REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS (formerly FAR EAST BANK AND TRUST COMPANY),
Petitioner,

- versus -

C.T.A. CASE NO. 6593

COMMISSIONER OF INTERNAL, REVENUE,
Respondent.

Promulgated:
AUG 3 1 2004

x - x

DECISION

The petition seeks for the cancellation and withdrawal of the allegedly erroneous deficiency documentary stamp tax assessment in the amount of P24,587,474.63 issued by the respondent covering the taxable years 1982 to 1986.

The following are the relevant facts as culled from the records of the case:

Petitioner, the surviving bank after its merger with Far East Bank and Trust Company, is a corporation duly created and existing under the laws of the Republic of the Philippines with principal office at Ayala Avenue corner Paseo de Roxas Ave., Makati City (*par. 1, Summary of Admitted Facts*).

Respondent thru then Revenue Service Chief Cesar M. Valdez, issued a pre-assessment notice (PAN) dated November 26, 1986 *(par. 1, Additional Facts Jointly Stipulated).*

Petitioner, in a letter dated November 29, 1986, requested for the details of the amounts alleged as 1982 – 1986 deficiency taxes mentioned in the November 26, 1986 pre-assessment notice *(par. 2, Additional Facts Jointly Stipulated).*

On April 7, 1989, petitioner was issued by respondent assessment/demand notices FAS-1-82 to 86/89-000 and FAS 5-82 to 86/89-000, for deficiency withholding tax at source (Swap Transactions) and documentary stamp tax (DST) involving the amounts of P190,752,860.82 and P24,587,174.63, respectively, for the years 1982 to 1986 *(par. 6, Additional Facts Jointly Stipulated).*

On April 20, 1989, petitioner protested the demand/assessment notices *(pages 170-176, BIR Records)* and filed as well a supplemental protest *(pages 153-167, BIR Records)* on May 8, 1989.

On August 9, 2002, respondent issued a final decision on petitioner's protest ordering the withdrawal and cancellation of the deficiency withholding tax assessment in the amount of P190,752,860.82 and considered the same as closed and terminated. On the other hand, the deficiency DST assessment in the amount of P24,587,174.63 was reiterated and the petitioner was ordered to pay the said amount within thirty (30) days from receipt of such order.

Petitioner received a copy of the said decision on January 15, 2003 *(pars. 5 & 6, Summary of Admitted Facts).* Thereafter, on January 24, 2003, petitioner filed the instant petition.

On March 12, 2003, respondent, in his Answer, alleged the following Special and Affirmative Defenses, to wit:

> 6. The assessment in question was issued in accordance with law and pertinent regulations;
>
> 7. All presumptions are in favor of correctness of tax assessments;
>
> 8. The period to assess the deficiency documentary stamp tax (DST) has not prescribed because during the taxable years in question, there was no requirement to file a return for DST;
>
> 9. The prescriptive period to collect the tax was suspended when petitioner requested a reinvestigation of the assessment *(CIR v. Wyeth Suaco Laboratories, Inc., 202 SCRA 125)*;
>
> 10. A pre-assessment notice dated November 26, 1986 and signed by Cesar M. Valdez, Revenue Service Chief of the Sector Operations Office on behalf of the then BIR Commissioner Bienvenido A. Tan, Jr., was issued to, and received by, the petitioner on November 26, 1986. But even *assuming ex argumentis* that there was no pre-assessment notice given by the respondent to the petitioner, such issue was not raised by the petitioner in its protest letter dated April 20, 1989, hence, cannot be raised before the Honorable Court *(Aguinaldo Industries Corp. vs. CIR, 112 SCRA 136)*;
>
> 11. The basis of the deficiency assessment for the documentary stamp tax is the order or instruction of the local bank to its correspondent foreign bank to remit a specific sum of foreign currency to the Central Bank's correspondent bank abroad for credit to the account of the Central Bank;
>
> 12. When a local bank sells a foreign exchange (spot sale) in swap transaction and said local bank orders its foreign

correspondent bank to remit a specific sum of foreign currency to the foreign correspondent bank of the Central Bank of the Philippines, said order is considered as telegraphic transfer subject to the DST under the then Section 195 of the Tax Code, as amplified by Sections 51 and 50 of Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations, pertinent provisions of which read as follows:

> Sec 195. – Stamp Tax on Foreign Bills of Exchange and Letters of Credit. - On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) drawn in but payable out of the Philippines in set of three or more according to the custom of the merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part thereof of the face value any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency. (as amended by PD 1457 and PD 1589). (Underscoring supplied.)
>
> Sec. 51. What may be considered as telegraphic transfer.- If a local bank cables to a certain bank in a foreign country with which bank said local bank has credit, and directs that foreign bank to pay another bank or person in same locality a certain sum of money, the document for and in respect of such transaction will be regarded as a telegraphic transfer, taxable under provisions of Section 1449(i) of the Administrative Code.
>
> Sec. 50. – Basis of a tax case of Telegraphic Transfers. – The basis of a tax in case telegraphic transfers or orders for the payment of money drawn in but payable out of the Philippine Islands (now Philippines) should be the face value of such telegraphic transfers or orders computed, if expressed in a foreign currency with the rate of exchange taken into consideration." (Underscoring supplied.)

13. The flow of funds abroad from the Philippines is irrelevant to the accrual of the DST. The liability of an instrument to the documentary stamp tax and the amount of the tax are determined by the form and face thereof and cannot be affected by proofs of facts outside the instrument itself (U. S. vs. Islam, 17 Wall, 496, 84 U.S. 496).

The then Section 195 (now Section 182) of the Tax Code subjects to the DST foreign bills of exchange and letters of credit (including orders by telegraph or otherwise) for the payment of money drawn in but payable out of the Philippines. Accordingly, the DST prescribed by Section 195 of the Tax Code, as amended, is due and payable on the order covering the forward transaction as well as order covering or leading to the spot sale of the foreign exchange and not on the sale or purchase of foreign exchange which are not subject to the DST. In the case bar, the real parties to the transaction are the local bank as drawer which has a SWAP arrangement with the CB and the former's foreign correspondent bank as drawee/acceptor. Pursuant to the then Section 222 (now Section 173) of the Tax Code, the DST is payable indifferently by either party making, signing issuing, accepting or transferring the taxable document. Hence, since the drawee (local bank's foreign correspondent bank) is not within the Philippine Government's taxing jurisdiction, the drawer local bank is liable to pay the DST on the aforementioned orders, market convention to the contrary notwithstanding. With the amendment of Section 222 of the Tax Code by Presidential Decree No. 1994 effective January 1, 1986, the liability of the local bank, as drawer, to the DST on the order/cable instruction effected under the SWAP agreement becomes more explicit.

The factual question of whether or not there was flow of fund from one country to another requires proof of facts outside the instrument itself. Be that as it may, where there is no fund or credit against which an order is drawn, the said order would not be accepted or honored and there is no consummated transaction to speak of subject documentary stamp tax (Comments on the BAP Memo of May 18, 1987 to the BIR by Jose J. Santos, Chief, Franchise and Miscellaneous Taxes Division). Petitioner's reliance on the memorandum dated March 4, 1987 is misplaced to say the least. The memorandum is, sad to say wrong interpretation of Section 195 of the Tax Code, as amended, which is the applicable law in this case. The memorandum having been issued on wrong construction of the law, cannot give rise to a vested right that can be invoked by the petitioner. The Supreme Court laid down this in Hilado v. Collector of Internal Revenue and the Court of Tax Appeals, G.R. No. L-9408, October 31, 1956, wherein stated that:

xxx xxx xxx

With regard to the contention that General Circular No. V-139 cannot be given retroactive effective because that would affect and obliterate the vested right acquired by petitioner under the previous circular, suffice it to say that General Circular No. V-123, having been issued on a wrong construction of the law, cannot give rise to a vested right that can be invoked by a taxpayer. The reason is obvious: a vested right cannot spring from a wrong interpretation. This is too clear to require elaboration.

