

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
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
Documentary stamp tax due thereon:	
P3,022,803,857.63 x <u>P 0.25</u>	P 3,778,504.82
P200.00	

Total	P6,789,256.90
Add: Compromise penalty	<u>600.00</u>
TOTAL AMOUNT DUE AND COLLECTIBLE	<u>P6,789,856.90.</u>

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

= P641,743.23 — 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 -				
P3,022,803,857.63	x <u>P 0.0325</u>	=		<u>P 491,205.62</u>
	P200.00			
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:

SEC. 173.^[12] *Stamp taxes upon documents, instruments, and papers* – Upon documents, instruments, and papers, and upon acceptances, assignments, **sales, and transfers of the obligation, right, or property incident thereto**, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party to thereto who is not exempt shall be the one directly liable for the tax. (Emphasis supplied.)

Particularly covering sales of securities, which SBC has been assessed by the BIR in this case, and the corresponding DST rates due thereon at the time the said tax accrued, the former Section 225 (now Section 176) of the NIRC provides:

SEC. 225. *Stamp tax on sales, agreements to sell, memorandum of sales, deliveries or transfer of bonds, due-bills, certificates of obligations, or shares or certificates of stocks* – On all sales, or agreements to sell or memorandum of

sales, or deliveries, or transfer of bonds, 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 bond, due-bills, certificates of obligation or stock, or to secure the future payment of money, or for the future transfer of any bond, due-bill, certificates of obligation or stock, there shall be collected a documentary stamp tax of twenty-five centavos on each two hundred pesos, or fractional part thereof, of the par value of such bond, due-bill, certificates of obligation or stock; *Provided*, That only one tax shall be collected of 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 case of stock without par value the amount of the documentary stamp tax herein prescribed shall be equivalent to twenty-five *per centum* of the documentary stamp tax paid upon the original issue of said stock.

It is clear from the plain language of the law that **all sales of securities**, without making any distinction as to the nature or type of the sale, i.e., whether it be with a repurchase agreement or not, are taxable. On the other hand, all securities consisting of bonds, due-bills, certificates of obligation, or shares or certificates of stock in any association, company or corporation, of whatever type or nature are within the scope of this section.

SBC contends, however, that the sales of securities being levied upon are not covered by Section 225 (now Section 176), but instead fall under Section 229 (now Section 180) of the Tax Code. In this respect, SBC invokes Revenue Memorandum Circulars No. 13-87^[13] and No. 33-86^[14] and BIR Ruling No. 119-91.^[15]

We are not persuaded for the simple reason that the BIR circulars and ruling relied upon were all issued after 1983, the tax period involved in this case. Those circulars and ruling cannot prevail over the clear and plain language of the Tax Code.^[16]

Moreover, the Court has no basis to rule in the present petition for review on *certiorari*, which by its very nature is limited to questions of law and not of facts, whether the securities subject of the tax assessment in this case in fact fall within the ambit of said revenue memorandum circulars. This Court is bound by the factual findings by the CTA, which did not rule that the subject securities, because of what type these were, fall under Section 229 (now Section 180) instead of 225 (now Section 176) of the NIRC. In *Commissioner of Internal Revenue v. Court of Appeals*,^[17] the Court ruled:

x x x the Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. Through its expertise, it is undeniably competent to determine the issue of whether. x x x Consequently, as a matter of

principle, this Court will not set aside the conclusion reached by the Court of Tax Appeals which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject unless there has been an abuse or improvident exercise of authority. This point becomes more evident in the case before us where the unanimous findings and conclusions of both the Court of Tax Appeals and the Court of Appeals appear untainted by any abuse of authority, much less grave abuse of discretion.

On this point, the Court finds the decision of the CA affirming that of the CTA free from any palpable or reversible error.

Relative to the second issue, SBC claims that based on the terms and conditions of the compromise agreement between it and then BIR Commissioner Tan, the whole DST assessment for 1983, including that on sales of securities, is deemed included thereunder. SBC further claims that the contemporaneous and subsequent acts of revenue officials in accepting its offer of payment, using the entire 1983 DST deficiency assessment, clearly including the sales of securities with repurchase agreement for the year 1983 in the amount of P3,022,803,857.63 as the tax base, were indicative of the fact that the DST due on said sales of securities for the year 1983 has been duly settled pursuant to the said compromise agreement of August 15, 1988.

Again, we disagree.

There is nothing clearer from the plain reading of the first paragraph of the subject compromise agreement than the fact that the only subject matter thereof is the **"assessment relating to Non-negotiable Promissory Notes issued prior to October 15, 1984."**^[18] To emphasize the limited scope thereof, the same compromise agreement expressly reiterated, in its Section VI, the exclusions thereto as follows:

VI. EXCLUSIONS:

Other issues raised in the tax assessments or which may be raised for open and assessed/pre-assessed years respectively, **not involving documentary stamp tax on all types of promissory notes issued prior to Oct. 15, 1984 are not included in, nor affected by this compromise,**^[19] (Emphasis supplied).

The issue of DST assessment on sales of securities with repurchase agreement, which was the subject of the reassessment being questioned in this case, is definitely not within the scope of the compromise agreement, being limited as it is to DST on **promissory notes** issued prior to October 15, 1984. The DST assessed on the former arises from the act of "selling" securities (presently taxed under Section 176), while the DST assessed in the latter is on the act of "issuing" promissory notes (taxed under Section 180). It is evident from the separate provisions governing the two that the law treats these two instruments differently. This Court simply cannot agree with SBC that securities and promissory notes

for purposes of the subject Compromise Agreement are one and the same thing. Besides, even assuming, *in gratia argumenti*, that promissory notes may be included under the generic term "securities," securities cannot be included under the specific term "promissory notes" so as to be deemed within the scope of the same compromise agreement. To be sure, the term "promissory note" has a definite meaning under the negotiable instruments law, which does not include "securities," and this definite meaning is what is deemed incorporated in the compromise agreement entered into by and between SBC and the BIR, unless a different definition is therein expressly agreed upon, which is not the case.

Finally, as regards SBC's contention that the BIR, through its various officials, accepted its offer to settle its entire DST deficiency assessment for 1983 which included the DST assessment for securities with repurchase agreement in the tax base for purposes of the computation of the DST due and collectible, suffice it to say that such acceptance and approval were not made by the BIR Commissioner himself, who, under Section 204 of the NIRC, has the sole power and authority to compromise taxes. Neither was there any showing that the BIR Commissioner specifically authorized those revenue officials, who purportedly accepted and approved SBC's offer of payment, to compromise the DST on sale of securities, which, to stress, were not included in the Compromise Agreement of August 15, 1988 by delegating his power to compromise said DST assessment on securities. This ultra vires act of those revenue officials cannot have any valid and binding legal effect upon the BIR, so as to proscribe the latter from issuing the assailed reassessment of unpaid DST on the sales of securities under repurchase agreements for the year 1983.

WHEREFORE, the petition is **DENIED** and the assailed CA Decision dated August 29, 1997 is **AFFIRMED** *in toto*.

Costs against petitioner.

SO ORDERED.

Puno, (Chairperson), Sandoval-Gutierrez, Corona and Azcuna, JJ., concur.

[1] Penned by Associate Justice Lourdes Tayag-Jagueros, with then Associate Justice Antonio M. Martinez (who became a member of this Court) and Associate Justice Salvador J. Valdez, Jr., concurring; Rollo, pp. 38-50.

[2] *Id.* at 148-149.

[3] *Id.* at 117-132.

[4] *Id.* at 55.

[5] Id. at 56.

[6] Id. at 59-66.

[7] Id. at 67-69.

[8] Id. at 75.

[9] Id. at 81-84.

[10] Id. at 111-116.

[11] Supra note 1.

[12] Formerly Section 222 of the Tax Code.

[13] Id. at 201-202.

[14] Id. at 205-206.

[15] Id. at 207-208.

[16] See: *Republic v. Sunlife Assurance Company of Canada*, G.R. No.158085, October 14, 2005, 473 SCRA 129, per then Associate Justice, now Chief Justice Artemio V. Panganiban.

[17] G.R. No. 115349, April 18, 1997, 271 SCRA 605.

[18] Annex F-1, Rollo, p. 67.

[19] Id. at 67.