REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CHINA BANKING CORPORATION, *Petitioner,*	**C.T.A. E.B. NO. 109 (C.T.A. CASE NO. 6379)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 0 1 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by China Banking Corporation (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated February 23, 2005 denying the Petition For Review, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, the subject Petition for Review is **DENIED** for lack of merit. Accordingly, Assessment Notice Nos. FAS-5-82/85-89-00586 and FAS-5-86-89-00587 for deficiency Documentary Stamp Taxes for the period from 1982 to 1986 are hereby **AFFIRMED**. Petitioner is **ORDERED TO PAY** herein respondent the amount of **ELEVEN MILLION THREE HUNDRED EIGHTY THREE THOUSAND ONE HUNDRED SIXTY FIVE AND 50/100 PESOS (P11,383,165.50)** plus 20% delinquency interest from January 20, 2002 up to the time such amount is fully paid.
>
> **SO ORDERED.**"

and the Resolution dated July 14, 2005 denying petitioner's Motion For Reconsideration issued by the Second Division of this Court in C.T.A. Case No. 6379, the dispositive portion of which reads as follows:

> "**WHEREFORE**, in view of the foregoing, petitioner's Motion For Reconsideration is hereby **DENIED** for lack of merit.
>
> SO ORDERED."

<u>THE FACTS</u>

The facts of the case are undisputed:

Petitioner China Banking Corporation is a universal banking institution duly organized and existing in accordance with the laws of the Philippines with principal office at 8745 Paseo de Roxas corner Villar St., Makati City, while respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) and may be duly served with summons and other court processes at his office at the BIR Building, East Triangle, Diliman, Quezon City.

During the periods from 1982 to 1986, petitioner was engaged in transactions involving sales of foreign exchange, or commonly known as SWAP transactions, to the then Central Bank of the Philippines, now Bangko Sentral ng Pilipinas or BSP for short.

On April 19, 1989, petitioner received a letter from respondent signed by Asst. Commissioner for Collection, Mr. Pedro G. Aguillon, dated April 11, 1989, with attached Income Tax Assessment Notice, thereby assessing petitioner the total amount of P150,223.45 and P11,383,165.50, representing its alleged deficiency expanded withholding tax at source and documentary stamp tax, respectively, on its SWAP

Transactions/Arrangements for the taxable years 1982 to 1986, detailed as follows:

ON SWAP TRANSACTIONS FOR CALENDAR YEARS 1982 TO 1986

Deficiency Withholding Tax At Source

	Amount
Deficiency Withholding Tax Due	P 83,346.47
Add: 25% Surcharge	20,836.62
14% Interest from 1-26-85 to 12-31-85	10,855.97
20% Interest from 1-1-86 to 3-10-89	35,184.39
	P150,223.45

Deficiency Documentary Stamp Tax

For the years 1982 to 1985		P8,280,696.00
For calendar year 1986	P2,481,975.60	
Add: Surcharge	620,493.00	3,102,469.50
		P 11,383,165.50

(FAS-1-82/86-89-000585-587, Exhibit "A" and annexes, Records, pp. 145-147)

On May 8, 1989, petitioner, through its First Vice President (now Executive Vice President and Chief Operating Officer), Mr. Ricardo R. Chua, sent a letter of protest to respondent detailing therein reasons why it disagreed with the findings of respondent (*Exhibit "B"*).

On December 21, 2001, petitioner received respondent's decision, promulgated on December 6, 2001, cancelling and withdrawing the assessed deficiency withholding tax at source in the amount of P150,223.45 for the taxable years 1982-1986 under Assessment Notice

No. FAS-1-82/86-89-000585, but reiterating the assessed deficiency documentary stamp tax for the same calendar years covered under Assessment Notice Nos. FAS-5-82/85-89-00586 and FAS-5-86-89-000587 in the aggregate amount of P11,383,165.50, plus increments that may accrue thereon.

On January 18, 2002, petitioner filed a Petition For Review before this Court, which was docketed as C.T.A. Case No. 6379.

In his Answer, filed on March 11, 2002, respondent alleged the following special and affirmative defenses:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> 3. In the instant Petition for Review, petitioner moves for the cancellation of the deficiency documentary stamp tax for taxable years 1982 to 1986 in the amount of Php: 11,383,165.50 relative to its transactions involving sales of foreign exchange also known as **SWAP Arrangements** to the then Central Bank of the Philippines (now Bangko Sentral ng Pilipinas), on the ground that it has no basis or leg to stand on;
>
> 4. It is the position of petitioner that the SWAP Arrangement may not be taxed as telegraphic transfer under Section 195 of the Tax Code (now Section 182) since if the local bank advises the correspondent foreign bank to turn over to the Federal Reserve Bank of the United States a specific amount in dollars corresponding to the SWAP for credit to the account of the Central of the Philippines,

ql

payment is made in the Philippines. This is contrast with a telegraphic transfer where a foreign bank is instructed by a local bank to make payment also abroad, where such foreign bank is located;

5. The position interposed by petitioner is not impressed with merit. It is clear from the provision of Section 231 (now Section 182 of the Tax Code) that foreign bills of exchange and letters of credit (including orders by telegraph or otherwise) for the payment of money drawn in but payable out of the Philippines are subject to documentary stamp tax. Thus, the documentary stamp tax prescribed by then Section 231 of the Tax Code is due and payable on the order covering the forward transaction as well as the order covering or leading to the spot sale of foreign exchange and not the document embodying the 'Offer to Sell Spot Exchange' under SWAP Arrangement or the sale or purchase of foreign exchange which is not subject to the documentary stamp tax. The real parties to the SWAP transaction are the local bank as drawer and the former's foreign correspondent bank as drawee/acceptor; (Bank of the Philippine Islands vs. Commissioner of Internal Revenue, CTA Case No. 4481, May 31, 1994, affirmed in CA-G.R. Sp. No. 35383, August 14, 1988).

6. Pursuant to Section 222 (now 173) of the Tax Code, the documentary stamp tax is payable indifferently by either party making, signing, issuing, accepting or transferring the taxable document. Hence, since the drawee (local bank's foreign correspondent bank) is outside the taxing jurisdiction of the Philippines, the drawer local (China Banking Corporation) is liable to pay the documentary stamp tax on the said order. Furthermore, the flow of funds abroad from the Philippines to a foreign country is irrelevant to the accrual of the documentary stamp tax and the amount of tax; au

> 7. The assessment issued against petitioner for deficiency documentary stamp tax for taxable years 1982 to 1986 was made in accordance with law and regulations;
>
> 8. All presumptions are in favor of the correctness of tax assessments."

After trial on the merits, the Second Division of this Court rendered the assailed Decision on February 23, 2005, denying the Petition For Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the Second Division denied in a Resolution dated July 14, 2005.

ISSUE

Hence, this Petition For Review raising the following sole issue, to wit:

> WHETHER OR NOT SWAP ARRANGEMENTS ARE SUBJECT TO DOCUMENTARY STAMP TAX FOR THE YEARS ASSESSED.

On August 12, 2005, petitioner filed its "Allegation In Support of the Application For the Issuance of a Preliminary Injunction and/or Temporary Restraining Order".

On August 31, 2005, petitioner filed its "Motion To Admit Memorandum In Lieu of Oral Argumentation", which the Court *En Banc* granted in a Resolution dated September 5, 2005, and respondent was granted five (5) days or until September 8, 2005 within which to file his Comment on petitioner's Memorandum In Support of the Application For a Temporary Restraining Order.

On September 6, 2005, respondent filed his "Comment (Re: Petitioner's memorandum In Lieu of Oral Argumentation)".

On September 20, 2005, the Court *En banc* denied the "Application For the Issuance of a Preliminary Injunction and/or Temporary Restraining Order", and required respondent to file his Comment on the Petition For Review, within ten (10) days from notice.

On October 12, 2005, respondent filed his "Comment".

Hence, the petition is now deemed submitted for decision.

THE COURT EN BANC'S RULING

We deny the petition.

The principal issue posed for resolution by the Court *En Banc* is whether or not transactions involving sales of foreign exchange commonly known as SWAP Arrangements shall be treated as telegraphic transfers subject to documentary stamp tax under the then *Section 195 (now 182) of the Tax Code*.

There is nothing novel in this case as the principal issue raised herein, had in a long line of cases, been previously ruled by this Court in the affirmative, and sustained by the Court of Appeals [*China Banking Corporation vs. Commissioner of Internal Revenue, CA-G.R. SP Nos. 33651, September 23, 1994 (C.T.A. Case No. 4361); Consolidated Bank and Trust Co. vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 35050, March 31, 1995 (C.T.A. case No. 4647); Bank of the Philippine Islands vs. Commissioner of Internal Revenue and Court of Tax Appeals, CA-G.R. SP No. 35383, August 14, 1998 (C.T.A. Case No. 4481)*].

Petitioner claims that the features and steps involved in SWAP Arrangements indicate that is not among those fixed under *Section 180 of the National Internal Revenue Code* (hereafter "NIRC"). It argues that at end of the SWAP cycle, the documentary stamp tax was already deducted by the Central Bank, and petitioner shall therefore be deemed to have paid it. And at the start of the cycle, consistent with the procedure that it is the buyer of foreign exchange who should shoulder the tax, it is the Central Bank which should pay it, if such is payable at all, invoking the

Memorandum of the Bankers Association of the Philippines addressed to all members, dated March 17, 1987 (*Exhibit "R"*).

On the other hand, respondent maintains that the cabled instructions of petitioner to its foreign correspondent bank to pay money is a telegraphic transfer subject to DST under *Section 195 (now Section 182) of the Tax Code.*

Respondent likewise asserts that the above provision is augmented by *Section 51 of Revenue Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations.*

Section 195 (now Section 182) of the Tax Code provides:

> "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 (3) or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency."

Corollarily, *Section 51 of Revenue Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations*, provides:

> "SEC. 51. What may be considered as telegraphic transfer. – If a local bank cables to a certain bank in a foreign country with which bank said local bank has a credit, and directs that foreign bank to pay to another bank or person in 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."

The law is clear 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 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.

All the elements for a telegraphic transfer are indeed present in this case, thus:

1) petitioner China Banking Corporation cables its foreign correspondent bank in the United States; and

2) petitioner bank directs that foreign correspondent bank to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the Bangko Sentral ng Pilipinas (hereafter "BSP").

Telegraphic transfers being proper subjects for the imposition of documentary stamp tax, We therefore uphold the following findings of the Second Division of this Court:

> "The order or cable instruction of the local bank to its foreign correspondent bank to remit a specific sum in dollars/foreign exchange to the Federal Reserve Bank for credit to the account of the BSP is considered a telegraphic transfer subject to the documentary stamp tax under then Section 195 (now Section 182) of the Tax Code. Said Section provides as follows:
>
> '**Sec. 195. Stamp Tax on Foreign Bills of Exchange and Letters of Credit.**- On all foreign bills of exchange and letters of credit (**including orders, by telegraph or otherwise, for the payment of money issued by express or steamship companies or by any person or persons**) drawn in but payable out of the Philippines in a set of three (3) or more according to the custom of merchants and bankers, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign currency.' (emphasis supplied)
>
> This provision is amplified by Section 51 of Revenue Regulations No. 26, otherwise known as the Documentary Stamp Tax Regulations, which reads thus:
>
> '**Section 51. What may be considered as telegraphic transfers.** – If a local bank cables to a certain bank in a foreign country with which bank said

Oul

> local bank has a credit, and directs that foreign bank to pay to another bank or person in the same locality a certain sum of money, the document for and in respect of such transaction will be regarded as a telegraphic transfer, taxable under provisions of Section 1449(i) of the Administrative Code."

In the light of the foregoing legal provisions, it is clear that the imposition of documentary stamp tax in Section 195 (now Section 182) of the Tax Code 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, to any person or persons drawn in but payable out of the Philippines. Thus, the cabled instructions of petitioner to its foreign correspondent bank to pay money falls within the ambit of Section 195 (now Section 182) of the Tax Code, the applicable law at the time of the SWAP agreements in question were transacted.

All the elements for a telegraphic transfer are indeed present, namely: (1) Petitioner bank 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 the United States for credit to the account of the Central Bank of the Philippines (BSP)."

Petitioner's contention that it was not accorded due process of law, that it was never formally apprised of the sources and how the amounts indicated in the assessment were arrived at is likewise devoid of merit. Records show that the subject deficiency tax assessment was issued by respondent after conducting a thorough investigation and examination of

Qu

petitioner's corporate books and account records. Records further show that petitioner was duly notified and was requested by respondent for an informal conference regarding its SWAP arrangement facilities with the BSP (*BIR Records, pp. 36 and 66*).

As aptly ruled by the Second Division of this Court:

> "The last issue is likewise resolved in the affirmative as this Court is convinced that petitioner was formally apprised of the sources and how the amounts indicated in the assessment were arrived at.
>
> Evidently, petitioner was notified and requested by herein respondent for an informal conference with regard to its SWAP arrangement facilities with the Central Bank of the Philippines. In fact, on two occasions (Letter dated September 24, 1986 answering respondent's letter dated September 18, 1986, and the second Letter dated November 20, 1986 replying to respondent's Pre-assessment Notice dated November 13, 1986), petitioner informed respondent that it was sending its authorized representative, Mr. Diolan Monteleyola to attend and confer with respondent's representatives on its behalf (*BIR Records, pp. 36 and 66*).
>
> Moreover, records would show that petitioner was able to assail in its Protest Letter dated May 8, 1989 to respondent, the latter's assessment for deficiency documentary stamp taxes. Petitioner cannot therefore say that it was not afforded due process as there was indeed proper notification on the part of respondent to petitioner."

For all the foregoing, We see no reason to reverse the assailed Decision dated February 23, 2005 and Resolution dated July 14, 2005 of the Second Division of this Court.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED**.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
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