REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6505

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

OCT 13 2003

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DECISION

This case seeks a review of a portion of the Decision of herein respondent dated May 8, 2002, affirming Assessment Notice No. FAS-1-79-80-89-000600 and demanding the payment of deficiency documentary stamp tax in the amount of P15,595,956.60 for the years 1979-1986.

The facts of the case are undisputed.

Petitioner Allied Banking Corporation (ABC for brevity) is a duly licensed commercial banking institution legally organized and existing under and by virtue of Philippine laws, with principal office address at Allied Bank Center, 6754 Ayala Avenue, Makati City, Metro Manila.

From 1979 to 1986, petitioner ABC entered into SWAP Transactions and/or arrangements whereby petitioner ABC sold to the Central Bank (now Bangko Sentral ng Pilipinas) dollars at the guiding rate/cross rate subject to the stipulation that it would buy back the dollar sold upon the maturity date of the SWAP arrangement at a specified rate. The dollars subject matter of the transaction emanated from a foreign bank where petitioner ABC maintains a deposit. In effecting the transfer of funds to the Central Bank, petitioner first advises through cable instruction the foreign bank where it maintains a deposit to remit the dollar amount of the SWAP to the Federal Reserve Bank which, in turn, credits the account of the Central Bank of the Philippines.

On April 13, 1989, petitioner received a copy of a Pre-Assessment Notice dated March 20, 1989 issued by the then Commissioner of Internal Revenue Jose U. Ong, demanding payment of 15% Deficiency Withholding Tax at Source, including surcharge and interest, on the aforesaid SWAP transactions in the amount of P118,204,237.10 and Deficiency Documentary Stamp Tax, including surcharge and interest, on the same SWAP Transactions in the amount of P15,595,956.60.

Even before petitioner's receipt of the foregoing Pre-Assessment Notice dated March 20, 1989, however, the respondent issued on April 12, 1989 Assessment Notice No. FAS-1-79-86-89-000599 ***(Annex C, Petition for Review)*** and Assessment Notice No. FAS-1-79-80-89-000600 ***(Annex D, Petition for Review)*** demanding payment within thirty (30) days of the amounts mentioned in the Pre- Assessment Notice dated March 20, 1989. Copies of said Assessment Notices both dated April 12, 1989 were received by petitioner on April 20, 1989.

On May 12, 1989, petitioner filed a letter-protest ***(Annex E, Petition for Review)*** with the respondent. A copy of said letter-protest was received by respondent on the same date.

On June 5, 2002, petitioner ABC received a copy of the Decision of the respondent dated May 8, 2002 canceling and withdrawing Assessment Notice No. FAS-

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1-79-86-89-000599 but affirming Assessment Notice No. FAS-1-79-80-89-000600, details of which are as follows:

Deficiency Documentary Stamp Tax

Year	Rate Used (For every P200)	Documentary Stamp Tax Due
1986	P 0.30	P3,671,265.20
1985	0.30	6,381,023.40
1984	0.20	2,899,045.90
1983	0.20	824,526.80
1982	0.20	472,306.20
1981	0.20	217,723.40
1980	0.20	153,009.20
1979	0.20	59,240.20
Total		P14,678,140.30
Add: 25% Surcharge (1986 only)		917,816.30
Total Amount Due and Collectible		P15,595,956.60

On July 5, 2002, petitioner filed the instant petition for review and raised the following assignment of errors:

1. Respondent erred in holding that the cable instruction of petitioner is a telegraphic transfer within the contemplation of the NIRC
2. Respondent erred in holding that the flow of funds from the Philippines to the United States is irrelevant to the accrual of DST.

In his answer filed on August 12, 2002, respondent claimed by way of Special and Affirmative Defenses that:

"3. The assessment in question was issued in accordance with law and pertinent regulations.

4. The deficiency documentary stamp tax (DST) assessment is based on the order or cable/instruction of the local bank to its foreign correspondent bank to remit a specific sum in dollars to the Federal Reserve Bank (which, in turn advises the Central Bank (CB) that a specific sum in dollars/foreign currency is available to the local bank). It is the position of the BIR that when the local bank sells a foreign exchange

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(spot sale) in a SWAP and said local bank orders its correspondent bank abroad to remit the dollars so sold to the correspondent bank of the Federal Reserve Bank, said order is considered a telegraphic transfer subject to the DST under the then Section 195 (now Section 182) 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 a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part 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 P.D. 1457 and P.D. 1959)." (Underscoring supplied)
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> "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 the 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 Sections 1449(1) of the Administrative Code.
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> "SEC. 50. - Basis of tax in case of Telegraphic Transfers. - The basis of a tax in case of 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)

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

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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 the order covering or leading to the spot sale of foreign exchange not on the sale or purchase of foreign exchange which are not subject to the DST. In the case at 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.

6. All presumptions are in favor of the correctness of tax assessments."

On February 6, 2003, counsel for the petitioner manifested that there are no factual issues to be proved in the case, thus, he moved to submit his case for decision after the submission of his memorandum. Likewise, counsel for respondent made the same manifestation. The motion was granted by the court.

The issues to be resolved by this court as stipulated by the parties are as follows:

1. Whether or not 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.
2. Whether the flow of funds from the Philippines to the United States is irrelevant to the accrual of DST in the instant case

3. Whether or not petitioner is liable for DST in the amount of P 15,595,956.60 for the years 1979 to 1986

Since all the issues stipulated by the parties are interrelated, the same shall be discussed jointly.

Petitioner assails the validity of Assessment Notice No. FAS-1-79-80-89-000600 on the ground that the SWAP Transactions between the Central Bank and petitioner are not the transactions contemplated under Section 195 (now Section 182 of the Tax Code), in relation to Sections 50 and 51 of the Documentary Stamp Tax Regulations, which we quote, to wit:

> **Section 182.** ***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 a set of three (3) or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency ***(underscoring supplied)***.
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> ***Section 50. - Basis of tax in case of Telegraphic Transfers.*** - The basis of the tax in the case of 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)***
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> ***Section 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 a credit, and directs that foreign bank to pay to another bank or person in the 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 the provisions of Section 1449(i) of the Administrative Code.

It is the contention of petitioner that "only 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 a set of three or more according to the custom of merchants and bankers" shall be subject to the Documentary Stamp Tax. On the other hand, if the order is not drawn in the Philippines but abroad, said order is not subject to documentary stamp tax as it is outside the jurisdiction of Philippine taxation. Since in the instant case, it has been duly established that the funds credited to the Federal Reserve Bank were drawn in the United States and not in the Philippines, petitioner maintains that it should not be liable for DST on its cable instruction to its foreign correspondent bank where it maintains a deposit as said funds were both drawn and payable out of the Philippines .

Petitioner further argues that it is clear that the inclusion of the words "drawn in but payable out of the Philippines" was deliberate and effectively limited the scope of the documents subject to documentary stamp tax and to rule otherwise would render this phrase useless and nugatory. Thus, the tax was expressly made limited to orders drawn in the Philippines but payable outside of the Philippines.

We find against the petitioner.

As to whether or not 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, the court rules in the affirmative.

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 ruled 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, *hereinbefore quoted*. "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.
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> 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. It is hard to imagine how the law could contemplate 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.
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> 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***."

Given that the facts and circumstances in the aforecited cases fall squarely with the instant petition for review, we do not see any valid reason why we should deviate from the wisdom of these rulings. However, while the parties agreed that there are no factual issues to be proved in this case, we noted that respondent committed a footing error in his computation *(Annex A)*. Thus, after carefully examining the details of the assessed amount, we arrived at the following results:

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Taxable Year	DST Due
1986	P3,651,265.20
1985	6,381,030.90
1984	2,899,026.00
1983	824,526.80
1982	472,234.20
1981	217,723.40
1980	153,009.20
1979	59,240.20
Total	P14,658,055.90
Add: 25% Surcharge (1986 only)	917,816.30
Total Amount Due and Collectible	**P15,570,872.20**

WHEREFORE, petitioner is hereby **ORDERED** to pay the respondent Commissioner of Internal Revenue the amount of P15,570,872.20, inclusive of 25% surcharge for 1986, plus 20% delinquency interest from July 5, 2002 until fully paid pursuant to Sections 248 and 249 of the Tax Code.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

LOVELL R. BAUTISTA
Associate Judge

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C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Judge

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