

FIRST DIVISION

[G.R. Nos. 172045-46, June 16, 2009]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS.
FIRST EXPRESS PAWNSHOP COMPANY, INC., RESPONDENT.**

DECISION

CARPIO, J.:

The Case

The Commissioner of Internal Revenue (petitioner) filed this Petition for Review^[1] to reverse the Court of Tax Appeals' Decision^[2] dated 24 March 2006 in the consolidated cases of C.T.A. EB Nos. 60 and 62. In the assailed decision, the Court of Tax Appeals (CTA) En Banc partially reconsidered the CTA First Division's Decision^[3] dated 24 September 2004.

The Facts

On 28 December 2001, petitioner, through Acting Regional Director Ruperto P. Somera of Revenue Region 6 Manila, issued the following assessment notices against First Express Pawnshop Company, Inc. (respondent):

- a. Assessment No. 31-1-98^[4] for deficiency income tax of P20,712.58 with compromise penalty of P3,000;
- b. Assessment No. 31-14-000053-98^[5] for deficiency value-added tax (VAT) of P601,220.18 with compromise penalty of P16,000;
- c. Assessment No. 31-14-000053-98^[6] for deficiency documentary stamp tax (DST) of P12,328.45 on deposit on subscription with compromise penalty of P2,000; and
- d. Assessment No. 31-1-000053-98^[7] for deficiency DST of P62,128.87 on pawn tickets with compromise penalty of P8,500.

Respondent received the assessment notices on 3 January 2002. On 1 February 2002, respondent filed its written protest on the above assessments. Since petitioner did not act on the protest during the 180-day period,^[8] respondent filed a petition before the CTA on 28 August 2002.^[9]

Respondent contended that petitioner did not consider the supporting documents on the interest expenses and donations which resulted in the deficiency income tax.^[10] Respondent maintained that pawnshops are not lending investors whose services are subject to VAT, hence it was not liable for deficiency VAT.^[11]

Respondent also alleged that no deficiency DST was due because Section 180^[12] of the National Internal Revenue Code (Tax Code) does not cover any document or transaction which relates to respondent. Respondent also argued that the issuance of a pawn ticket did not constitute a pledge under Section 195^[13] of the Tax Code.^[14]

In its Answer filed before the CTA, petitioner alleged that the assessment was valid and correct and the taxpayer had the burden of proof to impugn its validity or correctness. Petitioner maintained that respondent is subject to 10% VAT based on its gross receipts pursuant to Republic Act No. 7716, or the Expanded Value-Added Tax Law (EVAT). Petitioner also cited BIR Ruling No. 221-91 which provides that pawnshop tickets are subject to DST.^[15]

On 1 July 2003, respondent paid P27,744.88 as deficiency income tax inclusive of interest.^[16]

After trial on the merits, the CTA First Division ruled, thus:

IN VIEW OF ALL THE FOREGOING, the instant petition is hereby **PARTIALLY GRANTED**. Assessment No. 31-1-000053-98 for deficiency documentary stamp tax in the amount of Sixty-Two Thousand One Hundred Twenty-Eight Pesos and 87/100 (P62,128.87) and Assessment No. 31-14-000053-98 for deficiency documentary stamp tax on deposits on subscription in the amount of Twelve Thousand Three Hundred Twenty-Eight Pesos and 45/100 (P12,328.45) are **CANCELLED** and **SET ASIDE**. However, Assessment No. 31-14-000053-98 is hereby **AFFIRMED** except the imposition of compromise penalty in the absence of showing that petitioner consented thereto (*UST vs. Collector, 104 SCRA 1062; Exquisite Pawnshop Jewelry, Inc. vs. Jaime B. Santiago, et al., supra*).

Accordingly petitioner is **ORDERED to PAY** the deficiency value added tax in the amount of Six Hundred One Thousand Two Hundred Twenty Pesos and 18/100 (P601,220.18) inclusive of deficiency interest for the year 1998. In addition, petitioner is **ORDERED to PAY** 25% surcharge and 20% delinquency interest *per annum* from February 12, 2002 until fully paid pursuant to Sections 248 and 249 of the 1997 Tax Code.

SO ORDERED.^[17] (Boldfacing in the original)

Both parties filed their Motions for Reconsideration which were denied by the CTA First Division for lack of merit. Thereafter, both parties filed their respective Petitions for Review under Section 11 of Republic Act No. 9282 (RA 9282) with the CTA En Banc.^[18]

On 24 March 2006, the CTA En Banc promulgated a Decision affirming respondent's liability to pay the VAT and ordering it to pay DST on its pawnshop tickets. However, the CTA En Banc found that respondent's deposit on subscription was not subject to DST.^[19]

Aggrieved by the CTA En Banc's Decision which ruled that respondent's deposit on subscription was not subject to DST, petitioner elevated the case before this Court.

The Ruling of the Court of Tax Appeals

On the taxability of deposit on subscription, the CTA, citing *First Southern Philippines Enterprises, Inc. v. Commissioner of Internal Revenue*,^[20] pointed out that deposit on subscription is not subject to DST in the absence of proof that an equivalent amount of shares was subscribed or issued in consideration for the deposit. Expressed otherwise, deposit on stock subscription is not subject to DST if: (1) there is no agreement to subscribe; (2) there are no shares issued or any additional subscription in the restructuring plan; and (3) there is no proof that the issued shares can be considered as issued certificates of stock.^[21]

The CTA ruled that Section 175^[22] of the Tax Code contemplates a subscription agreement. The CTA explained that there can be subscription only with reference to shares of stock which have been unissued, in the following cases: (a) the original issuance from authorized capital stock at the time of incorporation; (b) the opening, during the life of the corporation, of the portion of the original authorized capital stock previously unissued; or (c) the increase of authorized capital stock achieved through a formal amendment of the articles of incorporation and registration of the articles of incorporation with the Securities and Exchange Commission.^[23]

The CTA held that in this case, there was no subscription or any contract for the acquisition of unissued stock for P800,000 in the taxable year assessed. The General Information Sheet (GIS) of respondent showed only a capital structure of P500,000 as Subscribed Capital Stock and P250,000 as Paid-up Capital Stock and did not include the assessed amount. Mere reliance on the presumption that the assessment was correct and done in good faith was unavailing vis-à-vis the evidence presented by respondent. Thus, the CTA ruled that the assessment for deficiency DST on deposit on subscription has not become final.^[24]

The Issue

Petitioner submits this sole issue for our consideration: whether the CTA erred on a question of law in disregarding the rule on finality of assessments prescribed under Section 228 of the Tax Code. Corollarily, petitioner raises the issue on whether respondent is liable to pay P12,328.45 as DST on deposit on subscription of capital stock.

The Ruling of the Court

Petitioner contends that the CTA erred in disregarding the rule on the finality of assessments prescribed under Section 228 of the Tax Code.^[25] Petitioner asserts that even if respondent filed a protest, it did not offer evidence to prove its claim that the deposit on subscription was an "advance" made by respondent's stockholders.^[26] Petitioner alleges that respondent's failure to submit supporting documents within 60 days from the filing of its protest as required under Section 228 of the Tax Code caused the assessment of P12,328.45 for deposit on

subscription to become final and unassailable.^[27]

Petitioner alleges that revenue officers are afforded the presumption of regularity in the performance of their official functions, since they have the distinct opportunity, aside from competence, to peruse records of the assessments. Petitioner invokes the principle that by reason of the expertise of administrative agencies over matters falling under their jurisdiction, they are in a better position to pass judgment thereon; thus, their findings of fact are generally accorded great respect, if not finality, by the courts. Hence, without the supporting documents to establish the non-inclusion from DST of the deposit on subscription, petitioner's assessment pursuant to Section 228 of the Tax Code had become final and unassailable.^[28]

Respondent, citing *Standard Chartered Bank-Philippine Branches v. Commissioner of Internal Revenue*,^[29] asserts that the submission of all the relevant supporting documents within the 60-day period from filing of the protest is directory.

Respondent claims that petitioner requested for additional documents in petitioner's letter dated 12 March 2002, to wit: (1) loan agreement from lender banks; (2) official receipts of interest payments issued to respondent; (3) documentary evidence to substantiate donations claimed; and (4) proof of payment of DST on subscription.^[30] It must be noted that the only document requested in connection with respondent's DST assessment on deposit on subscription is proof of DST payment. However, respondent could not produce any proof of DST payment because it was not required to pay the same under the law considering that the deposit on subscription was an advance made by its stockholders for future subscription, and no stock certificates were issued.^[31] Respondent insists that petitioner could have issued a subpoena requiring respondent to submit other documents to determine if the latter is liable for DST on deposit on subscription pursuant to Section 5(c) of the Tax Code.^[32]

Respondent argues that deposit on future subscription is not subject to DST under Section 175 of the Tax Code. Respondent explains:

It must be noted that deposits on subscription represent advances made by the stockholders and are in the nature of liabilities for which stocks may be issued in the future. Absent any express agreement between the stockholders and petitioner to convert said advances/deposits to capital stock, either through a subscription agreement or any other document, these deposits remain as liabilities owed by respondent to its stockholders. For these deposits to be subject to DST, it is necessary that a conversion/subscription agreement be made by First Express and its stockholders. Absent such conversion, no DST can be imposed on said deposits under Section 175 of the Tax Code.^[33] (Underscoring in the original)

Respondent contends that by presenting its GIS and financial statements, it had already sufficiently proved that the amount sought to be taxed is deposit on future subscription, which is not subject to DST.^[34] Respondent claims that it cannot be required to submit proof of DST payment on subscription because such payment is

non-existent. Thus, the burden of proving that there was an agreement to subscribe and that certificates of stock were issued for the deposit on subscription rests on petitioner and his examiners. Respondent states that absent any proof, the deficiency assessment has no basis and should be cancelled.^[35]

On the Taxability of Deposit on Stock Subscription

DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. DST is actually an excise tax because it is imposed on the transaction rather than on the document.^[36] DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.^[37] The Tax Code provisions on DST relating to shares or certificates of stock state:

Section 175. *Stamp Tax on Original Issue of Shares of Stock.* - On every original issue, whether on organization, reorganization or for any lawful purpose, of shares of stock by any association, company or corporation, there shall be collected a documentary stamp tax of Two pesos (P2.00) on each Two hundred pesos (P200), or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of the original issue of shares of stock without par value the amount of the documentary stamp tax herein prescribed shall be based upon the actual consideration for the issuance of such shares of stock: *Provided, further*, That in the case of stock dividends, on the actual value represented by each share.^[38]

Section 176. *Stamp Tax on Sales, Agreements to Sell, Memoranda of Sales, Deliveries or Transfer of Due-bills, Certificates of Obligation, or Shares or Certificates of Stock.* - On all sales, or agreements to sell, or memoranda of sales, or deliveries, or transfer of due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation, or transfer of such securities by assignment in blank, or by delivery, or by any paper or agreement, or memorandum or other evidences of transfer or sale whether entitling the holder in any manner to the benefit of such due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any due-bill, certificate of obligation or stock, there shall be collected a documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the par value of such due-bill, certificate of obligation or stock: *Provided*, That only one tax shall be collected on each sale or transfer of stock or securities from one person to another, regardless of whether or not a certificate of stock or obligation is issued, indorsed, or delivered in pursuance of such sale or transfer: *And provided, further*, That in the case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five percent (25%) of the documentary stamp tax paid upon the original issue of said stock.^[39]