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THIRD DIVISION

[G.R. No. 178797, August 04, 2009]

METROPOLITAN BANK AND TRUST CO., PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal and setting aside of the Decision[1] dated 21 May 2007 and Resolution[2] dated 9 July 2007 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. E.B. No. 247. The CTA *en banc* affirmed the assessment by the Bureau of Internal Revenue (BIR) against petitioner Metropolitan Bank and Trust Co. (Metrobank) for deficiency Documentary Stamp Tax (DST) for taxable year 1999.

There is no dispute as to the antecedent facts of this case.

Metrobank is a domestic corporation and a duly licensed banking institution. It offers to the public a product called the Universal Savings Account (UNISA). UNISA is for a depositor able to maintain a savings deposit with Metrobank with substantial average daily balance. A depositor is entitled to a higher interest rate in a UNISA, than in a regular savings account. When a depositor opens a UNISA, he/she is issued a passbook by Metrobank. The depositor may withdraw from his/her UNISA anytime. However, to be entitled to the preferential interest rate, the depositor must be able to conform to the stated minimum deposit balance for the specified holding period for the UNISA, otherwise, his/her account will revert to a regular savings account.

Pursuant to Letter of Authority No. LOA 2000 00052501 dated 26 June 2001, the BIR investigated Metrobank for its Gross Receipts Tax (GRT), Final Withholding Tax (FWT), and DST liabilities for 1999. As a result of said investigation, respondent Commissioner of Internal Revenue (CIR), through Edwin R. Abella (Abella), Assistant Commissioner of the Large Taxpayers Service (ACIR-LTS) of the BIR, issued on 30 September 2002, a Pre-Assessment Notice (PAN)[3] assessing Metrobank for deficiency DST on its UNISA for 1999, based on Section 180 of the National Internal Revenue Code (NIRC). Said DST deficiency of Metrobank for 1999, together with surcharge and interest, amounted to P473,207,457.97, per the following calculation in the PAN:

Special Savings Account or UNISA		170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)		0.15%
Basic DST Due		256,471,485.71
Add: Surcharge	64,117,871.43	
Interest until 12/31/02	152,618,100.54	216,735,971.97
TOTAL AMOUNT DUE		**473,207,457.97**

Metrobank filed with ACIR-LTS Abella on 11 December 2002 a protest to the PAN.[4] Metrobank argued that its UNISA should not be subject to DST and it should not be made liable for the 25% surcharge on its alleged deficiency DST for 1999.

On 7 January 2003, ACIR-LTS Abella issued Assessment No. DST-2-99-000022 and a Formal Letter of Demand[5] to Metrobank, requesting the latter to pay the deficiency DST on the UNISA for 1999, together with surcharge, interest, and compromise penalty, in the total amount of P477,588,959.62, computed as follows:

ASSESSMENT NO. DST-2-99-000022

Universal Savings Account (UNISA)		Php
(Gross Amount)		170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)		0.15%
Basic DST Due		256,471,485.71
Add:		
Surcharge	Php	
	64,117,871.42	
Interest (1/10/00-1/31/03)	156,974,602.49	
Compromise Penalty	25,000.00	221,117,473.91
Total DST Deficiency	**Php**	**477,588,959.62**

Metrobank filed with the CIR on 17 January 2003 a protest against Assessment No. DST-2-99-000022. Said protest was denied by the CIR in a Decision[6] dated 2 March 2004, the *fallo* of which reads:

> WHEREFORE, predicated on all the foregoing, METROBANK's protest against Assessment Notice No. DST-2-99-000022 is hereby DENIED. Consequently, METROBANK is hereby ordered to pay the total amount of P477,588,959.62, as deficiency documentary stamp tax for the taxable year 1999, plus increments that have legally accrued thereon until the actual date of payment, to the Large Taxpayer's Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.

This constitutes the Final Decision of this Office on the matter.

Petitioner filed a Petition for Review with the CTA on 21 April 2004. The Petition was docketed as C.T.A. Case No. 6955, and raffled to the CTA Second Division. The CTA Second Division failed to find merit in the Petition of Metrobank and, thus, decreed in its Decision[7] dated 1 September 2006:

> **WHEREFORE**, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision of the [CIR] dated March 2, 2004 is hereby **AFFIRMED** with modifications. The compromise penalty of P25,000.00 is hereby **CANCELLED** there being no mutual agreement arrived at between the parties.
>
> Accordingly, [Metrobank] is **ORDERED TO PAY** the [CIR] the amount of P477,563,959.62 representing deficiency documentary stamp taxes for the taxable year 1999, computed as follows:
>
> | | |
> |---|---|
> | Basic Tax | P 256,471,485.71 |
> | Add: 25% Surcharge | 64,117,871.42 |
> | Interest | 156,974,602.49 |
> | | **P 477,563,959.62** |
>
> In addition, [Metrobank] is **ORDERED TO PAY** 20% delinquency interest on the amount of P477,563,959.62 computed from April 26, 2004 until full payment thereof, pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

The Motion for Reconsideration of Metrobank was denied by the CTA Second Division in a Resolution[8] dated 3 January 2007.

Metrobank thereafter filed a Petition for Review with the CTA *en banc*, docketed as C.T.A. E.B. No. 247. In a Decision promulgated on 21 May 2007, the CTA *en banc* affirmed the Decision dated 1 September 2006 and Resolution dated 3 January 2007 of the CTA Second Division in C.T.A. Case No. 6955, and dismissed the Petition of Metrobank. According to the CTA *en banc*, the decisive issue of whether special savings accounts evidenced by passbooks, such as the UNISA of Metrobank, were subject to DST under Section 180 of the NIRC, had already been resolved in the affirmative by this Court in its Resolution dated 15 January 2007 in *Banco de Oro Universal Bank v. Commissioner of Internal Revenue* (*BDO case*)[9] and its Decision dated 4 April 2007 in *International Exchange Bank v. Commissioner of Internal Revenue* (*IEB case*).[10]

The CTA *en banc* denied the Motion for Reconsideration of Metrobank in a Resolution dated 9 July 2007.

Hence, Metrobank comes before this Court *via* the present Petition, raising the sole issue of whether the UNISA was subject to DST in 1999 under Section 180 of the NIRC, prior to the amendment thereof by Republic Act No. 9243, which took effect on 20 May 2004.

I

Prior to Republic Act No. 9243, Section 180 of the NIRC imposed DST on the following documents or instruments:

> 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 Deposits 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 instruments, **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 (P0.30) 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: x x x (Emphases ours.)

It is beyond question that a certificate of deposit issued by a bank for a time deposit was subject to DST under Section 180 of the NIRC. The CIR treated the UNISA of Metrobank like a time deposit, although a passbook is issued for the former, rather than a certificate of deposit. The CIR pointed out that in order to be entitled to the premium rate for UNISA, the depositor, just like in a time deposit, must wait for the holding period to expire before making the withdrawal. This constitutes a restriction on the depositor's right to withdraw from his deposit prior to the expiration of the holding period. Although the passbook issued by Metrobank for UNISA is not in the form of certificate nor is it labeled as such, it has a fixed maturity date and earns premium interest. Given the nature and substance of the passbook issued by Metrobank for UNISA, it is, for all intents and purposes, a certificate of deposit earning interest, which is subject to DST.

Metrobank opposes the assessment against it for deficiency DST on the UNISA for 1999 because the passbook issued for such an account was not among the documents subject to DST enumerated in Section 180 of the NIRC, prior to its amendment by Republic Act No. 9243. Section 180 of the NIRC imposed DST only on a certificate of deposit bearing

interest that is **not** payable on sight or demand, such as the certificate issued by a bank for a time deposit.

Metrobank explains that a UNISA is not the same as a time deposit account. It is a new product developed by Metrobank after the removal of interest ceilings on both savings and time deposits. It offers the flexibility of a savings deposit account by doing away with the rigidity of a time deposit account, but with interest rate on par with the latter. A time deposit can be distinguished from a UNISA by the following features: (1) in a time deposit account, the depositor agrees that the bank shall keep the money for a fixed period; in a UNISA, the depositor can make withdrawals anytime, just like an ordinary savings account; to be entitled to the preferential interest rate for UNISA, however, the depositor must maintain the required minimum deposit balance within the specified holding period; (2) a time deposit account is evidenced by a certificate of deposit; on the other hand, a UNISA is covered by a passbook; (3) for renewal, the certificate issued for a time deposit has to be formally surrendered upon maturity, while the passbook issued for UNISA need not be renewed in the same manner; and (4) the withdrawal of the money from a time deposit account before the expiration of the fixed period would mean the pretermination of said account; in comparison, there can be no pretermination of a UNISA, since the account simply reverts to an ordinary savings account in case the depositor makes a withdrawal, which would result in non-compliance with the required maintaining balance or holding period for UNISA.

Metrobank further insists that to be taxable under Section 180 of the NIRC, the certificate of deposit must be negotiable. It must be payable to the depositor, to his order, or to some other person or his order. A passbook, by all accounts, is not negotiable. It is merely a paper book issued by a bank or savings institution to a depositor to record deposits to, withdrawals from, and interest earned by a savings account.

Finally, Metrobank refers to the deliberations of both Houses of Congress on the precursor bills for Republic Act No. 9243. According to Metrobank, records of said deliberations reveal that the legislators acknowledged the existence of a loophole in Section 180 of the NIRC, as it was then worded, by virtue of which, banks offering special savings accounts, with high interest rates and specified holding periods, evidenced by passbooks instead of certificates of deposit, escape payment of DST. Thus, the legislators deemed it necessary to amend Section 180 of the NIRC through Republic Act No. 9243. Re-numbered as Section 179, the amended provision now reads:

> SEC. 179. *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided,* That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided,*

further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, **certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date**, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (Emphasis ours.)

Metrobank posits that only after Republic Act No. 9243 amended the NIRC on 20 March 2004, did the UNISA of Metrobank become subject to DST under the aforequoted Section 179.

The Court agrees with the CTA *en banc* that the pivotal issue in this case had been squarely resolved in the *BDO case* and the *IEB case*, which involved assessments issued by the BIR against the banks BDO and IEB for DST on their respective special savings accounts, closely similar to the UNISA of Metrobank.

In the *BDO case*, this Court dismissed the Petition for Review on *Certiorari* of BDO for the latter's failure to submit a verified statement of the dates of receipt of the assailed judgment and filing of the motion for reconsideration, as required by Sections 4(b) and 5, Rule 45, in relation to Section 5(d), Rule 56, of the Revised Rules of Court. Yet, the Court also declared that even without the technical lapse of BDO, the Petition of said bank should still be denied, there being no reversible error committed by the CTA *en banc* when the latter ruled as follows:

> On April 7, 2006[,] the CTA *en banc* rendered the herein challenged decision affirming the findings of its First Division that **petitioner's ISA is the equivalent of the certificate of deposit and which would make it subject to documentary stamp tax under Section 180 of the NIRC**.
>
> The CTA *en banc* likewise declared [t]hat in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. **Despite the differences in the form of the documents, the CTA *en banc* ruled that a time deposit and ISA have essentially the same attributes and features.** It explained that like time deposit, ISA transactions bear a fixed term or maturity because the bank acknowledges receipt of a sum of money on deposit which the bank promises to pay the

> depositor, bearer or to the order of a bearer on a specified period of time. Section 180 of the 1997 NIRC does not prescribed the form of a certificate of deposit. It may be any "written acknowledgement by a bank of the receipt of money on deposit." **The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.**
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> x x x x
>
> Dedicated exclusively to the study and consideration of tax problems, the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again. For this reason, the findings of fact of a division of the CTA, particularly when affirmed *en banc*, are generally conclusive on this Court absent grave abuse of discretion or palpable error, which are not present in this case.[11] (Emphases ours.)

Metrobank avers that the Petition in the *BDO case* was dismissed on a matter of procedure, and that the declaration made by the Court on the merits of the same constitutes *obiter dictum*,[12] which should not bind the Court in its resolution of the case at bar.

The Court is not persuaded. The Court resolved the *BDO case* on **both** procedural and substantive grounds. The declaration of the Court in the *BDO case* - that the Petition therein should be denied because the CTA *en banc* committed no reversible error in rendering its assailed decision - was purposely and categorically made. An additional reason in a decision (or in this case, a resolution), brought forward after the case has been disposed of on one ground, is not to be regarded as *dicta*. So, also, where a case presents two or more points, any one of which is sufficient to determine the ultimate issue, but the court actually decides all such points, the case becomes an authoritative precedent as to every point decided; none of such points can be regarded as having the status of a *dictum*, and one point should not be denied authority merely because another point was more dwelt on and more fully argued and considered; nor does a decision on one proposition make statements of the court regarding other propositions *dicta*.[13]

Hence, if according to the *BDO case*, the special savings account of BDO (*i.e.*, Investment Savings Account [ISA], covered by a passbook), is a certificate of deposit bearing interest, which is subject to DST under Section 180 of the NIRC; then the identical product of Metrobank (*i.e.*, UNISA) should likewise be subject to DST.

The Court was able to more thoroughly consider and address in the *IEB case* the very same arguments raised herein by Metrobank.

Just as in the *BDO case*, the Court held in the *IEB case* that a passbook issued by a bank, representing an interest-earning deposit account, qualifies as a certificate of deposit drawing interest, which is subject to DST.[14]

The Court, in the *IEB case*, referred to the definition of a certificate of deposit in *Far East Bank and Trust Company v. Querimit*,[15] *viz*:

> A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. x x x.

The Court then proceeded to elucidate even further in the *IEB case* on what constitutes a certificate of deposit:

> A document to be deemed a certificate of deposit requires **no specific form** as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the **nature or meaning** conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as **substance, not form,** is paramount.
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> Contrary to petitioner's claim, **not all certificates of deposit are negotiable**. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction **or**, instead of **and**, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, **or** to some other person or his order.
>
> In any event, the **negotiable character** of any and all documents under Section 180 is **immaterial** for purposes of imposing DST.
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> Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.[16]

The Court rejected the claim of IEB in the *IEB case* that its special savings account, *i.e.*, Fixed-Savings Deposit (FSD), was more akin to a regular savings account than a time deposit account, ratiocinating that:

> The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the

reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus explains the CTA *En Banc*:

> It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:
>
> "In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.
>
> The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The only difference lies on the evidence of deposit, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit."
>
> In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are *essentially* the features of a time deposit. Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)

The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an expertise on the subject, and unless there has been an abuse or improvident exercise of authority, and none has been shown in the

present case, deserves respect.

It bears emphasis that DST is 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. It is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.

While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes. To claim that time deposits evidenced by passbooks should not be subject to DST is a clear evasion of the rule on equality and uniformity in taxation that requires the imposition of DST on documents evidencing transactions of the same kind, in this particular case, on all certificates of deposits drawing interest.[17]

The amendment of Section 180 of the NIRC and its re-numbering as Section 179 by Republic Act No. 9243 in 2004 do not mean that prior thereto, special savings deposits evidenced by passbooks were exempted from payment of DST. The Court determined in the *IEB case* that:

If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. This is reflected from the following exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. 9243:

> MR. MIGUEL ANDAYA (Bankers Association of the Philippines). Just to clarify. Savings deposit at the present time is not subject to DST.
>
> THE CHAIRMAN. That's right.
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> MR. ANDAYA. Time deposit is subject. I agree with you in principle that if we are going to encourage deposits, whether savings or time...
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> THE CHAIRMAN. Uh-huh.
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> MR. ANDAYA. . .it's questionable whether we should tax it with DST at all, even the question of imposing final withholding tax has been raised as an issue.

THE CHAIRMAN. If I had it my way, I'll cut it by half.

MR. ANDAYA. Yeah, but I guess concerning the constraint of government revenue, even the industry itself right now is not pushing in that direction, but in the long term, when most of us in this room are gone, we hope that DST will disappear from the face of this earth, `no.

Now, I think the move of the DOF to expand the coverage of or to add that phrase, "Other evidence of indebtedness," it just removed ambiguity. When we testified earlier in the House on this very same bill, we did not interpose any objections if only for the sake of avoiding further ambiguity in the implementation of DST on deposits. Because of what has happened so far is, we don't know whether the examiner is gonna come in and say, "This savings deposit is not savings but it's time deposit." So, I think what DOF has done is to eliminate any confusion. They said that a deposit that has a maturity. . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . . which is time, in effect, regardless of what form it takes should be subject to DST.

THE CHAIRMAN. Would that include savings deposit now?

MR. ANDAYA. So that if we cloaked a deposit as savings deposit but it has got a fixed maturity . . .

THE CHAIRMAN. Uh-huh.

MR. ANDAYA. . . that would fall under the purview.[18] (Underscoring supplied.)

Given that the *IEB case* and the present case substantially involve the same facts and arguments, then the 4 April 2007 Decision in the former serves as a judicial precedent in the latter. The averment of Metrobank in the instant Petition that the judgment in the *IEB case* is still not final, since IEB filed a Motion for Reconsideration of the same, is no longer true. The Court denied with finality the Motion for Reconsideration of IEB in a Resolution dated 1 August 2007 and, accordingly, entry of judgment has been made in the *IEB case* on 15 January 2008.

In a more recent case, *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue* (*PBC case*),[19] the Court again considered the

Special/Super Savings Deposit Account (SSDA) of PBC, evidenced by a passbook, as a certificate of deposit bearing interest on which DST under Section 180 of the NIRC could be imposed, citing both the *BDO case* and the *IEB case*.

In the absence of any compelling reason, the Court cannot depart from the foregoing jurisprudence. There can be no doubt that the UNISA - the special savings account of Metrobank, granting a higher tax rate to depositors able to maintain the required minimum deposit balance for the specified holding period, and evidenced by a passbook - is a certificate of deposit bearing interest, already subject to DST even under the then Section 180 of the NIRC. Hence, the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1999 was only proper.

II

Nevertheless, the Court takes note of an intervening event, which significantly affects its resolution of the Petition at bar.

On 17 April 2008, during the pendency of the present Petition, Metrobank filed a Manifestation before this Court. Metrobank manifested that it had availed itself of the Tax Amnesty Program under Republic Act No. 9480, which lapsed into law on 24 May 2007. [20] Metrobank claimed that it was qualified to avail itself of the Tax Amnesty Program, and that it had fully complied with the requirements for the same. As a result, it became entitled to immunity from the payment of any and all taxes due from it for the taxable year 2005 and prior years, including the deficiency DST on the UNISA for 1999. On the basis of the tax amnesty, Metrobank again prayed for the reversal and setting aside of the 21 May 2007 Decision and 9 July 2007 Resolution of the CTA *en banc* in C.T.A. E.B. No. 247, and the cancellation of Final Assessment No. DST-2-99-000022.

A tax amnesty is a general pardon or the intentional overlooking by the State of its authority to impose penalties on persons otherwise guilty of violation of a tax law. It partakes of an **absolute waiver** by the government of its right to collect what is due it and to give tax evaders who wish to relent a chance to start with a clean slate. A tax amnesty, much like a tax exemption, is never favored or presumed in law. The grant of a tax amnesty, similar to a tax exemption, must be construed strictly against the taxpayer and liberally in favor of the taxing authority.[21]

The coverage of Republic Act No. 9480 is laid down in Section 1 thereof:

> SECTION 1. *Coverage*. — There is hereby authorized and granted a tax amnesty which shall cover **all national internal revenue taxes for the taxable year 2005 and prior years**, with or without assessments duly issued therefore, that have remained unpaid as of December 31, 2005: *Provided, however*, That the amnesty hereby authorized and granted **shall not cover persons or cases**

enumerated under Section 8 hereof. (Emphases ours.)

Section 8 of Republic Act No. 9480 enumerates persons or cases which cannot be covered by the tax amnesty:

> **SEC. 8.** ***Exceptions.*** — The tax amnesty provided in Section 5 hereof shall not extend to the following persons or cases existing as of the effectivity of this Act:
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> **(a) Withholding agents with respect to their withholding tax liabilities**;
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> (b) Those with pending cases falling under the jurisdiction of the Presidential Commission on Good Government;
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> (c) Those with pending cases involving unexplained or unlawfully acquired wealth or under the Anti-Graft and Corrupt Practices Act;
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> (d) Those with pending cases filed in court involving violation of the Anti-Money Laundering Law;
>
> (e) Those with pending criminal cases for tax evasion and other criminal offenses under Chapter II of Title X of the National Internal Revenue Code of 1997, as amended, and the felonies of frauds, illegal exactions and transactions, and malversation of public funds and property under Chapters III and IV of Title VII of the Revised Penal Code; and
>
> **(f) Tax cases subject of final and executory judgment by the courts**. (Emphases supplied.)

In his Comment on the Manifestation of Metrobank, the CIR asserts that: (1) Metrobank is merely a withholding agent for the depositors with respect to the DST on the UNISA, so it is disqualified from availing itself of the tax amnesty following Section 8(a) of Republic Act No. 9480; (2) the assessment against Metrobank for the deficiency DST for 1999 already attained finality, and it no longer qualifies for tax amnesty pursuant to Section 8(f) of Republic Act No. 9480; and (3) deficiency in DST is not covered by the tax amnesty under Republic Act No. 9480.

The reliance by the CIR on paragraphs (a) and (f) of Section 8 of Republic Act No. 9480 to oppose the availment by Metrobank of the Tax Amnesty Program is untenable.

This is the first time that the CIR has alleged that Metrobank is only a withholding agent for the DST on the UNISA. As pointed out by Metrobank, it was assessed by the CIR, not as a withholding agent that failed to withhold and/or remit the DST on the UNISA for 1999, but as one that was directly liable for the said tax and failed to pay the same.

The CIR did not provide the basis, whether in law or administrative issuances, for its averment that Metrobank was a withholding agent for the DST on the UNISA. In contrast, it is clear from Section 3 of Revenue Regulations No. 9-2000[22] that a bank shall be responsible for the payment and remittance of the DST prescribed under Title VII of the NIRC; and unless it is exempt from said tax, then it shall remit the same only as a collecting agent of the CIR. The pertinent provisions of Revenue Regulations No. 9-2000 are quoted hereunder:

> SECTION 3. *Mode of Payment and Remittance of the Tax.* -
>
> (a) *In general*. - Unless otherwise provided in these Regulations, any of the aforesaid **parties to the taxable transaction shall pay and remit** the full amount of the tax in accordance with the provisions of Section 200 of the Code.
>
> (b) *Exceptions*. -
>
> (1) If **one of the parties to the taxable transaction is exempt** from the tax, the other party who is not exempt shall be the one directly liable for the tax, in which case, the **tax shall be paid and remitted by the said non-exempt party**, unless otherwise provided in these Regulations.
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> (2) **If the said tax-exempt party is one of the persons enumerated in Section 3(c)(4) hereof, he shall be constituted as agent of the Commissioner for the collection of the tax**, in which case, he shall remit the tax so collected in the same manner and in accordance with the provisions of Section 200 of the Code: Provided, however, that if he fails to collect and remit the same as herein required, he shall be treated personally liable for the tax, in addition to the penalties prescribed under Title X of the Code for failure to pay the tax on time.
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> x x x x
>
> (c) *Persons liable to remit the DST*. - In general, the full amount 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:
>
> x x x x
>
> (4) When one of the parties to the taxable document or transaction is included in any of the entities enumerated below, such **entity shall be responsible for the remittance of the stamp tax** prescribed under Title VII of the Code: Provided, however, that **if such entity is exempt** from the tax herein imposed, it shall **remit the tax as a collecting agent**, pursuant to the preceding paragraph Section 3(b)(2) hereof, any provision of these Regulations to the contrary

notwithstanding:

(a) A **bank**, a quasi-bank or non-bank financial intermediary, a finance company, or an insurance, a surety, a fidelity, or annuity company. (Emphases ours.)

There has never been any allegation made in this case that Metrobank is exempt from the DST on the UNISA and, thus, it is tasked to remit the said tax only as a collecting agent. The standing presumption, therefore, is that Metrobank is directly liable for the payment and remittance of the DST on the UNISA.

Neither is there any merit in the insistence of the CIR that Assessment No. DST-2-99-000022 is already final and executory in light of the failure of Metrobank, *firstly*, to submit all the relevant supporting documents within 60 days from filing of its protest with the CIR; and, *secondly*, to appeal to the CTA the inaction of the CIR on its protest within 30 days from the lapse of the 180-day period as provided in Section 228 of the NIRC.[23]

The Court cannot simply accept the allegation of the CIR that Metrobank failed to submit the relevant supporting documents within 60 days from the filing of its protest on 17 January 2003, when the CIR does not even identify what these documents are. If the Court does not know what particular documents Metrobank purportedly failed to submit in support of its protest, then the Court likewise cannot make a determination on the relevance of such documents. In addition, there appear to be sufficient documents submitted by Metrobank to the CIR to have enabled the latter to render on 2 March 2004 a Decision on the protest of the former.

This brings the Court to its next point. Per the computation of the CIR, the 180-day period for the CIR to act on the protest of Metrobank ended on 13 September 2003, and the 30-day period for Metrobank to file an appeal with the CTA ended on 13 October 2003. If, indeed, Assessment No. DST-2-99-000022 became final and executory when the bank failed to file an appeal with the CTA by 13 October 2003, why then did the CIR even bother with resolving the protest of Metrobank against the said assessment and rendering a Decision thereon on 2 March 2004? That the CIR issued a Decision on 2 March 2004 denying the protest of Metrobank belies its own assertion herein that the assessment subject of the protest became final and executory after 13 October 2003. It also bears to stress that both the CTA Second Division and the CTA *en banc* took cognizance of the successive appeals of Metrobank, resolving both appeals on their merits without regard to the supposed finality of the appealed assessment. As argued by Metrobank, the very fact that the instant case is still subject of the present proceedings is proof enough that it has not reached a final and executory stage as to be barred from the tax amnesty under Republic Act No. 9480.

The assertion of the CIR that deficiency DST is not covered by the Tax Amnesty Program under Republic Act No. 9480 is downright specious.

To avail itself of the tax amnesty, Metrobank paid 5% of the resulting increase in its networth, following the amendment of its statement of assets and liabilities as of 31 December 2005, to include therein previously undeclared assets and/or liabilities.[24] The submission of the CIR that the foregoing payment by Metrobank of the amnesty tax "relates only to a determination of [Metrobank]'s revised taxable income, and does not delve on its unrecognized documentary stamp tax liabilities"[25] is rebuffed by the all-encompassing words of Republic Act No. 9480 that those who availed themselves of the tax amnesty, by paying the amnesty tax and complying with all of its conditions, "shall be immune from the payment of **taxes, as well as addition thereto**, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay **any and all internal revenue taxes for taxable year 2005 and prior years**."[26] The Court has absolutely no basis to limit the immunity, resulting from the payment by Metrobank of the amnesty tax, only to income tax, and to exclude DST therefrom.

Finally, the CIR never questioned or rebutted that Metrobank had fully complied with the requirements for tax amnesty under Republic Act No. 9480. Still, Metrobank calls the attention of this Court to the developments in another case before the CTA *en banc*, also between said bank and the CIR, docketed as C.T.A. EB No. 269, entitled *Metropolitan Bank and Trust Company v. Commissioner of Internal Revenue*.

C.T.A. EB No. 269 involved the assessment by the CIR against Metrobank for deficiency DST on the UNISA for 1995 to 1998, as well as on its Interbank Call Loans for 1998. The CTA *en banc* already promulgated on 30 March 2007 a Decision in C.T.A. EB No. 269 against Metrobank, prompting the latter to file a Motion to Suspend Collection of Taxes and/or Enjoin the Issuance of Warrant of Distraint, Garnishment and Levy and Motion for Waiver of Posting of Bond. While said Motions were pending before the CTA *en banc*, Metrobank applied for tax amnesty under Republic Act No. 9480. In its Resolution[27] dated 28 March 2008 in C.T.A. EB No. 269, the CTA *en banc* found that:

> **An examination of the records shows that being a qualified tax amnesty applicant, [Metrobank] duly complied with the requisites enumerated in R.A. No. 9480, as implemented by RMC No. 19-2008.** The law mandates that a tax amnesty compliant applicant shall be exempt from the payment of taxes, including the civil, criminal, or administrative penalties under the Tax Code, pursuant to Section 6 of R.A. No. 9480 which states:
>
> > Section 6. *Immunities and Privileges.* - Those who availed themselves of the tax amnesty under Section 5 hereof, and have fully complied with all its conditions shall be entitled to the following immunities and privileges:

> (a) The taxpayers shall be immune from the payment of taxes, as well as additions thereto, and the appurtenant civil, criminal or administrative penalties under the National Internal Revenue Code of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.
>
> Considering that the **[Metrobank] satisfied the requisites of the tax amnesty law, and is duly qualified tax amnesty applicant under R.A. No. 9480**, the Court sees no cogent reason to resolve [Metrobank]'s Motion to Suspend Collection of Taxes and/or Enjoin the Issuance of Warrant of Distraint, Garnishment and Levy, and its Motion for Waiver of Posting of Bond, for being moot.
>
> Given [Metrobank]'s compliance with the tax amnesty law, the subject tax deficiencies are extinguished.
>
> **WHEREFORE**, premises considered, C.T.A. EB Case No. 269 is hereby considered **CLOSED and TERMINATED**. (Emphases ours.)

Also worthy of note is the fact that this Court, in the *PBC case*, made its own determination that Metrobank was entitled to the tax amnesty under Republic Act No. 9480. PBC and Metrobank merged, with Metrobank as the surviving entity. The tax liabilities of PBC for 2005 and prior years were absorbed by Metrobank and were, thus, deemed included in the application for tax amnesty filed by Metrobank. The Court found in the *PBC case* that:

> **Records show that Metrobank, a qualified tax amnesty applicant, has duly complied with the requirements enumerated in RA 9480, as implemented by DO 29-07 and RMC 19-2008**. Considering that the completion of these requirements shall be deemed full compliance with the tax amnesty program, the law mandates that the taxpayer shall thereafter be immune from the payment of taxes, and additions thereto, as well as the appurtenant civil, criminal or administrative penalties under the NIRC of 1997, as amended, arising from the failure to pay any and all internal revenue taxes for taxable year 2005 and prior years.[28]

Metrobank filed only one application for tax amnesty under Republic Act No. 9480, since it already covered all national internal revenue taxes for 2005 and prior years. Hence, the factual determination made by the CTA *en banc* in C.T.A. EB No. 269 and by this Court in the *PBC case* - that Metrobank had complied with the requirements for its application and was qualified for the tax amnesty under Republic Act No. 9480 - is binding on this Court,

involving as it does the very same application for tax amnesty of Metrobank being invoked herein. Therefore, by virtue of the availment by Metrobank of the Tax Amnesty Program under Republic Act No. 9480, it is already immune from the payment of taxes, including the deficiency DST on the UNISA for 1999, as well as the addition thereto.

WHEREFORE, the instant Petition is **GRANTED**. The Decision dated 21 May 2007 and Resolution dated 9 July 2007 of the Court of Tax Appeals *en banc* in C.T.A. E.B. No. 247 is **REVERSED and SET ASIDE**, and Assessment No. DST-2-99-000022 is **CANCELLED**, solely in view of the availment by petitioner Metropolitan Bank and Trust Co. of the Tax Amnesty Program under Republic Act No. 9480.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and *Peralta, JJ.,* concur.

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[1] Penned by Associate Justice Olga Palanca-Enriquez with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Caesar A. Casanova, concurring; *rollo*, pp. 74-91.

[2] Id. at 92-93.

[3] Id. at 165-167.

[4] Id. at 168-170.

[5] Id. at 171-173.

[6] Id. at 160-164.

[7] Penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez, concurring; id. at 126-140.

[8] Id. at 141-146.

[9] G.R. No. 173602 (Resolution).

[10] G.R. No. 171266, 520 SCRA 688.

[11] *Banco de Oro Universal Bank v. Commissioner of Internal Revenue,* supra note 9.

[12] A *dictum* is an opinion of a judge that does not embody the resolution or determination of the court, and is made without argument or full consideration of the point, not the proffered, deliberate opinion of the judge himself. It is not necessarily limited to issues essential to the decision, but may also include expressions of opinion that are not necessary to support the decision reached by the court. Mere *dicta* are not binding under the doctrine of *stare decisis*. (*Ayala Corporation v. Rosa-Diana and Realty Development Corporation*, 400 Phil. 511, 523 [2000].)

[13] *Villanueva v. Court of Appeals*, 429 Phil. 194, 203-204 (2002).

[14] *International Exchange Bank v. Commissioner of Internal Revenue,* supra note 10.

[15] 424 Phil. 723, 730 (2002).

[16] *International Exchange Bank v. Commissioner of Internal Revenue,* supra note 10 at 697-698.

[17] Id. at 698-700.

[18] Id. at 701-703.

[19] G.R. No. 170574, 30 January 2009.

[20] An Act Enhancing Revenue Administration and Collection by Granting an Amnesty on All Unpaid Internal Revenue Taxes Imposed by the National Government for Taxable Year 2005 and Prior Years.

[21] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, s*upra note 19.

[22] Mode of Payment and/or Remittance of the Documentary Stamp Tax (DST) Under Certain Conditions.

[23] SEC. 228. *Protesting of Assessment*. - x x x.

x x x x

Such assessment may be protested administratively by filing a request for reconsideration or 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.

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.

[24] In accordance with Section 5(d) of Republic Act No. 9480, which provides:

(d) Taxpayers who filed their balance sheet/SALN, together with their income tax returns for 2005, and who desire to avail of the tax amnesty under this Act shall amend such previously filed statements by including still undeclared assets and/or liabilities and pay an amnesty tax equal to five percent (5%) based on the resulting increase in networth: *Provided*, That such taxpayers shall likewise be categorized in accordance with, and subjected to the minimum amounts of amnesty tax prescribed under the provisions of this Section.

[25] *Rollo*, p. 329.

[26] Section 6(1) of Republic Act No. 9480.

[27] Penned by Associate Justice Juanito C. Castañeda, Jr. with Presiding Justice Ernesto D. Acosta and Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring; *rollo*, pp. 303-309.

[28] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue,* supra note 19.