REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6207

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
MAY 06 2008 11:35 am

x -x

DECISION

CASANOVA, *J.*:

The Case

Before the Court is a Petition for Review praying for a judgment that will hold petitioner not liable for any deficiency documentary stamp taxes on its Interbank Call Loan Receivables and Assets Held in Trust for the years 1994 and 1995; and for the Court to order respondent to desist in collecting such tax from petitioner. Petitioner further prays that the assessment for deficiency documentary stamp tax on Premium Savings Account for the years 1994 and 1995 be declared closed and settled as its has already been previously paid.[1]

[1] See the petitioner's prayer in the Amended Petition; docket, p. 496.

The Facts

Petitioner is a banking corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCom Building, Juan Luna Street, Binondo, Manila.[2]

On January 12, 2000, petitioner received a Pre-Assessment Notice dated December 17, 1999 from respondent. In the Details of Discrepancy, petitioner was informed that its Interbank Call Loans Receivable, Special Savings, and Assets Held in Trust were all subject to documentary stamp taxes.[3]

On January 25, 2000, petitioner wrote respondent requesting for a reconsideration and withdrawal of the BIR findings.[4]

On January 31, 2000, respondent sent petitioner five (5) Assessment Notices numbered as ST-DST1-94-0036-2000, ST-DST2-94-0037-2000, ST-DST3-95-0038-2000, ST-DST4-95-0039-2000, ST-DST5-95-0040-2000 for deficiency documentary stamp taxes in the sum of P191,636,268.07.[5]

On March 27, 2000, respondent, through then Assistant Commissioner of the BIR-Enforcement Service, sent petitioner a Formal Letter of Demand dated January 31, 2000, requesting for the payment of deficiency documentary stamp taxes in the sum of P191,636,268.06 due from its Premium Savings Account, Interbank Call Loans Receivables and Trust covering the years 1994 and 1995. The deficiency documentary stamp taxes were computed as follows:[6]

---

[2] Par. 1 of the Stipulation of Facts; *ibid.*, p. 52.
[3] BIR Records, pp. 2920-2921.
[4] *Ibid.*, pp. 1318-1319, & 2922-2923.
[5] *Ibid.*, pp. 1323-1324, & 2929-2931. See also Par. 2 of the Stipulation of Facts; docket, p. 52.
[6] *Ibid.*, pp. 1302-1305.

For the Year 1994

A. *Documentary Stamp Tax - TRUST*

Taxable Base	6,909,420,200.00
Basic Deficiency Tax (Sec. 180)	10,364,130.30
Penalties:	
25% Surcharge (Sec. 180)	2,597,032.58
Interest - 1/10/95 ro 3/30/2000 (Sec. 249)	10,824,297.69
Compromise Penalty (RMO 1-90)	25,000.00
Total Amount Due & Collectible	23,810,460.56*

B. Documentary Stamp Tax - PREMIUM SAVINGS ACCOUNT

Taxable Base	16,353,219,717.70
Basic Deficiency Tax (Sec. 180)	24,529,829.58
Penalties:	
25% Surcharge (Sec. 248)	6,132,457.39
Interest - 1/10/95 or 3/30/2000 (Sec. 249)	25,618,954.01
Compromise Penalty (RMO 1-90)	25,000.00
Total Amount Due & Collectible	56,306,240.98

* It should be P23,810.460.57.

For the Year 1995

A. *Documentary Stamp Tax - TRUST*

Taxable Base	9,769,851,173.33
Basic Deficiency Tax (Sec. 180)	14,654,776.76
Penalties:	
25% Surcharge (Sec. 180)	3,663,694.19
Interest - 1/10/96 ro 3/30/2000 (Sec. 249)	12,374,493.50
Compromise Penalty (RMO 1-90)	25,000.00
Total Amount Due & Collectible	30,717,964.45

B. Documentary Stamp Tax - PREMIUM SAVINGS ACCOUNT

Taxable Base	23,245,883,011.80
Basic Deficiency Tax (Sec. 180)	34,868,824.52
Penalties:	
25% Surcharge (Sec. 248)	8,717,206.13
Interest - 1/10/96 ro 3/30/2000 (Sec. 249)	29,443,235.42
Compromise Penalty (RMO 1-90)	25,000.00
Total Amount Due & Collectible	73,054,266.07

C. Documentary Stamp Tax - INTERBANK CALL LOANS RECEIVABLE

Taxable Base	2,460,000,000.00
Basic Deficiency Tax (Sec. 180)	3,690,000.00
Penalties:	
25% Surcharge (Sec. 248)	922,500.00
Interest - 1/10/96 ro 3/30/2000 (Sec. 249)	3,115,836.00
Compromise Penalty (RMO 1-90)	25,000.00
Total Amount Due & Collectible	7,753,336.00

On May 5, 2000, petitioner filed its protest against the assessments and requested for a "reconsideration and/or reinvestigation.[7]

As the 180-day period expired without respondent acting on the protest, petitioner filed its Petition for Review on November 29, 2000.

