REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

METROPOLITAN BANK AND TRUST COMPANY.,
Petitioner,

- versus -

C.T.A. CASE NO. 6516

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 23 2004

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DECISION

This is a case seeking the cancellation of Assessment Notice Nos. FAS-1-85-000960 in the amount of P1,012,815.00 as deficiency documentary stamp taxes for the year 1985 on petitioner's sales of foreign exchange under its SWAP Arrangements and/or Forward Exchange Agreements.

The facts of the case as culled from the records 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

174

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"*)

Hence, on July 25, 2002, petitioner filed the instant petition for review.

In his Answer filed on August 28, 2002, respondent asserted the following Special and Affirmative Defenses, to wit:

> "3. Documentary Stamp Tax (DST) was imposed based on the findings that no DST had been paid by petitioner on its sale of foreign currency to the Central Bank of the Philippines pursuant to Section 182 (formerly 231 of the Tax Code, and implemented by Sections 50 and 51 of Revenue Regulations No. 26.

175

The DST was imposed on the orders drawn by petitioner addressed to its correspondent bank abroad instructing the remittance of the US dollars to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines in the amount corresponding to that agreed upon by petitioner as seller and Central Bank of the Philippines as buyer.

4. Pursuant to Section 173 (formerly Section 222) of the Tax Code, the documentary stamp tax 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 a 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 the DST on the aforementioned orders, any market convention to the contrary notwithstanding.

5. The assessments were issued in accordance with law and regulations;

6. The imposition of surcharge and interest on deficiency tax is mandatory.

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

During the course of the trial, the parties decided to stipulate on the following issues to be resolved by the court, namely:

1. Whether or not respondent's assessment of deficiency documentary stamp tax for the calendar year 1985 in the amount of P1,012,815.00 covered by Assessment No. FAS-1-85-000960 for the telegraphic transfer on petitioner's SWAP transactions/arrangements with Central Bank is valid.

2. Whether or not respondent's assessment of interest on top of the DST deficiency assessment for calendar year 1985 is valid. (*Joint Agreement on Stipulation of Facts and Issues, page 65, CTA Records*)

176

Petitioner argued that Section 195 of the Tax Code as well as Section 50 of Revenue Regulations No. 26, provide that the documentary stamp taxes shall be collected on telegraphic transfers for the payment of **money drawn in but payable out of the Philippine Islands.** The phrase "money drawn in but payable out of the Philippines Islands" simply means that the applicability of the said Section 195 of the NIRC and Section 50 of Revenue Regulations No. 26 is limited to telegraphic transfers of money drawn in but not out of the Philippines. Accordingly, the telegraphic transfers covering the SWAP Agreements of petitioner with the Central Bank of the Philippines are not covered by the provision of Section 195 of the NIRC. Under the said Agreements and/or Arrangements 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 said arrangements are **drawn out** of the Philippine Islands from the foreign bank, where petitioner has either a deposit or credit line. Subsequently, said foreign bank is instructed by petitioner to remit the dollar amount of the SWAP Agreement to the Federal Reserve Bank of the United States for credit or to the account of the Central Bank of the Philippines. Consequently, respondent does not have any territorial jurisdiction to impose DST on the said transactions.

Furthermore, petitioner averred that the subject SWAP Arrangements were mere renewals or extensions of the SWAP Agreements and therefore not subject to DST pursuant to Section 211 of the NIRC considering that what is being subjected to DST is the telegraphic transfer which is a one-time transaction. The moment the fund in transferred telegraphically and received by the payee the transaction is closed and obviously there can be no renewal or extension.

Moreover, petitioner alleged that the buyer in the subject SWAP Arrangement is the Central Bank of the Philippines. And since it is supposedly a market

177

convention recognized by both private and public instrumentalities that the buyer of the foreign exchange shoulders the DST, it therefore follows that it is the Central Bank which should pay the DST on said transactions. Respondent, likewise, cannot correctly assess herein petitioner of the deficiency DST since the assessment issued by herein respondent was for the SWAP transactions which transpired during the months of April and May 1985 or prior to the effectivity of Presidential Decree 1994, the law amending Section 222 of the Tax Code shifting the tax liability on the documentary stamp tax in the transaction to the non tax-exempt entity.

Finally, petitioner claimed that respondent's Worksheets *(Exhibit "B")* failed to clearly indicate the SWAP Agreements or transactions in which petitioner (as drawer) made orders by telegraph or otherwise to its foreign correspondent bank as drawee/acceptor. Respondent's Worksheet allegedly merely showed that the buyer is the Central Bank of the Philippines, the date of the transactions, the amount in foreign currency and its peso equivalent, and the amount of the DST. Moreover, petitioner argued that the data as found on the Worksheet of the respondent did not match those transactions as listed on its exhibits, thus, in effect, it can be interpreted that the transactions on respondent's Worksheet did not exist or if they did, they were based on erroneous information or that the said transactions are sale of foreign currency by petitioner to the Central bank of the Philippines without any foreign correspondent bank.

Respondent, on the other hand, argued that the subject DST was imposed based on the findings that no DST had been paid by petitioner on its sale of foreign currency to the Central Bank of the Philippines pursuant to Section 195 of the Tax Code (now Section 182 of the Tax Code), and implemented by Sections 50 and 51 of Revenue Regulations No. 26, pertinent provision of which read as follows:

178

> "**Sec. 195. Stamp Tax on Foreign Bills of Exchange and Letters of Credit.** – On all foreign bills of exchange and letters of credit (including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons) **drawn in but payable out of the Philippines** in a set of three or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of thirty centavos on each two hundred pesos, or fractional part 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).
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> "**Sec. 50**. Basis of tax in case of telegraphic transfers or orders for the payment of **money drawn in but payable out of the Philippine Islands (now Philippines)** should be the face value of such telegraphic transfers or orders computed, if expressed in a foreign currency with the rate of exchange taken into consideration."
>
> **"Sec. 51. What may be recorded as telegraphic transfer. – If a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay 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." *(Emphasis supplied)*

Accordingly, the DST was imposed on the orders drawn by petitioner addressed to its correspondent bank abroad instructing the remittance of the US dollars to the Federal Reserve Bank for credit to the account of the Central Bank of the Philippines in the amount corresponding to that agreed upon by petitioner as seller and Central Bank of the Philippines as buyer. Likewise, pursuant to Section 173 (formerly Section 222) of the Tax Code, the DST is payable by any party making, signing, issuing, accepting or transferring the taxable document. Here, the real parties to the transaction are the local bank (petitioner herein) as drawer which has a 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,

179

the drawer local bank is liable to pay DST on the aforementioned orders, any market convention to the contrary notwithstanding.

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court upholds the validity of the subject Assessment.

The main issue presented is not novel. There is a gamut of cases (**China Banking Corporation vs. The Commissioner of Internal Revenue**, *CTA Case No. 4361, December 22, 1993*; **Consolidated Bank & Trust Company vs. the Commissioner of Internal Revenue**, *CTA Case No. 4647, November 21, 1994*; **Bank of the Philippine Islands vs. The Commissioner of Internal Revenue**, *CTA Case No. 4481, May 31, 1994*) where this court held that the liability of the petitioner for the documentary stamp taxes for the transfer or sale of foreign bills of exchange is justified by Section 51 of Revenue Regulation No. 26. Said Section 51 is quoted below for easy reference:

> "**Sec. 51. What may be recorded as telegraphic transfer. – If a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay 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." *(Emphasis supplied)*

In the recent case of **Allied Banking Corporation vs. Commissioner of Internal Revenue**, *CTA Case No. 6505, October 13, 2003*, this court had said:

> "As to whether or not petitioner's cabled instructions to its foreign correspondent bank to remit a specific sum in dollars to the Federal Reserve Bank to be credited to the account of the Central Bank is in the nature of a telegraphic transfer subject to the DST under Section 195 (now 182) of the Tax Code, the court rules in the affirmative.
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> In the cases of **China Banking Corporation vs. Commissioner of Internal Revenue**, *CTA Case No. 4361, December 22, 1993* and **Consolidated Bank and Trust Company vs. The Commissioner of Internal Revenue**, *CTA Case No. 4647, November 21, 1994*, this court

180

ruled that the liability of petitioner for the payment of documentary stamp tax for the transfer sale of foreign bills of exchange finds support under Section 51 of Revenue Regulation No. 26, hereinbefore quoted. "A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but upon the privilege, opportunity or facility offered at exchanges for the transaction of the business" (**Commissioner of Internal Revenue vs. Heald Lumber Co.**, *G.R. No. L-16340, February 29, 1964*).

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

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

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

181

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

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

Recently, this court reiterated the same ruling in the case entitled **Metropolitan Bank and Trust Company vs. Commissioner of Internal Revenue**, *CTA Case No. 6378, April 16, 2004.*

Meanwhile, in the case of instruments renewal, Section 211 of the 1986 Tax Code clarifies the matter, thus:

> "**Section 211. Stamp Tax on Assignments and Renewals of Certain Instruments.** - Upon each and every assignment or transfers 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

182

levied, collected and paid a documentary stamp tax at the same rate as that imposed on the original instruments.

Hence, the assessment for deficiency DST against petitioner for the telegraphic transfers of petitioner's SWAP transactions/arrangements with Central Bank is valid.

Petitioner, as a collateral issue, contended that assuming the SWAP Arrangement is taxable, if there should be any party liable to the deficiency DST, it must be the Central Bank of the Philippines inasmuch as the amendment brought about by Presidential Decree 1994 shifting the tax liability of a tax-exempt entity to the transaction to the non-tax-exempt entity, took effect only on June 18, 1986. Accordingly, petitioner may be held to pay the DST starting only from June 18, 1986 and not prior to such date.

Petitioner cited the case of **Philippine Commercial International Bank (as successor-in-interest of Insular Bank of Asia and America) vs. The Commissioner of Internal Revenue**, *CTA Case No. 4883, April 11, 1996*, citing therein the case of **Bank of Philippine Islands vs. The Commissioner of Internal Revenue**, *CTA Case No. 4481, May 31, 1994*, which states, thus:

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

183

> 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 P.D. 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 at 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 Bank's 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 Reg.; p. 117, CTA records). The CB is the buyer bank. It is tax-exempt and so, nobody is liable on the subject assessment."*(Emphasis supplied)*

In the aforementioned case, although the petitioner bank should be made to answer for the payment of the DST, it was not made liable because the Central Bank of the Philippines, which is tax-exempt, has "assumed the responsibility to pay the subject documentary stamp taxes". There was a categorical affirmation on the part of the Central Bank to assume the tax liability. In the case above, with the assumption by the Central Bank of the responsibility to pay the subject documentary stamp taxes, nobody then was made liable to pay the DST.

However, in the case before us, the petitioner failed to show proof that the Central Bank of the Philippines had indeed assumed the responsibility for the payment of the documentary stamp taxes. 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.

184

And now to proceed to the second issue.

Petitioner alleged that it was wrong for respondent to impose interest on top of the DST assessment since there was no legal provision that imposes the same under the old National Internal Revenue Code.

The Court does not agree. The old Tax Code, as well as the new Tax Code, imposes interest on deficiency DST which is not paid within the time prescribed for its payment. **Section 248 of the old Tax Code** is hereunder quoted, to wit:

> **Section 248. Civil Penalties.** – xxx
>
> (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.**
>
> **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)*

As correctly pointed out by respondent and based on the applicable statutes and facts, the imposition of interest in this case is mandatory (**Philippine Refining Co. Inc. vs. Court of Appeals**, *70 SCRA 544*).

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%

186

delinquency interest computed from July 28, 2002 until fully paid pursuant to Section 249 of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice

187