

## THIRD DIVISION

**[ G.R. No. 170257, September 07, 2011 ]**

**RIZAL COMMERCIAL BANKING CORPORATION, PETITIONER, VS.  
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

### D E C I S I O N

**MENDOZA, J.:**

This is a petition for review on *certiorari* under Rule 45 seeking to set aside the July 27, 2005 Decision<sup>[1]</sup> and October 26, 2005 Resolution<sup>[2]</sup> of the Court of Tax Appeals En Banc (*CTA-En Banc*) in C.T.A. E.B. No. 83 entitled "*Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue.*"

#### THE FACTS

Petitioner Rizal Commercial Banking Corporation (*RCBC*) is a corporation engaged in general banking operations. It seasonably filed its Corporation Annual Income Tax Returns for Foreign Currency Deposit Unit for the calendar years 1994 and 1995.<sup>[3]</sup>

On August 15, 1996, RCBC received Letter of Authority No. 133959 issued by then Commissioner of Internal Revenue (*CIR*) Liwayway Vinzons-Chato, authorizing a special audit team to examine the books of accounts and other accounting records for all internal revenue taxes from January 1, 1994 to December 31, 1995.<sup>[4]</sup>

On January 23, 1997, RCBC executed two Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code covering the internal revenue taxes due for the years 1994 and 1995, effectively extending the period of the Bureau of Internal Revenue (*BIR*) to assess up to December 31, 2000.<sup>[5]</sup>

Subsequently, on January 27, 2000, RCBC received a Formal Letter of Demand together with Assessment Notices from the BIR for the following deficiency tax assessments:<sup>[6]</sup>

Particulars	Basic Tax	Interest	Compromise Penalties	Total
Deficiency Income Tax 1995 (ST- INC-95- 0199-2000)	P252,150,988.01	P191,496,585.96	P25,000.00	P443,672,573.97
1994 (ST- INC-94- 0200-2000)	216,478,397.90	207,819,261.99	25,000.00	424,322,659.89
Deficiency Gross				

Receipts Tax 1995 (ST- GRT-95- 0201-2000)	13,697,083.68	12,428,696.21	2,819,745.52	28,945,525.41
1994 (ST- GRT-94- 0202-2000)	2,488,462.38	2,755,716.42	25,000.00	5,269,178.80
Deficiency Final Withholding Tax 1995 (ST- EWT-95- 0203-2000)	64,365,610.12	58,757,866.78	25,000.00	123,148,477.15
1994 (ST- EWT-94- 0204-2000)	53,058,075.25	59,047,096.34	25,000.00	112,130,171.59
Deficiency Final Tax on FCDU Onshore Income 1995 (ST- OT-95-0205- 2000)	81,508,718.20	61,901,963,.52	25,000.00	143,435,681.72
1994 (ST- OT-94-0206- 2000)	34,429,503.10	33,052,322.98	25,000.00	67,506,826.08
Deficiency Expanded Withholding Tax 1995 (ST- EWT-95- 0207-2000)	5,051,415.22	4,583,640.33	113,000.00	9,748,055.55
1994 (ST- EWT-94- 0208-2000)	4,482,740.35	4,067,626.31	78,200.00	8,628,566.66
Deficiency Documentary Stamp Tax 1995 (ST- DST1-95- 0209-2000)	351,900,539.39	315,804,946.26	250,000.00	667,955,485.65
1995 (ST- DST2-95- 0210-2000)	367,207,105.29	331,535,844.68	300,000.00	699,042,949.97
1994 (ST- DST3-94- 0211-2000)	460,370,640.05	512,193,460.02	300,000.00	972,864,100.07
1994 (ST- DST4-94- 0212-2000)	223,037,675.89	240,050,706.09	300,000.00	463,388,381.98
TOTALS	P2,130,226,954.83	P2,035,495,733.89	P4,335,945.52	P4,170,058,634.49

Disagreeing with the said deficiency tax assessment, RCBC filed a protest on February 24, 2000 and later submitted the relevant documentary evidence to support it. Much later on November 20, 2000, it filed a petition for review before the CTA, pursuant to Section 228 of the 1997 Tax Code.<sup>[7]</sup>

On December 6, 2000, RCBC received another Formal Letter of Demand with Assessment Notices dated October 20, 2000, following the reinvestigation it requested, which drastically reduced the original amount of deficiency taxes to the following:<sup>[8]</sup>

Particulars	Basic Tax	Interest	Surcharge &/ Compromise	Total
Deficiency Income Tax 1995 (INC- 95-000003)	P374,348.45	P346,656.92		P721,005.37
1994 (INC- 94-000002)	1,392,366.28	1,568,605.52		2,960,971.80
Deficiency Gross Receipts Tax 1995 (GRT- 95-000004)	2,000,926.96	3,322,589.63	P1,367,222.04	6,690,738.63
1994 (GRT- 94-000003)	138,368.61	161,872.32		300,240.93
Deficiency Final Withholding Tax 1995 (FT-95- 000005)	362,203.47	351,287.75		713,491.22
1994 (FT-94- 000004)	188,746.43	220,807.47		409,553.90
Deficiency Final Tax on FCDU Onshore Income 1995 (OT- 95-000006)	81,508,718.20	79,052,291.08		160,561,009.28
1994 (OT- 94-000005)	34,429,503.10	40,277,802.26		74,707,305.36
Deficiency Expanded Withholding Tax 1995 (EWT- 95-000004)	520,869.72	505,171.80	25,000.00	1,051,041.03
1994 (EWT- 94-000003)	297,949.95	348,560.63	25,000.00	671,510.58
Deficiency Documentary Stamp Tax 1995 (DST-	599,890.72		149,972.68	749,863.40

95-000006)				
1995 (DST-24,953,842.46		6,238,460.62	31,192,303.08	
95-000002)				
1994 (DST-905,064.74		226,266.18	1,131,330.92	
94-000005)				
1994 (DST-17,040,104.84		4,260,026.21	21,300,131.05	
94-000001)				
TOTALS	P164,712,903.44	P126,155,645.38	P12,291,947.73	P303,160,496.55

On the same day, RCBC paid the following deficiency taxes as assessed by the BIR:<sup>[9]</sup>

Particulars	1994	1995	Total
Deficiency Income Tax	P2,965,549.44	P722,236.11	P3,687,785.55
Deficiency Gross Receipts Tax	300,695.84	6,701,893.17	7,002,589.01
Deficiency Final Withholding Tax	410,174.44	714,682.02	1,124,856.46
Deficiency Expanded Withholding Tax	672,490.14	1,052,753.48	1,725,243.62
Deficiency Documentary Stamp Tax	1,131,330.92	749,863.40	1,881,194.32
TOTALS	P5,480,240.78	P9,941,428.18	P15,421,668.96

RCBC, however, refused to pay the following assessments for deficiency onshore tax and documentary stamp tax which remained to be the subjects of its petition for review:<sup>[10]</sup>

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	P34,429,503.10	P81,508,718.20	P115,938,221.30
Interest	40,277,802.26	79,052,291.08	119,330,093.34
Sub Total	P74,707,305.36	P160,561,009.28	P235,268,314.64
Deficiency Documentary Stamp Tax			
Basic	P17,040,104.84	P24,953,842.46	P41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	P21,300,131.05	P31,192,303.08	P52,492,434.13
TOTALS	P96,007,436.41	P191,753,312.36	P287,760,748.77

RCBC argued that the waivers of the Statute of Limitations which it executed on January 23, 1997 were not valid because the same were not signed or conformed to by the respondent CIR as required under Section 222(b) of the Tax Code.<sup>[11]</sup> As regards the deficiency FCDU onshore tax, RCBC contended that because the onshore tax was collected in the form of a final withholding tax, it was the borrower, constituted by law as the withholding agent, that was primarily liable for the remittance of the said tax.<sup>[12]</sup>

On December 15, 2004, the First Division of the Court of Tax Appeals (*CTA-First Division*) promulgated its Decision<sup>[13]</sup> which partially granted the petition for review. It considered as closed and terminated the assessments for deficiency income tax, deficiency gross receipts tax, deficiency final withholding tax, deficiency expanded withholding tax, and deficiency documentary stamp tax (not an industry issue) for 1994 and 1995.<sup>[14]</sup> It, however, upheld the assessment for deficiency final tax on FCDU onshore income and deficiency documentary stamp tax for 1994 and 1995 and ordered RCBC to pay the following amounts plus 20% delinquency tax:<sup>[15]</sup>

Particulars	1994	1995	Total
<i>Deficiency Final Tax on FCDU Onshore Income</i>			
Basic	P22,356,324.43	P16,067,952.86	P115,938,221.30
Interest	26,153,837.08	15,583,713.19	119,330,093.34
Sub Total	48,510,161.51	31,651,666.05	119,330,093.34
<i>Deficiency Documentary Stamp Tax (Industry Issue)</i>			
Basic	P17,040,104.84	P24,953,842.46	P41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	1,300,131.05	31,192,303.08	52,492,434.13
TOTALS	P69,810,292.56	P62,843,969.13	P171,822,527.47

Unsatisfied, RCBC filed its Motion for Reconsideration on January 21, 2005, arguing that: (1) the CTA erred in its addition of the total amount of deficiency taxes and the correct amount should only be ₱132,654,261.69 and not ₱171,822,527.47; (2) the CTA erred in holding that RCBC was estopped from questioning the validity of the waivers; (3) it was the payor-borrower as withholding tax agent, and not RCBC, who was liable to pay the final tax on FCDU, and (4) RCBC's special savings account was not subject to documentary stamp tax.<sup>[16]</sup>