On January 2, 2001, respondent filed her Answer thereto. After the issues were joined, the parties presented their respective testimonial, and documentary evidence.[8]

On July 10, 2007, petitioner filed its Manifestation alleging that the present Petition became moot insofar as the assessments on deficiency documentary stamp taxes due on its Premium Savings Account for the years 1994 and 1995 as it availed of the benefits granted in Revenue Regulations No. 15-06 and paid the deficiency taxes. Petitioner attached a photocopy of the Termination Letter issued by then Commissioner Jose Mario C. Buñag.[9]

On August 21, 2007, in compliance with this Court's Order given during the August 10, 2007 hearing, petitioner filed its Amended Petition for Review.[10]

On November 13, 2007, this Court issued a Resolution considering this case as deemed submitted for decision after petitioner filed its Memorandum on March

[7] *Ibid.*, pp. 2932-2937.
[8] Docket, pp. 33-36.
[9] *Ibid.*, pp. 479-482.
[10] *Ibid.*, pp. 490-497.

29, 2007; and after respondent failed to file an Amended Answer or a Memorandum within the prescribed period.[11]

The Issues

Both parties submit the following issues for this Court's resolution:[12]

> "1. Whether the Interbank Call Loans Receivables are subject to DST.
>
> 2. Whether Petitioner's Premium Savings Account is a time deposit and thus, subject to DST.
>
> 3. Whether the assets held in trust of the Petitioner pursuant to its trust business are subject to DST."

This Court's Ruling

Foremost, the resolution of the second issue is deemed moot after petitioner availed of the One-Time Abatement Program under RR 15-2006 and paid the documentary stamp taxes in the sum of ₱59,398,654.10 due from the its Premium Savings Account. Besides, respondent issued a Termination Letter dated April 10, 2007 considering petitioner's tax liability as closed and terminated.[13]

As regards the first issue, this Court does not agree with the respondent in considering interbank call loans receivables as deposit substitutes; and, thus, taxable under Section 180 of the National Internal Revenue Code of 1977, as amended ("Tax Code").

---

[11] *Ibid.*, pp. 522-523.
[12] Stipulation of Issues; *ibid.*, pp. 53-54.
[13] See Manifestation filed on July 10, 2007; *ibid.*, pp. 479-481.

Section 180 of the Tax Code reads:

> "SEC. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposits bearing interest and others not payable on sight or demand.* — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section."

It is clear from the aforequoted provision that only the following documents are subject to DST:

1.) Loan agreements;
2.) Promissory notes;
3.) Bills of exchange;
4.) Drafts, instruments and securities issued by the Government or any of its instrumentalities;
5.) Certificates of deposit bearing interest; and
6.) Other orders for the payment of any sum of money otherwise than at sight or demand.

Even if interbank call loans receivables are considered as deposit substitutes under Section 20(y) of the 1977 Tax Code, the same are not among the instruments enumerated in Section 180 of the Tax Code quoted earlier. Hence, interbank call loans receivables are not subject to documentary stamp tax under the 1977 Tax Code.

For clarification, IBCLs receivables are not subject to documentary stamp tax under the 1977 Tax Code. However, IBCLs with maturity exceeding five days accruing in 1998 and onwards are considered as deposite substitutes; and, thus, taxable under the 1997 Tax Code. In *Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue*,[14] this Court ruled:

> "The Court in Division correctly cancelled DST assessment in IBCLs for taxable years 1995 to 1997. Prior to the 1997 NIRC, as amended, IBCLS were not subject to DST.
>
> xxx.
>
> DST is imposed on the privilege of contracting loans between and among banks, even if the IBCL transactions are documented merely by call loan slips and payment transfer tickets or done only through an electronic facility.
>
> xxx.
>
> The Bangko Sentral ng Pilipinas ('BSP') which exercises supervisory power among banks requires banks to maintain a daily minimum cash reserve set as a proportion of their deposit liabilities. These are banks which may be holding on to a reserve surplus in a day, while others have deficiency in reserves. A bank may experience surplus in a day, but low reserves in some other days. To cover temporary deficits, banks normally borrow (usually on an overnight lending) from other banks with surpluses. This network allowing banks that are deficient in reserves to borrow from banks with surplus reserves is referred to as IBCL. In other words, IBCL transactions among banks are done primarily to correct reserve requirements. By availing of IBCLs, reserve deficient banks are able to avoid BSP sanctions and the surplus banks are able to earn income on their excess cash holdings.
>
> The 1997 NIRC, as amended which took effect on January 1, 1998 is the applicable law for taxes accruing for taxable year 1998. Under the law, IBCLs with maturity exceeding five days qualify within the purview of the definition of deposit substitutes, pursuant to Section 22(Y) xxx:

---

[14] C.T.A. EB Case No. 269, October 30, 2007.

> Succinctly stated, IBCLs with a maturity period of more than five days and utilized to cover deficiency in reserves against deposit liabilities, including between or among banks and quasi-banks are treated as deposit substitutes.
>
> The taxability of IBCLs as deposit substitutes is governed by the provision of Section 180 of the 1997 NIRC, as amended, xxx"

Taxes are not to be imposed or presumed to be imposed beyond what statutes expressly and clearly declared. Otherwise stated, no person or property is subject to taxation unless they fall within the terms or plain import of a taxing statute.[15]

As regards the last issue, this Court likewise does not agree with the respondent in imposing documentary stamp tax on assets held in trust by the petitioner pursuant to Section 180 of the Tax Code.

The Court *En Banc* has already ruled that a trust agreement is not a bank deposit; and, hence, not subject to documentary stamp tax under Section 180 of the Tax Code.[16]

In *Traders Royal Bank vs. Commissioner of Internal Revenue*,[17] this Court ruled:

> "xxx. When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture. The yield or return of investment is higher and varies depending on the actual profit earned. In some trust agreements, a depositor may even get a negative return of investment. The fact that there is an 'expected rate of return' does not necessarily convert a trust agreement into a time deposit. Under Section X407 of the Manual of Regulations for Banks it is provided that 'the basic

---

[15] *Commissioner of Internal Revenue vs. Court of Appeals and Atlas Consolidated Mining and Development Corporation*, G.R. No. 86785, November 21, 1991 (204 SCRA 182).

[16] *Commissioner of Internal Revenue vs. Solidbank Corporation* (C.T.A. EB No. 114, February 22, 2007); and *Commissioner of Internal Revenue vs. Traders Royal Bank* (C.T.A. EB No. 32, February 14, 2005).

[17] CTA Case No. 6392, April 28, 2004. See also *Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue* (C.T.A. Case No. 6504, October 25, 2006).

characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment.'"

In *Solidbank Corporation (Now: First Metro Investment Corporation) vs. Commissioner of Internal Revenue*,[18] this Court further ruled:

"To reiterate, trust agreements or assets-held-in-trust accounts do not fall under the term 'certificates of deposit', basically, because no debtor-creditor relationship arises in trust agreements. What is established is that of a trustor-trustee relationship. In a trust agreement, no absolute transfer of ownership over the money or property happens. What is merely extended to the trustee-bank is the right to manage and invest the object of the trust under the instructions of the trustor-client. Therefore, the trustee-bank is not obliged to guarantee a positive return on the money or property subject of the trust."

In ruling in favor of the petitioner, this Court will quote the Supreme Court's ruling in *Commissioner of Internal Revenue vs. The Court of Appeals, The Court of Tax Appeals and Ateneo de Manila University*, as follows:[19]

"xxx '(A) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. xxx *(A) tax cannot be imposed without clear and express words* for that purpose. Accordingly, the general rule of requiring *adherence to the letter in construing statutes applies with peculiar strictness to tax laws* and the provisions of a taxing act are *not to be* extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that 'in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subjects or citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import." (Emphasis supplied.)

---

[18] C.T.A. Case No. 6557, May 5, 2005.

[19] 271 SCRA 605. See also *Marinduque Iron Mines Agents, Inc. vs. Municipal Council of the Municipality of Hinabangan, Samar*, 11 SCRA 416; and *Commissioner of Internal Revenue vs. Fireman's Fund Ins., Co.*, 148 SCRA 315.

IN VIEW OF THE FOREGOING, the amended Petition for Review is hereby **GRANTED**. The Formal Letter of Demand dated January 31, 2000, with attached Details of Discrepancies and Final Assessment Notices for 1994 and 1995, is **SET ASIDE** and **CANCELLED**.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairman, First Division