REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

BELLE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6156

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUN 17 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

The Commissioner of Internal Revenue (hereafter "respondent") assessed Belle Corporation (hereafter "petitioner") deficiency income taxes on interest income which petitioner should have supposedly imputed on the inter-company advances made by the latter to its subsidiaries and affiliates. The assessment was pursuant to the BIR Revenue Memorandum Order 63-99 in relation to *Section 43 of the National Internal Revenue Code* (hereafter

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"NIRC"). In addition thereto, documentary stamp taxes were also imposed for the same advances, pursuant to *BIR Ruling 108-99* in relation to *Section 180 of the NIRC*.

THE CASE

Before Us is a Petition for Review seeking to set aside the Assessment Notices issued by respondent against petitioner for deficiency income tax and documentary stamp taxes in the amounts of P126,399,127.27 and P 43,866,322.34, respectively.

THE FACTS

In their Joint Stipulation of Facts, the parties submitted a summary of stipulated facts:

> "1. Petitioner BELLE CORPORATION is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It may be served with summons and other court processes through the undersigned counsel.
>
> 2. Respondent Commissioner of Internal Revenue is the public officer authorized under the National Internal Revenue Code of 1997 to examine any taxpayer and to assess the correct amount of internal revenue tax. He may be served with summons and other court processes at the

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Bureau of Internal Revenue, National Office Building, Diliman, Quezon City.

3. On 28 July 1998, Respondent served Letter of Authority No. 165641 on Petitioner authorizing the examination of its books of accounts and other accounting records for "all internal revenue taxes" for "1997 & unverified prior years."

4. In the course of the examination, documents requested by Respondent were submitted by Petitioner and formed part of BIR records.

5. On 22 November 1999, Respondent issued two (2) assessment notices with an accompanying demand letter and an explanation of the deficiency tax assessments which Petitioner received on 24 December 1999. The assessment notices indicate a deficiency in income and documentary stamp taxes in the aggregate amount of P170,265,449.61, inclusive of increments, as follows:

Particulars	Basic Tax	Surcharges	Interest	Total
Deficiency income tax	95,760,227.27		30,638,900	126,399,127.27
Deficiency documentary stamp tax	35,093,057.87	8,773,264.47		43,866,322.34
Total	130,853,285.14	8,773,264.47	30,638,900	170,265,449.61

6. In a letter dated 24 January 2000, which was received by the Respondent on even date, Petitioner through undersigned counsel protested the Assessment by requesting for reconsideration thereof.

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7. In a letter dated 24 March 2000 which was received by Respondent on even date, Petitioner manifested that its Protest dated 24 January 2000 and those documents submitted to the BIR examiners which formed part of the BIR records constituted all relevant documents of the Protest in compliance with Section 228 of the Tax Code.

8. To date, no decision has been made by Respondent on the Protest, notwithstanding one hundred eighty (180) days has passed since the filing of the Protest on 24 January 2000.

9. To be well within the 30-day period from the earlier 180-day period given to Respondent to decide the Protest, the Petition for Review was filed for the purpose of having he Assessments cancelled and/or withdrawn.

10. The assessment by the BIR for deficiency income tax was made on the basis of Section 43 (now Section 50) of the Tax Code, as amended."

In his Answer, respondent alleged by way of special and affirmative defenses:

"6. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

7. Section 228 of the Tax Code, partly provides:

'Sec. 228. Protesting of Assessment.- Such assessment may be protested administratively by filing a request for reconsideration or

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> reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. **Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final**.' (Emphasis supplied).

Considering the failure of petitioner to submit all relevant supporting documents within sixty (60) days from filing its protest, the assessments have already become final by operation of law.

8. Since the assessments have become final, this Honorable Court has no jurisdiction to act on the instant petition.

9. Section 43 of the 1993 Tax Code (now Section 50 of the 1997 Tax Code) provides:

> '**Sec. 43. Allocation of income and deductions**.- In any case of two or more organizations, trades, or business (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion, or allocate gross income or deductions between or among such organizations, trades, or businesses, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trades or businesses. (**Emphasis supplied**)."

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As clearly provided from the foregoing, the Commissioner of Internal Revenue is authorized to distribute, apportion, or allocate gross income or deductions between or among organizations owned and controlled directly or indirectly by the same interests, if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes, or clearly to reflect the income of any such organization.

In the instant case, the BIR assessed petitioner for deficiency income tax on the interest income imputed on the advances granted by petitioner to its affiliates or subsidiaries at a rate prevailing at the time it was granted (16.2% in 1997) pursuant to the foregoing provision.

10. Section 43 (now Section 50) of the Tax Code empowers the Commissioner of Internal Revenue to rectify abnormalities and distortions in income brought about by common control through the adoption of standards considered fair, reasonable or at arm's length. Thus, in relation to **Revenue Memorandum Order no. 63-99**, the arm's length bargaining standard were adopted as the ultimate test for determining the fairness of related party transactions – i.e. 'the standard to be applied in every case is that of an uncontrolled taxpayer dealing at arm's length with another uncontrolled taxpayer.'

11. The Commissioner of Internal Revenue is not restricted to determine the true net income of a controlled taxpayer, in cases of improper accounting, fraudulent, colorable, sham transactions, or in case of devises designed to reduce or avoid by shifting or distorting income or deductions. The authority of the Commissioner of Internal Revenue to determine true net income, in whole or in part, of a controlled

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taxpayer is other than it would have been had the taxpayer dealt at arm's length with another uncontrolled taxpayer (see Annotations, National Internal Revenue Code, 1991, 15th Edition by Jose N. Nolledo).

12. It is the objective of **Revenue Memorandum No. 63-99** to adopt the arm's length bargaining standard as the ultimate test for determining the correct gross income and deductions between two or more enterprises under common control and to provide a means of redistributing or reapportioning income and expenses of taxpayers under common control after applying Section 43 (now Section 50) of the Tax Code.

13. **BIR Ruling No. 108-99** dated July 15, 1999, states:

> 'Inter-office memo covering the advances granted by a corporation/affiliate company or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to Section 180 of the NIRC of 1997.'

In relation thereto, **Section 180 of the NIRC of 1997,** provides:

> **'Sec. 180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute, Debt Instruments, Certificates of Deposit Bearing Interest and Others Not payable on Sight or Demand.** – On all bonds, loan agreements, including those 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, deposit substitute debt instrument certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, 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 (P.30) on each two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note. xxx"

Petitioner's granting of advances to its affiliates is tantamount to granting loan or credit.

Based on the foregoing, since the inter-office memo covering the advances granted by petitioner to its affiliates or subsidiaries is in the nature of a promissory note, petitioner is therefore liable to pay the deficiency documentary stamp tax.

14. BIR Ruling No. 108-99 dated July 15, 1999, modifies BIR Ruling No. 116-98 dated July 30, 1998, insofar as inter-office memo covering the advances granted by a corporation/affiliate company or inter-office memo evidencing lendings/borrowings is in the nature or a promissory note subject to Section 180 of the NIRC of 1997.

15. Section 246 of the NIRC of 1977, as amended, states that, except in cases: (1) where the taxpayer deliberately misstates or omits materials facts from his return or in any document required of him by the Bureau of Internal Revenue; (2) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on

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which the ruling is based; or (3) where the taxpayer acted in bad faith, any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with Section 245 of the Tax Code, or any rulings or circulars promulgated in accordance with Section 245 of the Tax Code, or any rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayer.

The case of petitioner, apparently belongs to one of the said exceptions – i.e. where the taxpayer deliberately misstates or omits materials facts required by the BIR since petitioner made it appear that the intercompany advances it made in 1997 to its subsidiaries and affiliates were at arm's length transactions. Hence, Revenue Memorandum No. 63-99 and BIR Ruling No. 108-99 should be applied retroactively to the case of petitioner.

16. The assessment issued against petitioner for delinquency income and documentary stamp tax for taxable year ending December 31, 1997 was made in accordance with law and regulations.

17. All presumptions are in favor of the correctness of tax assessments."

Petitioner presented Sylvia de los Santos, Jolina Malicdem, Eric Recto and Liani Marcia R. Constantino, representative of the commissioned independent CPA, as witnesses, and submitted its Formal Offer of Evidence,

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which was admitted by this Court subject to a final resolution as regards their probative value.

On the other hand, respondent presented Fe Coling, as witness, and submitted documentary evidence, marked as Exhibits "1" to "4".

Thereafter, both parties were ordered to file their respective memoranda within thirty (30) days from notice. Both parties having complied thereto, the case was deemed submitted for decision.

THE ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

> Whether or not Revenue Memorandum Order No. 63-99 issued in 1999, should be made to apply to Petitioner for inter-company advances made in 1997.

II

> Whether or not the inter-company advances made by petitioner in 1997 to its subsidiaries and affiliates were made due to: (a) the financial need of the borrowing company and the financial ability of the petitioner, the lending company; or (b) for tax evasion purposes.

III

Whether or not BIR Ruling No. 108-99 dated 15 July 1999 can apply retroactively to Petitioner's inter-company advances made in 1997 to its subsidiaries and affiliates.

IV

Whether or not the inter-company advances made by the Petitioner in 1997 to its subsidiaries and affiliates partake the nature of a promissory note subject to Section 180 of the Tax Code.

THE COURT'S RULING

The petition is partly meritorious.

DEFICIENCY INCOME TAX

The disputed deficiency tax in the instant case pertains to the supposed interest income for the inter-company advances that should have been earned had petitioner imposed interest on all its advances to/due from its affiliates for the year ending 1997.

Bases for the assessment

1. *Section 43 of the National Internal Revenue Code*

Unquestionably, the assessment made by the respondent for deficiency income tax was made on the basis of Section 43 (now Section 50) of the NIRC, as amended, which reads as follows:

> "Sec. 43. Allocation of income and deductions. – In any case of two or more organizations, trades or businesses (whether or not incorporated and whether or not organized in the Philippines) owned or controlled directly or indirectly by the same interests, the Commissioner of Internal Revenue is authorized to distribute, apportion or allocate gross income or deductions between or among such organizations, trades or businesses if he determines that such distribution, apportionment, or allocation is necessary in order to prevent evasion of taxes or clearly to reflect the income of any such organization, trades or businesses."

In the instant case, the subject transaction from which deficiency income tax was assessed involves cash advances made by petitioner to its affiliates/subsidiaries. Examination of the records would show that petitioner, using its own credit line, borrows money from banks, and subsequently advances the same to its affiliates/subsidiaries without charging any interest. For the foregoing "dubious" transaction, respondent imputed petitioner an "imaginary" interest income for the advances extended by the latter to its subsidiaries. As a result thereof, petitioner was assessed deficiency income tax for the undeclared "imaginary" interest income, which the respondent previously imputed.

Section 43 empowers the Commissioner of Internal Revenue (hereafter "CIR") to rectify abnormalities and distortions in income brought about by common control through the adoption of standards considered fair, reasonable or at arms' length. Admittedly the purpose of the law is to place a controlled taxpayer on tax parity with an uncontrolled taxpayer by determining, according to the standard of an uncontrolled taxpayer, the true net income from the property and business of a controlled taxpayer. If this has not been done then the taxable net income are hereby understated, the statute grants the CIR authority to intervene by making distributions, apportionments or allocations of gross income among the controlled taxpayers to determine the true net income of each controlled taxpayer (*Section 179[b], Revenue Regulation No. 2*).

2. Revenue Memorandum Order No. 63-99

Respondent also insists that the foregoing advances fall within the purview of *Revenue Memorandum Order No. 63-99*, which was issued in

July 19, 1999 by then Commissioner Beethoven L. Rualo that delved on *Section 43*. The subject of said memorandum reads as follows:

> "Determination of Taxable Income on Inter-Company Loans or Advances applying *Section 50 [then Section 43] of the NIRC*, as amended"

and the objectives thereof are as follows:

> "1.1. To adopt the arm's length bargaining standard as the ultimate test for determining the correct gross income and deductions between two or more enterprises under common control
> 1.2. To provide means of redistributing or reapportioning income and expenses of taxpayers under common control after applying *Section 50 [then Section 43] of the NIRC*, as amended."

The conflict-ridden transactions of herein petitioner are within the coverage of the foregoing order, which further reads as follows:

> "2. Coverage - This paper applies to all forms of bona fide indebtedness and includes:
>
> 2.1 Loans or advances of money or other consideration (whether or not evidenced by a written instrument);
>
> xxx xxx xxx."

Thus, in view of the premises presented, respondent defended his assessment for deficiency income tax against petitioner covering the undeclared interest income the latter should have earned if it had charged interest for the inter-company advances it made to its subsidiaries and affiliates.

Conversely, petitioner insists otherwise. It has been petitioner's consistent argument that the application of *RMO 63-99* and *Section 43 of the NIRC* in the instant case is misplaced.

2.a. Exception from coverage of RMO 63-99

At first glance, it would seem that the inter-company advances petitioner made to its affiliates fall within the ambit of the above-quoted excerpt. However, a careful perusal of said memorandum reveals certain exceptions to its coverage, to wit:

> "xxx xxx xxx.
>
> 2.3 But does not apply to alleged indebtedness which was in fact a *contribution of capital* or a distribution by a corporation with respect to its shares." (Emphasis supplied)

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Advances were Financial Assistance
For Capital and Operational Expenditures

We are not convinced that the manner of imposing "imaginary" income against petitioner is *completely* justifiable under the present situation. In the course of the trial, petitioner was able to prove, in part, by testimonial and documentary evidence that such advances were extended to its affiliates/subsidiaries to give the latter financial assistance for operational and capital expenditures. More telling and, in this case, decisive is the independent audit conducted by Constantino Guadalquiver Mendoza & Co. (hereafter "CGM & Co."), Certified Public Accountants, pursuant to CTA Circular No. 1-95, as amended by CTA Circular No. 10-97, confirming in part petitioner's allegation that the inter-company advances were indeed utilized for capital contribution.

Evidence adduced by the
Commissioned Independent CPA

CGM & Co. was engaged by this Court to verify and issue a report on: (a) the amount of the Company's advances to its Subsidiaries and Affiliates for the taxable year 1997; and (b) the completeness of supporting the actual disbursements of said advances and the subsequent receipt by the respective Subsidiaries and Affiliates or their third-party Suppliers/Service Providers. The findings (*Exhibit "PPP"; "QQQ-1 to 5"; "QQQ-2-1 to 11"; "QQQ-3-1 to 10"; "QQQ-4-1 to 10" and "QQQ-5-1 to 8."*) can be summarized as follows:

"Used for acquisition of furniture, fixture and equipment	P	38,208,499.98
Used for project development costs		6,395,854,553.81
Used for working capital of Operating Subsidiaries		182,749,082.40
Used for pre-operating expenses of Subsidiaries Affiliates not yet in operations as of 12/31/97		188,606,332.32
Used for acquisition of shares of stocks		1,745,308,929.84
Adjustments		13,182,714,819.49
Others		1,661,929,875.05
	P	23,395,372,092.89"

In the same vein, on direct examination of the commissioned independent CPA, represented by Ms. Liani Marcia B. Constantino, she collaborated the purpose of said advances, to wit:

> "Atty. Maraon:
> Q: Based on your examination and analysis of the petitioner's documents relating to the advances which you have just described, where you able to ascertain the nature and the purpose of the advances?
>
> Ms. Constantino:
> A: Yes, we have ascertain the nature and the purpose of these advances by examining the supporting documents, we

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> have note that these advances were used by the subsidiaries and affiliates for acquisition of furniture, fixtures, and equipment, used for project development cost of certain subsidiaries, used for working capital of subsidiaries and affiliates in operations and used for pre-operating expenses of subsidiaries and affiliates not yet in operation as of December 31, 1997, and also used for acquisition of shares of stocks." (*TSN, April 30, 2003, pages 21-22*)

This Court is persuaded of the fact that *RMO 63-99*, pursuant to *Section 43 of the NIRC*, finds no application to advances, which are in fact contribution of capital. However, at this juncture, it is still incumbent upon petitioner to adduce evidence to prove the same. It is with this regard that respondent may take solace in the fact that petitioner failed to substantiate its entire claim for the exception.

1. *Claim for Exception from the Coverage was Partially Substantiated.*

In the same testimony of the commissioned independent CPA, it was further revealed that there were advances, which were not adequately disclosed as to its purpose or were not supported by documents, thus:

> "Atty. Maraon:
> Q: Were there any substantiation as to the nature or purpose of these advances, which you have just described to us?

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Ms. Constantino:
A: Yes. Based on the examination that we have performed on the supporting vouchers, disbursement vouchers and journal vouchers, as well as the supporting third party document, the amount that we have ascertained to be properly substantiated or wherein the nature and the purpose which are adequately disclosed in supporting vouchers and journal vouchers, the amount is only P 1,663,002,793.32.

Atty. Maraon:
Q: What do you mean, Ms. Witness, when you say that there are no details on nature and purpose?

Ms. Constantino:
A: It only means that the nature and purpose of these advances were not adequately disclosed in the supporting disbursement vouchers and journal vouchers, and there is no supporting third party document to document such nature and purpose." (*TSN, April 30, 2003, pages 25-27*)

The details (*Exhibit "NNN-5")* of the above unsubstantiated amount is broken down as follows:

DESCRIPTION	AMOUNT
APC Group	1,551,360,155.97
Capital Partners	82,261,726.98
Metro Manila Turf Club	11,123,884.44
Parallax Resources, Inc	5,649,625.00
Ruby Stone	3,295,510.22
Silver Chain	3,295,510.22
Belle Makati Property	3,279,553.87
Tagaytay Highlands Int'l Golf Club	1,832,524.20
Rancho Montana	750,000.00
THCAI-VILLAS	206,669.32
THCAI-Pinecrest	61,762.10

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Belle Bay City	45,020.91
White Rock	23,117.90
Maginet Corp	13,384.82
Sinophil Corp	8,754.60
Tagaytay Midlands Golf Club, Inc.	1,266.00
Pacific Online Systems Corp	1,133.95
Palo Bandera Resorts	394.75
Manila Bay Park	131.85
Belle Bay Plaza Corp	(207,333.78)
	1,663,002,793.32

1.a. Of the total unsubstantiated amount of 1,663,002,793.32, only P 106,321,219.19 will be imputed interest income

After considering the testimonial evidence, as well as documentary, this Court cannot allow herein petitioner to claim the entire advances as exempt from the coverage of RMO 63-99, instead, We rule to reduce the same, by the aggregate amount of P **106,321,219.19**. This amount represents the unsubstantiated portion, which respondent could validly impute interest income in applying *RMO 63-99*. Although the total unsubstantiated advances was P 1,663,002,793.32, We cannot declare the whole amount as being covered under RMO 63-99 since not all of the unsubstantiated advances were subjects of the assessment notice (*Exhibits "TTT" to "TTT-c" vis-a-vis BIR Records No. 1009 to 1016*), to wit:

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SINOPHIL	8,754.60	BELLE MAKATI	3,279,505.87
MMTC	11,123,884.44	THCCAI VILLAS	206,669.32
PALO BANDERA	394.75	THCCAI PINECREST	98,840.10
CAPITAL PARTNERS	82,261,726.98	PARALLOX	6,706,000.00
MANILA BAY PARK	131.85	BELLE BAY PLAZA	66,632.22
THIGCI	1,772,524.20	RANCHO	750,000.00
PACIFIC ONLINE	1,133.95	BELLE BAY CITY	45,020.91
			106,321,219.19

1.b. Imputation of interest income

The foregoing advances are subject to a 16.2% interest, which is the prevailing rate per annum in 1997 using 365 days as time basis. Thus, the aggregate "undeclared" interest income of petitioner for the aforesaid unsubstantiated advances amounts to **P 5,485,066.44**.

SINOPHIL	4.00	BELLE MAKATI	133,911.65
MMTC	683,605.00	THCCAI VILLAS	24,033.17
PALO BANDERA	14.00	THCCAI PINECREST	9,266.56
CAPITALPARTNERS	4,308,260.00	PARALLOX	142,865.00
MANILA BAY PARK	4.00	BELLE BAY PLAZA	3,164.00
THIGCI	107,182.76	RANCHO	65,577.00
PACIFIC ONLINE	162.00	BELLE BAY CITY	7,017.00
			5,485,066.14

Deficiency Income Tax

Therefore, respondent's assessment for deficiency income tax is upheld in the reduced amount of P 2,534,100.56, computed as follows:

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Imputed Interest Income On Advances to Subsidiaries	P 5,485,066.14
Income tax due thereon @ 35%	1,919,773.15
Add: 20% interest from 4/16/98 to 11/22/99	614,327.41
Total	P 2,534,100.56

DOCUMENTARY STAMP TAX

Petitioner, in addition to the assessment of deficiency income tax, was also assessed deficiency documentary stamp taxes, which are incidents to the inter-company advances. Documentary stamp taxes were imposed on advances granted by petitioner to subsidiaries based on *Section 180 of the NIRC of 1997*, which provides the following:

> "SEC. 180. Stamp Tax on all bonds, loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, deposit substitute, debt instruments, certificates of deposit bearing interest and others not payable on sight or demand. – On all bonds, loan agreements, including those 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, deposit substitute debt instrument drawing interest, orders for the payment of sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for

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> circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of thirty centavos (P.30) on each two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note. xxx"

The instant issue involves interpretation of Section 180 as to what documents vis-a-vis transactions are covered therein. Corollary thereto, respondent issued *BIR Ruling No. 108-99* on July 15, 1999, elucidating on the matter at hand, which in part states: *"inter-office memo covering the advances granted by a corporation/affiliate company or inter-office memo evidencing lendings/borrowings is in the nature of a promissory note subject to Section 180 of the NIRC."*

Petitioner conversely, cited an earlier *BIR Ruling No. 116-98,* issued by the Bureau of Internal Revenue (hereafter "BIR") in 1998, in support of its protest against the assessment of documentary stamp taxes. Pertinent portion of the foregoing ruling states:

> "On the matter of whether of not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office

> memo evidencing the lendings/borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are more or less categorized as 'securities', is not subject to documentary stamp tax imposed under Sections 180, 174, and 176 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates."

In fine, both rulings are interpretative of *Section 180 of the NIRC*. However, a careful perusal thereof reveals that *BIR Ruling 116-98* is more in accordance with the law.

While rulings issued by the Commissioner of Internal Revenue command respect and weight, such rulings, however, are not judicially binding if found to be erroneous. "As a matter of power a court, when confronted with an interpretative rule, is free to (i) give the force of law to the rule; (ii) go to the opposite extreme and substitute its judgment; or (iii) give some intermediate degree of authoritative weight to the interpretative rule." (*Misamis Oriental Association of Coco Traders, inc. vs. Department of Finance Secretary, 238 SCRA 63)*. In the case at bar, *BIR Ruling 108-99* clearly goes beyond the terms of the law it seeks to interpret. Thus, We are constrained to override such ruling and exempt such board resolutions and cash vouchers from documentary stamp tax consistent with *Section 180 of the NIRC* and with the well settled rule that, in cases of doubt, tax laws must be construed strictly against the state and liberally in favor of the taxpayer (*Lincoln Philippine Life Insurance Company, Inc. vs Court of Appeals, 293 SCRA 92).*

Coverage of Documentary Stamp Tax

Documentary stamp tax is an excise tax upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right or property incident thereto.

It must be stressed that documentary stamp taxes are levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationship through the execution of specific instruments (*Philippine Home Assurance Corporation, et al. vs. Court of Appeals, 301 SCRA 447*). It is a tax on documents, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto. Since, board resolutions and cash vouchers do not partake the nature, the elements and the form of any of the specific instruments mentioned in the law, they are not therefore subject to documentary stamp tax.

Transactions are evidenced by office memorandum, vouchers and board resolutions

It can be clearly gleaned from the records that the inter-company advances were evidenced by journals, cash vouchers, and office memo and/or by board resolution. Moreover, this fact was also confirmed by CGM & Co, who examined all of petitioner's records, when it reported that:

> "Based on our review of the supporting documents presented to us, we were able to ascertain that the company's advances to its subsidiaries and affiliates for the year 1997 amounting to P23,395,372,092.89 were not documented in any form of a promissory note, nor a certificate of indebtedness or a certificate of obligation issued by the respective subsidiaries and affiliates. The said advances were only evidenced by disbursement vouchers, journal voucher and inter-office memoranda issued by the Company."

Journals, Vouchers and/or Board Resolutions are not within the meaning of a promissory note

Promissory note is defined as an unconditional promise in writing by one person to another signed by the maker engaging to pay on demand or at a fixed or determinable future time, a sum certain in money to such other person or to order or to bearer, free from restrictions as to registration or transfer and usually without coupons.

Similarly, a promissory note refers to an instrument, whether negotiable or non-negotiable, whereby the maker agrees to pay a sum certain in money or its equivalent at a definite time.

Thus, from the foregoing, We do not agree with the respondent that the inter-company advances evidenced by interoffice memorandum, vouchers, or board resolutions are in the nature of a promissory note. The definition is clear, and when the law speaks in clear and categorical language, there is no room for interpretation, but only application. There is nothing in *Section 180* that clearly and expressly declares inter-office memoranda covering inter-company advances made by petitioner as subject to the documentary stamp tax therein.

Pursuant to the aforecited *Section 180*, it is clear that what the law seeks to tax are merely loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities or certificates of deposits drawing interest and others

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not payable on sight or demand. Clearly, inter-office memoranda, board resolutions and cash vouchers were not included in the list.

WHEREFORE, premises considered, the instant Petition for Review is hereby partially **GRANTED.** Accordingly, petitioner is ORDERED to PAY the respondent Commissioner of Internal Revenue the amount of **P2,534,100.56** representing petitioner's deficiency income tax for the taxable year 1997, plus 20% delinquency interest from January 23, 2000 until the amount is fully paid pursuant to *Section 249 (c)(3) of the 1994 Tax Code*.

As regards the documentary stamp tax assessment of P 43,866,322.34 issued by respondent against the petitioner, the same is hereby **CANCELLED** and **SET ASIDE**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

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WE CONCUR:

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

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division