REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE COMMERCIAL INTERNATIONAL BANK (as successor - in - interest of Insular Bank of Asia and America),
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 4883

Promulgated :
APR 11 1996

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DECISION

Involved in this case is the 1985 deficiency documentary stamp tax assessment issued to Philippine Commercial International Bank as successor - in - interest of Insular Bank of Asia and America (IBAA, for brevity) in the amount of P2,105,129.40.

Petitioner is a registered domestic corporation engaged in universal banking operations. It became the successor - in - interest of IBAA by reason of corporate merger and pursuant to Section 80 of the Corporation Code.

To maintain an adequate level of international reserve position, the Central Bank in 1985 purchased from petitioner foreign currency in the total amount of P1,403,319,418.00 Philippine pesos. The transfer of the purchased foreign currency was remitted for petitioner's account to the Central Bank's deposit account with the Federal Reserve Bank of New York.

Consequently, on June 26, 1989, respondent issued a demand letter with documentary stamp tax (DST) assessment which was received by petitioner on July 4, 1989, computed as follows:

Foreign Bills of Exchange	P1,403,319,418.00
Documentary Stamp Tax Due Thereon :	
$\frac{1,403,319,418.00}{200}$ x P0.30 =	P 2,104,829.40
Add : Compromise Penalty	300.00
Total Amount Due and Collectible	P 2,105,129.40

On July 24, 1989, petitioner filed its protest letter, dated July 20, 1989.

In a letter, dated July 20, 1992, respondent denied with finality the protest of petitioner. This letter was received by the petitioner through its tax counsel only on November 6, 1992.

On December 3, 1992, petitioner filed with this Court its petition for review.

Answer of respondent was filed on January 27, 1993, admitting thereon only the allegations of petitioner pertaining to its legal personality to sue and respondent's legal personality to be sued, and denying the rest of petitioner's allegations either for lack of knowledge or information sufficient to form a belief as to the truth thereof, or for being mere arguments, opinions and/or erroneous conclusions of fact and/or law. Respondent also raised in his answer the following special and affirmative defenses:

> "1. Petitioner was assessed Deficiency Documentary Stamp Tax for the year 1985 the sum of P2,105,129.40 in an assessment Notice No. FAS-5-85-89-001122, dated June 26, 1989;
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> 2.Petitioner sells foreign exchange to the Central Bank of the Philippines and upon petitioner's orders, its correspondent bank abroad remits said dollars sold to the Federal Reserve Bank. Hence, petitioner's said orders are considered telegraphic transfers taxable under Section 182 of the National Internal Revenue Code as implemented by Sections 50 and 51 of Revenue Regulations No. 26;
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> 3.Upon the effectivity of Presidential Decree 1994 on January 1, 1986, Section 173 of the Tax Code became applicable to petitioner and is quoted hereunder:
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>> 'x x x Provided, that whenever one party to the taxable document enjoys exemption from the tax herein imposed the other party thereto who is not exempt shall be the one directly liable for the tax.'
>
> 4.All presumptions are in favor of the correctness of the tax assessment. The taxpayer has the burden of proof to impugn its validity (Interprovincial Autobus Co., Inc. vs. Commissioner of Internal Revenue, 98, Phil. 290; Commissioner of Internal Revenue vs. Avelino, 8 SCRA 7570)."

Issues having been joined, the case was set for hearing for the reception of petitioner's evidence. Upon discovery that its protest of July 20, 1989 filed with respondent on July 24, 1989 was not included in the BIR records submitted to this Court, petitioner's counsel immediately filed on May 19, 1993 a Request for Admission of said protest letter. In his Comment filed on June 1, 1993, respondent admitted the existence of such protest letter but specifically denied its contents and purpose for being mere opinions and erroneous conclusions of law and/or facts.

In the hearings conducted, petitioner presented two witnesses in the persons of Ms. Cristina Garcia and Atty. Cirilo Noel. The first witness explained the bank's trading mechanics of foreign currencies. She was also presented to identify or explain some BIR rulings which were marked and offered as petitioner's rebuttal evidence. Atty. Noel was presented to testify on the existence and filing of petitioner's protest letter.

On the part of respondent, Mr. Bonifacio Caringal, the examiner who investigated and recommended the issuance of the subject assessment, was presented as witness. He testified on how he conducted his examination and the basis of his assessment. He also identified the documents presented and offered as exhibits for respondent.

The issues raised by petitioner in its memorandum, are as follows:

1. Whether or not remittance of foreign currency is a foreign bill of exchange subject to DST under Section 182 of the National Internal Revenue Code;

2. Whether or not petitioner as seller of foreign currency is liable for the payment of DST in cases where the buyer is the Central Banks; and

3. Whether or not petitioner is subject to DST on its sales of foreign currencies to the Central Bank in taxable year 1985.

The second issue is substantially the same as the third issue, so we will just consider the first and third issues of petitioner.

The first issue was answered negatively by petitioner by asserting that the assessment issued by respondent is not based on facts but on mere conjectures and presumptions (p. 4, Memorandum of Pet.; p. 175, CTA records). Petitioner laid emphasis on the testimony of Mr. Caringal, respondent's examiner, that he was not able to examine the actual books of accounts but instead, he gathered data from the Central Bank and such data gathered became the basis of his assessment. Petitioner stated further that the BIR records of the case do not even contain the alleged data from the Central Bank which should support the issuance of the subject DST assessment.

Respondent did not present any controverting argument regarding this issue. In her second special and affirmative defense, she merely stated that petitioner sells foreign exchange to the Central Bank and upon its orders, its correspondent bank abroad remits said dollars sold to the Federal Reserve Bank. According to respondent, such orders of remittance are considered telegraphic transfers taxable under Section 182 of the Tax Code.

After going over the BIR records of the case which consist of one hundred thirty three (133) pages, the Court could not find any concrete evidence supporting respondent's allegation that petitioner sold foreign currencies to Central Bank and such foreign currencies were remitted by petitioner's correspondent bank to the Federal Reserve Bank. Seemingly, the only evidence contained in the BIR docket, is a two-page listing in columns of figures with the caption of Insular Bank of Asia and America (IBAA) found on pages 2 and 3 of the BIR records. Presumably, this is the list of the foreign currencies remitted for at the bottom left end of page two of said listing there appears the figure 1,403,219,418. which is the same figure appearing on page 4 of the BIR records, opposite the caption of total peso value of foreign exchange transaction. Based on this figure, respondent's examiner computed the deficiency DST assessment of petitioner, thus:

Total value of foreign exchange transaction	P1,403,219,418.00
Divided by	200.00
	P 7,016,097.09
Rate of Doc. Stamp	.30
	P 2,104,829.46

The Court concurs with the petitioner that the assessment was not based on indisputable facts. The two-page document which as mentioned earlier, appeared to be a list of foreign currency transactions, although not offered as evidence or exhibit for respondent, does not carry any weight at all. It cannot support and should not be made as the sole basis of an assessment. In the first place, the document is a mere photocopy and not duly certified. It was never identified by its alleged maker/author, and its contents were never explained before the Court. There were no other documents presented to prove the veracity of the figures contained in the list. As the authenticity of the document and the veracity of its contents were highly questionable, the Court is constrained to consider the subject assessment as arbitrary, it being merely based on presumptions and not on actual facts. As aptly quoted by petitioner: "The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption" (**Collector of Internal Revenue vs. Benipayo**, 4 SCRA 182 quoted in **Commissioner of Internal Revenue vs. Island Garment Manufacturing Corporation and the CTA**, G.R. No. L-46644, September 11, 1987).

Summing up on the first issue, as far as the Court is concerned, there was no valid documentary stamp tax assessment issued by the respondent against the petitioner. There was no showing that foreign bills, or letters of credit, or even orders for payment of money or foreign currency outside of the Philippines were found by the respondent's examiner and the same were made as his basis for the instant assessment. For lack of any of the documentary evidence mentioned, it is erroneous for respondent to claim that her assessment was based on Section 182* of the Tax Code, which provides:

> "**Section 182.** *Stamps 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

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* previously numbered as Section 231 under the 1985 Tax Code

> Philippines in a set of three or more according to the customs of 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 of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency."

Even assuming, for the sake of argument, that there was a valid DST assessment issued by respondent, the second question to be argued upon is this : Is petitioner liable for DST even if the buyer is the Central Bank, a tax-exempt entity, but who has assumed responsibility for the payment of such tax?

Respondent asserts that petitioner is liable, invoking the amendatory provision of P.D. 1994 to Section 222 (now Section 186), which states:

> "Provided: That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." (Underscoring supplied).

Petitioner and even this Court beg to disagree. P.D. 1994 expressly provides in its Section 49 that it shall take effect on January 1, 1986. In the case of **Bank of Philippine Islands vs. The Commissioner of Internal Revenue**, CTA Case No. 4481, May 31, 1994, this Court even ruled that the date of publication of PD No. 1994 for purposes of its effectivity was June 18, 1986, the day the Official Gazette on which it was published was released for publication. It was only after June 18, 1986 that BPI was made to pay the deficiency DST. Applying this decision to the case of bar where the taxable year involved is 1985, it is undeniably clear that P.D. 1994 is inapplicable. Therefore, it is again erroneous for respondent to maintain that since Central Bank is tax-exempt, it is the other party (the herein petitioner) who is liable for the DST. Precisely, this is the reason why petitioner offered as its Exhibit "A" (Rebuttal Evidence) the Rules and Regulations of the Bankers 'Association of the Philippines. In said rules, it was expressly agreed upon that "documentary stamps on trading floor transactions shall be for the account of the buyer bank" (Exhibit "A-1", Rebuttal Evidence; par. E, p. 7, Rules and Regs.; p. 117, CTA records). The CB is the buyer bank. It is tax-exempt and so, nobody is liable on the subject assessment.

To recapitulate on the issues involved, it has been shown that the DST assessment issued to petitioner has no legal and factual bases. And even if it is to be assumed that said assessment is valid, petitioner cannot be liable for DST of such transactions held in 1985 as the Central Bank which is the purchaser of the subject foreign currency thereof is tax exempt.

WHEREFORE, in the light of all the foregoing, the Court finds the instant Petition for Review MERITORIOUS. Respondent is hereby ordered to CANCEL the 1985 deficiency documentary stamp tax assessment issued to Insular Bank of Asia and America in the amount of P2,105,129.40 covered by Assessment No. FAS-5-85-00112.

SO ORDERED.

RAMON O. DE VEYRA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

MANUEL K. GRUBA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals