**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**METROPOLITAN BANK AND TRUST COMPANY,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS (1st Division),**
Respondents.

**C.T.A. EB No. 112**
(C.T.A. CASE No. 6516)

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**METROPOLITAN BANK AND TRUST COMPANY,**
Petitioner,

-versus-

**COMMISSIONER OF INTERNAL REVENUE, COURT OF TAX APPEALS (1st Division),**
Respondents.

**C.T.A. EB No. 134**
(C.T.A. CASE No.6378)

Present:
Acosta, *P.J.*,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Palanca-Enriquez, *JJ.*

**Promulgated:**

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# D E C I S I O N

**CASTAÑEDA, JR., *J.*:**

Before this Court are two Petitions for Review filed by the petitioner Metropolitan Bank and Trust Company seeking to set aside the Decisions of the First Division of Court of Tax Appeals (the Court in

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Division) in C.T.A. CASE No. 6516 and C.T.A. CASE No. 6378 dated September 23, 2004 and April 16, 2004, respectively.

Petitioner's appeal from the Decision in C.T.A. CASE No. 6516 is docketed as C.T.A. EB No. 112 and its appeal from the Decision in C.T.A. CASE No. 6378 is docketed as C.T.A. EB No. 134. Both Petitions for Review involve the same parties and subject matter, the taxability of petitioner's cable instructions to its foreign correspondent bank in SWAP Arrangements and/or Forward Exchange Agreements as well as the taxability of renewals of the aforementioned agreement. This Court noted that the errors assigned as well as the arguments presented in C.T.A. EB No.112 are essentially the same as the errors assigned and arguments presented in C.T.A. EB No. 134. Hence, the above-mentioned cases were consolidated in a Resolution dated September 22, 2006 pursuant to Section 1 of Rule 31 of the 1997 Revised Rules of Civil Procedure. C.T.A. EB No. 134 has been consolidated with C.T.A. EB. No. 112 (the lower number) even though the former case covers the taxable years 1982, 1983, 1984, 1985, and 1986 and the latter case covers taxable year 1985 only.

We observed that in both Petitions for Review filed by the petitioner, the Court of Tax Appeals (1st Division) was impleaded as a respondent. This is not proper pursuant to Section 6 (a) of Rule 43 of

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the 1997 Rules of Civil Procedure in relation to Rule 7 of the Revised Rules of the Court of Tax Appeals (RRCTA). The aforementioned Section 6 (a) of Rule 43, in part, provides:

> "SEC. 6. *Contents of the petition.* - The petition for review shall (a) state the full names of the parties to the case, without impleading the court or agencies either as petitioners or respondents; xxx" *(underscoring supplied)*

Counsel for the petitioner should comply with the provisions of the Rules of Court to avoid the dismissal of actions based on technicalities as provided under Sec. 7 of Rule 43 thereof. Nonetheless, glossing over this defect in the petitions, this Court will decide the consolidated cases on the merits.

In C.T.A. EB No. 112 (C.T.A. CASE No. 6516), for review is the Resolution promulgated by the First Division of this Court ( the Court in Division) on August 16, 2005 which affirmed, in all respects, its Decision dated September 23, 2004. The dispositive portion of the assailed Decision provides:

> **WHEREFORE**, the instant petition is **DENIED** for lack of merit. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the amount of P1,012,875.00 as deficiency documentary stamp tax for the taxable year 1985, plus 20% delinquency interest computed from July 28, 2002 until fully paid pursuant to Section 249 of the Tax Code.
>
> **SO ORDERED**.

In C.T.A. EB No. 134 (C.T.A. CASE No. 6378), for review is the Resolution dated October 11, 2005 rendered by the Court in Division

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denying petitioner's Motion for Reconsideration. The Court in Division affirmed in all respects its Decision promulgated on April 16, 2004, the dispositive portion of the assailed Decision provides as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit. Assessment Notices Nos. FAS-82/85-5-89-00583 and FAS-5-86-89-00584 are AFFIRMED. Accordingly, the petitioner is ORDERED to pay the respondent Commissioner of Internal Revenue the amount of P14, 690,818.50 (P9,571,536.00 for the years 1982-1985 and P5,119,282.50, inclusive of 25% surcharge for the year 1986, plus 20% delinquency interest from May 30, 1989 until fully paid pursuant to Sections 248 and 249 of the Tax Code, as amended.

Hence, these petitions for review.

## THE FACTS

As to C.T.A. EB No. 112 (C.T.A. CASE No. 6516), the facts of the case as found by the Court in Division are as follows:

> Petitioner is a universal banking corporation duly organized and existing under Philippine laws with principal office at Metrobank Plaza Building, Sen. Gil Puyat Avenue, Makati City.
>
> On June 20, 1989, petitioner received a demand letter dated April 11, 1989 from respondent directing petitioner to pay the amount of P1,012,815.00 covered by Assessment No. FAS-1-85-000960 as deficiency documentary stamp tax (DST) including increments thereof covering the calendar year 1985 for petitioner's sales of foreign exchange under the SWAP Arrangements and/or Forward Exchange Agreements it entered into with the then Central Bank of the Philippines (now Bangko Sentral ng Pilipinas).
>
> The assessment of the aforementioned deficiency DST stemmed from the Memorandum for the Commissioner dated September 18, 1986 issued by its Franchise and Miscellaneous Taxes Division (*Petition for Review, Annex "A" to "A-5"*). Under the said Memorandum, petitioner is liable for DST pursuant to Section 182 (formerly Section 195) of the then National Internal Revenue Code (NIRC) on the telegraphic transfers under its SWAP Arrangements

> and/or Forward Exchange Agreements (*Joint Agreement on Stipulation of Facts and Issues, CTA, Records, page 65*).
>
> On July 19, 1989, petitioner filed with respondent its Letter of Protest contesting the validity and legality of the aforementioned deficiency DST assessment (*Petition for Review, Annexes "B " to "B-6"*)
>
> On June 10, 2002, respondent rendered a Decision which was received by petitioner on June 28, 2002, affirming with finality the subject assessment for deficiency DST against petitioner which amounted to P1,012,975.00 plus interest that may have accrued thereon until fully paid. (*Petition for Review, Annexes "C" to C-4")*

On July 25, 2002, petitioner questioned the Decision of respondent CIR in a Petition for Review[1] filed in the Court in Division. In a Decision[2] dated September 23, 2004, the Court in Division denied the petition for lack of merit.

On October 12, 2004, petitioner timely filed a Motion for Reconsideration[3]. On August 16, 2005, the Court in Division promulgated the Resolution[4] denying the motion and affirming in all respects the assailed Decision.

On September 1, 2005, petitioner filed this Petition for Review.

As to C.T.A. EB No. 134 (C.T.A. CASE No. 6378), the facts as found by the Court in Division are as follows:

> Petitioner is a universal banking corporation duly organized and existing under Philippine laws with principal office at Metrobank Plaza Building, Sen. Gil J. Puyat Avenue Extension, Makati City *(par. 1, Stipulation of Facts, p. 94, CTA Records).*

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1 *Records for C.T.A EB No. 112 , Annex D, page 117*
2 *Ibid., Annex E page 125*
3 *Ibid., page 168*
4 *Ibid., Annex F, page 139*

During the years 1982 to 1986, petitioner entered into SWAP Arrangements and/or Forward Exchange Agreements with the Central Bank of the Philippines. Such Swap Arrangements and/or Forward Exchange Agreements involve the following:

a. Petitioner (local bank) has a deposit account or credit line with its foreign correspondent bank (abroad);

b. Petitioner instructs its foreign correspondent bank (abroad) to draw a certain amount from its deposit account or credit line and to remit the same to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas);

c. Petitioner's foreign correspondent bank (abroad) remits the amount to the Federal Reserve Bank (abroad) which in turn remits the same to the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas) for the account of the petitioner;

d. Petitioner (local bank) sells (spot sale) the foreign exchange to the Central Bank and, in turn, petitioner also forward purchases the foreign exchange from Central Bank of the Philippines (now Bangko Sentral ng Pilipinas). *(par. 6, Stipulation of Facts, p. 916, CTA Records).*

On September 18, 1986, Jose J. Santos, Chief of the Franchise & Miscellaneous Taxes Division of the Bureau of Internal Revenue, issued a memorandum-report addressed to respondent, finding original SWAP Arrangement and/or Forward Exchange Agreement, its renewal, continuance and extension of the maturity period, subject to the documentary stamp tax at the rate prescribed under Sec. 195 of the NIRC. He then recommended for the issuance of a formal letter of demand to the taxpayer to effect the collection of the assessed amount.

On April 20, 1989, petitioner received a demand letter dated April 11, 1989 from herein respondent. Said letter-demand, which was signed by then Asst. Commissioner for Collection Pedro A. Aguillon, directed petitioner to pay the entire amount of P 92,711,161.09, representing deficiency withholding tax at source which amounted to P 78,020,342.59 and documentary stamp tax which amounted to P 14,690,818.50 including the increments thereof covering the calendar years 1982, 1983, 1984, 1985 and 1986, within a period of thirty (30) days from receipt thereof, for petitioner's sales of foreign exchange under its SWAP Arrangements and/or Forward Exchange Agreements. The particulars of the aforementioned deficiency assessment together with their corresponding assessment notice numbers are as follows:

**A. WITHHOLDING TAX AT SOURCE**

| Assessment Number | Year | Amount |
|---|---|---|
| FAS-1-82-89-00578 | 1982 | P 4,089,075.54 |
| FAS-1-83-89-00579 | 1983 | 10,555,922.94 |
| FAS-1-84-89-00580 | 1984 | 30,592,765.75 |
| FAS-1-85-89-00581 | 1985 | 19,512,529.42 |
| FAS-1-86-89-00582 | 1986 | 13,270,048.74 |
| | | **P 78,020,342.59** |

**B. DOCUMENTARY STAMP TAX**

| | | |
|---|---|---|
| FAS-82/85-5-89-00583 | 1982-1985 | P 9,571,536.00 |
| FAS-5-86-89-00584 | 1986 | 5,119,282.50 |
| | | **P 14,690,818.50** |
| | | **P 92,711,161.00** |

*(par. 2, Stipulation of Facts, p. 95, CTA Records)*

On May 19, 1989, petitioner timely contested the legality of respondent's assessment for deficiency withholding tax at source and documentary stamp taxes as shown on its demand letter dated April 11, 1989. (*par. 3, Stipulation of Facts, p. 95, CTA Records*).

On December 20, 2001, petitioner received respondent's decision dated December 7, 2001, canceling and withdrawing its assessment on deficiency withholding tax at source but affirming the validity of its assessment of the deficiency documentary stamp taxes for the calendar years 1982 to 1985 covered by Assessment Notice No. FAS-82/85-5-89-00583 amounting to P 9,571,536.00 (*Annex "A-4", Petition for Review*), and for the year 1986 covered by Assessment Notice No. FAS-5-86-89-00584 amounting to P5,119,282.50 (*inclusive of the 25% surcharge which amounted to P1,023,856.50) (par. 5, Stipulation of Facts, p.95, CTA Records*). Thus, petitioner's assessment was reduced as follows:

Deficiency Documentary Stamp Taxes:

| | | |
|---|---|---|
| For the years 1982-1985 | | P 9,571,536.00 |
| For calendar year 1986 | P 4,095,426.00 | |
| Add: 25% Surcharge | 1,023,856.50 | 5,119,282.50 |
| Total Amount Due and Collectible | | P 14,690,818.50 |

In affirming the validity of the assessments for documentary stamp taxes, respondent relied on the following grounds, to wit:

"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 (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 Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), e.g., 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. 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) <u>drawn in but payable out of the Philippines in a set of three or more according to the custom</u> 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. (as amended by P.D. 1457 and P.D. 1959)." *( Underscoring supplied)*

Sec. 51 <u>. What may be recorded as telegraphic transfer</u>. — 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 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.

Sec.50. Basis of tax in case of telegraphic transfers or orders for the payment of <u>money drawn in but payable out of the Philippine Islands</u> (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)*

The petitioner then filed an appeal[5] with the Court of Tax Appeals from the adverse decision of respondent CIR. As stated above, the Court in Division denied the Petition for Review in a Decision[6] dated April 16, 2004.

On May 7, 2004, the petitioner filed its Motion for Reconsideration[7]. A Supplemental Motion for Reconsideration[8] and the Second Supplement[9] were filed by the petitioner on May 12, 2004 and on May 28, 2004, respectively.

In a Resolution[10] dated October 11, 2005, the Court in Division denied petitioner's Motion for Reconsideration and affirmed in all respects its Decision[11] promulgated on April 16, 2004.

Hence, on November 3, 2005, the petitioner filed this present appeal.

## ASSIGNMENT OF ERRORS

The errors assigned by the petitioner in C.T.A. EB No. 112 are as follows:

**1. RESPONDENT GRAVELY ERRED IN HOLDING PETITIONER LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX FOR ITS SWAP ARRANGEMENTS/FORWARD EXCHANGE AGREEMENTS ENTERED**

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5 *Records, C.T.A. EB No. 134 Annex E, page 54*
6 *Ibid., Annex F, page 66*
7 *Ibid., Annex G, page 82*
8 *Ibid., Annex H, page 96*
9 *Ibid., Annex I, page 99*
10 *Ibid., Annex J, page 106*
11 *Ibid., Annex F, 66*

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**INTO IN 1985 PURSUANT TO SECTION 195 (NOW SEC. 182) OF THE NIRC AND SECTION 50 OF REVENUE REGULATIONS NO. 26.**

2. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THAT THE ENTITY ULTIMATELY LIABLE FOR THE PAYMENT OF THE DST IS THE CENTRAL BANK OF THE PHILIPPINES (NOW, BANGKO SENTRAL NG PILIPINAS), A TAX EXEMPT ENTITY.**

3. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THE EXISTING MARKET CONVENTION/PRACTICE IN 1985 WHICH EXEMPTS BANKS FROM PAYING THE DST ON SWAP TRANSACTIONS/ARRANGEMENTS IT ENTERS INTO WITH THE CENTRAL BANK (NOW, BANGKO SENTRAL NG PILIPINAS).**

4. **RESPONDENTS GRAVELY ERRED IN HOLDING THAT THE BANGKO SENTRAL NG PILIPINAS MUST FIRST ASSUME RESPONSIBILITY FOR THE PAYMENT OF THE DST NOTWITHSTANDING THE ABSENCE OF SAID REQUIREMENT IN THE MARKET CONVENTION AND PRACTICE EXISTING IN 1985.**

5. **RESPONDENTS GRAVELY ERRED IN GIVING RETROACTIVE EFFECT TO PD 1994 WHICH TOOK EFFECT ON JUNE 18, 1986.**

6. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THAT ITS DEFICIENCY ASSESSMENT FOR 1985 IS TANTAMOUNT TO A PROHIBITED DOUBLE ASSESSMENT SINCE PETITIONER HAS ALSO BEEN ASSESSED FOR DEFICIENCY DST FOR THE PERIOD 1982-1986.**

While in C.T.A. EB No.134 the errors assigned by the petitioner are the following:

1. **RESPONDENT GRAVELY ERRED IN HOLDING PETITIONER LIABLE FOR DEFICIENCY DOCUMENTARY STAMP TAX FOR ITS SWAP ARRANGEMENTS/FORWARD EXCHANGE AGREEMENTS ENTERED INTO IN THE YEARS 1982-1986 PURSUANT TO SECTION 195 (NOW SEC. 182) OF THE NIRC AND SECTION 50 OF REVENUE REGULATIONS NO. 26.**

2. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THAT THE ENTITY ULTIMATELY LIABLE FOR THE PAYMENT OF THE DST IS THE CENTRAL BANK OF THE PHILIPPINES (NOW, BANGKO SENTRAL NG PILIPINAS), A TAX EXEMPT ENTITY.**

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3. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THE EXISTING MARKET CONVENTION/PRACTICE IN 1985 WHICH EXEMPTS BANKS FROM PAYING THE DST ON SWAP TRANSACTIONS/ARRANGEMENTS IT ENTERS INTO WITH THE CENTRAL BANK (NOW, BANGKO SENTRAL NG PILIPINAS).**

4. **RESPONDENTS GRAVELY ERRED IN HOLDING THAT THE BANGKO SENTRAL NG PILIPINAS MUST FIRST ASSUME RESPONSIBILITY FOR THE PAYMENT OF THE DST NOTWITHSTANDING THE ABSENCE OF SAID REQUIREMENT IN THE MARKET CONVENTION AND PRACTICE EXISTING IN 1985.**

5. **RESPONDENTS GRAVELY ERRED IN GIVING RETROACTIVE EFFECT TO PD 1994 WHICH TOOK EFFECT ON JUNE 18, 1986.**

6. **RESPONDENTS GRAVELY ERRED IN FAILING TO CONSIDER THAT ITS DEFICIENCY ASSESSMENT FOR THE YEARS 1982-1985 IS TANTAMOUNT TO A PROHIBITED DOUBLE ASSESSMENT SINCE PETITIONER HAS ALSO BEEN ASSESSED FOR DEFICIENCY DST FOR THE YEAR 1985.**

## PETITIONER'S ARGUMENTS

The following are the petitioner's common arguments in both Petitions of Review:

First, the telegraphic transfers covering SWAP Arrangements of petitioner with the Central Bank of the Philippines ( now Bangko Sentral ng Pilipinas) are not covered by Section 195 (now Sec. 182) of the NIRC and Section 50 of Revenue Regulations No. 26. Petitioner argues that the phrase "money drawn in but payable out of the Philippine Islands" simply means that the applicability of said Section 195 of the NIRC and Section 50 of Revenue Regulation No. 26 is limited to telegraphic transfer of money drawn in but not out of the Philippines.

Petitioner avers that there is actually no money drawn in and payable out of the Philippines since the funds in foreign currency which are the subject matter of the SWAP Agreements are drawn out of the Philippine Islands from a foreign bank where petitioner has either a deposit or credit line.

Petitioner contends that respondent CIR does not have any territorial jurisdiction to impose Documentary Stamp Tax on the said transactions. Petitioner submits that Section 50 of Revenue Regulation No.26 does not apply to the SWAP Agreements of petitioner for the funds are not drawn from inside but outside the Philippines in the said transactions. Petitioner avers that the transactions then contemplated by Section 1449 (i) of the Administrative Code ( now Section 195 of the Tax Code) refer to situations where money was drawn from an account in the Philippines and made payable abroad.

Secondly, petitioner likewise submits that renewals or extensions of the SWAP Agreements are not subject to DST pursuant to Section 211 of the NIRC since what is being subjected to DST is the telegraphic transfer which is a one-time transaction. Petitioner avers that the extensions or renewals of the SWAP Agreements were done due to *force majeure* where the government imposed a moratorium on the payment of foreign obligations.

Petitioner submits that the facts involved in the present case are very similar to, if not on all fours with, those involved in the case of *Philippine Commercial International Bank (as successor-in-interest of Insular Bank of Asia and America) vs. Commissioner of Internal Revenue*, C.T.A. CASE No. 4883, promulgated on April 11, 1996 wherein the then Court of Tax Appeals applied the ruling in the case of the *Bank of Philippine Islands vs. Commissioner of Internal Revenue*, C.T.A. CASE NO. 4881 (*should be C.T.A. CASE No. 4481*), May 31, 1994 as to effectivity of P.D. 1994.

Third, petitioner alleges that it is grave error for respondent Commissioner of Internal Revenue (CIR) and the Court in Division to require that the CB first assume responsibility for paying DST notwithstanding the market convention that it is liable thereof.

The Petitioner cited the case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 4881 (*should be C.T.A. CASE No. 4481*), May 31, 1994, arguing that it was held therein that the then Court of Tax Appeals had already recognized the market convention that the buyer pays for DST, it ruled that: "xxx This market convention in the banking industry may therefore be recognized by this Court." Similarly, petitioner argues that in *Consolidated Bank and Trust Company vs. Commissioner of Internal Revenue*, C.T.A. CASE

No. 4466, January 5, 1995, the then Court of Tax Appeals ruled as follows:

> "xxx petitioner contends that the Central Bank as buyer assumed the payment of the documentary stamp tax as dictated by established banking practice then it is the Central Bank which should be the one liable for its payment xxx To sum it all up, it is the petitioner's theory that in 1985, neither party could be held liable to pay the documentary stamp tax. We find merit in the final conclusion of the petitioner that no one is liable for the payment of documentary stamp tax for foreign currency purchases made by the Central Bank in 1985."

Petitioner avers that the Court of Appeals affirmed the foregoing ruling in the case of *Consolidated Bank and Trust Company vs. Commissioner of Internal Revenue*, CA-G.R. SP No. 35950, March 31, 1995, in this wise:

> "Likewise, by market convention, the cost of DST is for the account of the buyer, in this instance the CBP. Since the CBP is exempt from all taxes, per the Central Bank Act, no DST is collected."

Petitioner argues that even assuming without admitting that petitioner is liable for the deficiency DST, it cannot be held liable for the calendar year 1985 since the buyer of the foreign exchange, the Central Bank of the Philippines (now Bangko Sentral ng Pilipinas ), the party liable for the DST, is tax-exempt under P.D. 1827. Petitioner can be held liable only for the DST starting June 18, 1986 by virtue of P.D. 1994 amending Section 222 (now Sec. 173) of the NIRC which now imposes the DST on the other party who is not exempt since the Official Gazette containing the text of P.D. 1994 which amended Section 222 (now Sec.173) was released only for general circulation on June 18, 1986 for the purpose of its effectivity.

It is the stand of Petitioner that its liability for DST could not have amounted to P1,012,875.00 for the calendar year 1985 covered by Assessment Notice No. FAS-1-85-000960 since the said assessment includes renewals and extensions of the Swap Arrangement and/or Forward Exchange Agreements which cannot be considered as telegraphic transfers. In addition, petitioner contends that the computation of said deficiency assessment was inaccurate and erroneous as the same was based not merely on incomplete records of the CB but was not also referred to Petitioner for comparison and verification with its records.[12]

Petitioner avers that it cannot be held liable for the accrued interest therein since there was no legal provision that imposes the same under the old NIRC.[13]

Lastly, Petitioner pointed out that the instant deficiency DST assessment for calendar year 1985 covered by Assessment Notice No. FAS-185-89-00960 in the amount of P1,012,875.00, the subject of C.T.A. EB No. 112, involving SWAP transactions is tantamount to double assessment by respondent against petitioner because it is already

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12 *Petition for Review C.T.A. EB. No. 112* ( C.T.A. CASE No. 6516)
13 *Ibid.*

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included in Assessment Notices No. FAS-82/85-5-89-00583 and FAS-5-86-89-00584 in the total amount of P14,690,818.50 for deficiency DST on petitioner's SWAP transactions covering the calendar years from 1982 to 1986, the subject of C.T.A. EB No 134.

## RESPONDENT'S ARGUMENTS

In the Comments of respondent Commissioner of Internal Revenue on the Petitions for Review, the following are his arguments:

First, respondent CIR avers that when the local bank sells foreign exchange (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 Central Bank, e.g. Federal Reserve Bank, said order is considered a telegraphic transfer subject to the DST under then Section 195 (now Sec. 182) of the old Tax Code, as amplified by Sections 51 and 50 of Revenue Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations.

Second, pursuant to Section 222 of the old Tax Code (now Section 173 of the 1997 Tax Code), the DST is payable by either party, making, signing, issuing, accepting or transferring the taxable document. In the case at bar, the real parties to the transaction are the local bank (petitioner herein) as drawer which has SWAP Arrangement with the Central Bank of the Philippines and the former's foreign correspondent bank as drawee/acceptor. 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 DST on the aforementioned orders, any market convention to the contrary notwithstanding.

Third, respondent CIR alleges that Sec. 211 of the NIRC is clear in placing within the ambit of taxation all renewals and continuances of a taxable document.

Fourth, respondent CIR avers that petitioner failed to show proof that the Central Bank categorically assumed payment of the subject DST. Moreover, petitioner failed to show the prevailing market convention and that the Central Bank recognized such convention. Respondent argues that the letter of Mr. Bayani C. Ramos to Commissioner Bienvenido A. Tan, Jr., dated June 28, 1988, merely stated that "under existing CB practice, the documentary stamps are paid by the buyer on the actual sale of the foreign exchange". Likewise, the affidavit[14] of Celia M. Gonzalez, Director of International Operations Department of the Bangko Sentral ng Pilipinas merely stated:

> "Regarding the second issue, **I cannot likewise say that the CBP recognized and upheld above BAP Position that the buyer (of the foreign currency) in a swap transaction is liable for the payment of the documentary stamp tax (DST), since this was not specifically provided in the covering swap**

[14] *dated November 23, 2004, Records (C.T.A. CASE No. 6378), page 324*

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> **contracts or Foreign Exchange Agreements** which we provided earlier to the Court of Tax Appeals." *(Emphasis supplied)*

In C.T.A. EB 112, respondent contends that even assuming for the sake of argument that a prevailing market convention exists wherein the buyer pays the DST on the actual sale of foreign exchange and the Central Bank recognized such market convention, petitioner would still be liable for the payment of DST because the transactions took place in April and May 1985 and the Central Bank, which was the purchaser of the subject foreign currency, was tax exempt from June 11, 1984 to March 9, 1987 pursuant to Resolution No. 35-85 dated May 3, 1985 of the Fiscal Incentive Review Board. In such instance, the liability for documentary stamp tax automatically falls upon the other party who is not exempt, in this case the petitioner.

Respondent avers that petitioner is liable to pay DST because even before Section 222 was amended by P.D. 1994, the same was already interpreted in BIR Ruling No. 144-84 dated September 3, 1984 that any of the parties to a taxable document is subject to the Documentary Stamps Tax which states, in substance, that where one party to the contract is exempt from said tax, the other party, who is not tax exempt, shall be the one liable thereto.

As regards the imposition of interest on the deficiency assessment, respondent CIR does not agree with the allegation of the petitioner that there was no legal provision under the old Tax Code that imposes interest in case of failure to pay the tax on time. Sections 248 and 249 of the old Tax Code provide for the civil penalties and interest that the government can collect in addition to the tax liability of the taxpayer.

Lastly, respondent argues that it is well-settled that assessments are prima facie presumed correct and made in good faith citing *Bonifacia Sy Po vs. Court of Tax Appeals and Commissioner of Internal Revenue,* G.R.81446, August 18, 1988.

## THIS COURT'S RULING

We deny the petitions.

During the years 1982 to 1986, petitioner entered into SWAP Arrangements and/or Forward Exchange Agreements with the Central Bank of the Philippines. A SWAP is a spot purchase of foreign currency and a forward sale of the same amount of currency.[15] In the spot purchase of foreign currency, CB is the buyer and in the forward sale of the same amount of currency, CB is the seller.[16] As stated at the outset, petitioner effected the SWAP transactions via cable instructions to its foreign correspondent banks to transfer foreign currency to the

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15 *Letter of Mr. Bayani C. Ramos, Officer-in-charge of Foreign Operations and Investments Department of CB, to BIR Commissioner Bienvenido A. Tan, Jr.* dated June 28, 1988

16 *Ibid.*

Federal Reserve Bank for credit to the account of the Central Bank of the Philippines.

***Nature and Taxability of Petitioner's Cable Instructions to Its Foreign Correspondent Banks in SWAP Transactions with the Central Bank of the Philippines***

The issue of whether or not the cable instruction by a local bank to a foreign correspondent bank in connection with its sale of foreign exchange to the Central Bank is subject to documentary stamp tax is not novel.

In the most recent case of *Bank of the Philippine Islands vs. Commissioner of Internal Revenue,*[17] the Supreme Court upheld the taxability of the cable instruction wherein it categorically ruled that the sale of foreign exchange to the Central Bank *via* order by cabled instruction is subject to documentary stamp tax pursuant to Section 195 (now Section 182) of the NIRC. Said Section provides:

> "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 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 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."

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[17] *G.R. No. 137002 promulgated on July 27, 2006 penned by Associate Justice Minita V. Chico-Nazario of Supreme Court First Division*

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In the above-mentioned Decision, the Supreme Court discussed the nature of acts covered by the above-quoted section of the NIRC. It held that Section 182 imposes documentary stamp tax on (1) foreign bills of exchange, (2) letters of credit, and (3) orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons.

**The Supreme Court ruled that the order to pay in the form of cable instruction is included among those taxed under Section 195 (now Section 182) of the NIRC**. It explained the meaning of the phrase "orders, by telegraph or otherwise, for the payment of money", thus:

> "The phrase orders, by telegraph or otherwise, for the payment of money used in reference to documentary stamp taxes may be found in an earlier documentary tax provision, Section 1449(i) of the Administrative Code of 1917,which was substantially reproduced in Section 195 (now Section 182) of the NIRC. Regulations No. 26, which provided the rules and guidelines for the documentary stamp tax imposed under the Administrative Code of 1917, contains an explanation for the phrase 'orders by telegraph or otherwise, for the payment of money'.
>
>> *What may be regarded as telegraphic transfer.* – 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 another bank or person in the same locality a certain sum of money, the document for and in respect such transaction will be regarded as a telegraphic transfer, taxable under the provisions of Section 1449(i) of the Administrative Code.
>
> In this case, BPI ordered its correspondent bank in the U.S. to pay the Federal Reserve Bank in New York a sum of money, which is to be credited to the account of the Central Bank. These are the same acts described under Section 51 of Regulations No. 26,

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interpreting the documentary stamp tax provision in the Administrative Code of 1917, which is substantially identical to Section 195 (now Section 182) of the NIRC. These acts performed by BPI incidental to its sale of foreign exchange to the Central Bank are included among those taxed under Section 195 (now Section 182) of the NIRC."

Furthermore, the Supreme Court identified the common elements of the instruments under Section 195 (now Section 182) of the NIRC:

> "Section 195 (now Section 182) of the NIRC covers foreign bills of exchange, letters of credit, and orders of payment for money, drawn in Philippines, but payable outside the Philippines. From this enumeration, two common elements need to be present: (1) drawing the instrument or ordering a drawee, within the Philippines; and (2) ordering that drawee to pay another person a specified amount of money outside the Philippines. What is being taxed is the facility that allows a party to draw the draft or make the order to pay within the Philippines and have the payment made in another country."

Applying the foregoing ruling to the present controversy before this Court, all the elements of a taxable telegraphic transfer as defined in Section 51 of Revenue Regulations No. 26 in relation to Section 195 (now Section 182) of the NIRC are present in this case, namely:

a. Petitioner Metropolitan Bank and Trust Company cables its foreign correspondent bank in the United States; and

b. Petitioner bank directs that foreign bank to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the Central Bank (now Bangko Sentral ng Pilipinas).

A reading of Section 51 of Revenue Regulations No. 26 in relation to Section 195 shows that mere cable instructions to its foreign correspondent bank of the petitioner ordering that a certain amount of foreign currency be transferred to the Federal Reserve Bank for credit

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to the Central Bank of the Philippines are in the nature of telegraphic transfers and subject to Documentary Stamp Tax.

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.[18] The power to levy an excise upon the performance of an act or the engaging in an occupation does not depend upon the domicile of the person subject to the excise, nor upon the physical location of the property and in connection with the act or occupation taxed, but depends upon the place in which the act is performed or occupation engaged in.[19]

In this case, the cable instruction of petitioner Metrobank to its correspondent bank in the United States to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the Central Bank (now Bangko Sentral ng Pilipinas) had been done or performed in the Philippines. Therefore, the excise tax was properly levied by respondent CIR since the act is performed within the taxing jurisdiction of the Philippine government.

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18 *Commissioner of Internal Revenue vs. Heald Lumber Co.*, GR No. L-16340, February 29, 1964

19 *Allied Thread Co., Inc. vs. City of Mayor of Manila* 218 Phil 308, 313-314 (1984)

The ruling of the Supreme Court in the *Bank of the Philippine Islands vs. Commissioner of Internal Revenue, supra.,* is but a confirmation of the previous rulings of the then Court of Tax Appeals in the following cases: *China Banking Corporation vs. The Commissioner of Internal Revenue,* C.T.A. CASE No. 4361, December 22, 1993; *Consolidated Bank and Trust Company vs. The Commissioner of Internal Revenue,* C.T.A. CASE No. 4647, November 21, 1994; and *Bank of the Philippine Islands vs. The Commissioner of Internal Revenue,* C.T.A. CASE No. 4481, May 31, 1994 where it was ruled that the local banks are liable for the payment of documentary stamp taxes for the transfer or sale of foreign bills of exchange pursuant to Section 51 of Revenue Regulations No. 26. Likewise, the Court of Appeals had sustained this ruling in a number of cases, to wit: *China Banking Corporation vs. Commissioner of Internal Revenue,* CA-G.R. SP No. 33651, September 23, 1994; *Consolidated Bank and Trust Company vs. The Commissioner of Internal Revenue and the Court of Tax Appeals,* CA-G.R. SP No. 35950, March 31, 1995; and *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.

More recently, the Court *En Banc* in the cases of *Philippine National Bank vs. Commissioner of Internal Revenue* in C.T.A. EB No.

93 dated January 17, 2006 and the *China Banking Corporation vs. Commissioner of Internal Revenue* C.T.A. EB No. 109, December 1, 2005, held that cable instructions are telegraphic transfers and are therefore subject to documentary stamp tax.

***Categorical Assumption of Liability of a Tax-exempt Buyer is Required***

The argument of the petitioner that it cannot be liable for deficiency DST for the calendar year 1985 since the buyer of the foreign exchange, the Central Bank of the Philippines is the party liable for the DST is tax-exempt under P.D.1827, is bereft of merit.

Notwithstanding that the amendment introduced by P.D. No. 1994 on Sec. 222 ( now Sec. 173) of the NIRC making the other party who is not exempt liable to the DST, took effect only 15 days after its publication in the Official Gazette (published on June 18, 1986), Sec. 222 of the 1977 NIRC (now Section 173 of the 1997 NIRC) provides *that the tax shall be paid by the person making, signing, issuing, accepting, or transferring the same*, therefore, the person liable to the DST could either be the issuer or the acceptor, in other words, either of the parties to the transaction. Thus, the assailed Decision states that "there is no question that the documentary stamp tax is payable by either the person making, signing, issuing, accepting, or transferring the document, instrument or paper. Said provision leaves the tax to be paid indifferently by either party (*Sta. Clara Lumber Company, Inc. vs. Jose Aranas*, C.T.A. CASE No. 502, June 12, 1959)". Section 222 of the 1977 NIRC provides:

> *Sec. 222. Stamp taxes upon documents, instruments, and papers.* — Upon documents, instruments, and papers, and upon acceptances, assignments, sales, and transfers of the obligation, right, or property incident thereto, **there shall be levied, collected and paid**, for and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following section of this Title, **by the person making, signing, issuing, accepting, or transferring the same**, and at the time such act is done or transaction had."

Thus, contrary to the contention of the petitioner, the respondent did not give retroactive effect on P.D. 1994 because Sec. 222 already provides that DST is to be paid by the person making, signing, issuing, accepting, or transferring the same. In other words, DST is to paid **indifferently by either party**. The said provision of law is clear on this point.

Petitioner alleges that a categorical assumption of liability is not required by a tax-exempt buyer pursuant to the market convention. It even cites the following C.T.A. cases: *Philippine Commercial International Bank vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 4883, April 11, 1996*; Consolidated Bank and Trust Company vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 4466, January 5, 1995; and *Bank of Philippine Islands vs. Commissioner of Internal*

*Revenue,* C.T.A. CASE No. 4481, May 31, 1994 in support of its argument.

We are not persuaded.

Petitioner's reliance in the above-mentioned cases is misplaced. In *Philippine Commercial International Bank vs. Commissioner of Internal Revenue, supra,* there was an express finding made by the Court of Tax Appeals that the Central Bank of the Philippines **assumed** responsibility for the payment of the tax. On the other hand, in the case at bar, the Court in Division found that there was **no** categorical assumption of liability by the Central Bank, thus:

> Unfortunately, petitioner failed to show proof that the Central Bank (now Bangko Sentral ng Pilipinas) had indeed assumed the responsibility for the payment of the documentary stamp taxes. There is nothing in the records of this case that will support Central Bank's assumption of responsibility to pay the subject documentary stamp tax.
>
> It has been held time and again that taxes are the lifeblood of the nation, thus, tax exemptions are regarded as in derogation of sovereign authority and must be construed strictissimmi juris against the person or entity claiming the same. In other words, the claimant/petitioner has the burden of proof to establish the factual basis of its claim. Failure to do so is fatal to its claim. *(Underscoring supplied)*

Even the affidavit of petitioner's witness Ms. Celia M. Gonzalez, Director of International Operations Department of the Bangko Sentral ng Pilipinas, failed to confirm the prevailing market convention and that the Central Bank recognized it. The affidavit abovementioned, in part, merely stated:

> "Regarding the second issue, **I cannot likewise say that the CBP recognized and upheld above BAP Position that the buyer (of the foreign currency) in a swap transaction is liable for the payment of the documentary stamp tax (DST), since this was not specifically provided in the covering swap contracts or Foreign Exchange Agreements** which we provided earlier to the Court of Tax Appeals." *(Emphasis supplied)*

With respect to the case of *Consolidated Bank and Trust Company vs. Commissioner of Internal Revenue, supra,* **the Court of Tax Appeals had abandoned said ruling** in view of the ruling in later cases such as in *Philippine Commercial International Bank vs. Commissioner of Internal Revenue, supra; Philippine National Bank vs. The Commissioner of Internal Revenue,* C.T.A. CASE No. 6511, April 28, 2004*; and China Banking Corporation vs. Commissioner of Internal Revenue,* C.T.A. CASE No. 6379, Feb. 23, 2005 where the Court of Tax Appeals ruled that it is indispensable that the tax-exempt buyer must first assume responsibility to pay the subject tax (DST).

Neither can petitioner rely on the ruling in the case of *Bank of Philippine Islands vs. Commissioner of Internal Revenue*[20] because the subject transactions covered by the assessment therein pertains to the year 1986 when the amendment introduced by P.D. No. 1994 became effective. In fact, the Supreme Court even upheld the ruling of the then Court of Tax Appeals that BPI was liable for DST for its cable instructions to its foreign correspondent banks for its SWAP transactions

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20 *C.T.A. CASE No. 4481*, May 31, 1994

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Hence, this Court agrees with the ruling of the Court in Division in the assailed Decisions that the buyer (Central Bank) shall categorically assume the payment of the DST because the DST is to be paid by the person making, signing, issuing, accepting, or transferring the same and the Central Bank did not assume the liability for the payment of the DST. The factual finding of the Court in Division is that there was **no** proof offered by the petitioner to show that the Central Bank indeed assumed the payment of the DST. Said factual finding cannot be disturbed on appeal without any showing that it is not supported by the evidence on record. Thus, we concur with the following ratiocination[21] of the Court in Division:

> However, in the case before us, the petitioner <u>failed to show proof that the Central Bank of the Philippines had indeed assumed the responsibility for the payment of the documentary stamp taxes.</u> Inasmuch as it failed to satisfy the only condition — the assumption by the tax exempt entity of the tax liability — that will excuse the petitioner from tax payment. Consequently, the petitioner herein is liable under the questioned assessment. *(Underscoring supplied)*

***Renewals of SWAP Agreements are likewise subject to DST***

Petitioner's contention that the renewal of documents is not subject to DST is misplaced. Section 198 of the 1977 NIRC provides that any "renewal or continuance of any agreement" shall also be subject to the documentary stamp tax at the same rate. Any extension

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21 *Decision in C.T.A. CASE No. 6516* ( C.T.A. EB No. 112), page 11

of the SWAP agreement shall also be subject to the Documentary Stamp Tax pursuant to Section 198, quoted hereunder:

> "Section 198. *Stamp tax on assignments and renewals of certain instruments.* — Upon each and every assignment or transfer of any mortgage, lease or policy of insurance, **or the renewal or continuance of any agreement**, contract, charter, or, any evidence of obligation or indebtedness by altering or otherwise, there shall be levied, collected and paid a documentary stamp tax, at the same rate as that imposed on the original instrument."

The Court *En Banc* does not agree with petitioner's allegation that renewals or extensions of the SWAP Agreements due to *force majeure,* when the government imposed a moratorium on the payment of foreign obligations, are not covered by 198 of the NIRC. The word "renewal" is not qualified by the provision. As long as there is an agreement and such is renewed, the levy, collection and payment of DST is proper. Clearly, DST is imposed not only on the orders by telegraph but also on the renewals or extensions of the SWAP agreements.

***Imposition of Interest on Deficiency Assessment is Valid***

As regards the issue on whether or not the imposition of interest on the deficiency DST assessment is valid, this Court concurs with the ruling of the Court in Division that the imposition of interest is supported by Sections 248 and 249 of the 1977 NIRC[22] providing for the

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22 As amended by E.O. Nos. 21, 22, 36, 37, 40, 72, 194, 195, 273 and 311 (*Nolledo, The National Internal Revenue Code of the Philippines, Annotated 1993 16$^{th}$ Revised Edition*)

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civil penalties and interest that the government can collect in addition to the tax liability of the taxpayer. The aforementioned provisions of the NIRC provides:

> *Section 248.Civil Penalties.* — . . .
>
> (d) In the case of failure to affix the proper documentary stamps to a document or instrument, there shall, for every violation, be imposed, in addition to the amount of documentary stamp tax required to be paid, an amount equivalent to twenty-five percent of such unpaid amount which shall be in lieu of the interest prescribed in Section 249; Provided, that when the amount is not paid within the time prescribed in the notice and demand, there shall be collected on the total unpaid amount, including the surcharge, the interest prescribed in Section 249 (a) from the due date prescribed in the notice and demand until the amount is fully paid, which interest shall form part of the tax. (Emphasis supplied)
>
> *Section 249.Interest.* (a) In general. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the same is fully paid." *(Emphasis supplied)*

Tax laws imposing penalties for delinquencies are clearly intended to hasten tax payments or punish evasions or neglect of duty in respect thereof.[23] If delays in tax payments are to be condoned for light reasons, the law imposing penalties for delinquencies would be rendered nugatory, and the maintenance of the government and its multifarious activities would be as precarious as taxpayers are willing or unwilling to pay their obligations to the state on time. The imperatives of public welfare will not approve of this result.[24]

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23 *Jamora vs. Meer* No. 48129, November 11, 1942 (74 Phil 22)
24 *Ibid.*

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***There is No Double Assessment for Deficiency DST for the Taxable year 1985***

In C.T.A. EB No. 112, one of the issues presented before this Court is whether or not the deficiency DST in the amount of P1,012,815.00 covered by Assessment Notice No. FAS-1-85-000960 including increments thereof covering the calendar year 1985 is already included in petitioner's 1982-1986 deficiency DST Assessment covered by Assessment Notices No. FAS-82/85-5-89-00583 and FAS-5-86-89-00584 in the total amount of P14,690,818.50 . The latter assessment notices are the subject of the Petition for Review in C.T.A. EB No. 134.

The assessments made by respondent on the deficiency DST, in the absence of substantial evidence controverting the same, are prima facie presumed correct and made in good faith. It is the petitioner who has the duty to present substantial evidence to prove its claim of double assessment for deficiency DST for the taxable year 1985. What is required is substantial evidence which means not necessarily preponderant proof as is required in ordinary civil actions, but such kind of relevant evidence as a reasonable mind might accept as adequate to support a conclusion.[25]

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[25] *Commissioner of Internal Revenue vs. Manila Machinery & Supply Company* No. L-25653, February 28, 1985 (135 SCRA 8)

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Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the C.T.A. and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties. This rule for tax initiated suits is premised on several factors other than the normal evidentiary rule imposing proof obligation on the petitioner-taxpayer: the presumption of administrative regularity; the likelihood that the taxpayer will have access to the relevant information; and the desirability of bolstering the record-keeping requirements of the NIRC.[26]

Thus, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the respondent is wrong but that he (taxpayer) is right because all presumptions are in favor of the correctness of the tax assessment.[27] And if the taxpayer fails to present evidence or proof in support of his allegation, this Court will sustain the assessment against the taxpayer.[28]

To sum it up, in order for a taxpayer to rebut the presumption of correctness in the assessment, jurisprudence requires that:

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26 *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005 (454 SCRA 301)

27 *Inter-provincial Autobus Co. Inc. vs. Collector of Internal Revenue* No. L-6741 January 31, 1956 (98 Phil. 290)

28 *Caresosa vs. BIR*, C.T.A. CASE No. 3713 January 25, 1985

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1. the taxpayer must prove that the assessment is wrong , and
2. the taxpayer must also prove that he is right.

In the case at bar, the twin-requirement was not satisfied by petitioner. Petitioner did not present any substantial evidence in support of its claim that the assessment of respondent CIR is wrong and that petitioner is right. Petitioner merely relied on its bare allegation that since deficiency DST for calendar year 1985 is included in Assessment Notice No. FAS-82/85-5-89-00583 which covers calendar years 1982, 1983, 1984 and 1985, there is already double assessment since Assessment Notice No. FAS-1-85-000960 covers also the deficiency DST for calendar year 1985.

A review of the BIR records of this consolidated case reveals that the principal amounts of the covered SWAP agreements subject to DST under Assessment Notice No. FAS-185-89-000960 were not included as part of or not among the principal amounts of the covered SWAP agreements subjected to DST under Assessment Notice No. FAS-82/85-5-89-00583 because not even a single principal amount of the covered contracts under Assessment Notice No. FAS-82/85-5-89-00583 matches with the principal amounts of the contracts subject of Assessment Notice No. FAS-185-89-000960.The following list of transactions used by the B.I.R. in arriving at the amounts indicated on the assessments shows that there is no double assessment :

**Computation of the deficiency DST for 1985** **Annex A**

**page 2, BIR Records, CTA Case No. 6516**

(with emphasis on the Principal Amount of each of the Swap Agreement)

| Date | Buyer | US Dollars | Exchange Rate | Phil. Peso | Doc. Stamp |
|---|---|---|---|---|---|
| 04-03-85 | Central Bank of the Phils. | **700,000.00** | 18.50 | 12,950,000.00 | 19,425.00 |
| 04-11-85 | -do- | **2,800,000.00** | 18.50 | 51,800,000.00 | 77,700.00 |
| 04-19-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| 04-22-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| 04-23-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| 04-25-85 | -do- | **1,000,000.00** | 18.50 | 18,500,000.00 | 27,750.00 |
| 04-29-85 | -do- | **23,500,000.00** | 18.50 | 434,750,000.00 | 652,125.00 |
| 05-02-85 | -do- | **2,000,000.00** | 18.50 | 37,000,000.00 | 55,500.00 |
| 05-03-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| 05-08-85 | -do- | **1,500,000.00** | 18.50 | 27,750,000.00 | 41,625.00 |
| 05-09-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| 05-13-85 | -do- | **2,000,000.00** | 18.50 | 37,000,000.00 | 55,500.00 |
| 05-14-85 | -do- | **500,000.00** | 18.50 | 9,250,000.00 | 13,875.00 |
| | **TOTAL DOCUMENTARY STAMP TAX DUE 1985** | | | | **1,012,875.00** |

**Computation of Basic Deficiency DST** **Annex B**

**For 1982 to 1986**

| Contract No. | Doc. Stamp |
|---|---|
| 812302 | 2,737,144.00 |
| 822535 | 867,360.00 |

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| | | |
|---|---|---|
| 822590 | | 2,397,557.00 |
| 832842 | 2,306,121.50 | |
| | (1,138,965.50) | 1,167,156.00 |
| 832846 | 2,370,415.00 | |
| | (1,489,379.00) | 881,036.00 |
| 832742 | | 2,534,008.00 |
| 832894 | | 306,632.00 |
| 832754 | | 1,549,883.00 |
| 832890 | | 766,558.00 |
| 832897 | | 459,628.00 |
| **Total** | | ***13,666,962.00*** |

**Excerpt of the computation of deficiency DST per Respondent's** **Annex B-1**

**WORKSHEET, page 19 to 22, BIR Records, CTA Case No. 6378**

(with emphasis on the Principal Amount of each of the Swap Agreement)

| Contract | Maturity Dates | | Principal | |
|---|---|---|---|---|
| No. | From | To | US$ | Doc. Stamp Due |
| 812302 | 09/28/81 | 03/28/82 | **10,000,000.00** | 83,131.00 |
| | 03/28/82 | 09/28/82 | **10,000,000.00** | 82,518.00 |
| | 09/28/82 | 03/28/83 | **10,000,000.00** | 85,981.00 |
| | 03/28/83 | 09/28/83 | **10,000,000.00** | 97,965.00 |
| | 09/28/83 | 03/28/84 | **10,000,000.00** | 111,218.00 |
| | 03/28/84 | 06/28/84 | **10,000,000.00** | 140,723.00 |
| | 06/28/84 | 09/28/84 | **10,000,000.00** | 182,361.00 |
| | 09/28/84 | 12/28/84 | **10,000,000.00** | 185,185.00 |
| | 12/28/84 | 03/28/85 | **10,000,000.00** | 311,696.00 |
| | 03/28/85 | 07/01/85 | **10,000,000.00** | 286,796.00 |

| | | | | | |
|---|---|---|---|---|---|
| | 07/01/85 | 10/01/85 | **10,000,000.00** | 286,431.00 | |
| | 10/01/85 | 01/06/86 | **10,000,000.00** | 282,153.00 | |
| | 01/06/86 | 04/07/86 | **10,000,000.00** | 287,696.00 | |
| | 04/07/86 | 07/07/86 | **10,000,000.00** | 313,290.00 | **2,737,144.00** |
| 822535 | 05/29/82 | 11/29/83 | **10,000,000.00** | 83,327.00 | |
| | 11/29/83 | 05/29/84 | **10,000,000.00** | 142,214.00 | |
| | 05/29/84 | 08/29/84 | **10,000,000.00** | 140,914.00 | |
| | 08/29/84 | 11/29/84 | **10,000,000.00** | 184,445.00 | |
| | 11/29/84 | 02/28/85 | **10,000,000.00** | 316,460.00 | **867,360.00** |
| 822590 | 10/23/82 | 04/23/83 | **10,000,000.00** | 88,350.00 | |
| | 04/23/83 | 10/23/83 | **10,000,000.00** | 100,780.00 | |
| | 10/23/83 | 04/23/84 | **10,000,000.00** | 142,773.00 | |
| | 04/23/84 | 07/23/84 | **10,000,000.00** | 140,920.00 | |
| | 07/23/84 | 10/23/84 | **10,000,000.00** | 184,146.00 | |
| | 10/23/84 | 01/23/85 | **10,000,000.00** | 313,065.00 | |
| | 01/23/85 | 04/29/85 | **10,000,000.00** | 289,259.00 | |
| | 04/29/85 | 07/29/85 | **10,000,000.00** | 287,066.00 | |
| | 07/29/85 | 10/29/85 | **10,000,000.00** | 283,109.00 | |
| | 10/29/85 | 01/27/86 | **10,000,000.00** | 282,414.00 | |
| | 01/27/86 | 04/28/86 | **9,500,000.00** | 285,675.00 | **2,397,557.00** |
| 832842 | *09/21/83* | *03/21/84* | ***10,000,000.00*** | *111,281.00* | |
| | *03/21/84* | *06/21/84* | ***10,000,000.00*** | *140,920.00* | |
| | *06/21/84* | *09/21/84* | ***10,000,000.00*** | *101,256.00* | |
| | *09/21/84* | *12/21/84* | ***10,000,000.00*** | *184,892.00* | |
| | *12/21/84* | *03/21/85* | ***10,000,000.00*** | *314,416.50* | |
| | *03/21/85* | *06/21/85* | ***10,000,000.00*** | *286,200.00* | |
| | 06/21/85 | 09/23/85 | **10,000,000.00** | 287,117.00 | |
| | 09/23/85 | 12/23/85 | **10,000,000.00** | 282,033.00 | |
| | 12/23/85 | 03/24/86 | **10,000,000.00** | 285,104.00 | |
| | 03/24/86 | 06/03/86 | **10,000,000.00** | 312,902.00 | **2,306,121.50** |
| 832846 | *09/28/83* | *03/27/84* | ***10,000,000.00*** | *111,218.00* | |
| | *03/27/84* | *06/25/84* | ***10,000,000.00*** | *140,723.00* | |
| | *06/25/84* | *09/25/84* | ***10,000,000.00*** | *182,487.00* | |

| | | | | | |
|---|---|---|---|---|---|
| | *09/25/84* | *12/27/84* | ***10,000,000.00*** | *185,299.00* | |
| | *12/27/84* | *03/28/85* | ***10,000,000.00*** | *286,502.00* | |
| | *03/28/85* | *06/28/85* | ***10,000,000.00*** | *296,663.00* | |
| | *06/28/85* | *09/30/85* | ***10,000,000.00*** | *286,487.00* | |
| | 09/30/85 | 01/02/86 | **10,000,000.00** | 282,179.00 | |
| | 01/02/86 | 04/02/86 | **10,000,000.00** | 285,522.00 | |
| | 04/02/86 | 07/01/86 | **10,000,000.00** | 313,335.00 | **2,370,415.00** |
| 832742 | 10/16/83 | 04/16/84 | **10,000,000.00** | 141,810.00 | |
| | 04/16/84 | 07/16/84 | **10,000,000.00** | 140,819.00 | |
| | 07/16/84 | 10/16/84 | **10,000,000.00** | 183,309.00 | |
| | 10/16/84 | 01/16/85 | **10,000,000.00** | 310,296.00 | |
| | 01/16/85 | 04/22/85 | **10,000,000.00** | 301,982.00 | |
| | 04/22/85 | 07/22/85 | **10,000,000.00** | 288,149.00 | |
| | 07/22/85 | 10/22/85 | **10,000,000.00** | 286,239.00 | |
| | 10/22/85 | 01/20/86 | **10,000,000.00** | 282,230.00 | |
| | 01/20/86 | 04/21/86 | **10,000,000.00** | 286,646.00 | |
| | 04/21/86 | 07/21/86 | **10,000,000.00** | 312,528.00 | **2,534,008.00** |
| 832894 | 11/22/83 | 05/22/84 | **4,000,000.00** | 56,973.00 | |
| | 05/22/84 | 08/22/84 | **4,000,000.00** | 56,443.00 | |
| | 08/22/84 | 11/26/84 | **4,000,000.00** | 72,319.00 | |
| | 11/26/84 | 02/26/85 | **4,000,000.00** | 120,897.00 | **306,632.00** |
| 832754 | 10/12/83 | 04/12/84 | **9,000,000.00** | 129,016.00 | |
| | 04/12/84 | 07/12/84 | **9,000,000.00** | 127,879.00 | |
| | 07/12/84 | 10/12/84 | **9,000,000.00** | 164,433.00 | |
| | 10/12/84 | 01/14/85 | **9,000,000.00** | 172,687.00 | |
| | 01/14/85 | 04/15/85 | **9,000,000.00** | 271,337.00 | |
| | 04/15/85 | 07/15/85 | **9,000,000.00** | 257,942.00 | |
| | 07/15/85 | 10/15/85 | **5,000,000.00** | 142,837.00 | |
| | 10/15/85 | 01/13/86 | **5,000,000.00** | 141,252.00 | |
| | 01/13/86 | 04/14/86 | **5,000,000.00** | 142,500.00 | **1,549,883.00** |
| 832890 | 11/21/83 | 05/21/84 | **10,000,000.00** | 142,433.00 | |
| | 05/21/84 | 08/21/84 | **10,000,000.00** | 141,107.00 | |

| | | | | | |
|---|---|---|---|---|---|
| | 08/21/84 | 11/21/84 | **10,000,000.00** | 180,765.00 | |
| | 11/21/84 | 02/21/85 | **10,000,000.00** | 302,253.00 | **766,558.00** |
| 832897 | 11/29/83 | 05/29/84 | **6,000,000.00** | 85,328.00 | |
| | 05/29/84 | 08/29/84 | **6,000,000.00** | 84,546.00 | |
| | 08/29/84 | 11/29/84 | **6,000,000.00** | 108,459.00 | |
| | 11/29/84 | 02/28/85 | **6,000,000.00** | 181,295.00 | **459,628.00** |
| **TOTAL** | | | | | **16,295,306.50** |

*Less: Adjustments stated in page 26, BIR Records, CTA Case No. 6378*
*(1,138,965.50 + 1,489,379.00), comprising of:*

| | | | | | |
|---|---|---|---|---|---|
| 832842 | *09/21/83* | *03/21/84* | ***10,000,000.00*** | *111,281.00* | |
| | *03/21/84* | *06/21/84* | ***10,000,000.00*** | *140,920.00* | |
| | *06/21/84* | *09/21/84* | ***10,000,000.00*** | *101,256.00* | |
| | *09/21/84* | *12/21/84* | ***10,000,000.00*** | *184,892.00* | |
| | *12/21/84* | *03/21/85* | ***10,000,000.00*** | *314,416.50* | |
| | *03/21/85* | *06/21/85* | ***10,000,000.00*** | *286,200.00* | ***1,138,965.50*** |
| 832846 | *09/28/83* | *03/27/84* | ***10,000,000.00*** | *111,218.00* | |
| | *03/27/84* | *06/25/84* | ***10,000,000.00*** | *140,723.00* | |
| | *06/25/84* | *09/25/84* | ***10,000,000.00*** | *182,487.00* | |
| | *09/25/84* | *12/27/84* | ***10,000,000.00*** | *185,299.00* | |
| | *12/27/84* | *03/28/85* | ***10,000,000.00*** | *286,502.00* | |
| | *03/28/85* | *06/28/85* | ***10,000,000.00*** | *296,663.00* | |
| | *06/28/85* | *09/30/85* | ***10,000,000.00*** | *286,487.00* | ***1,489,379.00*** |
| | **Total** | | | | **2,628,344.50** |
| **Basic Deficiency DST for 1982 to 1986** | | | | | **13,666,962.00** |

Clearly, a comparison of the principal amounts in Assessment Notice No. FAS-185-89-000960 for the taxable year 1985 and Assessment Notice No. FAS-82/85-5-89-00583 for the taxable years

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1982 to 1985 confirms the fact that there is no double assessment for the taxable year 1985.

In view of all the foregoing discussions, We see no cogent reason to disturb the assailed Decisions and Resolutions in C.T.A. CASE No.6516 and C.T.A. CASE No. 6378 of the 1st Division of this Court.

**WHEREFORE**, premises considered, both Petitions for Review are hereby **DENIED** for lack of merit. Accordingly, the assailed Decisions of the 1st Division in C.T.A. CASE No.6516 dated September 23, 2004 and in C.T.A. CASE No. 6378 dated April 16, 2004 as well as the Resolutions in C.T.A. CASE No.6516 dated August 16, 2005 and in C.T.A. CASE No. 6378 dated October 11, 2005 are **AFFIRMED**.

**SO ORDERED.**

Juanito C. Castaneda, Jr.
**JUANITO C. CASTANEDA, JR.**
Associate Justice

**We Concur:**

**ERNESTO D. ACOSTA**
Presiding Justice

**LOVELL R. BAUTISTA**
Associate Justice

**ERLINDA P. UY**
Associate Justice

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**CAESAR A. CASANOVA**
Associate Justice

**OLGA PALANCA-ENRIQUEZ**
Associate Justice

## CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court.

**ERNESTO D. ACOSTA**
Presiding Justice

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