REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

ABN-AMRO SAVINGS BANK CORPORATION **CTA CASE NO. 7089**
(now ABN AMRO Bank, Inc.)
Petitioner,

Members:

- versus -

Acosta, *PJ*
Bautista, and
Casanova, *JJ*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 10 2008 ; 2:00 pm

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DECISION

ACOSTA, *PJ:*

The Case

The Petition for Review seeks for the cancellation of the deficiency documentary stamp tax (DST) assessment amounting to One Hundred Sixty Seven Million Eight Hundred Eighty Six Thousand Nine Hundred Six Pesos and 79/100 (Php167,886,906.79) for the taxable year 1999.

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The Facts

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission (SEC), and duly authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in commercial banking, with principal business address at 18/F LKG Tower, 6801 Ayala Avenue, Makati City. It may be served with papers, orders, and other processes through counsel, Atty. Herminigildo G. Murakami, at Murakami Law Office, Unit No. 11K-1, Tower 1, Robinsons Place Residences, Padre Faura St., Ermita, Manila.[1]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested by law to decide disputed assessments and to enforce the provisions of the NIRC, and other tax laws. It may be served with papers, orders, and other processes through counsel, Atty. Wilmer B. Dekit, at the Legal Division, Bureau of Internal Revenue, Revenue Region No. 8, 5/F Atrium Building, Makati Avenue, Makati City.[2]

On December 30, 2003, Respondent sent to Petitioner a Formal Assessment Notice (FAN), assessing Petitioner deficiency documentary stamp tax (DST) for the taxable year 1999 in the amount of P167,886,906.79, inclusive of penalties,[3] computed as follows:

Loans entered during the year	P 3,721,715,430.83
Reverse Repurchase Agreements with BSP	55,716,000,000.00
Taxable Base subject to DST	59,437,715,430.83

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues
[2] Par. 2, Summary of Admitted Facts, Joint Stipulation of Facts and Issues
[3] Exhibit A; and Par. 3, Summary of Admitted Facts, Joint Stipulation of Facts and Issues

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DST due @ P.30 in every P200.00	
Including fractional part thereof	89,156,573.40
Less: Tax Payments	(7,391,652.30)
Basic DST	81,764,921.10
Add 25% surcharge	20,441,230.28
Add 20% interest (1-26-00 to 2-02-04)	65,680,755.41
Total Deficiency DST	P 167,886,906.79

Respondent claims that petitioner failed to pay the DST due on reverse repurchase agreements (RRPs) with the BSP; and that the reverse repurchase agreements with the BSP are considered as "deposit substitutes" under Sec. 22(Y) of the 1997 Tax Code; hence, taxable pursuant to then Sec. 180 of the 1997 Tax Code.[4]

On January 28, 2004, Petitioner filed its protest letter pursuant to Sec. 228 of the 1997 Tax Code.[5] Due to the alleged failure of the respondent to act on the said protest,[6] petitioner filed on October 25, 2004 a Petition for Review praying for the cancellation of the aforesaid deficiency documentary stamp tax assessment.[7]

In her Answer filed on February 9, 2005,[8] the Commissioner prayed for the dismissal of the petition for lack of merit and for a judgment ordering the petitioner to pay the assessed deficiency documentary stamp tax. She also alleged therein the following Special and Affirmative Defenses:

> *"3. The assessment in question were made and issued in accordance with law, rules and regulations.*
>
> *4. Reverse Repurchase Agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank are considered as deposit substitute effective January 2, 1997 pursuant to Revenue Regulations No. 03-97; thus, petitioner's reverse repurchase agreement with the BSP is subject to documentary stamp tax (DST) pursuant to Section 180 of the 1997 Tax Code.*

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[4] Par. 4, Summary of Admitted Facts, Joint Stipulation of Facts and Issues
[5] Par. 5, Summary of Admitted Facts, Joint Stipulation of Facts and Issues
[6] Par. 1, Petition for Review
[7] Page 1, *Rollo*
[8] Pages 39 to 42, *Rollo*

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5. The documentary stamp tax is payable by the person making, signing, issuing, accepting or transferring the same (Section 173, 1997 Tax Code). Upon documents and upon acceptances, assignments and transfers of the obligation, right, or property incident thereto, documentary stamp taxes for and in respect of the transaction so had or accomplished shall be paid by the maker, signer, issuer, ***acceptor****, or transferor at the time the act is done (Sec. 2, Regs. No. 26, Department of Finance, 22 O.G. 2335; Tuason vs. La Provisora, 67 Phi.. 36; Inter-Provincial Autobus Co. vs. Collector of Internal Revenue, 98 Phil. 290).*

6. Stated otherwise, a documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto whereby both the person issuing and the person to whom the document/instrument is issued may be held liable for the tax. It is an excise tax because it is imposed on the privilege to enter into a transaction. A REVERSE REPURCHASE AGREEMENT, whether accepted, assigned or transferred shall be subject to a corresponding DST, which is paid by anyone who issued, accepted or transferred the said instrument. Thus, the party liable for the payment thereof may be the party issuing the instrument or the one accepting it.

7. Since DST is intended to be a tax on the privilege to enter into a transaction, then it must attach on the first issue as well as its subsequent negotiation. Thus, under normal circumstances, the party who originally issued the instrument and the party who accepted the same must pay the DST attached to the negotiated instrument. Since it was not shown that the subject Reverse Repurchase Agreement was previously subjected to DST, then petitioner, as the transferee who accepted the instrument could be held liable to pay the unpaid DST on the instrument pursuant to Section 173 of the Tax Code of 1997.

8. Petitioner's reliance of Revenue Regulations No. 9-2000 dated August 31, 2000 to escape from the liability of subject deficiency DST assessment by passing the burden to the BSP as the one liable to the DST is misplaced and misleading. A cursory reading of the aforesaid regulation would clearly reveal that the persons liable to the DST is "the person making, signing, issuing, accepting, or transferring" the document or facility evidencing the transactions. Thus, in general, it may be imposed on the transaction itself or upon the document underlying such act. Any of the parties thereto shall be liable for the full amount of the tax due. The Section cited by petitioner only mandated who is the person liable to ***remit*** *the tax. There is a big distinction between payment and remittance. A person may be the one who pays and remits the taxes at the same time but she/he could be the person who only withhold the tax (as a withholding agent) and remit the same to the BIR.*

9. Moreover, Revenue Regulations No. 9-2000 dated August 31, 2000 which became effective 15 days after its publication in the newspaper of general circulation cannot find application in the case at bar. Apparently,

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the said regulation which mandated, among other things, that the corresponding DST shall be remitted by the person who issued the instrument applies only to those transactions entered into after August 31, 2000. Obviously, the Reverse Repurchase Agreement in this case executed on taxable year 1999 does not fall within the coverage of the said regulation.

10. All presumptions are in favor of the correctness of the tax assessment ***(Interprovincial Autobus vs. Collector of Internal Revenue, 98 Phil. 290)."***

On November 10, 2005, during the Pre-Trial stage, respondent forwarded the BIR records of the case.[9] The Pre-Trial proceeding was terminated on January 3, 2006 with the Court's approval of the Joint Stipulation of Facts and Issues which was filed on November 30, 2005.[10] Thereafter, the trial of the case proceeded whereby petitioner formally offered its evidence and the same was admitted by the Court in a Resolution dated December 18, 2007,[11] sans respondent's evidence. After the parties submitted their respective Memorandum, this case was submitted for decision on May 9, 2008.[12]

The Stipulated Issues

In order to facilitate the disposition of the case, the parties jointly stipulated the following issues for the resolution of this Court, to wit:

1. Whether the reverse repurchase agreements (RRPs) with BSP are subject to DST under then Section 180 of the 1997 Tax Code.

2. Assuming that the RRPs with BSP are subject to DST under then Section 180 of the 1997 Tax Code, whether Petitioner is the party liable to pay the DST on the reverse repurchase agreement.

[9] Page 97, *Rollo*
[10] Page 103, *Rollo*
[11] Page 259-260, *Rollo*
[12] Page 309, *Rollo*

3. Whether the imposition of the 25% surcharge in addition to the basic deficiency DST is proper.

The above issues boil down into a single point of whether or not petitioner is liable to pay the deficiency documentary stamp tax assessment for taxable year 1999.

Parties' Arguments

Petitioner's arguments

In its Memorandum, petitioner maintained its stand that it is not liable to the assessed deficiency documentary stamp tax arguing that (1) the subject transactions refer to Inter-Bank Call Loans, and not as Reverse Repurchase Agreements, which is an exception under Section 22(Y) of the 1997 Tax Code; (2) the BIR computation of the so-called tax base contains a mathematical error; (3) as a savings bank, it is exempted from paying the disputed documentary stamp taxes because the subject taxable year 1999 is covered by the five year exemption *(from the payment of all taxes, except corporate income taxes, local taxes, fees and charges)* provided under Republic Act No. 7906, *otherwise known as the Thrift Bank Act of 1995*, and that the DST in question do not constitute as an exception to the exemption; and (4) the BSP, being the borrower-issuer of the debt instrument, and not the petitioner should be liable for the DST based on Sec. C(1) of Revenue Regulations No. 09-2000 [13] which implements Section 180 of the Tax Code.

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[13] (c) Persons liable to remit the DST. In general, the full payment of the tax imposed under Title VII of the Code may be remitted by any of the party or parties to the taxable transaction, except in the following cases:

(1) Stamp tax on bonds, debentures, certificates of indebtedness, deposit substitute, or other similar instruments. – The tax shall be remitted by the person who issued the instrument (e.g., "X" Corporation borrowed funds from the public through the issuance and sale of its interest-bearing Bonds. In this case, the stamp tax due thereon shall be remitted by "X" Corporation.

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Respondent's arguments

In her Memorandum, aside from reiterating the arguments raised in her special and affirmative defenses, respondent questioned for the first time the jurisdiction of the Court to take cognizance of the case on the ground that the Petition for Review was filed out of time. Accordingly, petitioner has sixty (60) days from its letter protest on January 28, 2004 or until March 28, 2004 within which to submit the relevant documents in support of its protest; since petitioner failed to prove that it had submitted the relevant documents within the 60-day period, then the 180-day period shall be reckoned from the filing of the protest on January 28, 2004 for the respondent to resolve the protest until August 5, 2004; and considering that the petition for review was filed only on October 25, 2004, the same was filed fifty-one (51) days late of the period granted under Section 228 of the 1997 Tax Code because the petitioner has only thirty (30) days from August 5, 2004 or until September 4, 2004 within which to appeal before this Court. Respondent concluded that the instant petition has already prescribed; the subject deficiency DST assessment had already become final, executory and demandable; and the Court has no jurisdiction to take cognizance of the case.

Respondent also pointed out that petitioner's argument that the transaction is an inter-bank call loan and not reverse repurchase agreement cannot be raised for the first time on appeal; and that even assuming that the transactions arose from inter-bank call loans, nevertheless, the deficiency DST assessment still stands inasmuch as the petitioner has failed to present as evidence the "debt instruments" that were issued for the alleged inter-bank call loans. Accordingly, in the absence of debt instruments, it cannot be figured out that they are not considered as deposit substitute debt instruments.

The Court's Ruling

The jurisdictional issue raised by the respondent deserves a paramount consideration. Since if indeed the Petition for Review was belatedly filed, then this Court has no jurisdiction to take cognizance of the case, consequently, the case will be dismissed. Noteworthy that in ***Basilio vs. David***,[14] the Supreme Court pointed out that since after trial the evidence shows that the court lacks jurisdiction over the subject matter of the case, then the court should have dismissed the complaint.

Rule 9 of the Rules of Court requires that all defenses and objections – except lack of jurisdiction over the subject matter, *litis pendencia*, bar by prior judgment and/or prescription – must be pleaded in a motion to dismiss or in an answer; otherwise, they are deemed waived. As to the excepted grounds, the court may dismiss a claim or a case at any time "when it appears from the pleadings or the evidence on record" that any of those grounds exists. [15] Considering that the new argument of the respondent falls under one of the above-cited exceptions, We will, therefore, consider the veracity thereof. Indeed, the general rule remains: a court's lack of jurisdiction may be raised at any stage of the proceedings, even on appeal.[16]

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[14] 98 Phil. 955
[15] Francel Realty Corporation vs. Ricardo T. Sycip, G.R. No. 154684, September 8, 2005
[16] Lopez v. David, Jr., 426 SCRA 535; Oca v. Court of Appeals, 428 Phil. 696; Duero v. Court of Appeals, 424 Phil. 12; and Gumabon v. Larin, 422 Phil. 222 cited in Francel Realty Corporation v. Sycip, *supra*.

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The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action.[17]

The Court of Tax Appeals is a court of special jurisdiction and as such it can take cognizance only of such matters as are clearly within its jurisdiction.[18] Its jurisdiction may only be invoked in the particular instances enumerated in Section 7 of Republic Act No. 1125 as amended by Section 7 of Republic Act No. 9282.[19] The Court's exclusive appellate jurisdiction to review by appeal inaction by the Commissioner of Internal Revenue in cases involving disputed assessment is conferred under Section 7(a)(2) of Republic Act No. 9282. As an added requirement, Section 11 of the same law provides that "any party adversely affected by inaction of the Commissioner of Internal Revenue may appeal with the CTA within thirty (30) days after the expiration of the period fixed by law." The Supreme Court emphasized that the requirement to file a Petition for Review with the Court of Tax Appeals within 30 days is jurisdictional and failure to comply therewith would bar the appeal and deprive the said Court of its jurisdiction to entertain and determine the correctness of the assessment. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.[20]

Since the bone of contention lies on the timeliness of the Petition for Review, proper determination thereof may be made through the guiding provisions of Section 228 of the 1997 Tax Code, the pertinent portions of which read:

> "Sec. 228. *Protesting of Assessment. – xxx*
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> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days

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[17] Gumabon v. Larin, *supra;* and Arcelona v. Court of Appeals, 345 Phil. 250 cited in Francel Realty Corporation v. Sycip, *supra.*
[18] DA-Region 02, Multi-purpose Cooperative vs. Commissioner of Internal Revenue, *et.al*, CTA EB No. 163, September 15, 2006; and Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, GR. No. 168498, April 24, 2007
[19] Moog Controls Corporation Philippine Branch vs. Commissioner of Internal Revenue, CTA EB No. 44, May 10, 2005
[20] Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, *supra,*citing Chan Kian v. Court of Tax Appeals, 105 Phil. 904.

> from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulation. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

In a recent case[21] the Court *En Banc* held that "where the taxpayer failed to submit relevant supporting documents within the sixty (60) day period from filing of the protest, and in case of inaction by the respondent and the taxpayer chooses to appeal to the Court of Tax Appeals, the same must be made within thirty (30) days from the lapse of the one-hundred eighty (180) day period, the one-hundred eighty (180) day period must be reckoned from the date the protest was filed. The sixty (60) day period shall not be added to the computation of the one-hundred eighty (180) days because from the wordings of the law, in case the taxpayer fails to submit relevant supporting documents, the assessment becomes final. The one hundred eighty (180) day period, therefore, commenced to run from the date protest was filed. Failure on the part of the petitioner to file a Petition for Review with the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period reckoned from the date the protest was filed, renders the assessment final, executory and demandable."

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[21] Oceanic Wireless Network, Inc. vs. Commissioner of Internal Revenue, CTA EB No. 76, June 22, 2006; also cited in Fil-Hispano Holdings Corporation vs. Commissioner of Internal Revenue, CTA EB No. 343, June 12, 2008

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The case at bar reveals that the petitioner filed its letter protest on January 28, 2004, therefore, it has sixty (60) days, until March 28, 2004, within which to submit the relevant supporting documents. Records of the case, however, is bereft of proof that petitioner had submitted the relevant documents on or before March 28, 2004, therefore, applying the pronouncement in the ***Oceanic case***,[22] the 180-day period shall be reckoned from the filing of the protest on January 28, 2004, which ends on July 26, 2004.

In the ***RCBC*** case,[23] the Supreme Court held that in case the Commissioner failed to act on the disputed assessment within the 180-day period, a taxpayer can either: 1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or 2) await the final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision. However, these options are mutually exclusive, and resort to one bars the application of the other.

Here, from the expiry of the 180 day period, petitioner opted to appeal to this Court the inaction of the Commissioner involving the subject deficiency documentary stamp tax assessment by way of filing the Petition for Review on October 25, 2004. Section 228 of the Tax Code clearly provides that an appeal to this Court should be made within 30 days from the lapse of the 180-day period, which as earlier mentioned is reckoned from the filing of the protest considering that

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[22] Supra
[23] Supra

there was no relevant supporting documents submitted within the 60-day period. Thus, the petitioner has thirty (30) days from lapse of the 180-day period, which starts on July 27, 2004 up to August 25, 2004 within which to appeal before this Court. Unfortunately, the Petition for Review was filed only on October 25, 2004, the same has already prescribed since it was filed beyond the period allowed under Section 228 of the 1997 Tax Code. Therefore, the Court has no jurisdiction to take cognizance of the case.

As held in the same case of ***Oceanic***, the "failure on the part of the petitioner to file a Petition for Review with the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period reckoned from the date the protest was filed, renders the assessment final, executory and demandable." The resolution of the other issues raised becomes moot and academic.

WHEREFORE, the instant Petition for Review for the cancellation of the deficiency documentary stamp tax assessment for taxable year 1999 is hereby **DISMISSED** for lack of jurisdiction.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

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CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

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