"It seems to clear for serious argument that an administrative officer can not change the law enacted by Congress. A regulation that is merely an interpretation of the statute when once determined to have become erroneous becomes nullity. An erroneous construction on the law by the Treasury Department or the collector on internal revenue does not preclude or estop the government from collecting a tax which is legally due." (Ben Stocker, et. al., B.T.A.., 1351.)

"Art. 2254. –No vested or acquired right can rise from acts or omissions which are against the law or which infringe upon the rights of others". (Article 2254, New Civil Code)

In sum, it is very clear that the said memorandum expands the language of Section 195 of the Tax Code, as amended. The same cannot be countenanced. It is settled rule of statutory construction that the implementing rules and regulations cannot amend the act of Congress *(National Tobacco Administration vs. COA, 311 SCRA 755)* for administrative rules and regulation are intended to carry out, not supplant or modify, the law *(Grego v. COMELEC, 274 SCRA 481)*. Likewise it is axiomatic that a rule or regulation must bear upon, and be consistent with, the provisions of the enabling statute if such rule or regulations is to be valid *(Lina Jr. vs. Carino, 221 SCRA 515)*. And in case of discrepancy between the basic law and the rule or regulation issued to implement the law, the basic law prevails *(Hijo Plantation, Inc., vs. Central Bank, 164 SCRA 192; Conte vs. Court of Appeals 264 SCRA 19).*

14. Finally, the government is not estopped by the mistake or errors of agents, erroneous application and enforcement of law by public officers do not block the subsequent application of statutes *(E. Rodriguez, Inc. v. Collector ; L-23041, July 31, 1969).*

During the July 17, 2003 hearing, counsel for the petitioner manifested that he is submitting the case based on the pleadings on a purely legal issue, to which the respondent on the August 28, 2003 hearing, likewise manifested that he would not submit any evidence. Thereafter, after both parties had filed their respective memorandum, this case was submitted for decision on January 22, 2004. Despite previous notice to the respondent, he failed to forward the BIR Records to the court, hence, in its resolution promulgated on May 19, 2004, this court ordered respondent's counsel to forward the BIR records and to explain why he failed to deliver the BIR Records to this court despite repeated demands. The respondent filed a manifestation on May 26, 2004 informing the court that on May 12, 2004 he already transmitted to the court's Records Section the BIR Records consisting of three hundred sixteen (316) pages *(pages 113-114, CTA Records).*

The parties agreed that the following are the issues for resolution in this case, to wit:

1. The validity of assessment notices for respondent's failure to issue any notice for informal conference with respect to the findings of the alleged documentary stamp tax deficiency from 1982 to 1986 as required under Section of Revenue Regulation No. 12-85 dated November 27, 1985;

2. Whether the failure of the respondent to furnish petitioner of the details, nature and breakdown of the alleged findings of tax deficiency violates procedural due process and fair play;

3. The validity of the 1982 to 1986 demand/assessment notices issued by then Assistant Commissioner for Collection – Mr. Aguillon on April 7, 1989 (after then Commissioner Tan made it official to set aside, disregard or reprobate the very same tax assessments), for failure of respondent to issue notice for informal conference and/or pre-assessment notice (PAN) prior to the issuance of said assessment notices;

4. Whether or not the collection of tax deficiency in question has prescribed;

5. Whether or not petitioner's cabled instruction to its foreign correspondent bank to remit specific sum of foreign currency to the foreign correspondent bank of the Central Bank of the Philippines is in the nature of a telegraphic transfer subject to documentary stamp tax under Section 195 of the Tax Code, as amended, and amplified by Sections 50 and 51 of Regulations No. 26;

6. Whether or not petitioner is liable to pay the alleged 1982 and 1986 documentary stamp tax deficiency assessment.

To sensibly put the issues into order, it is necessary to resolve the issues in the following sequence: *First*, whether or not there was a valid assessment notice for the deficiency documentary stamp tax. *Second*, whether or not the collection of the documentary stamp tax deficiency in question has already prescribed. *And third*, whether or not petitioner is liable to pay documentary stamp tax for its swap transactions from 1982 to 1986.

Anent the first issue, petitioner contends that respondent's penchant for procedural shortcuts – by not disclosing to the petitioner, the nature, details and basis of the assessment and skirting the issuance of the notice for an informal conference as required by Revenue Regulation No. 12-85, violated its right to due process and fair play.

Pertinent provisions of Revenue Regulations No. 12-85, implementing Section 319 of then Tax Code are hereunder quoted for easy reference:

> POST REPORTING NOTICE
>
> **Section 1**. *Post-reporting notice* – Upon receipt of findings, the Division Chief, Revenue District Officer of Chief Office Audit Section, as the case may be, shall send to the taxpayer a notice for an informal conference before forwarding the report to higher authorities for approval. The notice which is Annex "A" hereof shall be accompanied with a summary of findings as basis for informal conference. (Annex "A" deleted).
>
> In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice may be dispensed with.
>
> PRE-ASSESSMENT NOTICE
>
> **Section 2**. *Notice for Proposed Assessment.* When the Commissioner or his duly authorized representative finds that taxes should be assessed, he shall first notify the taxpayer of his findings in the attached prescribed form as Annex "B" hereof. The notice shall be made in writing and sent to the taxpayer at the address indicated in his return or at his last known address as stated in his notice of change of address. (Annex "B" deleted).
>
> In cases where the taxpayer has agreed in writing to the proposed assessment, or where such proposed assessment has been paid, the required notice may be dispensed with.
>
> **Section 3**. *Time to Reply. – Venue for Filing Reply.* –
>
> (a) Regional Office cases. – x x x x x

(b) National Office cases. – The taxpayer shall reply within a period of fifteen (15) days from receipt of the Pre-Assessment Notice. In meritorious cases and upon written request of the taxpayer an extension exceed a total of ten (10) days.

The reply of the taxpayer shall be filed with the Section Audit Review Division or the National Audit Review Division, as the case may be, which has jurisdiction over the case.

x x x x x x x

ISSUANCE OF ASSESSMENT

Section 5. *Failure to Reply to Pre-Assessment Notices. Issuance of Assessment.* In the event the taxpayer fails to respond to the Pre-Assessment Notice within the above-prescribed period, or when the Commissioner or his duly authorized representative finds the response without merit, he should be informed of such fact and the report of investigation shall be given due course."

The petitioner claims that the non-observance of the aforequoted sections of Revenue Regulations No. 12-85 violated its right to due process.

We do not agree.

Petitioner admitted that it received the pre-assessment notice on November 26, 1986 for deficiency income and business taxes in the amounts of P153,378,910.44 and P24,587,474.63, respectively, covering the years 1982 to 1986. Petitioner, in a letter dated November 29, 1986, protested the said preliminary assessment notice and requested for a reconsideration or reinvestigation thereof *(page 135, BIR Records)*. On April 7, 1989, respondent issued assessment/demand notices FAS-1-82 to 86/89-000 and FAS 5-82 to

86/89-000 for deficiency withholding tax at source in the amount of P190,752,860.82 and deficiency documentary stamp tax in the amount of P24,587,174.63 for the years 1982-1986. It cannot be denied that on April 20, 1989, petitioner filed its protest to the demand/assessment notices and on May 8, 1989, it filed a supplemental protest. Respondent took cognizance of said protests when in his decision dated August 9, 2002, he cancelled and withdrew the assessment for deficiency withholding taxes amounting to P190,752,860.82.

It is noteworthy that petitioner is not arguing that its right to due process was violated as regards the said deficiency assessment for withholding taxes. It would be tantamount to admitting that Sections 1, 2, 3 and 5 of Revenue Regulations No. 12-85 were not disregarded where the assessment for deficiency withholding taxes is concerned. But petitioner cannot claim denial of due process nor allege procedural defects with respect to the subject deficiency documentary stamp tax assessment and not with regard to the deficiency withholding tax assessment which was cancelled. It must be pointed out that both the deficiency withholding tax and documentary stamp tax assessments were contained in only one assessment notice and both assessments were the subject of petitioner's protests. In other words, both assessments underwent the same procedural process. Apparently, petitioner's arguments are bereft of merits.

Moreover, we are not persuaded by petitioner's argument that respondent's failure to issue notice for an informal conference invalidates the assessments. Revenue Regulations No. 12-85 does not provide so nor does Section 319 of the Tax Code which it implements.

As regards the second issue of whether or not the period to collect deficiency documentary stamp taxes on the part of respondent has prescribed, we rule in the negative.

In the case of *Commissioner of Internal Revenue vs. Wyeth Suaco Laboratories, Inc., 202 SCRA 125*, the Supreme Court held that although the protest letters prepared by SGV & Co. for and in behalf of the private respondent did not categorically state or use the words "reinvestigation and reconsideration", the same are to be treated as letters of reinvestigation and reconsideration.

In the case at bar, petitioner filed a protest on April 20, 1989 *(pages 170 to 176, BIR Records)* and a supplemental protest on May 8, 1989 *(pages 153 to 167, BIR Records)*. In its letter protest of April 20, 1989, petitioner wrote thus:

> In view of all the foregoing, we most respectfully request that this fundamental issue be resolved first, before anything else, because it affects the very validity and existence of the assessments themselves, not to mention the importance and far-reaching significance thereof. For this purpose, it is requested that this be referred to your Legal Department for study and resolution. (Underscoring ours)

Likewise, in its supplemental protest dated May 8, 1989, petitioner requested:

> For the purpose of resolving the legal issues raised in this protest, we request that this be referred to your Law Division for study and recommendation. Thereafter, we request that the assessments be withdrawn and cancelled. (Underlining supplied)

Clearly from the foregoing letters, petitioner was asking for a reconsideration and/or reinvestigation of the assessments so issued. In fact, in a letter dated June 13, 1994 *(page 256, BIR Records)*, petitioner categorically stated and we quote:

> "Further to our letter of April 2, 1993 relative to the submission of swap contracts **in connection with the reinvestigation of the subject assessment**, we are submitting the following:"

Under Section 320 [now 223] of then Tax Code, the running of the statute of limitations on the making of assessment and the beginning of distraint or levy or proceeding in court for collection, in respect to any deficiency, shall be suspended for the period when the taxpayer requests for a reinvestigation which is granted by the Commissioner.

We consider petitioner's protest letters as requests for reinvestigation and based on the evidence on record, the respondent granted the same. As early as May 29, 1989, petitioner's protest letters were forwarded to the Assistant Commissioner, Legal Office *(page 115, BIR Records)*. On October 22, 1991, the Assistant Commissioner for Special Operations Service issued a memorandum to Revenue Officer Aida N. Florencio of Banks, Financing & Insurance Division to conduct a verification of the withholding tax on interest on foreign loans of petitioner and other commercial banks with swap transactions for the years 1982-1986 *(page 149, BIR Records)*. On April 2, 1992, the Senior Assistant Cashier of petitioner submitted to Revenue Officer Florencio copies of swap contracts in connection with the swap transactions under investigation *(page 190, BIR Records)*. Thereafter, Revenue Officer Florencio issued a 1st Indorsement dated April 30, 1992 *(page 193, BIR Records)* returning to the Chief of Banks, Financing and Insurance Division the entire docket on the tax case of petitioner [then Far East Bank and Trust Co.]. She recommended that the original assessment of P86,161,704.12, exclusive of penalties be given due course since the documents of petitioner failed to show that it is exempted from withholding tax at source. The Chief of Banks, Financing and Insurance Division then issued a 2nd Indorsement dated February 17, 1993 forwarding to the Assistant Commissioner, Collection Service the said docket and concurring with the recommendation of Revenue Officer Aida Florencio *(page 234, BIR Records)*. On March 8, 1993, petitioner thru SGV & Co., wrote the Bureau of Internal Revenue Attention: Chief, Banks, Financing and Insurance Division that:

> "On behalf of our above-named client and in compliance with your requirement, we are submitting a duly executed copy of the Waiver of the Statute of Limitation relative to the subject assessments.
>
> It would be appreciated if our client can be given the opportunity to present or submit additional documentation on its swap transactions with the Central Bank as agreed upon by the BIR and the BAP Tax Committee."

Then on April 2, 1993, petitioner submitted additional documents, particularly the swap contracts and the corresponding ticket advice *(pages 228-230, BIR Records)*.

On November 25, 1993, Revenue Officer Florencio returned the docket of the case to the Revenue Service Chief, Special Operations Service *(page 247, BIR Records)*. On February 17, 1994, the Regional Director of Revenue Region No. 6 forwarded the case to the Revenue District Officer of Revenue District Office No. 33 on the ground that petitioner "falls within the jurisdiction of that district" *(page 246, BIR Records)*. In an Indorsement dated June 6, 1994, the Revenue Officer of Revenue District No. 33 forwarded to the Revenue District Officer the docket bearing petitioner's case "with the information that the source of assessment is of legal question" and recommended that the same be referred to the Legal Division, National Office *(page 272, BIR Records)*. On June 17, 1994, petitioner submitted to the Revenue District Office No. 33 swap contracts in connection with the reinvestigation of the subject assessment *(page 256, BIR Records)*. On August 17, 1994, petitioner submitted the corresponding FCDU ticket advice for the swap contracts. Petitioner also submitted a copy of the Memorandum of Understanding on Withholding Tax Issue Relative to Swap Transactions of Commercial Banks entered into by the BIR and the Bankers Association of the Philippines *(pages 268-269, BIR Records)*. In an Indorsement prepared by Revenue District Officer Jaime Q. Concepcion dated August 26, 1994, the protest case of petitioner was forwarded to the Chief, Legal Service with the findings that as per the documents submitted, the foreign exchange used as the object of the Spot Sale and Forward Purchase under the Swap Agreement fell under the exemption agreed upon in the Memorandum of

Understanding on Withholding Tax Issue Relative to Swap Transactions of Commercial Banks, hence, not subject to 15% [now 20%] withholding tax. However, the issue of DST is not included in the said Memorandum of Understanding, thus, recommending once more the deficiency tax assessment on DST.

On November 27, 2000, a Decision signed by Commissioner Rene Banez was rendered withdrawing and cancelling the deficiency withholding tax assessment in the amount of P190,752,860.82 but finding petitioner [then Far East Bank & Trust company] liable for deficiency documentary stamp tax in the amount of P24,587,174.63 *(pages 300-309, BIR Records)*. But as admitted by the parties, it was the Decision dated August 9, 2002 which was received by the petitioner on January 15, 2003. Just the same, the contents are the same.

Indeed, based on the above incontrovertible facts, petitioner requested for a reinvestigation and reconsideration and the same was granted and acted upon by the respondent. As discussed, the deficiency withholding tax assessment amounting to P190,752,860.82 was withdrawn and cancelled and only the deficiency documentary stamp tax assessment amounting to P24,587,174.63 remained. Therefore, the prescriptive period provided by law to make a collection by distraint or levy or by proceeding in court for collection relative to the deficiency documentary stamp tax subject of this case was suspended. It was only upon receipt by the petitioner of the Decision on the protest on January 13, 2003 that the period to collect started to run again. It follows that respondent's right to collect said deficiency tax assessment has not prescribed. In fact, on October 10, 2002, a Final Notice Before Seizure was already issued by the BIR's Chief of Large Taxpayers Collection and Enforcement Division *(page 310, BIR Records).* However, this case was under judicial review as of January 24, 2003.

As to the final issue of whether or not petitioner is liable for documentary stamp tax on its swap transactions for the years 1982-1986, this court has ruled in a number of cases, the latest of which is the case of *Metropolitan Bank and Trust Company vs. The Commission of Internal Revenue, CTA Case No. 6378, April 26, 2004,* that petitioner's cabled instructions to its foreign correspondent bank to remit a specific sum in dollars to the Federal Reserve Bank to be credited to the account of the Central Bank is in the nature of a telegraphic transfer subject to the DST under Section 195 (now 182) of the Tax Code.

In the cases of *China Banking Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 4361, December 22, 1993* and *Consolidated Bank and Trust Company vs. The Commissioner of Internal Revenue, CTA Case No. 4647, November 21, 1994*, this court declared that the liability of petitioner for the payment of documentary stamp tax for the transfer or sale of foreign bills of exchange finds support under Section 51 of Revenue Regulation No. 26. "A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of the business" *(Commissioner of Internal Revenue vs. Heald Lumber Co., GR No. L-16340, February 29, 1964).*

Significantly, our pronouncements in the aforesaid cases were affirmed *in toto* by the Court of Appeals in the cases of ***China Banking Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP No. 33651, September 23, 1994*** and ***Consolidated Bank & Trust Company vs. The Commissioner of Internal Revenue and the Court of Tax Appeals, CA-G.R. SP. No. 35950, March 31, 1995***, respectively.

And again, in the case of **Bank of the Philippine Islands vs. The Commissioner of Internal Revenue, CTA Case No. 4481, May 31, 1994**, the court had the occasion to pass upon the same issue in this wise:

> "It has been shown above that by virtue of Section 51 of Revenue Regulations No. 26, mere cabled instructions to a foreign correspondent to pay money would fall within the ambit of Section 182.
>
> Even if such instructions were not covered, Petitioner's argument would still not stand. Section 182 mentions "foreign bills of exchange and letters of credit" that are "drawn in but payable out of the Philippines." Obviously, it is not money that is being drawn in the Philippines, as the Petitioner would have it, but bills of exchange and letters of credit "being drawn from a place of deposit in the Philippines" in relation to documentary stamp tax under Section 182.
>
> It is more logical to consider that what the law means with "drawn in" is "executed in". In fact, the Centennial 6th Edition of Black's Law Dictionary defines "draw" as:
>
>> *The act of a drawer in creating a draft. To draw a bill of exchange, check, or draft, is to write (or cause it to be written) and sign it; to make, as a note.*

> Thus to draw bills of exchange and letters of credit in the Philippines is to write, sign, or otherwise execute such bills of exchange and letters of credit in the Philippines.

The Court of Appeals likewise affirmed the above decision in the case of ***Bank of the Philippine Islands vs. Commissioner of Internal Revenue and The Court of Tax Appeals, CA-G.R. SP No. 35383, August 14, 1998***, and elucidated further, thus:

> "If petitioner would read the said provision in its entirety and not merely rely on the caption, it is quite apparent that the imposition of documentary stamp tax in Section 182 is not limited only to foreign bills of exchange or letters of credit but to all the orders made by telegraph or by any other means for the payment of money made by any person or persons drawn in but payable out of the Philippines.
>
> Was the advise sent by petitioner bank ***via*** cable to its foreign correspondent a telegraphic transfer and one which would fall within the provisions of ***Section 182***? Perusing the provisions of ***Section 51 of Revenue Regulations No. 26***, We have to say that it is.
>
> All the elements for a telegraphic transfer are indeed present, thus: (1) Petitioner BPI cables its correspondent bank in the United States; and (2) Petitioner bank directs that correspondent bank to remit the dollar amount to the Federal Reserve Bank of New York for credit to the account of the Central Bank of the Philippines.
>
> Telegraphic transfers being proper subjects for the imposition of documentary stamp tax, We therefore uphold the findings of the court ***a quo***."

In sum, petitioner is liable to pay the deficiency documentary stamp tax subject of the instant petition.

IN VIEW OF ALL THE FOREGOING, the petition is hereby **DENIED** for lack of merit. Accordingly, petitioner is **ORDERED to PAY** the respondent the amount of P24,587,174.63 representing deficiency documentary stamp tax for the period 1982-1986, plus 20% interest starting February 14, 2003 until the amount is fully paid pursuant to Section 249 of the Tax Code.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(On Official Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice