Supreme Court E-Library

by his silence when he ought to speak out, intentionally or through culpable negligence, induces another to believe certain facts to exist and the other rightfully relies and acts on such beliefs so that he will be prejudiced if the former is permitted to deny the existence of such facts. The real office of the equitable norm of estoppel is limited to supplying deficiency in the law, but it should not supplant positive law. The elements for the existence of a tenancy relationship are explicit in the law and these elements cannot be done away with by conjectures.[56]

WHEREFORE, the instant Petition is *DENIED* and the Decision of the Court of Appeals in CA-G.R. S.P. No. 84405 dated April 15, 2005 is *AFFIRMED*. No costs.

SO ORDERED.

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

FIRST DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **FIRST EXPRESS PAWNSHOP COMPANY, INC.,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX; THE DOCUMENTARY STAMP TAX UNDER SECTION 175 IS IMPOSED ON THE ORIGINAL ISSUE OF SHARES OF STOCK AS AN EXCISE

---

[56] *Ganzon v. Court of Appeals*, 434 Phil. 626, 641 (2002).

Supreme Court E-Library

TAX LEVIED UPON THE PRIVILEGE, THE OPPORTUNITY AND THE FACILITY OF ISSUING SHARES OF STOCK.— In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, this Court explained that the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock.

2. ID.; ID.; ID.; THE DOCUMENTARY STAMP TAX UNDER SECTION 176 IS IMPOSED ON THE SALES, AGREEMENTS TO SELL, MEMORANDA OF SALES, DELIVERIES OR TRANSFER OF SHARES OR CERTIFICATES OF STOCK.— In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of 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 certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.

3. ID.; ID.; ID.; SECTIONS 175 AND 176 OF THE TAX CODE CONTEMPLATE A SUBSCRIPTION AGREEMENT IN ORDER FOR A TAXPAYER TO BE LIABLE TO PAY THE DOCUMENTARY STAMP TAX.— Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that: 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order. x x x 3. All existing corporations

Supreme Court E-Library

with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization**, on or before the tenth day of the month following the date of authorization. RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks. As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed. A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.

4. ID.; ID.; ID.; THE DEPOSIT ON STOCK SUBSCRIPTION AS REFLECTED IN RESPONDENT'S BALANCE SHEET OF 1998 IS NOT A SUBSCRIPTION AGREEMENT SUBJECT TO DOCUMENTARY STAMP TAX; THE DEPOSIT ON SUBSCRIPTION IS NOT SUPPORTED BY A SUBSCRIPTION AGREEMENT WHICH CREATES RIGHTS AND OBLIGATIONS BETWEEN THE SUBSCRIBER AND THE CORPORATION.— Based on Rosario's testimony and respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment for the future issuance of capital stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*, we held: We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire**

Supreme Court E-Library

any practical value for their owners. Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no ₱800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

5. ID.; ID.; FINALITY OF ASSESSMENT; THE TERM "RELEVANT SUPPORTING DOCUMENTS" SHOULD BE UNDERSTOOD AS THOSE DOCUMENTS NECESSARY TO SUPPORT THE LEGAL BASIS IN DISPUTING AN ASSESSMENT AS DETERMINED BY THE TAXPAYER; THE BUREAU OF INTERNAL REVENUE CANNOT DEMAND WHAT TYPE OF SUPPORTING DOCUMENTS TO BE SUBMITTED, OTHERWISE, A TAXPAYER WILL BE AT THE MERCY OF THE BUREAU WHICH MAY REQUIRE THE PRODUCTION OF DOCUMENTS THAT A TAXPAYER CANNOT SUBMIT.— We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription. The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

Supreme Court E-Library

6. ID.; ID.; RESPONDENT'S TAX ASSESSMENT CANNOT BE CONSIDERED FINAL, EXECUTORY AND DEMANDABLE SINCE THE REQUISITES IN DISPUTING AN ASSESSMENT UNDER SECTION 228 OF THE TAX CODE HAS BEEN COMPLIED WITH.— After respondent submitted its letter-reply stating that it could not comply with the presentation of the proof of DST payment, no reply was received from petitioner. Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period. Respondent, having submitted its supporting documents on the same day the protest was filed, had until 31 July 2002 to wait for petitioner's reply to its protest. On 28 August 2002 or within 30 days after the lapse of the 180-day period counted from the filing of the protest as the supporting documents were simultaneously filed, respondent filed a petition before the CTA. Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable. Further, respondent's deposit on subscription is not subject to the payment of DST. Consequently, respondent is not liable to pay the deficiency DST of ₱12,328.45.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Siguion Reyna Montecillo & Ongsiako for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

The Commissioner of Internal Revenue (petitioner) filed this Petition for Review[1] to reverse the Court of Tax Appeals'

[1] Under Rule 45 of the Rules of Court.

Supreme Court E-Library

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 ₱20,712.58 with compromise penalty of ₱3,000;

b. Assessment No. 31-14-000053-98[5] for deficiency value-added tax (VAT) of ₱601,220.18 with compromise penalty of ₱16,000;

c. Assessment No. 31-14-000053-98[6] for deficiency documentary stamp tax (DST) of ₱12,328.45 on deposit on subscription with compromise penalty of ₱2,000; and

d. Assessment No. 31-1-000053-98[7] for deficiency DST of ₱62,128.87 on pawn tickets with compromise penalty of ₱8,500.

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

---

[2] Penned by Associate Justice Caesar A. Casanova with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez, concurring and Presiding Justice Ernesto D. Acosta, concurring and dissenting.

[3] Penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta, concurring and Associate Justice Juanito C. Castañeda, Jr., concurring and dissenting.

[4] BIR Records, pp. 147-149.

[5] *Id.* at 144-146.

[6] *Id.* at 141-143.

[7] *Id.* at 138-140.

Supreme Court E-Library

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)

---

[8] Section 228, Republic Act No. 8424.

Section 228. Protesting of Assessment. — x x x

x x x x x x x x x

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 one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

[9] CTA *rollo*, pp. 1 and 3.

[10] *Id.* at 4.

[11] *Id.* at 5-6.

[12] Section 180 of the Tax Code states:

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 (₱0.30) on each Two hundred pesos (₱200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note; *Provided,* That only one documentary stamp tax

Supreme Court E-Library

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]

---

shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided*, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section.

[13] Section 195 of the Tax Code provides:

SEC. 195. *Stamp Tax on Mortgages, Pledges and Deeds of Trust.*— On every mortgage or pledge of lands, estate, or property, real or personal, heritable or movable, whatsoever, where the same shall be made as a security for the payment of any definite and certain sum of money lent at the time or previously due and owing of forborne to be paid, being payable and on any conveyance of land, estate, or property whatsoever, in trust or to be sold, or otherwise converted into money which shall be and intended only as security, either by express stipulation or otherwise, there shall be collected a documentary stamp tax at the following rates:

(a) When the amount secured does not exceed Five thousand pesos (₱5,000), Twenty pesos (₱20.00).

(b) On each Five thousand pesos (₱5,000), or fractional part thereof in excess of Five thousand pesos (₱5,000), an additional tax of Ten pesos (₱10.00).

On any mortgage, pledge, or deed of trust, where the same shall be made as a security for the payment of a fluctuating account or future advances without fixed limit, the documentary stamp tax on such mortgage, pledge or deed of trust shall be computed on the amount actually loaned or given at the time of the execution of the mortgage, pledge or deed of trust. However, if subsequent advances are made on such mortgage, pledge or deed of trust, additional documentary stamp tax shall be paid which shall be computed on the basis of the amount advanced or loaned at the rates specified above: *Provided, however*, That if the full amount of the loan or credit, granted under the mortgage, pledge or deed of trust is specified in such mortgage, pledge or deed of trust, the documentary stamp tax prescribed in this Section shall be paid and computed on the full amount of the loan or credit granted.

[14] CTA *rollo*, pp. 6-7.

Supreme Court E-Library

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 ₱27,744.88 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 (₱62,128.87) 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 (₱12,328.45) 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 (₱601,220.18) 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)

---

[15] *Rollo,* pp. 10-11.

[16] *Id.* at 12.

[17] *Id.* at 66-67.

Supreme Court E-Library

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

---

[18] *Id.* at 14.

[19] *Id.* at 23-44.

[20] CTA Case No. 5988, 17 January 2002.

[21] *Rollo*, pp. 34-35.

[22] Section 175 of the Tax Code provides:

Section 175. *Stamp Tax on Original Issue of Shares of Stock.* — On every original issue, whether on organization or reorganization or for any lawful purpose, of shares of stock by any association, company

Supreme Court E-Library

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 ₱800,000 in the taxable year assessed. The General Information Sheet (GIS) of respondent showed only a capital structure of ₱500,000 as Subscribed Capital Stock and ₱250,000 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 ₱12,328.45 as DST on deposit on subscription of capital stock.

---

or corporation, there shall be collected a documentary stamp tax of Two pesos (₱2.00) on each Two hundred pesos (₱200.00) or fractional part thereof, of the par value, of such shares of stock: *Provided*, That in the case of 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.

[23] *Rollo*, p. 35.

[24] *Id.* at 34-35.

Supreme Court E-Library

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 ₱12,328.45 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:

---

[25] *Id.* at 138.

[26] *Id.*

[27] *Id.* at 140.

[28] *Id.*

[29] CTA Case No. 5696, 16 August 2001.

Supreme Court E-Library

(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

---

[30] *Rollo*, p. 155.

[31] *Id.* at 156.

[32] *Id.*

[33] *Id.* at 158.

Supreme Court E-Library

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 (₱2.00) on each Two hundred pesos (₱200), 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]

---

[34] *Id.* at 159.

[35] *Id.* at 160.

[36] Section 173, 1997 Tax Code; DE LEON AND DE LEON, *THE NATIONAL INTERNAL REVENUE CODE*, ANNOTATED, 8th ed., Volume 2 (2003). See also *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, 3 May 2006, 489 SCRA 147, 152-153.

[37] *Philippine Home Assurance Corporation v. Court of Appeals*, 361 Phil. 368, 372-373 (1999).

[38] As amended by Republic Act Nos. 7660 and 8424.

Supreme Court E-Library

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 (₱1.50) on each Two hundred pesos (₱200), 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]

In Section 175 of the Tax Code, DST is imposed on the original issue of shares of stock. The DST, as an excise tax, is levied upon the privilege, the opportunity and the facility of issuing shares of stock. In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[40] this Court explained that the DST attaches upon acceptance of the stockholder's subscription in the corporation's capital stock regardless of actual or constructive delivery of the certificates of stock. Citing *Philippine Consolidated Coconut Ind., Inc. v. Collector of Internal Revenue*,[41] the Court held:

The documentary stamp tax under this provision of the law may be levied only once, that is upon the original issue of the certificate.

---

[39] As amended by Republic Act No. 7660.

[40] 230 Phil. 76, 80-81 (1986).

[41] 162 Phil. 32 (1976).

Supreme Court E-Library

The crucial point therefore, in the case before Us is the proper interpretation of the word 'issue.' In other words, when is the certificate of stock deemed 'issued' for the purpose of imposing the documentary stamp tax? Is it at the time the certificates of stock are printed, at the time they are filled up (in whose name the stocks represented in the certificate appear as certified by the proper officials of the corporation), at the time they are released by the corporation, or at the time they are in the possession (actual or constructive) of the stockholders owning them?

x x x x x x x x x

Ordinarily, when a corporation issues a certificate of stock (representing the ownership of stocks in the corporation to fully paid subscription) the certificate of stock can be utilized for the exercise of the attributes of ownership over the stocks mentioned on its face. The stocks can be alienated; the dividends or fruits derived therefrom can be enjoyed, and they can be conveyed, pledged or encumbered. The certificate as issued by the corporation, irrespective of whether or not it is in the actual or constructive possession of the stockholder, is considered issued because it is with value and hence the documentary stamp tax must be paid as imposed by Section 212 of the National Internal Revenue Code, as amended.

In Section 176 of the Tax Code, DST is imposed on the sales, agreements to sell, memoranda of sales, deliveries or transfer of 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 certificates of stock, or to secure the future payment of money, or for the future transfer of certificates of stock. In *Compagnie Financiere Sucres et Denrees v. Commissioner of Internal Revenue*, this Court held that under Section 176 of the Tax Code, sales to secure the future transfer of due-bills, certificates of obligation or certificates of stock are subject to documentary stamp tax.[42]

---

[42] G.R. No. 133834, 28 August 2006, 499 SCRA 664, 669. The Court ruled in this case that the transfer or assignment of deposits on stock subscription is subject to DST.

Supreme Court E-Library

Revenue Memorandum Order No. 08-98 (RMO 08-98) provides the guidelines on the corporate stock documentary stamp tax program. RMO 08-98 states that:

> 1. All existing corporations shall file the Corporation Stock DST Declaration, and the DST Return, if applicable **when DST is still due on the subscribed share issued by the corporation**, on or before the tenth day of the month following publication of this Order.
>
> x x x x x x x x x
>
> 3. All existing corporations with authorization for increased capital stock shall file their Corporate Stock DST Declaration, together with the DST Return, if applicable **when DST is due on subscriptions made after the authorization,** on or before the tenth day of the month following the date of authorization. (Boldfacing supplied)

RMO 08-98, reiterating Revenue Memorandum Circular No. 47-97 (RMC 47-97), also states that what is being taxed is the privilege of issuing shares of stock, and, therefore, the taxes accrue at the time the shares are issued. RMC 47-97 also defines issuance as the point in which the stockholder acquires and may exercise attributes of ownership over the stocks.

As pointed out by the CTA, Sections 175 and 176 of the Tax Code contemplate a subscription agreement in order for a taxpayer to be liable to pay the DST. A subscription contract is defined as any contract for the acquisition of unissued stocks in an existing corporation or a corporation still to be formed.[43] A stock subscription is a contract by which the subscriber agrees to take a certain number of shares of the capital stock of a corporation, paying for the same or expressly or impliedly promising to pay for the same.[44]

---

[43] Section 60, The Corporation Code of the Philippines, Batas Pambansa Blg. 68, 1 May 1980.

[44] LOPEZ, ROSARIO N., *THE CORPORATION CODE OF THE PHILIPPINES*, ANNOTATED, Volume Two, 1994, p. 750.

Supreme Court E-Library

In this case, respondent's Stockholders' Equity section of its Balance Sheet as of 31 December 1998[45] shows:

STOCKHOLDERS' EQUITY	1998	1997
Authorized Capital Stock	₱ 2,000,000.00	₱ 2,000,000.00
Paid-up Capital Stock	250,000.00	250,000.00
Deposit on Subscription	800,000.00	
Retained Earnings	62,820.34	209,607.20
Net Income	(858,498.38)	(146,786.86)
TOTAL	₱ 254,321.96	₱ 312,820.34

The GIS submitted to the Securities and Exchange Commission on 31 March 1999 shows the following Capital Structure:[46]

B. Financial Profile

1. Capital Structure :

AUTHORIZED	-	₱2,000,000.00
SUBSCRIBED	-	500,000.00
PAID-UP	-	250,000.00

These entries were explained by Miguel Rosario, Jr. (Rosario), respondent's external auditor, during the hearing before the CTA on 11 June 2003. Rosario testified in this wise:

> Atty. Napiza
> Q. Mr. Rosario, I refer you to the balance sheet of First Express for the year 1998 particularly the entry of deposit on subscription in the amount of ₱800 thousand, will you please tell us what is (sic) this entry represents?
>
> Mr. Rosario Jr.
> A. **This amount of ₱800 thousand represents the case given by the stockholders to the company but does not necessarily made (sic) payment to subscribed portion.**

---

[45] CTA First Division *rollo*, p. 89.

[46] *Id.* at 92.

Supreme Court E-Library

Atty. Napiza
Q. **What is (sic) that payment stands for?**

Mr. Rosario Jr.
A. **This payment stands as (sic) for the deposit for future subscription.**

Atty. Napiza
Q. Would you know if First Express issued corresponding shares pertinent to the amount being deposited?

Mr. Rosario Jr.
A. No.

Atty. Napiza
Q. What do you mean by no? Did they or they did not?

Mr. Rosario Jr.
A. **They did not issue any shares because that is not the payment of subscription. That is just a mere deposit.**

Atty. Napiza
Q. Would you know, Mr. Rosario, how much is the Subscribed Capital of First Express Pawnshop?

Mr. Rosario Jr.
A. The Subscribed Capital of First Express Pawnshop Company, Inc. for the year 1998 is ₱500 thousand.

Atty. Napiza
Q. How about the Paid Up Capital?

Mr. Rosario Jr.
A. The Paid Up Capital is ₱250 thousand.

Atty. Napiza
Q. Are (sic) all those figures appear in the balance sheet?

Mr. Rosario Jr.
A. The Paid Up Capital appeared here but the Subscribed Portion was not stated. (Boldfacing supplied)

Based on Rosario's testimony and respondent's financial statements as of 1998, there was no agreement to subscribe to the unissued shares. Here, the deposit on stock subscription refers to an amount of money received by the corporation as a deposit with the possibility of applying the same as payment

Supreme Court E-Library

for the future issuance of capital stock.[47] In *Commissioner of Internal Revenue v. Construction Resources of Asia, Inc.*,[48] we held:

We are firmly convinced that the Government stands to lose nothing in imposing the documentary stamp tax only on those stock certificates duly issued, or wherein the stockholders can freely exercise the attributes of ownership and with value at the time they are originally issued. **As regards those certificates of stocks temporarily subject to suspensive conditions they shall be liable for said tax only when released from said conditions, for then and only then shall they truly acquire any practical value for their owners.** (Boldfacing supplied)

---

[47] BIR Ruling No. 015-2003. EBC Strategic Holdings Corporation, 17 November 2003. The BIR ruled that the One Billion Pesos deposited by Equitable PCI Bank to its subsidiary company Equitable Strategic Holdings Corporation (ESHC) to be applied for future subscription to an increase in capital is not subject to documentary stamp tax under Section 175 of the Tax Code of 1997. The BIR, quoting the CTA Case entitled First Southern Philippines Enterprises, Inc. *v*. Commissioner of Internal Revenue promulgated on 17 January 2002, ruled that deposit on stock subscription is not subject to the payment of documentary stamp tax. The BIR explained that there was no agreement to subscribe to the issuance of stock of ESHC. The BIR further explained in this wise:

> Capital stock issued connotes permanence of funds flowing into a corporation which cannot be withdrawn. The phrase 'issuance of shares of stock' upon which the documentary stamp tax is to be computed must likewise be viewed as permanent in character. It is considered as a trust fund for the payment of the debts of the corporation, to which the creditors may look for satisfaction. Consequently, to be so categorized, all conditions and requirements, such as the execution of the subscription agreements, and approval by regulatory authorities must be secured to facilitate the issuance of the shares of stock.
>
> x x x x x x x x x
>
> Viewed from the foregoing, it can be inferred that future subscription to an increase in capital stock is not an original issue of shares of stock nor is it a sale or transfer of shares of stock contemplated under Sections 175 and 176 of the Tax Code of 1997, but it is a standard accounting term which refers to an amount of money transmitted by a stockholder to a corporation on deposit with the possibility of the same being later subscribed in the company's capital.

[48] *Supra* note 40.

Supreme Court E-Library

Clearly, the deposit on stock subscription as reflected in respondent's Balance Sheet as of 1998 is not a subscription agreement subject to the payment of DST. There is no ₱800,000 worth of subscribed capital stock that is reflected in respondent's GIS. The deposit on stock subscription is merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen. The person making a deposit on stock subscription does not have the standing of a stockholder and he is not entitled to dividends, voting rights or other prerogatives and attributes of a stockholder. Hence, respondent is not liable for the payment of DST on its deposit on subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

On the Finality of Assessment as Prescribed under Section 228 of the Tax Code

Section 228 of the Tax Code provides:

SEC. 228. **Protesting of Assessment**. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: *Provided, however*, That a preassessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who opted to claim a refund or tax credit of excess creditable withholding tax for a taxable period was determined to have carried over and automatically applied the same amount claimed against the estimated tax liabilities for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on excisable articles has not been paid; or

Supreme Court E-Library

(e) When an article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayer shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.

Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.

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. (Boldfacing supplied)

Section 228 of the Tax Code[49] provides the remedy to dispute a tax assessment within a certain period of time. It states that

---

[49] Revenue Regulations No. 12-99, Implementing the Provisions of the National Internal Revenue Code of 1997 Governing the Rules on Assessment of National Internal Revenue Taxes, Civil Penalties and Interest and the Extra-judicial Settlement of a Taxpayer's Criminal Violation of the Code Through Payment of a Suggested Compromise Penalty, 6 September 1999.

> Sec. 3.1.5 Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. If there are several issues involved in the formal letter of demand and assessment notice but the taxpayer only disputes

Supreme Court E-Library

an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

---

or protests against the validity of some of the issues raised, the taxpayer shall be required to pay the deficiency tax or taxes attributable to the undisputed issues, in which case, a collection letter shall be issued to the taxpayer calling for payment of the said deficiency tax, inclusive of the applicable surcharge and/or interest. No action shall be taken on the taxpayer's disputed issues until the taxpayer has paid the deficiency tax or taxes attributable to the said undisputed issues. The prescriptive period for assessment or collection of the tax or taxes attributable to the disputed issues shall be suspended.

The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto.

The taxpayer shall submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest, otherwise, the assessment shall become final, executory and demandable. The phrase "submit the required documents" includes submission or presentation of the pertinent documents for scrutiny and evaluation by the Revenue Officer conducting the audit. The said Revenue Officer shall state this fact in his report of investigation.

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date

Supreme Court E-Library

In this case, respondent received the tax assessment on 3 January 2002 and it had until 2 February 2002 to submit its protest. On 1 February 2002, respondent submitted its protest and attached the GIS and Balance Sheet as of 31 December 1998. Respondent explained that it received ₱800,000 as a deposit with the possibility of applying the same as payment for the future issuance of capital stock.

Within 60 days from the filing of protest or until 2 April 2002, respondent should submit relevant supporting documents. Respondent, **having submitted the supporting documents together with its protest**, did not present additional documents anymore.

In a letter dated 12 March 2002, petitioner requested respondent to present proof of payment of DST on subscription. In a letter-reply, respondent stated that it could not produce any proof of DST payment because it was not required to pay DST 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.

Since respondent has not allegedly submitted any relevant supporting documents, petitioner now claims that the assessment has become final, executory and demandable, hence, unappealable.

We reject petitioner's view that the assessment has become final and unappealable. It cannot be said that respondent failed

---

of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise, the assessment shall become final, executory and demandable. (Boldfacing supplied)

Supreme Court E-Library

to submit relevant supporting documents that would render the assessment final because when respondent submitted its protest, respondent attached the GIS and Balance Sheet. Further, petitioner cannot insist on the submission of proof of DST payment because such document does not exist as respondent claims that it is not liable to pay, and has not paid, the DST on the deposit on subscription.

The term "relevant supporting documents" should be understood as those documents necessary to support the legal basis in disputing a tax assessment as determined by the taxpayer. The BIR can only inform the taxpayer to submit additional documents. The BIR cannot demand what type of supporting documents should be submitted. Otherwise, a taxpayer will be at the mercy of the BIR, which may require the production of documents that a taxpayer cannot submit.

After respondent submitted its letter-reply stating that it could not comply with the presentation of the proof of DST payment, no reply was received from petitioner.

Section 228 states that if the protest is not acted upon within 180 days from submission of documents, the taxpayer adversely affected by the inaction may appeal to the CTA within 30 days from the lapse of the 180-day period. Respondent, having submitted its supporting documents on the same day the protest was filed, had until 31 July 2002 to wait for petitioner's reply to its protest. On 28 August 2002 or within 30 days after the lapse of the 180-day period counted from the filing of the protest as the supporting documents were simultaneously filed, respondent filed a petition before the CTA.

Respondent has complied with the requisites in disputing an assessment pursuant to Section 228 of the Tax Code. Hence, the tax assessment cannot be considered as final, executory and demandable. Further, respondent's deposit on subscription is not subject to the payment of DST. Consequently, respondent is not liable to pay the deficiency DST of ₱12,328.45.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Court of Tax Appeals' Decision dated 24 March 2006 in the consolidated cases of C.T.A. EB Nos. 60 and 62.

Supreme Court E-Library

SO ORDERED.

Puno (Chairperson), Corona, Leonardo-de Castro, and *Bersamin, JJ.,* concur.

FIRST DIVISION

[G.R. No. 172198. June 16, 2009]

MA. LOURDES C. DE CASTRO, *petitioner, vs.* **CRISPINO DE CASTRO, JR., OFFICE OF THE CITY PROSECUTOR FOR MANILA, and THE OFFICE OF THE SOLICITOR GENERAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; DUE PROCESS; NO DENIAL OF DUE PROCESS AFTER HAVING BEEN GRANTED NUMEROUS MOTIONS FOR POSTPONEMENT; CASE AT BAR.— Petitioner argues that the lower courts erred in ruling that she waived her right to present further evidence when she failed to appear at the August 20, 2003 hearing. She contends that in effect, she was declared in default, which is violative of the state policy on marriage as a social institution and the due process clause of the Constitution. We disagree. The instant case was set for hearing twelve times. x x x After having been granted numerous motions for postponement, petitioner cannot now claim that she was denied due process. In ***Ortigas, Jr. v. Lufthansa German Airlines***, we ruled that: Where a party seeks postponement of the hearing of this case for reasons caused by his own inofficiousness, lack of resourcefulness and diligence if not total indifference to his own interests or to the interests of those he represents, thereby resulting in his failure to present his own evidence, the court would not extend to him its mantle of protection. If it was he who created the situation that brought about the resulting adverse consequences, he cannot plead for his day in court nor claim that he was so denied of it.