REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

CONSOLIDATED ORIENT LEASING AND FINANCE CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 4463

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
OCT 25 1995

x - x

DECISION

This is a case involving alleged deficiency gross receipts tax and documentary stamp tax for the fiscal year ending September 30, 1983 in the amounts of P725,638.00 and P584,719.91, respectively.

Petitioner is a domestic corporation engaged in leasing operations under the provisions of Republic Act No. 5980 otherwise known as the "Financing Company Act". Under its Articles of Incorporation, its primary purpose is "to engage in the business of financing by leasing all kinds of equipment, machinery, vehicles, vessels, airplanes, facilities appliances and all other types of real and personal property for whatever use through finance-related transactions... "C" and "C-A").

On July 1, 1988 Petitioner received from Respondent a letter of demand and assessment notices nos. FAS-4-83-88-001795 and FAS-5-83-001796 (Exhs. "A", "A-1" and "A-2") for alleged deficiency gross receipts and documentary stamp taxes plus increments, for fiscal year ending September 30, 1983 totalling P1,310,357.93 computed as follows:

Deficiency Gross Receipts Tax

Gross Receipts subject to tax	P35,388,885.15
5% Gross Receipts Tax due	P 1,769,444.26
Less: Quarterly Payment	1,189,173.84
Deficiency Gross Receipts Tax	P 580,270.42
Plus: 25% Surcharge	145,067.60
Compromise Penalty	300.00
Total	P 725,638.02

Deficiency Documentary Stamp Tax

On transfer or collection of proceeds of commercial paper:	
P32,025,930.56 / P200.00 x P0.24 =	P 40,032.41
On certificates of indebtedness issued during the year:	
P180,350,000.00 / P200.00 x P0.65 =	P 586,137.50
Total documentary stamp tax due	P 626,169.91
Less: Payment	41,750.00
Deficiency documentary stamp tax	P 584,419.91
Plus: Compromise penalty	300.00
Total	P 584,719.91
Total amount due and collectible	P 1,310,357.93

In justifying the above assessments, Respondent argued that "petitioner's alleged lease contracts are, in substance and purpose, an installment sale, hence, covered by Section 42 of the 1986 Tax Code, as amended" (Answer, p. 2). The factual and legal basis of the gross receipts tax (GRT) assessment relied upon by the Respondent was contained in the Revenue Examiner's Memorandum Report dated April 7, 1988 which stated, thus:

> The results of the business tax investigation are as follows:
>
> GROSS RECEIPTS TAX (GRT) (Sec. 120, N.I.R.C) -
>
> C.T.A. Case No. 3354, i.e. MAKATI LEASING AND FINANCE CORPORATION, Petitioner - Versus - COMMISSIONER OF INTERNAL REVENUE, Respondent, which falls squarely on this instant case of Consolidated Orient Leasing and Financing Corp. (COLF), thus -
>
> "5. Petitioner's lease contract is, in substance and purpose, an installment sale; hence, it is covered by Section 43 of the Tax Code, as amended;
>
> "6. While Petitioner maintained its books of accounts under the operating method, in its financial statement, it used the financing method. Under the "operating method", the entire rent income is recorded as income and depreciation of the leased equipment is claimed as deduction therefrom. Under the financing method only a portion of the amount received is considered income and the rest is treated as part of the cost. Depreciation is not claimed as deduction, the equipment being

considered sold under the installment basis;

"7. Some of the terms and conditions of petitioner's lease agreement are different from those of the ordinary contract of lease, to wit:

1) The lessee is required to pay the insurance premium on the equipment;

2) The lessee, according to the agreement, is required to pay "all licence fees, registration fees, assessment, charges and taxes imposed upon the ownership... sale, possession or use of the equipment..."

"8. In determining the real character of a contract, the purpose, rather than the name given to it by the parties governs."

and the documentary stamp tax (DST) was based "per BIR Ruling of Commissioner B. Tan on the case of State Financing Center, Inc., the debt instruments issued by corporate taxpayer before October 15, 1984 to secure bills payable, whether negotiable or non-negotiable, were considered certificate of indebtedness under Sec. 223 of the Tax Code and therefore taxable at P0.65/P200, citing Sec. 9 of Finance Reg. No. 26 (DST Regulations)." (BIR Records, p. 114)

In a letter dated July 19, 1988 received by Respondent on July 20, 1988, Petitioner formally protested the assessments, saying:

> We submit that we are a financing company engaged in leasing activities and operating under the guidelines of R.A. 5980. We don't have any merchandise being sold on cash or installment basis. Apparently, the examiner included our lessees guaranty deposits in his computation of initial payments to arrive at the conclusion whether the transaction is one of installment or cash sales. This procedure, in effect, makes the guaranty deposit a taxable income on our part at the time of receipt.
>
> Please note that the guaranty deposit or security deposit is solely intended to ensure the faithful performance by the lessee of all the provisions of the lease agreement and is returnable at the end of the lease upon faithful performance by the lessee of the lease conditions. Thus, no taxable income could have been realized in the year the guaranty deposit was received.
>
> xxx xxx xxx
>
> As mentioned, the examiner made the assessment on the basis that the transaction is a cash sale per Section 43 (now Section 42), NIRC, if the initial payment is more than 25% of the selling price. A close look of the Section stated above, one will notice that the initial payments apply to sale or disposition of <u>Real Property</u> and not to sale of personal property on a regular installment plan. The gross profit method of recognizing income without taking into account initial payments is allowed on sale of personal property.

With regard the alleged deficiency documentary stamps tax, Petitioner argued, thus:

> B. DEFICIENCY DOCUMENTARY STAMPS TAX ON TRANSFER OR COLLECTION OF PROCEEDS OF COMMERCIAL PAPERS P40,032.41
>
> This assessment was made by the examiner allegedly on the premise that the

act of surrendering commercial papers/treasury bills certificates to the bank upon maturity of the investment is still subject to documentary stamps tax.

We submit that collection of proceeds of commercial papers/treasury bills is not anymore subject to documentary stamps tax and that only one tax shall be collected on each sale or transfer of securities from one person to another regardless of whether or not a certificate of stock on obligation is issued, endorsed in pursuance of such sale or transfer. Furthermore, documentary stamps tax, per se, is a tax on document and not on the transaction.

C. DOCUMENTARY STAMPS TAX ON INDEBTEDNESS ISSUED DURING THE YEAR - P584,719.91

This amount was arrived at by the examiner allegedly using Section 223 of the NIRC as basis. He subjected our Company's borrowings/loans at P.65 per P200 citing as example the case of State Financing Center. In that case, we quoted hereunder the part of the letter which was used by the examiner as his basis of assessment:

> "Where corporate borrowings are derived from the <u>general public</u> designed to raise funds for use by the corporation for its business activities, the debt instruments are not promissory notes but partake of the nature of investment securities." (Underscoring supplied).

We submit that all our Company's borrowings came from banks and other financial institutions only. These are evidenced by non-negotiable promissory notes wherein there is a

> clean cut distinction between the lender and the borrower. We can neither borrow funds from the general public nor issue commercial papers to them because of Central Bank regulations limiting our creditors to only nineteen (19), our Company being a non-quasi bank financial intermediary.
>
> Furthermore, Revenue Memo Circular No. 33-86 a copy of which is hereby also attached, provides that non-negotiable promissory notes are not subject to documentary stamp tax prior to October 15, 1984.

On May 10, 1990, Petitioner received from the Respondent a letter of final denial of its protest informing it that "after careful evaluation of the issues raised therein, this Office finds no ground to cancel or even modify the same." (Exh. "B")

Hence, this appeal.

The issues to be resolved are the following:

1) Whether or not the lease agreements entered into by the Petitioner are considered cash or installment sales transactions and hence, covered by Section 42 of the Tax Code, as amended;

2) Whether or not the act of surrendering commercial paper for collection or proceeds upon maturity is subject to documentary stamp tax;

3) Whether or not non-negotiable promissory notes executed by the Petitioner in 1983 are subject to documentary stamp tax.

As regards the first issue, We are of the opinion and We so hold that the Petitioner is indeed a financing company engaged in leasing operations as evidenced by its Articles of Incorporation (Exh. "C"). In fact, the present Respondent Commissioner herself in her BIR Ruling No. 241-93 admitted that Petitioner is engaged in lease financing when she said, thusly: "such being the case, your lease agreement model and its auxiliary contract as submitted to this Office meet the requirements to constitute the same as a finance lease contract pursuant to Revenue Regulations No. 19-86, as amended." (Exh. "C", Rebuttal, CTA Records, p. 151-152). Hence, the contention of the previous Respondent of this case that the lease agreements entered into by the Petitioner are considered cash or installment sales necessarily fell apart as the idea was now debunked by the present Respondent Commissioner herself.

And rightly so.

Not even the case of **Makati Leasing and Finance Corporation vs. Commissioner of Internal Revenue** (CTA Case No. 3354) cited by Respondent's Examiner, Mr.

Francisco S. de Guzman as the factual and legal basis in his recommendation for the assessments could save this instant case. In fact, We think that the statement of Mr. de Guzman saying that "the present case... is parallel to the case of this Makati Leasing and Finance Corporation <u>wherein the BIR won</u>" (T.S.N. Hearing of February 24, 1993, p. 11) is misleading. In the cited case, contrary to the statement of the Respondent's witness, <u>the BIR lost the case</u>. Said judgment of this Court was "AFFIRMED in its entirety" by the Court of Appeals which ruled in part, thus:

> In this appeal interposed by the Commissioner of Internal Revenue (herein petitioner), it is insisted that the agreements entered into by MLFC with the lessee (e.g., Exh. "C") were "in substance and purpose" installment sales although in the form of lease contracts.
>
> <u>After due consideration and evaluation of the facts and applicable statutory provisions, We have found no sufficiently valid and convincing reasons warranting reversal or modification of the appealed judgment</u>.
>
> (Underscoring supplied; CA G.R. SP No. 23578, November 25, 1992, p. 2)

As to the second issue, We resolve in the negative. Respondent assessed Petitioner of alleged deficiency Documentary Stamp Tax on what the Revenue Examiner Mr. de Guzman termed as "transfer or collections of proceeds of commercial papers" purportedly under Section 225 of the

1983 Tax Code. However, a closer scrutiny of the said law reveals that there is no such specie in the Tax Code. Section 225 of the 1983 Tax Code is hereby quoted, thusly in part:

> SEC. 225. *Stamp tax on sales, agreements to sell, memoranda of sales, deliveries or transfer of bonds, due-bills, certificates of stock.* - On all sales, or agreements to sell or memoranda of sales or deliveries, or transfer of bonds, due-bills, certificates or obligation, or shares or certificates of stocks...

Clearly, <u>it does not provide for a stamp tax on the surrender of commercial paper for collection of proceeds upon maturity.</u> There being none, said assessment has no leg to stand on and should therefore be cancelled. In its desire to raise revenues for the government, the Bureau of Internal Revenue can only think of the weirdest "grounds" for assessment emanating from its wildest imagination to the detriment of the innocent taxpayers.

We cannot allow that.

With regard the last issue, again, We resolve in the negative.

The legal basis used by the Respondent's Examiner in assessing documentary stamp tax (DST) on non-negotiable promissory notes is Section 223 of the 1983 Tax Code which provides, in part:

> SEC. 223. *Stamp tax on bonds, debentures, and certificates of indebtedness.* - On all bonds, debentures, and certificates of indebtedness issued by any association, company or corporation..."

The examiner, therefore, treated the non-negotiable promissory notes as certificates of indebtedness which is subject to documentary stamp tax under the above-cited law.

We, however, are not prepared to accept the argument of the Respondent as it lacked basis in law and jurisprudence. Petitioner's promissory notes are clearly **not** certificates of indebtedness having the form of investment securities but promissory notes in form and in substance. (Exhs. "E", "F" and submarkings). The law is clear and leaves no room for interpretation. We have no alternative but to apply the law as it is clearly worded.

Moreover, under Section 229 of the 1983 Tax Code prior to its amendment by P.D. 1959 on October 15, 1984 provides that promissory notes are subject to the stamp tax only if negotiable. It should be remembered therefore, that it was only after October 15, 1984 (effectivity date of P.D. 1959) that non-negotiable promissory notes became subject to documentary stamp tax. But since the above-subject non-negotiable promissory notes were issued by the Petitioner **before** October 15, 1984, it should, therefore, not be liable for documentary stamp tax.

Lastly, needless to state that a tax cannot just be imposed by mere implication or without clear and express words for that purpose. Thus, "if the intent or meaning of the tax statute is not clear, or is doubtful as whether a taxpayer is covered by the tax obligation, the tax law shall be construed against the Government because revenue laws impose special burdens." (**Marinduque Iron Mines Agents, Inc. vs. Hinabangan Samar**, L-18924, June 30, 1964).

WHEREFORE, in all the foregoing, the assessments issued by the Respondent are hereby **CANCELLED**, the Petitioner not being liable to the alleged deficiency gross receipts and documentary stamp taxes for 1983.

SO ORDERED.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals