemed written into every contract[14] and that the regulations placed to ensure its efficacy must be equally considered. Although petitioner may shift its liability to pay the DST by contract, the duty of its remittance is one which it cannot pass on to SNAP-BI and Hedcor by force of regulation.

Secondly, petitioner's interpretation of *ING Bank* is misleading. The issue therein involved the exclusion or inclusion of DST under the tax amnesty granted under Republic Act (**RA**) No. 9480.[15] Although *ING Bank* revisited the ruling in *MBTC*, the same was only to reverse a previous declaration that DST was not subject to tax amnesty under RA No. 9480. A review of the assailed Decision will show that this Court's discussion on *MBTC* was in reference to petitioner's failure to prove an exception from the payment of DST to warrant a treatment thereof as mere collecting agent.[16] Moreover, the bank's duty to remit DST was maintained in *ING Bank*. The Supreme Court merely clarified the source of the bank's liability for DST as a party to a taxable transaction, particularly as the issuer of the certificate of deposit, to wit:

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14 *Heirs of Severina San Miguel v. The Honorable Court of Appeals, et al.*, G.R. No. 136054, 05 September 2001.

15 AN ACT ENHANCING REVENUE ADMINISTRATION AND COLLECTION BY GRANTING AN AMNESTY ON ALL UNPAID INTERNAL REVENUE TAXES IMPOSED BY THE NATIONAL GOVERNMENT FOR TAXABLE YEAR 2005 AND PRIOR YEARS.

16 *Rollo*, p. 87.

> ...
>
> As a party to a taxable transaction, petitioner is responsible for the payment and remittance of the documentary stamp tax. However, if petitioner were exempt from the tax, it should be required to remit the same only as a collecting agent of respondent.[17]
>
> ...

From the foregoing, nowhere did the Supreme Court suggest liability for DST to be assumed by the debtor. Neither did the Supreme Court modify the bank's duty to remit the same.

It must be emphasized that the primary reason why this Court cannot grant petitioner's claim for refund is due to the fact that its actions have been executed with regularity and made in accordance with law and relevant regulation. *First*, petitioner had remitted the DST pursuant to RR No. 9-2000. *Second*, it correctly paid the amount of DST as found by the Court in Division. Hence, no justification can be made for the refund's grant given that the same was remitted by the proper party and in the proper amount. If any, the error in remittance was made by SNAP-BI and Hedcor when they remitted the DST on the loan agreements.

WHEREFORE, with the foregoing premises considered, petitioner's "Motion for Reconsideration (of the Decision promulgated on 2 December 2020)" filed on 07 January 2021 is hereby **DENIED** for lack of merit. Accordingly, the assailed Decision of this Court promulgated on 02 December 2020 is hereby **AFFIRMED**.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

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17 Supra at note 6.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice