REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

IFC CAPITALIZATION (EQUITY) FUND, LP,
Respondent.

CTA EB NO. 2083
(CTA Case No. 9148)

Present:

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

Promulgated:
NOV 05 2020 4:02 p.m.

x - x

DECISION

BACORRO-VILLENA, J.:

Assailing the Special First Division's Decision dated 17 January 2019[1] and Resolution dated 03 June 2019[2], in CTA Case No. 9148, entitled *IFC Capitalization (Equity) Fund, LP v. Commissioner of Internal Revenue*, petitioner Commissioner of Internal Revenue (**petitioner/CIR**) filed the present Petition for Review[3] on 18 June 2019

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[1] Division Docket, Volume VI, pp. 3433-3457; Penned by Honorable Associate Justice Erlinda P. Uy, with Honorable Associate Justice Cielito N. Mindaro-Grulla, concurring, and Honorable Presiding Justice Roman G. Del Rosario, dissenting.

[2] Id., pp. 3517-3525.

[3] *Rollo*, pp. 1-9.

pursuant to Section 3(b), Rule 8[4], in relation to Section 2(a), Rule 4[5] of the Revised Rules of the Court of Tax Appeals (**RRCTA**).

Petitioner is the duly-appointed CIR who is vested with authority to administer and enforce all laws pertaining to internal revenue taxes and has the jurisdiction to decide refunds and disputed tax assessments.[6] On the other hand, respondent IFC Capitalization (Equity) Fund LP (**respondent/ICEF-LP**) is a non-resident foreign limited partnership organized and existing under the laws of the State of Delaware, United States of America (**USA**).[7] Respondent is not registered as a corporation or partnership in the Philippines[8] and is not a dealer in securities.

FACTS OF THE CASE

Serge Jules Devieux[9] (**Devieux**), respondent's witness testified on the latter's ownership structure and his declarations are summarized below.

During the period relevant to respondent's claim for refund, the latter is owned by: (1) its general partner, IFC Capitalization (Equity) Fund, LLC (**ICEF-LLC**); and, (2) its limited partners, International Finance Corporation (**IFC**) with 39.22% share and Japan Bank for International Cooperation (**JBIC**) with 60.78% share.

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4 **SEC. 3.** *Who may appeal; period to file petition.*

...

(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.

5 **SEC. 2.** *Cases within the jurisdiction of the Court en banc.* – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:
(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:
(1) Cases arising from administrative agencies – Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture[.]

6 Joint Stipulation of Facts and Issues (JSFI), Division Docket, Volume IV, p. 2266.

7 Exhibit "P-11", id., Volume V, pp. 2625-2637.

8 Exhibit "P-12", id., p. 2639.

9 Judicial Affidavit of Serge Jules Devieux, Exhibit "P-20", id., Volume II, p. 817.

ICEF-LLC is wholly-owned by IFC Asset Management Company (**IAMC**), which, in turn, is a wholly-owned subsidiary of IFC. The latter is an international organization established by the Articles of Agreement (**AOA**) among its member countries, including the Republic of the Philippines. By virtue of Republic Act (**RA**) No. 1604[10], the AOA became part of the Philippine laws which authorized the membership of the Republic of the Philippines in IFC and its accession to the AOA.

JBIC, one of respondent's limited partners, is a financing institution wholly-owned and controlled by the Japanese government.

Respondent thus is a limited partnership that is 100% beneficially-owned by IFC and JBIC. Therefore, respondent is owned and controlled by financing institutions that are, in turn, owned, controlled or enjoying refinancing from foreign governments and international or regional financial institutions (established by foreign governments).

From 20 September 2013 to 03 September 2014, respondent, as beneficial owner of 140,289,079 listed BDO Unibank, Inc. (**BDO**) shares, traded said shares in the Philippine Stock Exchange (**PSE**), through the assistance of two (2) trading companies, Deutsche Securities Asia Limited (**DSAL**) and UBS Securities Asia Limited (**USAL**), as respondent's traders.[11]

Respondent's traders, DSAL and USAL, were then instructed to inform the stockbrokers, Deutsche Regis Partners, Inc. (**DRPI**) and UBS Securities Philippines, Inc. (**USPI**), that the proceeds of the sale of shares were to be remitted to respondent's custodian banks in the Philippines, J.P. Morgan and Hongkong and Shanghai Banking Corporation (**HSBC**).[12]

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10 AN ACT AUTHORIZING PHILIPPINE MEMBERSHIP IN THE PROPOSED INTERNATIONAL FINANCE CORPORATION AND AUTHORIZING THE APPROPRIATION OF FUNDS THEREFOR.

11 Q&A No. 8, Judicial Affidavit of Serge Jules Devieux, Exhibit "P-20", Division Docket, Volume II, p. 818.

12 Q&A No. 11, id., p. 819.

Stockbrokers DRPI and USPI withheld stock transaction tax (**STT**) of ½ of 1% from the proceeds of the sales of respondent's listed BDO shares in the aggregate amount of ₱62,444,698.37[13], consisting of (**a**) ₱42,256,810.28 withheld by DRPI[14] and (**b**) ₱20,187,888.09 withheld by USPI.[15]

Asserting exemption from STT, respondent filed with the Bureau of Internal Revenue (**BIR**) Revenue District Office (**RDO**) No. 39 a claim for refund[16] of the supposed erroneously withheld STT in the amount of ₱62,444,698.37.

As the two (2)-year statutory period under Section 229[17] of the National Internal Revenue Code (**NIRC**) of 1997, as amended, was about to lapse, respondent filed with this Court its prior Petition for Review (CTA Case No. 9148) on 24 September 2015.[18]

Trial on the merits thereafter ensued where respondent presented its witnesses.

Devieux[19], the Co-Head of IFC Financial Institutions Fund of IAMC testified on: (1) respondent's ownership structure; (2) the fact that stockbrokers withheld STT in the amount of ½ of 1% from the proceeds of the sale of the listed BDO shares; (3) respondent's administrative claim for refund with BIR RDO No. 039; (4) the timeliness of the filing of the administrative and judicial claims; and, (5) BIR Ruling No. 051-12 dated 09 February 2012[20] as the basis of respondent's refund claim.

Daniel I. Orajay[21] (**Orajay**), the Controller of DRPI also testified and declared that: (1) DRPI is a licensed stockbroker; (2) respondent is a client of DSAL that placed certain trade orders involving the sale of

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13 Q&A No. 14, id., pp. 819-822.
14 Q&A No. 33, Judicial Affidavit of Emmanuel Y. Mendoza, Exhibit "P-19", id., Volume IV, p. 2352.
15 Id.
16 Exhibit "P-25", id., Volume III, pp. 1674-1682.
17 **Sec. 229**. *Recovery of Tax Erroneously or Illegally Collected.*
18 Exhibit "P-4", Division Docket, Volume I, pp. 10-28.
19 Exhibit "P-20", id., Volume II, pp. 814-824.
20 Exhibit "P-13", id., Volume V, pp. 2640-2642.
21 Exhibit "P-15", id., Volume III, pp. 1687-1695.

respondent's BDO shares in the PSE from 20 September 2013 to 03 September 2014; and, (3) as a statutory withholding agent of the STT, DRPI withheld STT at the rate of ½ of 1% applied on the proceeds of the sale amounting to ₱42,256,809.48 and remitted the same to the BIR.

Ann M. Osti[22] (**Osti**), the Executive Director of J.P. Morgan, also took the witness stand where she declared that: (1) on behalf of respondent as owner, J.P. Morgan holds in its custody, directly and through the sub-custodian, HSBC, various shares of stock, including listed BDO shares (traded in the PSE in the years 2013 and 2014); (2) J.P. Morgan directly received the net proceeds of the sale of the BDO shares traded through one of the stockbrokers, DRPI; and, (3) J.P. Morgan also received the net proceeds of the BDO shares traded through the other stockbroker, USPI, through the sub-custodian, HSBC.

Emmanuel Y. Mendoza[23] (**Mendoza**), the Independent Certified Public Accountant (**ICPA**) followed and testified that: (1) he submitted his ICPA Report[24] after completing the examination and review of the relevant documents; (2) respondent is owned and controlled by entities that are owned, controlled, or enjoying refinancing from foreign governments or international or regional financial institutions established by foreign governments; (3) he verified the total STT being claimed by respondent in its prior Petition for Review (CTA Case No. 9148) and found that the same is equal to the amount stated in the original Schedule of STT that the stockbrokers withheld and remitted; (4) he was able to confirm that, out of respondent's total claim for refund pertaining to erroneously withheld STT of ₱62,444,698.37, the amount of ₱42,256,810.28 was supported by Certificates of Tax Withheld (**CWT**) (BIR Form No. 2307) issued by DRPI and the amount of ₱20,187,888.09 was supported by other documents presented by USPI containing the same details or information provided in a CWT; and, (5) he was also able to confirm the fact of withholding and the actual amount of STT that USPI withheld from the proceeds of the sales of respondent's listed BDO shares.

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22 Exhibit "P-26", id., pp. 2141-2145.
23 Exhibit "P-19", id., Volume IV, pp. 2343-2356.
24 Exhibit "P-2".

In its Order[25] dated 07 December 2017, the First Division granted respondent's motion to consider petitioner's right to present evidence waived for his failure to submit the judicial affidavit of its witness within five (5) days before the scheduled hearing, as required in the Pre-Trial Order[26] dated 19 September 2016. In the same Order, the First Division likewise directed the parties to submit their respective memoranda within thirty (30) days therefrom.

Notwithstanding the said directive, only respondent submitted its Memorandum.[27] The Court, therefore, resolved to submit the case for decision without petitioner's memorandum.

On 17 January 2019, the Special First Division[28] promulgated the now assailed Decision.[29] The dispositive portion thereof reads:

> ...
>
> **WHEREFORE**, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to petitioner, the correct amount of **₱62,444,697.57**, representing STT erroneously collected on income derived from the sale of 140,289,079 listed BDO shares in the PSE for the period from September 25, 2013 to September 8, 2014.
>
> **SO ORDERED.**[30]
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> ...

Petitioner filed a Motion for Reconsideration[31] (**MR**) to the above ruling alleging essentially that the exemption granted under Title II, , Chapter VI, Section 32(B)(7)(a)[32] of the NIRC of 1997, as amended, only

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25 Division Docket, Volume VI, p. 3338.

26 Id., Volume IV, p. 2394; See Amended Pre-Trial Order dated 22 May 2017, id., Volume VI, pp. 3252-3287.

27 Id., Volume VI, pp. 3399-3424.

28 The First Division was reconstituted after the issuance of CTA Administrative Circular No. 02-18 dated 18 September 2018 entitled "Reorganizing the Three (3) Divisions of the Court."

29 Division Docket, Volume VI, pp. 3433-3450.

30 Emphasis and italics in the original text.

31 Division Docket, Volume VI, pp. 3458-3463.

32 **TITLE II**
TAX ON INCOME
...
CHAPTER VI
COMPUTATION OF GROSS INCOME
...
SEC. 32. *Gross Income.* –

covers tax on income and does not include STT imposed under Title V thereof. On the other hand, upon directive of the Special First Division, respondent filed its Comment/Opposition[33] on 22 February 2018.

In the assailed Resolution[34] dated 03 June 2019, the Special First Division denied the said MR and ruled that: (1) the argument on the nature of the STT was raised by respondent for the first time in his motion and cannot be considered as it violates the basic rules of fair play, justice and due process; and, (2) respondent is exempt from all taxes pursuant to RA 1604.[35] The dispositive portion of the assailed 03 June 2019 Resolution reads:

> ...
>
> **WHEREFORE**, in light of the foregoing considerations, respondent's **Motion for Reconsideration** is **DENIED** for lack of merit.
>
> **SO ORDERED.**[36]
>
> ...

Disagreeing with the Special First Division's action on his MR, petitioner appealed to the Court *En Banc* by filing this present Petition for Review.[37]

Pursuant to the directive of the Court *En Banc*, respondent filed its Comment[38] on 30 September 2019. *Per* its Resolution[39] dated 07 November 2019, the Court *En Banc* submitted the case for decision.

...
(B) Exclusions from Gross Income.
...
(7) Miscellaneous Items. –
(a) Income Derived by Foreign Government.

33 Division Docket, Volume VI, pp. 3490-3504.
34 Id., pp. 3517-3525.
35 Supra at note 10.
36 Emphasis in the original text.
37 Supra at note 3.
38 *Rollo*, pp. 108-135.
39 Id., pp. 451-452.

ISSUE

Herein, petitioner presents the following issue for the Court *En Banc*'s resolution:

> WHETHER PETITIONER IS ENTITLED TO THE REFUND OF THE WITHHELD STOCK TRANSACTION TAX ON THE SALE OF ITS LISTED BDO UNIBANK, INC. SHARES OF STOCK IN THE PHILIPPINE STOCK EXCHANGE FROM SEPTEMBER 20, 2013 TO SEPTEMBER 3, 2014 IN THE AMOUNT OF SIXTY-TWO MILLION FOUR HUNDRED FORTY-FOUR THOUSAND SIX HUNDRED NINETY-SEVEN PESOS AND THIRTY-SEVEN (SIC)[40] CENTAVOS (₱62,444,697.57).

In support of the above, petitioner argues that, while the income or gain on the sale of listed shares of stock is exempt from capital gains tax under Title V, Section 127(D)[41] of the NIRC of 1997, as amended, this exemption does not apply to percentage tax under Title V, Section 127(A)[42] of the same law. In relation thereto, petitioner also claims that the exemption granted under Title II, Chapter VI, Section 32(B)(7)(a)[43]

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40 Should read as Fifty-Seven.

41 **SEC. 127.** *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* -

...

(D) Common Provisions. - any gain derived from the sale, barter, exchange or other disposition of shares of stock under this Section shall be exempt from the tax imposed in Sections 24(C), 27(D)(2), 28(A)(8)(c), and 28(B)(5)(c) of this Code and from the regular individual or corporate income tax. Tax paid under this Section shall not be deductible for income tax purposes.

42 **SEC. 127.** *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* –

(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. - There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.

...

43 **SEC. 32.** *Gross Income.* –

...

(B) Exclusions from Gross Income. - The following items shall not be included in gross income and shall be exempt from taxation under this Title:

...

(7) Miscellaneous Items. –

(a) Income Derived by Foreign Government. - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.

of the NIRC of 1997, as amended, only covers tax on income and does not include exemption from STT imposed under Title V, Section 127(A)[44] of the same law.

Petitioner further claims that the tax exemption granted to IFC under RA 1604[45] cannot be made to apply to respondent as the two (IFC and respondent) are separate and distinct entities. Thus, petitioner insists that, as the STT was paid in accordance with the law, tax refund would be improper in this case.

On the other hand, respondent claims that petitioner is barred from belatedly raising before the Court *En Banc* the new and additional issue of whether the STT is an income tax or a percentage tax. Respondent contends that, despite the averments in its prior Petition for Review (CTA Case No. 9148) that STT is essentially a tax on income, petitioner did not include as an affirmative defense in his Answer the argument that STT is a percentage tax. Respondent then advances the rule that defenses not pleaded and seasonably raised in the Answer are to be deemed waived. He points to several Supreme Court and Court of Tax Appeals decisions[46] and resolution[47] allegedly declaring that arguments not raised before the trial court cannot be considered for the first time on appeal.

Likewise, respondent claims that the BIR ruled consistently that STT under Title V of the NIRC of 1997, as amended, is essentially a tax on income. In support thereof, respondent cites several BIR rulings[48] issued in the years 2005, 2007, and 2009 wherein the BIR ruled that STT is a tax on income.

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44 Supra at note 42.

45 Supra at note 10.

46 *Huang v. Philippine Hoteliers, Inc.*, G.R. No. 180440, 05 December 2012; *Toledo y Tamboong v. People of the Philippines*, G.R. No. 158057, 24 September 2004; *Commissioner of Internal Revenue v. Carmona*, CTA EB No. 1324, 20 December 2017; and, *Commissioner of Internal Revenue v. Spouses Genato*, CTA EB No. 1695, 12 January 2018.

47 *Willore Pharma Corporation v. The Commissioner of Internal Revenue*, CTA Case No. 8602, 15 December 2016.

48 BIR Ruling [DA-(TSF-007) 560-09] dated 18 September 2009; BIR Ruling [DA-054-07] dated 31 January 2007; BIR Ruling [DA-199-07] dated 30 March 2007; BIR Ruling [DA-053-07] dated 31 January 2007; and, BIR Ruling [DA-474-05] dated 18 November 2005.

Additionally, respondent invokes the BIR International Tax Affairs Division (**ITAD**) rulings[49] in 2000 that likewise treated STT as tax on income. To further support its position, respondent also cites tax treaties[50] which commonly make the same applicable to, among others, "the income taxes imposed under Title II and the stock transaction tax in accordance with Section 124-A[51] of the National Internal Revenue Code of the Republic of the Philippines".

Lastly, respondent claims that IFC's immunity from taxation under RA 1604[52] covers its operations and transactions through respondent.

RULING OF THE COURT *EN BANC*

After considering the contrasting arguments of both parties, the Court *En Banc* finds merit in the instant Petition for Review.

Before proceeding to discuss the merits of the case, the Court *En Banc* deems it propitious to first resolve petitioner's supposed procedural lapse in belatedly raising the argument that STT is a percentage tax and not an income tax.

PETITIONER DID NOT BELATEDLY RAISE THE ISSUE ON THE CHARACTERIZATION OF STOCK TRANSACTION TAX (STT).

Contrary to respondent's claim, paragraph 5 of petitioner's Answer to respondent's prior Petition for Review before the Special First Division states:

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49 BIR ITAD Ruling No. 165-00 dated 30 October 2000 and BIR ITAD Ruling No. 146-00 dated 19 October 2000.

50 RP-Hungary Convention for the Avoidance of Double Taxation; Philippines-Turkey Agreement for the Avoidance of Double Taxation; Philippines-Bangladesh Tax Treaty on Income; RP-China Agreement for the Avoidance of Double Taxation; and, RP-Thailand Convention for the Avoidance of Double Taxation.

51 Now Section 127 of the NIRC of 1997, as amended.

52 Supra at note 10.

...

5. **She DENIES the allegations in paragraphs 22, 23, 24, 25, 26, and 35 for being false. The truth of the matter is that the Petitioner** [now, respondent] **paid the correct taxes in the amount of Php62,444,698.37 pursuant to Section 127 of the National Internal Revenue Code, as amended**, to wit:

> SEC. 127. ***Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.*** -
>
> *(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange.* - There shall be levied, assessed and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.[53]

...

The paragraphs specifically denied by petitioner in his Answer as stated in paragraph 5 thereof read further:

...

22. In fact, in BIR Ruling No. 051-12 dated February 9, 2012, the BIR had ruled that ICEF's "investments in the Philippines in... stocks... or other domestic securities... are not subject to Philippine income tax and consequently to any withholding tax."

23. **Petitioner [now, respondent] respectfully submits that its income from the sales and trading of its listed BDO shares should be exempt from income tax, which necessarily includes exemption from the STT. Petitioner [now, respondent] further respectfully submits that STT is essentially a tax on income derived from the sales of shares listed and traded through a local stock exchange.**

24. As a matter of fact, in BIR Ruling No. ITAD-153-15 dated April 30, 2015, the BIR clearly confirmed that the sale of shares of IFC

[53] Division Docket, Volume I, p. 786; Emphasis supplied.

and petitioner [now, respondent] in Rizal Commercial Banking Corporation though the local stock exchange is not subject to STT. **The said BIR Ruling had confirmed that *"income derived from the sale of its shares in RCBC is exempt from income tax under Section 127(a) of the Tax Code of the Philippines."***

25. **Furthermore, in BIR's opinion in BIR Ruling [DA-474-05] dated November 18, 2005, the BIR likewise confirmed that as the STT is essentially a tax on income, the income earned by an entity that is exempt from income tax from investments in shares of stock listed and traded through the PSE is also exempt from the STT under Section 127(a) of the Tax Code. Given that Section 32(B)(7)(a) of the Tax Code exempts ICEF from income tax on its investments in stocks in the Philippines, it therefore follows that ICEF is likewise exempt from the STT under Section 127(a) of the Tax Code with respect to its sales of shares listed and traded through the PSE.**

26. Petitioner [now, respondent] respectfully submits that the principles applied in BIR Ruling No. 051-12, BIR Ruling No. ITAD-153-15, and BIR Ruling [DA-474-05] should equally apply in the case of the STT erroneously withheld and remitted on the sales and trading by petitioner [now, respondent] of its listed BDO shares through the PSE from September 20, 2013 to September 3, 2014. As such, the stockbrokers should not have withheld the STT from the said sales and trading.

35. Despite the fact that petitioner [now, respondent] is legally exempt from paying the STT, the stockbrokers withheld the said tax, filed the percentage tax returns with the BIR, and paid the total amount of ₱62,444,698.37 on the dates enumerated under paragraph 13.[54]

...

From the foregoing, it is clear that petitioner has timely denied in his Answer the allegation of respondent that it is exempt from STT (being essentially an income tax), which effectively joined the issue of the STT being either an income tax or a percentage tax.

We also deem petitioner's supposed lapse (of not specifically pointing out that STT is a percentage tax and not an income tax) inconsequential since it is already encompassed in and can be clearly

[54] Citations omitted and emphasis supplied.

inferred from petitioner's invocation of Section 127(A) of the NIRC of 1997, as amended, pertaining to percentage taxes.

Section 1, Rule 8 of the Rules of Court, as revised, merely requires that "[I]f a cause of action or defense relied on is based on law, the pertinent provisions thereof and their applicability to him or her shall be clearly and concisely stated".

At any rate, even if We are to deem that petitioner belatedly raised the issue on the STT as an income tax or a percentage tax, the Court *En Banc* could nevertheless take up an issue raised for the first time on appeal. In *Commissioner of Internal Revenue v. Eastern Telecommunications Philippines, Inc.*[55], the Supreme Court ruled:

> ...
>
> **The rule against raising new issues on appeal is not without exceptions; it is a procedural rule that the Court may relax when compelling reasons so warrant or when justice requires it.** What constitutes good and sufficient cause that would merit suspension of the rules is discretionary upon the courts. Former Senator Vicente Francisco, a noted authority in procedural law, cites an instance when the appellate court may take up an issue for the first time:
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>> **The appellate court may, in the interest of justice, properly take into consideration in deciding the case matters of record having some bearing on the issue submitted which the parties failed to raise** or the lower court ignored, **although they have not been specifically raised as issues by the pleadings. This is in consonance with the liberal spirit that pervades the Rules of Court, and the modern trend of procedure which accord the courts broad discretionary power, consistent with the orderly administration of justice**, in the decision of cases brought before them.
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> ...

Having resolved the procedural aspect of the case, the Court *En Banc* shall now resolve whether respondent is indeed exempt from STT for its sales of shares of stock listed and traded through the PSE.

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[55] G.R. No. 163835, 07 July 2010; Citations omitted and emphasis supplied.

A STOCK TRANSACTION TAX IS A PERCENTAGE TAX AND NOT AN INCOME TAX HENCE, THE EXEMPTION FROM INCOME TAX UNDER SECTION 32(B)(7)(a) OF THE NIRC OF 1997, AS AMENDED, CANNOT BE EXTENDED TO IT.

Respondent mainly anchors its claim for refund on the basis of its alleged exemption from STT on Section 32(B)(7)(a) of the NIRC of 1997, as amended, which reads:

> ...
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> **TITLE II**
> **TAX ON INCOME**
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> ...
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> **SEC. 32.** *Gross Income.* –
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> ...
>
> *(B) Exclusions from Gross Income.* - The following items **shall not be included in gross income and shall be exempt from taxation under this Title**:
>
> ...
>
> *(7) Miscellaneous Items.* –
>
> *(a) Income Derived by Foreign Government.* - Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments.[56]
>
> ...

To counter this claim, petitioner argues that respondent paid the correct taxes and could not therefore be entitled to refund. He maintains that it is subject to STT under Section 127(A) found in Title V of the NIRC of 1997, as amended, which states:

[56] Emphasis supplied.

...

TITLE V
OTHER PERCENTAGE TAXES

...

SEC. 127. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* –

(A) Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange. - There shall be levied, assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchanged or otherwise disposed which shall be paid by the seller or transferor.

...

A plain reading of the provision yields that respondent is not exempt from STT since Section 32(B) of the NIRC of 1997, as amended, merely **excludes any income derived from the items enumerated therein from gross income** and **exempts the same from taxation only under Title II** of the same law.

In *Commissioner of Internal Revenue v. The Court of Appeals, et al.*[57], the Supreme Court applied the plain meaning rule in resolving exceptions on the general rule, *viz*:

...

Under the rules of statutory construction, exceptions, as a general rule, should be strictly but reasonably construed. They extend only so far as their language fairly warrants, and all doubts should be resolved in favor of the general provisions rather than the exception. Where a general rule is established by statute with exceptions, the court will not curtail the former nor add to the latter by implication...

...

It is a basic rule of interpretation that words and phrases used in the statute, in the absence of a clear legislative intent

57 G.R. No. 107135, 23 February 1999; Citations omitted and emphasis supplied.

to the contrary, should be given their plain, ordinary and common usage or meaning.

...

As the law is clear in excluding only the income derived by financing institutions owned, controlled, or enjoying refinancing from foreign governments from gross income and thereby exempting the same from tax under Title II of the NIRC of 1997, as amended (which pertains to income tax), the same cannot be extended to STT imposed under Title V of the same law (which pertains to other percentage taxes).

Had Congress indeed intended to likewise exempt the gross selling price or gross value in money received by said entities as a result of its sale of shares of stocks listed and traded through the local stock exchange from STT, then it would have explicitly provided so as it did for income tax. However, as the Congress restricted the exemption to income tax by words too plain to be mistaken, this Court *En Banc* cannot extend such exemption to STT or stretch the same to cover respondent.

In insisting that the BIR held consistently that the STT imposed under Title V of the NIRC of 1997, as amended, is substantially a tax on income and is, therefore, covered by the exemption laid down in Section 32(B)(7)(a) of the same law, respondent seeks succor from: (1) BIR Ruling [DA-(TSF-007) 560-09] dated 18 September 2009 issued to Banco de Oro Unibank, Inc. Trust and Investments Group; (2) BIR Ruling [DA-054-07] dated 31 January 2007 issued to ING Bank N.V. (Manila Branch); (3) BIR Ruling [DA-199-07] dated 30 March 2007 issued to Rizal Commercial Banking Corporation; (4) BIR Ruling [DA-053-07] dated 31 January 2007 issued to Rizal Commercial Banking Corporation; (5) BIR Ruling [DA-474-05][58] dated 18 November 2005 issued to Lepanto Consolidated Mining Co.; (6) BIR Ruling No. 051-12[59] dated 09 February 2012 issued to respondent, through Romulo Mabanta Buenaventura Sayoc & De Los Angeles; (7) BIR ITAD Ruling No. 165-00 dated 30 October 2000; (8) BIR ITAD Ruling No. 146-00 dated 19 October 2000; and, (9) BIR Ruling No. ITAD-153-15[60] dated 30 April 2015 issued to IFC.

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58 Exhibit "P-25-2", Division Docket, Volume V, pp. 3240-3243.
59 Supra at note 20.
60 Exhibit "P-14", Division Docket, Volume V, pp. 2643-2645.

Unfortunately, We can only find respondent's reliance on the above BIR rulings, misplaced.

As early as 2007, the BIR has already expressed the view that STT is a percentage tax and not an income tax. In *DA ITAD BIR Ruling No. 022-07* dated 09 February 2007, the BIR ruled that STT cannot be considered as an identical or substantially similar tax on income. In arriving at the said conclusion, the BIR examined the deliberations of Congress in passing RA 7717[61] from which the present Section 127(A) of the NIRC of 1997, as amended, originated, to wit:

> ...
> *History of Section 127*
> *of the Tax Code of 1997*
>
> On the other hand, Section 127 (A) (*under Title V-Other Percentage Taxes*) of the National Internal Revenue Code (Tax Code) of 1997 provides as follows, *viz.*:
>
>> "*SEC. 127. Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange.* — There shall be levied, and assessed and collected on every sale, barter, exchange or other disposition of shares of stock listed and traded through the local stock exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered, exchange or otherwise disposed which shall be paid by the seller or transferor."
>
> **The tax imposed by the foregoing provision is known as the "stock transaction tax". Such tax is *not* a tax on the earnings derived from the sale of stocks *but* is an excise tax imposed on the privilege to sell shares of stocks** (*BIR Ruling No. 118-80*).
>
> **In enacting Republic Act No. (RA) 7717, Congress has considered the view that the stock transaction tax is not a tax on income** as it explicitly provided under its Section 3, to wit:

---

61 AN ACT IMPOSING A TAX ON THE SALE, BARTER OR EXCHANGE OF SHARES OF STOCK LISTED AND TRADED THROUGH THE LOCAL STOCK EXCHANGE OR THROUGH INITIAL PUBLIC OFFERING, AMENDING FOR THE PURPOSE THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, BY INSERTING A NEW SECTION AND REPEALING CERTAIN SUBSECTIONS THEREOF.

> "SEC. 3. Sections 21(d)(2), 24(e)(2)(B), *25(a)(6)(C)(ii), and 25(b)(5)(C)(ii)* of the National Internal Revenue Code, as amended, (*i.e.*, the Tax Code of 1993) are hereby *repealed*"

Such repealed provisions of the Tax Code of 1993 pertaining to foreign corporations are as follows, viz.:

> "SEC. 25. *Rates of tax on foreign corporations.* —
>
> "(a) Tax on resident foreign corporations. — . . .
>
> "(6) Tax on certain incomes received by resident foreign corporations. . . .
>
> "(C) *Capital gains from sales of shares of stocks. — Capital gains realized from sale, exchange or disposition of shares of stocks in any domestic corporation shall be taxed as follows:*
>
> xxx xxx xxx
>
> "(ii) *Capital gains presumed to have been realized from the sale, exchange or disposition of shares of stock listed and traded through a local stock exchange — 1/4 of 1% based on the gross selling price of the shares or shares of stock.*
>
> xxx xxx xxx
>
> "(b) Tax on non-resident foreign corporations. — . . .
>
> "(5) Tax on certain incomes realized by non-resident foreign corporations. . .
>
> "(C) Capital gains realized from sale, exchange or disposition of shares of stocks in any domestic corporation shall be subject to tax as follows:
>
> xxx xxx xxx
>
> "(ii) *Capital gains presumed to have been realized from the sale, exchange or disposition of shares of stock listed and traded through a local stock exchange — 1/4 of 1% based on the gross selling price of the shares or shares of stock.*"

In place of the foregoing provisions, Section 1 of RA 7717 inserted a new section [which was reenacted as Section 127(A) of the Tax Code of 1997 as above-cited] *under the Title V (on Other Percentage Taxes)*, to wit:

> "Sec. 124-A. *Tax on Sale, Barter or Exchange of Shares of Stock Listed and Traded through the Local Stock Exchange or through Initial Public Offering.* — (a) Tax on sale, barter or exchange of shares of stock listed and traded through the local stock exchange. — There shall be levied, assessed, and collected on every sale, barter, exchange, or other disposition of shares of stock listed and traded through the local exchange other than the sale by a dealer in securities, a tax at the rate of one-half of one percent (1/2 of 1%) of the gross selling price or gross value in money of the shares of stock sold, bartered exchanged, or otherwise disposed which shall be paid by the seller of transferor."

In repealing Section 25 under the Tax Code of 1993 and replacing the same with Section 124-A above, Congress removed the stock transaction tax from the classification of income taxes and considered the same as a percentage tax. It is noted that the tax base in the former law, *i.e.*, *"(c)apital gains presumed to have been realized"* was not retained. Instead, the tax base was changed to *"gross selling price or gross value in money"*, making manifest the intent to change the stock transaction tax to a percentage tax.

A percentage tax is a business tax which is based on a given ratio between the gross sales or receipts and the burden imposed upon the taxpayer (*City of Manila vs. Inter-Island Gas*, 99 Phil. 847). The percentage tax on sales is based on a set ratio between the volume of sales and the amount of the tax (*Pepsi Cola Bottling Co., Inc. vs. Municipality of Tanauan*, L-31156, February 27, 1976).

Congressional Deliberations

It is well-established that opinions expressed in the debates and proceedings of the Legislature, steps taken in the enactment of a law, or the history of the passage of the law through the Legislature, may be resorted to as aids in the interpretation of a statute with a doubtful meaning (*Esso Standard Eastern, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 28508-9, July 7, 1989).

Thus in relation to the foregoing, relevant portions in the Committee Deliberations (Committee on Ways and Means, May 26,

1993) of the House of Representatives on House Bill No. 9187 (later to become RA 7717) are hereunder reproduced:

xxx xxx xxx

THE CHAIRMAN.

> **Because the one fourth (1/4) of one percent (1%) right now is not really an income tax. It is out of place in Title 2 of the Internal Revenue Code because it is based on gross selling price. That's why we are transferring it and putting it in its proper place under Title 5 of the Internal Revenue Code. Because it is a gross selling price.**

MR. FRIENZA (DOF).

> It might be that the present provision or the taxation of shares of stock is based on expediency and that is why the provision reads that presumably the capital gains have been taxed at one fourth (1/4) of one percent (1%). Now, the rate . . .

MS. GUEVARA (DOF).

> Sir, except that we just have to interpret it in the light of policy context because for all intents and purposes, it is really supposed to be a tax on capital gains except that . . . because of administrative reasons and also for purposes of developing the stock market, it was based on the value and the rate was lowered.

THE CHAIRMAN.

> It does not detract from the fact that it is a business tax which is being characterized as an income tax.

xxx xxx xxx

MS. SERASPI (NTRC).

> Good morning, Mr. Chairman. I am Aurora Seraspi of the National Tax Research Center. We also support the increase of the rate of tax from one-fourth of one percent to one-half of one percent, however, on the part of the transfer of the tax from the income tax to the percentage tax, the NTRC has also a reservation. As my other colleagues have stated, we subscribed to

them, and then one issue that we would like to point out is that the transfer of the tax from the income tax to the percentage tax has a serious implication on the over all tax structure particularly on the progressivity of the tax system because you will be eroding your direct taxes, it will be transferred to the indirect taxes and the Philippine tax system will be again be said as a regressive tax system.

THE CHAIRMAN.

I don't think it will affect the progressivity of the system. Because right now, under the present provisions of the Internal Revenue Code, this is already an indirect tax. This is already an indirect tax.

MS. SERASPI (NTRC).

The capital gains?

THE CHAIRMAN.

No, this is not a capital gains tax, this is a transaction tax under the present provisions of the Internal Revenue Code, but it's out place. It's also an indirect tax.

MS. SERASPI (NTRC).

Before it was an indirect tax under, earlier . . .

THE CHAIRMAN.

No! Because it can be passed on to the buyer.

MS. SERASPI (NTRC).

But what was taxed under the . . . one fourth of one percent is the presumed gains realized from the sale.

THE CHAIRMAN.

There is no such thing as a presumed gain.

MS. SERASPI (NTRC).

Yeah, And then

THE CHAIRMAN.

How can you presume gain when you, for example, sell the shares of stock at a loss?

MS. SERASPI (NTRC).

I think the one fourth of one percent is not imposed if there is a loss. Because we are imposing . . .

THE CHAIRMAN.

No.! It is imposed even if there is a loss.

VOICE.

Transaction tax iyan, eh.

THE CHAIRMAN.

So, it is really an indirect tax. There is no problem putting this indirect tax in its proper place and really characterizing it as an indirect tax, rather than putting it, making it appear as an income tax.

xxx xxx xxx

THE CHAIRMAN.

So I said, this is not a direct tax, as presently worded in the Internal Revenue Code. It is really an indirect tax which is disguised as a direct tax.

HON. ALMARIO.

Or would you just . . . what you call it a direct tax because of the criticism that the Philippine tax system is regressive.

MS. SERASPI (NTRC).

The dependence of the Philippine tax system is on indirect taxes. So, if that will be transferred again, it will be . . . the tax system will become more regressive.

THE CHAIRMAN.

> Yeah. Whatever tax system you will go, if you look at the present provisions of the Internal Revenue Code imposing the one fourth of one percent on stock transaction, it's really not a direct tax, it's an indirect tax. Because it can be even shifted to the seller. Because the tax is based on gross selling price not on gain. It's the same as in the VAT. The VAT is based on gross selling price which can be shifted to the buyer.

xxx xxx xxx

In the Congressional Floor Deliberations (held on September 2, 1993) regarding the same Bill, Honorable Exequiel B. Javier of Antique delivered a sponsorship speech, a part of which is stated as follows:

MR. JAVIER.

xxx xxx xxx

> **Finally, the proposed measure, Mr. Speaker, seeks to correct the present characterization of the tax on sale of shares of stock listed in the stock exchange. Under the National Internal Revenue Code, the tax is characterized as a tax on income. This is a misnomer, Mr. Speaker. The tax is in essence a tax on transaction since it is imposed regardless of whether the gain or loss is derived from the sale of shares of stock. Historically, Mr. Speaker, when this tax was introduced in 1970, it was likewise characterized as a tax on the transaction. P.D. No. 779, however, erroneously change that characterization to a tax on income. This measure, Mr. Speaker, merely seeks to restore the characterization of this tax — a tax on transaction.**

As shown above, there was a very clear intent on the part of our legislators to clarify the treatment of the stock transaction tax under the Section 124-A [now Section 127(A) of the Tax Code of 1997] as one which is not in the nature of an income tax.

> RULING
>
> **In view of all the foregoing, the stock transaction tax cannot be considered as an identical or substantially similar tax *on income*** in place of the capital gains tax imposed under the former law on the sale or transfer of shares of stock listed and traded through the local stock exchange.[62]
>
> ...

And while the rulings cited by respondent considered STT as essentially a tax on income, the Court *En Banc* cannot subscribe thereto as the same were issued in contravention of the provisions of the law itself. **An administrative agency cannot amend an act of Congress. In case of discrepancy between a provision of a statute and a rule or regulation issued to implement said statute, the statutory provision prevails.**[63]

Furthermore, the Supreme Court, in *Commissioner of Internal Revenue v. The Hon. Court of Appeals, et al.*[64], also held:

> ...
>
> The authority of the Minister of Finance (now the Secretary of Finance), in conjunction with the Commissioner of Internal Revenue, to promulgate all needful rules and regulations for the effective enforcement of internal revenue laws cannot be controverted. Neither can it be disputed that such rules and regulations, as well as administrative opinions and rulings, ordinarily should deserve weight and respect by the courts. **Much more fundamental than either of the above, however, is that all such issuances must not override, but must remain consistent and in harmony with, the law they seek to apply and implement. Administrative rules and regulations are intended to carry out, neither to supplant nor to modify, the law.**
>
> ...

The BIR's more recent rulings also affirm the characterization of STT as percentage tax and not an income tax.

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62 Citation omitted, emphasis and italics in the original text and supplied.

63 *Echegaray v. The Secretary of Justice, et al.*, G.R. No. 132601, 12 October 1998; Citation omitted.

64 G.R. No. 108358, 20 January 1995; Emphasis supplied.

In *BIR Ruling No. 152-14* dated 29 May 2014, the BIR ruled that, although exempt from income tax, any income earned from investments in shares of stocks listed and traded through the PSE is not exempt from the STT under Section 127(A) of the NIRC of 1997, as amended, to wit:

> ...
>
> In reply thereto, please be informed that Section 60 (B) of the Tax of 1997 as amended, provides that —
>
> > *"Sec. 60(B). Exception. — __The tax imposed by title II shall not apply to employees' trust which forms part of a pension, stock bonus, or profit-sharing plan of an employer for the benefit of some or all of his employees__ (1) if contributions are made to the trust by such employer, or employees, or both for the purpose of distributing to such employees the earnings and principal of the fund accumulated by the trust in accordance with such plan, and (2) if under the trust instrument it is impossible, at any time prior to the satisfaction of all liabilities with respect to employees under the trust, for any part of the corpus or income to be (within the taxable year or thereafter) used for, or diverted to, purposes other than for the exclusive benefit of his employees. . ."*
>
> **The foregoing provision categorically exempts employees' trust from income tax. It must be noted, however, that the tax incentive provided under the above-quoted provision is limited only to Title II which refers to income tax. Thus, exemption from stock transaction tax, which is a percentage tax under Title IV** (sic)[65] **of the 1997 Tax Code, as amended, is not covered by Section 60 (B) of the same Code. It is well settled that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature intended to exempt him by words too plain to be beyond doubt or mistake, consistent with the principle that tax exemptions must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.** (*City of Iloilo, et al. vs. Smart Communications, Inc. G.R. No. 167260 dated February 27, 2009*).
>
> **In fine, any income earned by BPI's various Retirement Plans from investments in shares of stocks listed and traded through the Philippine Stock Exchange (PSE), is not exempt**

65 Should read as Title V as Title IV is entitled "Value-Added Tax".

> **from the stock transaction tax under Section 127 (A) of the Tax Code of 1997, as amended.**
>
> Please be guided accordingly.[66]
>
> ...

In *BIR Ruling No. 1300-18* dated 23 October 2018, the same conclusion was reached, that is, any income derived by People's Bank of China (**PBOC**), the Central Bank of the People's Republic of China from investments in the Philippines in loans, stocks, bonds, or other domestic securities, or from interest on deposits, is not included in the gross income and shall be exempt from income tax but it is nonetheless subject to other applicable taxes on the transactions it entered in the Philippines, such as STT under Section 127 of the NIRC of 1997, as amended, and documentary stamp tax under Title VII of the same law. The pertinent provisions of the said ruling read:

> ...
>
> In reply thereto, please be informed that Section 32 (B)(7)(a)(i) of the Tax Code of 1997, as amended, provides that —
>
> > "(B) **Exclusions from Gross Income** — The following items shall not be included in gross income and shall be exempt from taxation under this Title:
> >
> > xxx xxx xxx
> >
> > (7) **Miscellaneous Items.** —
> >
> > (a) **Income Derived by Foreign Government.** — Income derived from investments in the Philippines in loans, stocks, bonds or other domestic securities, or from interest on deposits in banks in the Philippines by (i) foreign governments, (ii) financing institutions owned, controlled, or enjoying refinancing from foreign governments, and (iii) international or regional financial institutions established by foreign governments."
>
> From the foregoing, it is clear that the income derived by a foreign government from investments in the Philippines is exempt from income tax.
>
> ...

---

66 Emphasis, italics and underscoring in the original text and supplied.

> **In view of the foregoing, any income derived by PBOC from its investments in the Philippines in loans, stocks, bonds, or other domestic securities, or from interest on deposits is not included in the gross income and shall be EXEMPT from income tax and consequently from withholding tax. However, PBOC shall be subject to other applicable taxes on the transactions it entered in the Philippines, such as stock transaction tax under Section 127 of the Tax Code of 1997, as amended, and documentary stamp tax under Title VII of the same Code.** (*BIR Ruling Nos. 294-12 dated May 3, 2012, 449-12 dated July 10, 2012 and 495-12 dated July 31, 2012*).[67]
>
> ...

The same is true with respect to *BIR Ruling No. 1301-18*, also dated 23 October 2018, where the BIR once again ruled that the STT under Section 127(A) of the NIRC of 1997, as amended, is not embraced within the title of "Income Tax", to wit:

> ...
>
> Applying the foregoing in the instant cases, the income of **Takata (Philippines) Corporation Retirement Plan** earned from investments in shares of stocks not listed and traded in the Philippine Stock Exchange is exempt from capital gains tax, and consequently from final withholding tax. Moreover, its interest income derived from investments in currency bank deposits, deposit substitutes, trust funds and/or similar arraignments in money market placements is exempt from the 20% final withholding tax imposed under Section 24 (B) (1) of the 1997 Tax Code, as amended.
>
> **It is worthy to note, however that the tax incentive granted to a pension trust under Section 60 (B) of the 1997 Tax Code, as amended, is limited only to Title II which refers to Income Tax. Please note that stock transaction tax under Section 127 (A) of the 1997 Tax Code, as amended, is not embraced within the title of "Income Tax." Thus, the stock transaction tax which is a percentage tax under Title V of the 1997 Tax Code, as amended, is not covered by Section 60 (B) of the same Code. Accordingly, any income earned by Takata (Philippines) Corporation Retirement Plan, from shares of stocks listed and traded in the local stock exchange shall be subject to stock transaction tax imposed under Section 127 (A) of the 1997 Tax Code, as amended.** It is well settled that he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the Legislature

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[67] Emphasis supplied.

> intended to exempt him by words too plain to be beyond doubt or mistake, consistent with the principle that tax exemption must be construed in *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority. *(City of Iloilo, et al. vs. Smart Communications, Inc., G.R. No. 167260 dated February 27, 2009).*[68]
>
> ...

Aside from its misplaced reliance on the aforementioned BIR rulings, respondent also cited several tax treaties which supposedly confirm that the Philippine government has acknowledged that STT is a tax on income by commonly and essentially providing that the taxes to which the said treaties shall apply are the income taxes imposed under Title II and STT.

For instance, the *Convention between the Republic of the Philippines and the Republic of Hungary for the Avoidance of Double Taxation and the Prevention of Fiscal Evasion with Respect to Taxes on Income* (RP-Hungary Convention for the Avoidance of Double Taxation) signed on 13 June 1997 reads:

> ...
>
> **ARTICLE 2**
> *Taxes Covered*
>
> 1. This Convention shall apply to taxes on income on behalf of each Contracting State, irrespective of the manner in which they are levied.
>
> 2. There shall be regarded as taxes on income all taxes imposed on total income or on elements of income, including taxes on gains from the alienation of movable or immovable property, and taxes on the total amounts of wages and salaries.
>
> 3. The existing taxes to which the Convention shall apply are, in particular:
>
> (a) in the Philippines:
>
> the income taxes imposed under Title II and the stock transaction tax in accordance with Section 124-A of the National Internal Revenue Code of the Republic of the Philippines (hereinafter referred to as "Philippine tax");
>
> ...

---

[68] Emphasis in the original text and emphasis supplied.

However, as can be observed therefrom, nothing in the said tax treaty provision supports respondent's claim that STT is an income tax. At best, STT is placed merely in the same category and treatment as income tax but without acknowledging that STT is really an income tax.

Truth is, if the Philippine government indeed recognizes that STT is a tax on income, then there would have been no need for the subject treaties to specifically mention STT in addition to the general statement that income taxes imposed under Title II of the NIRC of 1997 are the ones covered. In other words, if We follow respondent's line of argument, then the mere statement of "income tax" as its coverage would have sufficed.

Moreover, even if We are to concede that STT is essentially an income tax, the fact remains that the exemption provided under Section 32(B) is limited to taxes imposed under Title II of the NIRC of 1997, as amended. To rule otherwise would constitute as judicial legislation which is forbidden by the tripartite division of powers among the three departments of government.

In the early case of *Tañada v. Yulo, et al.*[69], the Supreme Court held:

> ...
>
> In substantiation of what has just been said, it is of course fundamental that the determination of the legislative intent is the primary consideration. However, it is equally fundamental that that (sic) **legislative intent must be determined from the language of the statute itself. This principle must be adhered to even though the court be convinced by extraneous circumstances that the Legislature intended to enact something very different from that which it did enact.** An obscurity cannot be created to be cleared up by construction and hidden meanings at variance with the language used cannot be sought out. **To attempt to do so is a perilous undertaking, and is quite apt to lead to an amendment of a law by judicial construction. To depart from the meaning expressed by the words is to alter the statute, is to legislate not to interpret.**
>
> ...

---

69 G.R. No. L-43575, 31 May 1935; Emphasis supplied.

> Counsel in effect urges us to adopt a liberal construction of the statute. That in this instance, as in the past, we aim to do. **But counsel in his memorandum concedes "that the language of the proviso in question is somewhat defective and does not clearly convey the legislative intent", and at the hearing in response to questions was finally forced to admit that what the Government desired was for the court to insert words and phrases in the law in order to supply an intention for the legislature. That we cannot do.** By liberal construction of statutes, courts from the language use, the subject matter, and the purposes of those framing them are able to find their true meaning. **There is a sharp distinction, however, between construction of this nature and the act of a court in engrafting upon a law something that has been omitted which someone believes ought to have been embraced. The former is liberal construction and is a legitimate exercise of judicial power. The latter is judicial legislation forbidden by the tripartite division of powers among the three departments of government, the executive, the legislative, and the judicial.**
>
> ...

From the foregoing, STT is clearly not categorized as income tax as respondent postulated insistently. Therefore, the exemption from income tax granted under Section 32(B)(7)(a) of the NIRC of 1997, as amended, cannot be extended to STT, which is a kind of percentage tax.

THE EXEMPTION GRANTED TO INTERNATIONAL FINANCE CORPORATION (IFC) UNDER RA 1604 CANNOT BE EXTENDED TO RESPONDENT, WHICH IS A SEPARATE AND DISTINCT ENTITY FROM IFC.

The immunities from taxation granted to IFC are reflected in Section 9, Article VI of the *Articles of Agreement of the International Finance Corporation*, which is appended to RA 1604.[70] Said Section 9 reads, as follows:

[70] Supra at note 10; Emphasis supplied.

> ...
>
> **Sec. 9.** *Immunities from Taxation.* – (a) The Corporation, **its assets, property, income and its operations and transactions authorized by this Agreement, shall be immune from all taxation and from all customs duties.** The Corporation shall also be immune from liability for the collection or payment of any tax or duty.
>
> (b) No tax shall be levied on or in respect of salaries and emoluments paid by the Corporation to Directors, Alternates, officials or employees of the Corporation who are not local citizens, local subjects, or other local nationals.
>
> (c) No taxation of any kind shall be levied on any obligation or security issued by the Corporation (including any dividend or interest thereon) by whomsoever held:
>
> (i) which discriminates against such obligation or security solely because it is issued by the Corporation; or
>
> (ii) if the sole jurisdictional basis for such taxation is the place or currency in which it is issued, made payable or paid, or the location of any office or place of business maintained by the Corporation.
>
> (d) No taxation of any kind shall be levied on any obligation or security guaranteed by the Corporation (including any dividend or interest thereon) by whomsoever held:
>
> (i) which discriminates against such obligation or security solely because it is guaranteed by the Corporation; or
>
> (ii) if the sole jurisdictional basis for such taxation is the location of any office or place of business maintained by the Corporation.
>
> ...

As can be gleaned therefrom, the exemption granted to IFC is limited to its assets, property, income and its operations and transactions. The provision does not extend such immunity to any other entity, much less, respondent.

Respondent's argument that the denial of tax exemption to it (which is effectively controlled and managed by IFC) would run afoul to the public policy considerations behind the Philippine government's approval and ratification of IFC's AOA likewise holds no water. In *Philippine Long Distance Telephone Company, Inc. v. City of Davao, et al.*[71], the Supreme Court held, citing the United States Supreme Court, that a law giving a corporation all the "powers, rights reservations, restrictions, and liabilities" of another company does not give an exemption from taxation which the latter may possess, to wit:

> ...
>
> **Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be mistaken. They cannot be extended by mere implication or inference.** Thus, it was held in *Home Insurance & Trust Co. v. Tennessee* that **a law giving a corporation all the "powers, rights reservations, restrictions, and liabilities" of another company does not give an exemption from taxation which the latter may possess.** In *Rochester R. Co. v. Rochester*, the U.S. Supreme Court, after reviewing cases involving the effect of **the transfer to one company of the powers and privileges of another in conferring a tax exemption possessed by the latter, held that a statute authorizing or directing the grant or transfer of the "privileges" of a corporation which enjoys immunity from taxation or regulation should not be interpreted as including that immunity.**
>
> ...

Thus, if the Supreme Court ruled that vesting a corporation the powers, rights reservations, restrictions, and liabilities of another company would not result to extend the exemption from taxation (which the latter may possess), it is with more reason that the same exemption cannot be extended to respondent, which is merely effectively controlled and managed by the holder of the exemption (especially in the absence of clear grant of the similar privilege of tax exemption).

Based on above disquisitions, the Court *En Banc* is thus constrained to hold that respondent is indeed not exempt from STT on its sales of shares of stock listed and traded through the local stock exchange. As a consequence, respondent cannot claim refund of the STT withheld by its stockbrokers as they have not been erroneously or illegally collected.

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[71] G.R. No. 143867, 25 March 2003; Citations omitted and emphasis supplied.

On a final note. Tax refunds partake the nature of tax exemptions which are a derogation of the power of taxation of the State. They are construed strictly against a taxpayer and liberally in favor of the State such that he who claims a refund or exemption must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[72]

WHEREFORE, with the foregoing, this instant Petition for Review filed by Commissioner of Internal Revenue is hereby **GRANTED**. Accordingly, the Decision dated 17 January 2019 and Resolution dated 03 June 2019, respectively, of the Special First Division in CTA Case No. 9148, entitled *IFC Capitalization (Equity) Fund, LP v. Commissioner of Internal Revenue,* are hereby **REVERSED** and **SET ASIDE.**

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

(On Leave)
ERLINDA P. UY
Associate Justice

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72 *Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*, G.R. No. 182045, 19 September 2012; Citation omitted.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice