REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BANK OF THE PHILIPPINE ISLANDS, (Successor-in-interest of CITYTRUST BANKING CORPORATION),
Petitioner,

- versus -

C.T.A. CASE NO. 5711

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 12 2001

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DECISION

This case involves the 1985 deficiency documentary stamp tax assessment issued by Respondent Commissioner of Internal Revenue, against the Bank of the Philippine Islands (BPI) as successor-in-interest of Citytrust Banking Corporation (CBC) in the amount of P1,259,884.50.

The facts of the case as found in the records are as follows:

On June 16, 1989, Petitioner received from the Respondent Bureau of Internal Revenue (BIR) an assessment notice and demand letter (Exhibits 1 and 1-a, respectively), both dated May 19, 1989 with No. FAS-5-85-89-000988, for the alleged 1985 deficiency documentary stamp tax in the amount of P1,259,884.50, computed as follows:

1985 – Deficiency Documentary Stamp Tax

Foreign Bills of Exchange	P839,723,000.00
Tax Due thereon	
P839,723,000.00 x P.30 (Sec. 182, 1994 NIRC) / P200.00	P 1,259,584.50
Add: Suggested Compromise Penalty	300.00
TOTAL AMOUNT DUE	P 1,259,884.50

On June 26, 1989, Petitioner duly filed its protest (Exhibit 2) against the subject assessment with the BIR. On December 3, 1998 (TSN, p. 6, May 18, 1999), Petitioner, through former counsel, SGV and Co. received a letter dated August 4, 1998 from herein Respondent, denying with finality the protest of Petitioner (Exhibit 3).

Thus, on January 4, 1999, Petitioner filed a Petition for Review with this Court, praying that the subject assessment be declared null and void.

On March 9, 1999, Respondent filed his Answer, raising thereon the following Special and Affirmative defenses, to wit:

(a) The assessments in question were made and issued in accordance with existing laws, rules and regulations;

(b) All presumptions are in favor of the correctness of the tax assessment (Interprovincial Autobus, Inc. vs. CIR, 98 Phil. 290).

During the hearing conducted on May 18, 1999, Respondent questioned the Court's jurisdiction to entertain the instant Petition as more than thirty (30) days had elapsed from the time the Petitioner's protest was denied with finality up to the time of the filing of this Petition. In ruling otherwise, this Court in its Resolution dated July 29, 1999, held that the Petition was timely filed considering that the assessment was only received by the Petitioner on December 3, 1998. Since January 3, 1999 fell on a Sunday then January 4, 1999 is the reasonable date to file the Petition in observance of the thirty-day prescriptive period to appeal. Thus, this Court ruled that jurisdiction over the case was properly acquired (see pages 60 to 63, CTA records).

The case was then set for hearing for the reception of Petitioner's evidence. However, counsel for the Petitioner manifested that he will no longer present any evidence but would merely rely on the admissions of the parties. Considering that the issue involved is purely legal, Petitioner submitted his case for decision.

Respondent, for his part, submitted the following evidence in order to prove the validity of the assessment it issued:

Exhibits	Description
1	Assessment No. FAS-5-85-89-00988 dated May 5, 1989
1-a	Petitioner's demand letter dated May 19, 1989
2	Protest letter dated June 23, 1989
3	Respondent's letter dated August 4, 1998 denying Petitioner's protest

The deficiency assessment for DST originated from the results of the investigation conducted by Revenue Examiner, Myrna R. de Ocampo which revealed among others that Petitioner sold foreign bills of exchange to the Bangko Sentral ng Pilipinas (BSP) and other commercial banks. It is the theory of Ms. de Ocampo that the buying and selling of foreign currency with the BSP and other commercial banks is subject to the payment of DST. According to her report, Ms. de Ocampo opined that what is being subjected to DST under Section 231 of the Tax Code is the order by the drawer to the drawee (foreign correspondent bank of the drawee) which could be in the form of a telex or telegraph. She further theorized that on purchases and sales of foreign currency of this nature to the BSP, it is the seller (referring to Petitioner) who is liable to pay DST based on the following reasoning embodied in her report, thus:

> "x x x On purchases and sales of foreign currency of this nature with commercial banks, it is a matter of practice that the buyer shoulders the payment of the documentary stamp tax. However on the sale of the foreign currency to the Central Bank, the documentary stamp taxes were not paid as it was alleged that the Central Bank is the buyer and is an exempt entity. It may be stated in this connection that the taxes could be collected instead from the seller-bank as provided for by Sec. 222 of the Tax Code of 1997 (now Section 186), and to quote:
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> > "Sec. 222. STAMP TAX 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."
>
> From the above-quoted provisions of the applicable law, documentary stamp taxes are payable by either the person making, signing, issuing, accepting or transferring the document, instrument or paper. It is now well settled that where one party to the instrument is exempt from said taxes, the other party who is not tax exempt should be liable (RULING, BIR, May 30, 1977)."

Respondent fully supported the conclusions embodied in the aforementioned report of Ms. de Ocampo and further strengthened the legal basis of the assessment by citing the following BIR Rulings which in substance state:

1. BIR Unnumbered Ruling dated May 30, 1977.

"x x x Documentary stamp taxes are payable by either the person, signing, issuing, accepting, or transferring the instrument, document, or paper. It is now well-settled that where one party to the instrument is exempt from said taxes, the other party who is not exempt should be liable."

2. BIR Ruling No. 144-84 dated September 3, 1984 –

"x x x Thus, where one party to the contract is exempt from said tax, the other party who is not exempt, shall be liable therefore. Accordingly, since A.J.L. Construction Corporation the other party to the contract and the one assuming the payment of the expenses incidental to the registration in the vendee's name of the property sold, is not exempt from said tax, then it is the one liable therefore, pursuant to Sec. 24 (now Sec. 196), in relation to Sec. 222 (now Sec. 173), both of the Tax of 1977, as amended."

On the other hand, Petitioner in challenging the validity of the assessment advances the following arguments:

1. DST is an indirect tax which is susceptible of being shifted and thus it can be paid indifferently by either party, depending on their agreement (citing the case of Sta. Clara Lumber vs. Aranas, CTA Case No. 502);

2. It is a recognized business practice that the buyer of the foreign currency pays for the DST as formalized by the market convention of the Bankers Association of the Philippines;

3. It is to be noted that CBC was already assessed by the BIR on Swap Transaction covering taxable years 1982 to 1986 under Assessment No. FAS-1-82-86-89-0008900. The subject 1985 DST is already covered by the said Swap Transaction which in effect, CBC is being taxed twice for the same transaction.

The lone issue to be resolved in the case at bar is WHETHER OR NOT PETITIONER BPI, AS THE SELLER OF FOREIGN CURRENCY IN 1985, SHOULD BE HELD LIABLE TO PAY THE AMOUNT OF P1,259,884.50 AS DEFICIENCY DOCUMENTARY STAMP TAX, INSTEAD OF THE BUYER, BANGKO SENTRAL NG PILIPINAS WHICH IS A TAX-EXEMPT ENTITY.

For easy reference, we will quote hereunder the applicable provisions of law that primarily governs the issue in the case at bar involving the 1985 Documentary Stamp Tax on Foreign bills of exchange, to wit:

<u>NATIONAL INTERNAL REVENUE CODE OF 1984</u>

Section 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.

Section 231. ***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 twenty 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. (219) (As amended by PD 1457)

<u>REVENUE REGULATIONS NO. 26</u>

> **Section 51.** ***What maybe considered as Telegraphic Transfer.*** - If a local bank cables to a certain 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 documents for and in respect of such transactions will be regarded as telegraphic transfer, taxable under the provisions of sub-section 144a(I) of the Administrative Code (now Section 195 of the NIRC).

Judging from the tenor of the aforequoted codal provisions, it would seem that the law does not expressly provide in a categorical manner who between the parties in the document, instrument or paper subject to the documentary stamp tax is liable for the payment thereof. The fact remains that where there is a document, instrument or paper subject to the DST which is made by two or more persons or parties, the burden of paying the tax is shouldered by said persons or parties. As simply put, the provision leaves the tax to be paid indifferently by either party depending on their contractual agreement or to any legal or lawful provision which may apply.

It is the contention of Respondent that the obligation to pay the DST (on the transaction to transfer fund from one foreign bank to another by telex or telegraphic transfer) should be shouldered by herein Petitioner since the alleged buyer who is the Bangko Sentral ng Pilipinas is a tax-exempt entity. Respondent, in saying so, draws it legal anchor on Section 222 and 231 of the 1984 NIRC and the BIR Unnumbered ruling dated May 30, 1977 and BIR Ruling No.144-84 dated September 3, 1984.

We do not subscribe to the contention of the Respondent.

Nowhere from the wordings of Section 222 and 231 of the 1984 Tax Code could sufficiently support the assertion of Respondent that when one party to the transaction is exempt , the other who is not exempt, is liable to the payment of the DST. It is only upon the enactment and effectivity of PD 1994 wherein the vacuum in the law is filled up as to the shifting of liability in case one of the party is exempt. What is peculiar in the instant case is the fact that the DST assessed upon the Petitioner involves calendar year 1985. While it is true that in a litany of cases decided by this Court, We impute liability to the Petitioner-Bank(seller) to pay the DST if the other party is exempt, this doctrine applies only to assessments covering taxable year 1986 onwards.*(See China Banking Corp. vs. CIR, CTA Case No. 4361, December 22, 1993 as affirmed by the Court of Appeals in China Banking Corp. vs. CIR, CA-G.R. Sp No. 33651, September 23, 1994 and Consolidated Bank and Trust Co. vs. CIR, CTA Case No. 4647, November 21, 1994 as affirmed by the Court of Appeals in Consolidated Bank and Trust Co. vs. CIR and CTA, CA-G.R. Sp No. 35950, March 31, 1995 with affirming Resolution issued by the Supreme Court dated November 20, 1995).*

It is to be noted that in the aforesaid cases, the Court relied entirely on the provision of Section 32 of PD 1994 which amended Section 222 of the 1984 Tax Code which reads as follows:

> "**SEC. 32.** Section 222 of the National Internal Revenue Code is hereby renumbered and amended to read as follows:
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> **Section 186.** ***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 sections of this Title, by the person making, signing, issuing, accepting, or transferring the same, and at the same time such act is done or transaction had:

> 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)

However, this law could not be relied upon in the instant case. It is worthy to stress that Section 49 of PD 1994 expressly provides that this law shall take effect on January 1, 1986. The case of **Philippine Commercial International Bank (as successor-in-interest of Insular Bank of Asia and America) vs. CIR, CTA Case No. 4883, April 11, 1996,** even points out 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 citing **Bank of the Philippine Islands vs. CIR, CTA Case No. 4481, May 31, 1994.** It is undeniably clear that PD 1994 finds no application to the instant case considering that the assessed DST involved covers calendar year 1985. Therefore, it is erroneous for Respondent to maintain that since Central Bank is tax exempt, it is the other party (herein Petitioner) who is liable for the DST.

This being so, Respondent in passing the liability to herein Petitioner, takes refuge in the BIR rulings which in gist is similar to Section 32 of PD 1994. Said BIR rulings cannot be given force and effect by this Court. True enough, BIR rulings are not binding in this Court especially if it involves a ruling in another case **(Shell Refining Co. vs. Lingad, CTA Case No. 1394, October 12, 1966).** An administrative ruling issued by the BIR to a taxpayer's query in one case does not necessarily apply to another case. As reiterated by the Supreme Court, "Although courts might uphold administrative rulings especially wherein there is no showing that they are contrary to law yet it should be noted that they are not binding on the Courts **(Commissioner vs. Ledesma, L-17509, January 30, 1970).** This is because rulings which merely embody administrative opinions on queries submitted do not have the force and effect of laws **(Howden vs. Collector, *supra*)**" but merely advisory in nature—sort of an information service to the taxpayer.

Petitioner likewise made mention of the Rules and Regulations of the Bankers Association of the Philippines (BAP) where it was expressly agreed upon that the DST on trading from transaction shall be for the account of the buyer-bank. Consequently, this Court upholds the validity of this recognized business practice formalized by the market convention of the BAP, which by agreement shifts the liability to pay the DST to the buyer of the Foreign Currency. As We held in **Sta. Clara Lumber vs Aranas case (CTA Case No.502, June 12,1959),**

> "x x x One of the natural characteristics of indirect taxes is that they are susceptible of being shifted from the person upon whom in the first instance the duty of payment is laid. (American Express Co. vs Maynard ex rel Moore, 177 U.S. 404, 413-414, 44 L. Ed. 823, 827). There is nothing in the provisions of Section 210 (Now Section 222) of the Tax Code which, in case of documents, instruments or papers required to be stamped, can be construed as expressly forbidding the person upon which the stamp taxes are imposed from shifting the payment of the stamp tax to Petitioner, the other party in the Agreement, Annex B. The contractual shifting of the burden of paying the stamp tax in question does not contravene any public policy. x x x".

However, considering the status of the Central Bank as a tax-exempt entity, said rules and regulations of the BAP which shifts the liability to pay the DST to the buyer bank appears to be inapplicable. It is important to note that this Court recognizes the status of Central Bank as a tax-exempt entity. From the period of June 11, 1984 until

March 9, 1987, Central Bank has been given tax exemption privilege by virtue of Resolution No. 35-85 of the Fiscal Incentive Review Board dated March 3, 1985. This being the case, liability for the payment of DST should likewise not be shouldered by the buyer Central Bank who is proven to be tax-exempt.

Premised on the facts that no express stipulation was entered upon by the parties, that Central Bank the buyer in the transaction is exempt from the payment of taxes and that PD 1994 which shifted the liability to the non-exempt person, cannot be given retroactive effect as it would be prejudicial to the taxpayer, it could be concluded that neither the Petitioner nor the Central Bank could be held liable for the payment of the DST for the former's 1985 sale of foreign currencies to the latter **(Bank of the Philippine Islands vs. CIR, CTA Case No. 5555, February 2, 1999).**

It also bears stressing that the Court's conclusion in invalidating the assessment rests largely on the fact that the taxable year involved is 1985, a period when PD1994 amending Section 222 of the 1984 Tax Code had not yet taken effect. Upon its effectivity however on January 1, 1986, the conclusion will altogether be different as said provision passes on the liability to pay the DST on the other party who is not exempt, in this case, the seller of foreign currency, in a situation where the buyer is a tax-exempt entity such as the BSP.

WHEREFORE, in view of 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 Bank of the Philippine Islands (as successor-in-interest of Citytrust banking Corporation) in the amount of P1,259,884.50 covered by Assessment No. FAS-5-85-89-000988.

SO ORDERED

ERNESTO D. ACOSTA
Presiding Judge

CONCURRING:

AMANCIO Q. SAGA
Associate Judge

DISSENTING:

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge