

SECOND DIVISION

[G.R. NO. 130838, August 22, 2006]

**SECURITY BANK CORPORATION (FORMERLY SECURITY BANK
AND TRUST COMPANY), PETITIONER, VS. THE COMMISSIONER
OF INTERNAL REVENUE, RESPONDENT.**

D E C I S I O N

GARCIA, J.:

Before us is this petition for review on *certiorari* to reverse, annul and/or nullify the Decision^[1] dated August 29, 1997 of the Court of Appeals (CA) which affirmed the January 12, 1996 Decision^[2] and May 21, 1996 Resolution^[3] of the Court of Tax Appeals (CTA) in CTA Case No. 4784 adjudging herein petitioner Security Bank Corporation (SBC) liable for deficiency documentary stamp tax (DST) on its 1983 sales of securities under repurchase agreements.

The facts are undisputed:

Sometime before March 19, 1987, SBC, a registered commercial bank and a member of the Bankers Association of the Philippines (BAP), received a Pre-Assessment Notice dated March 6, 1987 from the Bureau of Internal Revenue (BIR) for deficiency DST containing the following details:

1983 – Deficiency Documentary Stamp Tax^[4]

A. On Promissory Notes Issued

Promissory notes issued during the year	P926,385,255.00
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Documentary stamp tax due thereon:

P926,385,255.00 x <u>P 0.65</u>	P 3,010,752.08
P200.00	

B. On Sale of Securities under Repurchase Agreement

Securities sold during the year	P3,022,803,857.63
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Documentary stamp tax due thereon:

P3,022,803,857.63 x <u>P 0.25</u>	P 3,778,504.82
P200.00	

T o t a l	P6,789,256.90
Add: Compromise penalty	<u>600.00</u>

TOTAL AMOUNT DUE AND COLLECTIBLE	<u>P6,789,856.90.</u>
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In its letter dated March 19, 1987, SBC protested the above-quoted pre-assessment

notice on the following grounds:

(1) promissory notes issued by SBC prior to October 15, 1984 or specifically in 1983, were non-negotiable and, therefore, not subject to documentary stamp tax; and

(2) sale of securities under Repurchase Agreement is not subject to DST.

Instead of answering the letter-protest, the BIR sent SBC an assessment letter^[5] dated May 29, 1987. The letter was a reiteration of the pre-assessment notice previously received, but SBC nevertheless sent a written reply to the assessment notice, clarifying that its answer thereto was already contained in its previous letter-protest of March 19, 1987.

On April 8, 1988, the BIR, through former Commissioner Bienvenido A. Tan, Jr., entered into a general compromise agreement^[6] with the BAP concerning the DST assessment of the various member banks relating to non-negotiable promissory notes, whereby the BAP members agreed to pay THREE AND ONE-FOURTH CENTAVOS (P0.0325) per P200 of the total issuances of non-negotiable promissory notes issued prior to October 15, 1984.

Pursuant to said compromise agreement, SBC signed its own compromise agreement^[7] with the BIR on August 15, 1988 by paying the amount of P641,743.23 as full settlement of its 1983 deficiency DST, computed as follows:

Promissory notes issued during the year 1983		P 926,385,255.00
Add: Securities sold under Repurchase Agreement		<u>3,022,803,857.63</u>
		P3,949,189,112.63
Compromise Base	x	<u>P 0.0325</u>
		200
= P 3,949,189,112.63	x	<u>P 0.0325</u>
		200
= <u>P641,743.23</u>	—	compromised amount paid under P.O. No. C3252171 and C.R. No. 814457384 both dated March 31, 1988 .

Despite its avilment of the compromise agreement, SBC still received a letter from the BIR demanding payment of the amount of P3,287,399.20 as DST on securities sold under repurchase agreements in 1983, to wit:

1983
Deficiency Documentary Stamp Tax
On Sale of Securities Under Repurchase Agreement^[8]

Securities Sold During the Year		P 3,022,803,857.63
Documentary Stamp Tax Due Thereon -		
P3,022,803,857.63	x <u>P 0.25</u>	= P3,022,803,857.63

	P200.00	
Less: Partial Payment -		
	x <u>P 0.0325</u>	=
P3,022,803,857.63	P200.00	<u>P 491,205.62</u>
TOTAL AMOUNT STILL DUE AND COLLECTIBLE		<u>P3,287,399.20</u>

Through a letter dated August 23, 1989, SBC informed the BIR that the assessment sought to be collected was already the subject of a compromise agreement.

On June 17, 1991, SBC filed a protest with the BIR's Appellate Division disputing the reassessment of the DST on sale of securities with repurchase agreements. The BIR Commissioner denied said protest in a letter^[9] dated January 29, 1992, copy of which was received by SBC on March 11, 1992.

On March 17, 1992, SBC filed a request for reconsideration, which remained unresolved despite BIR's receipt thereof. Eventually, SBC filed a petition for review^[10] with the CTA questioning the reassessment.

On June 19, 1992, the BIR filed its answer alleging the following special and affirmative defenses:

1. The 1988 BIR-BAP DST Compromise Agreement covers only tax assessments involving documentary stamp tax on all types of promissory notes issued prior to October 15, 1984;
2. SBC's sale of securities under a Repurchase Agreement is not included or placed within the scope of the Compromise Agreement. The law is specific that the subject of a compromise comprises only those matters which are definitely stated therein (Article 2036, New Civil Code);
3. SBC, knowing fully well that documentary stamp taxes on sales of securities under Repurchase Agreement were not within the scope of the BIR-BAP DST Compromise Agreement, induced the BIR to enter into a compromise settlement thereof. A compromise in which there is a mistake, fraud, violence, intimidation, undue influence or falsity of documents may be rescinded or invalidated (Article 2038 in relation to Article 1330 of the New Civil Code); and
4. The assessment is in accordance with law and regulation.

Issues having been joined, SBC presented documentary and testimonial evidence supportive of its cause. After SBC rested its case, the BIR presented and offered only documentary evidence consisting of BIR records. No further testimonial evidence was presented by it.

On January 12, 1996, the CTA rendered its decision, the decretal portion of which reads:

WHEREFORE, in view of all the foregoing, instant petition for review is found to be without merit and the same is hereby DISMISSED. ACCORDINGLY, petitioner is hereby ORDERED to PAY to respondent the amount of P3,287,399.82, without any surcharge and interest thereon, as deficiency documentary stamp tax due on petitioner's sale of

securities under repurchase agreement for the year 1983.

SO ORDERED.

In time, SBC filed a motion for reconsideration, which the CTA denied in its Resolution of May 21, 1996.

Therefrom, SBC went to the CA on a petition for review. In the herein assailed Decision^[11] dated August 29, 1997, the CA dismissed SBC's petition, thus:

WHEREFORE, the instant petition for review is hereby DISMISSED by this Court for lack of merit. The appealed decision of the Court of Tax Appeals in C.T.A. Case No. 4784 is Affirmed. Costs against petitioner.

SO ORDERED.

Hence, SBC's present recourse on the following assigned errors:

I.

THE HONORABLE COURT OF APPEALS ERRED IN FINDING THAT THERE ARE FACTUAL AND LEGAL BASES FOR THE HONORABLE COURT OF TAX APPEALS TO HAVE FOUND PETITIONER LIABLE TO PAY RESPONDENT COMMISSIONER OF INTERNAL REVENUE THE AMOUNT OF P3,287,399.82, WITHOUT ANY SURCHARGE AND INTEREST THEREON, AS DEFICIENCY DOCUMENTARY STAMP TAX DUE ON PETITIONER'S SALE OF SECURITIES UNDER REPURCHASE AGREEMENT FOR THE YEAR 1983.

II.

THERE WAS ERROR IN FINDING THAT THE TERMS AND CONDITIONS OF THE COMPROMISE AGREEMENT (BETWEEN PETITIONER AND FORMER COMMISSIONER BIENVENIDO TAN), DID NOT INCLUDE/COVER THE WHOLE DST ASSESSMENT ON THE DOCUMENTS OF SALES OF SECURITIES IN 1983 OR THAT MISTAKE WAS COMMITTED BY THE BUREAU OF INTERNAL REVENUE WITH REGARD TO THE OFFER AND ACCEPTANCE OF THE TAX BASE OF THE COMPROMISE SETTLEMENT.

The recourse has no merit.

Relative to the first issue, SBC claims that the BIR's DST assessment on its sales of securities with repurchase agreements lacks factual and legal bases. While it never disputed the amount of P3,022,803,857.63 used by the BIR as tax base for its assessment, which constitutes as the factual basis for the DST assessment on sales of securities under repurchase agreements, SBC claimed that these conveyances are instruments covered under Section 229 (now Section 180) of the National Internal Revenue Code (NIRC) that are not subject to DST imposed by Section 225 (now 176) of the NIRC.

We do not agree.

The NIRC levies DST upon documents, instruments and papers as follows: