Lib

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus - C.T.A. CASE NO. 3719

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

12/28/88

D E C I S I O N

This case, as well as the issues, as stated by petitioner Philippine Bank of Communications, is as follows:

This is an appeal from the respondent's decision of November 21, 1983, which was received by the petitioner on December 16, 1983, denying the latter's protest against the deficiency tax assessments for the year 1974 in the total amount of P418,846.40, inclusive of surcharge, broken down as follows:

a)	5% bank tax	P277,660.40
b)	Documentary and science stamp tax	141,186.00
	Total	P418,846.40

The alleged deficiency 5% bank tax was assessed by the respondent on the interest income derived by the petitioner from the Central Bank Certificate of Indebtedness (CBCI's) with the following pertinent provision thereon:

> "ASSUMPTION OF TAX LIABILITY - The Bank assumes payment of the corresponding tax on interest earned and premium, if any, paid to the holder of the Certificate." (Exh. "A-1" of Exh. "A")

On the other hand, the deficiency documentary and science stamps taxes were assessed on the petitioner due to the respondent's treatment of the Trust Receipts (Exh. "B") as deeds of trust subject to the said taxes pursuant to then Section 232 of the old Tax Code (now Section 208 of the 1977 Tax Code, as amended).

Clearly, the issues involved in this case are questions of law, pure and simple.

1. Whether or not the Central Bank of the Philippines, instead of the petitioner herein, considering the assumption of the tax liability clause printed on the face of the Central Bank Certificate of Indebtedness, is the one liable for the payment of all kinds of taxes, including the

5% bank tax in question on the interest earned and paid to the holders of the said certificates;

2. Whether or not the trust receipts issued in connection with the letters of credit are deeds of trust in order to be subject to the documentary and science stamp tax under then Section 232 of the pre-1977 Tax Code; and even assuming arguendo that the trust receipt is subject to the said documentary and science stamp tax. Whether or not the petitioner is the party liable for the said tax.

On the deficiency 5% bank tax of P277,660.40, involved in the first issue, there is no dispute that as contemplated under Section 249 of the applicable National Internal Revenue Code, interests earned on Central Bank Certificates of Indebtedness (CBCI) by all banks (including petitioner herein) and non-bank financial intermediaries are includible in gross receipts for purposes of computing the 5% bank tax due thereon. Petitioner contends however that the Central Bank has assumed liability to pay any and all taxes which may accrue from the interests on the CBCI's paid to the holders thereof, and therefore, the 5% bank tax in the sum of P277,660.40 on the interest earned from CBCI is also assumed by the Central Bank in accordance with the provision of the tax liability clause of the aforesaid Certificates of Indebtedness, quoted as follows:

> "Assumption of Tax Liability: The Bank assumes payment of the corresponding tax on interest earned and premium, if any, paid to the holder of this certificate."

Respondent maintains however that under the afore-cited provision, the Central Bank has assumed payment of the income tax only on the interest income but not on other taxes. This position of respondent on the matter is allegedly supported by the consistent practice of the Central Bank in remitting to the Bureau of Internal Revenue the 35% tax on such interest income and no other tax is being paid. According to respondent, the wording on the assumption of tax liability is that "the Bank assumes payment of the corresponding tax on interest earned, if any, paid to the holder of the certificates", the phrase "corresponding tax" cannot possibly be interpreted to mean all kinds of taxes to differentiate it from such phrases as "any tax" or "all taxes."

We find n merit in petitioner's cause.

Settled is the rule that the question as to who shall pay any given tax and what shall be the basis thereof are determined by law, the operation of which can not be affected by the provisions of a contract to which the Government is not a party. This is, of course, without prejudice to the right, if any, of a party to the agreement to demand reimbursement from the other party. But such right of reimbursement is independent of, and foreign to, the right of the Government to collect the tax in the manner and under the conditions presented by law. **(Gibbs vs. Collector of Internal Revenue,** L-14166 and L-14320, April 28, 1962, 4 SCRA 1165.)

Under Section 249 of the then applicable National Internal Revenue Code (Section 220 of the 1977 Tax Code), interests earned by all banks, including interest on Central Bank Certificates of Indebtedness, are includible in gross receipts for purposes of computing the 5% bank tax due thereon payable by the holder bank. On the assumption that the Central Bank assumed payment of any or all taxes on interest which the holder of the CBCI earned thereon, such assumption of liability embodied in the Certificates of Indebtedness cannot affect the right of the Government to collect the tax from the person specified by the law as liable thereto. Since the 5% bank tax on gross receipts is imposed by law upon petitioner and not on the Central Bank, petitioner Philippine Bank of Communications is therefore liable for the deficiency bank tax of P272,660.40. The law is clear. Petitioner's right, if any, arising from such payment should be resolved in accordance with its agreement with the Central Bank.

In assessing petitioner the amount of P141,186.00 representing alleged deficiency documentary and science stamp taxes at the rate of P1.50 for every P3,000.00 consideration under Section 232 of the applicable National Internal Revenue Code, respondent avers in his answer to the petition for review as special and affirmative defense that:

Pursuant to Section 156 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Tax Regulations, implementing the provisions of Section 210 in relation to Section 232 (now Sections 222 and 244 respectively) both of the Tax

Code, trust receipts issued in connection with letters of credit are deeds of trust, subject to the affixture of documentary and science stamps. Having failed to affix the stamps on its trust receipt, petitioner is, therefore, liable therefor.

The controlling statute is Section 232 of the pre-1977 National Internal Revenue Code, the pertinent portion of which provides:

> xxx xxx xxx xxx
>
> On any mortgage, pledge or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge, or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge, or deed of trust. However, if subsequent advances are made on such mortgage, pledge, or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: Provided, however, That if the full amount of the loan or credit granted under the mortgage, pledge, or deed of trust is specified in such mortgage, pledge, or deed of trust, the documentary stamp tax prescribed in this section shall be paid and computed on the full amount of the loan or credit granted.

Are trust receipts issued in connection with letters of credit deeds of trust, subject to the affixture of documentary and science stamps?

To facilitate the importation of merchandise or goods for an importer who does not have sufficient funds or resources to finance the importation, an arrangement is made whereby such importer is allowed by the bank to open a letter of credit. Upon arrival of the merchandise the bank advances or pays the full cost of the importation in order that the goods can be released, but the bank requires the importer to execute trust receipts in its favor as a condition for the turning over of their possession to the importer. The importer then executes trust receipts wherein he acknowledges having received in trust from the bank the imported goods and obligates himself to hold them in trust for the bank. The document authorizes the importer to sell the goods for the account of the bank, under obligation to remit to the bank the proceeds of the sale, if sold - or to return them, if not sold within a certain agreed period.

Thus, in **Philippine National Bank vs. Jose**, 63 Phil. 821, the Supreme Court defined "trust receipt" as an arrangement by virtue of which a banker advances money to a person for the importation of goods, the former taking full title to the goods at the very beginning and continuing to do so until he is paid, or if the goods have been sold, until the proceeds of the sale are turned over to him by the importer or successors in interest. The ownership of the merchandise continues to be vested in the owner thereof or in the person who has advanced payment, until he has been paid in full, or if the merchandise has already been sold, the proceeds of the sale be turned over to him by the importer or by his representative or successor in interest. **(Philippine National Bank vs. Vda. e Hijos de Angel Jose,** 63 Phil. 814-815.) A trust receipt is considered therefore as a security transaction intended to aid in financing importers and attract dealers who do not have sufficient funds or resources to finance the importation or purchase of merchandise, and who may not be able to acquire credit except through utilization as collateral, of the merchandise imported or purchased. (53 Am. Jur. 961, cited in **Samo vs. People**, 5 Phil. 354.)

A "deed of trust" is a conveyance in trust by way of security, subject to a condition of defeasance, or redeemable at any time before the sale of the property. A deed conveying land to a trustee as mere collateral security for the payment of a debt, with the condition that it shall become void on the payment of the debt when due, and with power of the trustee to sell the land and pay the debt in case of default, is a deed of trust in the nature of a mortgage. (**El Hogar Filipino vs. Paredes**, 45 Phil. 192.) Evidently, as in deed of trust, a trust receipt is executed to secure an indebtedness, accomplished and effected as a security for the payment of an account, with authority to sell the property or merchandise to pay the debt or obligation. It requires no argument to show therefore that trust receipts issued in connection with letters of credit, as in deeds of trust, are subject to the affixture of documentary and science stamps pursuant to Section 156 of Revenue Regulations No. 26, otherwise known as the Revised Documentary Stamp Tax Regulations, implementing the provisions of Section 232 of the applicable National Internal Revenue Code.

Furthermore, the view has already been expressed that reenactment of a law without substantial amendment after it had long been enforced by administrative officials charged with its enforcement is tantamount to legislative approval of the administrative interpretation. (Asturias Sugar Central vs. Commissioner of Internal Revenue, L-19337, Sept. 30, 1969, 29 SCRA 617; Commissioner of Internal Revenue vs. Ledesma, L-17509, Jan. 30, 1970, 31 SCRA 95; Inter-Provincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290; Mindanao Bus Co. vs. Collector of Internal Revenue, L-14078, Feb. 24, 1961, 1 SCRA 538; ABS-CBN Broadcasting Corp. vs. Court of Tax Appeals, 108 SCRA 142.) The provisions of Section 210 in relation to Section 232 of the old National Internal Revenue Code, the applicable law, were reenacted without amendments as Sections 222 and 244, respectively, of the 1977 National Internal Revenue Code and again reenacted without amendments as Sections 186 and 208, respectively, of the present Tax Code. Under the foregoing doctrine of legislative reenactment, it seems clear therefore that the interpretation of the applicable law contained in Section 156 of Revenue Regulations 26, otherwise known as the Revised Documentary Stamp Tax Regulations, implementing the provisions of Section 210 in relation to Section 232 (reenacted as Sections 222 and 244, now Sections 186 and 200), that trust receipts issued in connection with letters of credits are deeds of trust subject to the affixture of documentary (and science) stamps has already received legislative approval.

Petitioner however argues that it is not the party liable for the payment of the documentary and science stamps tax, nor is petitioner constituted a "withholding agent" for such purpose by any provision of the National Internal Revenue Code.

The documentary stamp tax is payable by the person making, signing, issuing, accepting or transfering the same. (Sec. 210 , later 222 and now 186, National Internal Revenue Code.) Upon documents and upon acceptances, assignments and transfers of the obligation, right, or property incident thereto, documentary taxes for and in respect of the transaction so had or accomplished shall be paid by the maker, signer, issuer, acceptor, or transferror at the time the act is done. (Sec. 2, Regs. 26, Department of Finance, 22 O.G. 2335; Tuason vs. La Provisora, 67 Phil 36;

Inter-Provincial Autobus Co. vs. Collector of Internal Revenue, 98 Phil. 290.)

A cursory examination of the trust receipt of petitioner Philippine Bank of Communications, Exhibit B, page 22, BIR records, will readily show that while petitioner may not be the signer, it certainly is the issuer, acceptor or transferor at the time the transaction is had or accomplished, i.e., at the time of the issuance of the document. Thus, the pertinent portions thereof:

Philippine Bank of Communications

TRUST RECEIPT

.... BRANCH ...., 19 ...

RECEIVED, upon the trust hereunder mentioned, from the Philippine Bank of Communications the following described goods (documents or instruments), the property of said Bank:

INVOICE VALUE	DESCRIPTION OF MERCHANDISE	MARKS & NOS	CARRIER

and in consideration thereof, I/WE HEREBY AGREE TO HOLD SAID GOODS IN TRUST FOR THE SAID BANK and

> as its property for one of the following purposes, as indicated by (X), and for no other purpose:
>
> [ ] 1. to sell or exchange them, or procure their sale or exchange.
>
> [ ] 2. to make use of the goods delivered or covered by the documents.
>
> [ ] 3. to manufacture or process the goods delivered or covered by the documents, with the purpose of ultimate sale, or for the purpose of loading, un-loading, storing, shipping, transshipping or otherwise dealing with them in a manner preliminary to or necessary to their sale.
>
> but without authority to make any other disposition whatever of the said goods or any part thereof (or the proceeds thereof) either by way of conditional sale, pledge, or otherwise except as may otherwise be permitted by the Bank in writing.
>
> In case of sale I/WE further agree to hand the proceeds, as soon as received, to the Philippine Bank of Communications to apply against the relative acceptances and for the payment of any other indebtedness of mine/ours to the Philippine Bank of Communications.
>
> xxx xxx xxx xxx xxx

The trust receipt is designed, made, prepared and issued by petitioner to be merely filled-up and signed by the importer. As clearly shown by the trust receipt, petitioner transfers the described goods (documents or instruments), the property of the Philippine Bank of Communications to the importer. While the importer may be the person signing the trust receipt, it is petitioner who is accepting the trust receipt at the time the transaction is had or accomplished. To say otherwise would be to ignore the plain and unmistakable meaning of ordinary words. Since trust receipts are subject to affixture of documentary and science stamps (under the law then applicable), petitioner is the party upon whom this duty devolves and therefor subject to the payment of the amount of P141,186.00 involved in this case.

Accordingly, petitioner Philippine Bank of Communications is liable to pay respondent Commissioner of Internal Revenue the amounts of P277,660.40 and P141,186.00 as 5% deficiency bank tax and documentary science stamp taxes, respectively, for 1974.

WHEREFORE, the decision appealed from is hereby affirmed at petitioner's costs.

SO ORDERED.

Quezon City, Metro Manila, December 28, 1988.

Amante Filler

AMANTE FILLER
Presiding Judge

WE CONCUR:

CONSTANTE C. ROAQUIN
Associate Judge

ALEX Z. REYES
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 among the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

AMANTE FILLER
Presiding Judge
Court of Tax Appeals