Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

CHINA BANKING CORPORATION,
Petitioner,

- versus - **C.T.A. CASE NO. 4361**

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x ------------------------ x

12/27

D E C I S I O N

In this appeal, petitioner prays for the Court to declare the nullity of respondent's assessment for 1986 deficiency documentary stamp tax in the amount of P523,851.53.

The material facts of the case are simple.

Petitioner is a commercial banking corporation duly organized and existing in accordance with the laws of the Philippines.

On November 28, 1988, the petitioner received from the respondent a letter assessment dated November 28, 1988, together with an Income Tax Assessment Notice demanding for the full payment of petitioner's alleged Deficiency Documentary Stamp Tax for 1986 on Sales of Foreign Bills of Exchange to the Central Bank in the total amount of P523,851.53, itemized as follows:

DEFICIENCY DOCUMENTARY STAMP TAX
(Sec. 195 of NLRC as amended)

Sale of Foreign Bills of Exchange to Central Bank	P279,387,470.00
Tax due thereon:	
P279,387,470.00 x P0.30 / P200.00 ---------	P 410,081.22
Add: 25% surcharge -------------	P104,770.31
Total amount due and collectible	P 523,851.53
	==============

On December 7, 1988, petitioner requested for a reconsideration/reinvestigation of the aforesaid deficiency documentary stamp tax assessments.

On March 31, 1989, petitioner received from the respondent a letter dated March 10, 1989 conveying its final decision denying in whole the protest of the petitioner and reiterating its demand for the payment of its assessment mentioned above.

Hence, the petitioner was constrained to file this petition for review in accordance with Section 270 of the National Internal Revenue Code.

In its petition, China Banking Corporation's counsel alleges, among others, the following arguments:

Petitioner alleged that he has duly paid the proper documentary stamp taxes required by law on all its transactions involving sales of foreign bills of exchange to the Central Bank of the Philippines, for which it should not be taxed again;

When the petitioner sells foreign exchange through telegraphic transfers to the Central Bank of the Philippines, the latter, as the buyer, is directly liable for the documentary stamp tax pursuant to Section 173 (formerly Section 186) in relation to Section 182 (formerly Section 195) of the Tax Code.

Petitioner also asserts, that the tax and duty exemption privilege enjoyed by the Central Bank of the Philippines has been expressly withdrawn and revoked under Presidential Decrees Nos. 1177 (July 30, 1977) and 1931 (June 11, 1984) for which reason it is directly liable for documentary stamp tax on the sales of foreign bills of exchange made by petitioner to it in the year 1986; Unless it can be shown that the exemption privilege of the Central Bank of the Philippines has been subsequently restored upon the recommendation of the Fiscal Incentives Review Board, the petitioner cannot be liable on the alleged documentary stamp tax on the sale of foreign bills of exchange to the Central Bank of the Philippines for the year 1986; Under *Section 182* (formerly Section 195) of the National Internal Revenue Code, petitioner maintained that respondent's reliance on said law as its legal basis on the questioned assessments, has no applicability to the transaction sought to be taxed. (Section 182 of the NIRC is herein quoted to wit:

> "Section 182. ***Stamp tax on foreign bills of exchange and letter of credit.*** On all foreign bills of exchange and letters of credit (including orders, by telegraphic 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)

Furthermore, petitioner added that the issuance by respondent of the letter-assessment and assessment notice, deprived the petitioner of its constitutional right to due process, in the sense that -

> petitioner's return or records were never formally examined or inspected by the respondent or any of his authorized, subordinate officers determining petitioner's alleged deficiency documentary stamp tax;
>
> petitioner was never formally apprised of the sources and how the amounts indicated in the assessment were arrived at;
>
> no pre-assessment notice was ever issued to the petitioner in violation of Section 229 of the Tax Code thus depriving the petitioner of the opportunity to resolve the matter forthwith, and;
>
> no hearings, formal or informal, whatsoever was ever held in connection with assessment, despite petitioner's request for reinvestigation.

On the other hand respondent maintained that petitioner's Telex Order to the correspondent bank abroad to pay or deposit foreign exchange sold for the account of various commercial banks are bills of exchange subject to documentary stamp tax.

Respondent further argued that the subject tax assessment likewise finds support in Section 51 of Revenue Regulations No. 26. Moreover, respondent contended that Sec. 186 of P.D. 1944, as amended, clearly states that "whenever the party to the taxable document enjoys exemptions from the tax herein imposed the other party thereto who is not exempt shall be the one directly liable to tax.

The only issue to be resolved in this case is whether or not petitioner is liable for deficiency documentary stamp tax in the amount of P523,850.53.

Under Section 195 (Now Section 182) of the Tax Code, the one bound to pay the stamp tax is the party-making, signing, issuing, accepting or transferring the same and this would be referring to the time the act is done or transaction is had. Section 195 of the Tax Code provides that:

> "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 such bill of exchange or letter of credit, or the Philippine equivalent of such face value, if expressed in foreign country."

In this case, it is the petitioner that should be held liable to pay the documentary stamp tax, because herein petitioner was the one who transfered or sold such foreigner bills of exchange and such liability is well supported by Sec. 51 of Rev. Reg. No. 26 which reads:

> 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 a telegraphic transfer, taxable under the provisions of sub-section 144 a(i) of the administrative code (now Section 195 of the NIRC).

A documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facilities used in the transaction (Comm. Internal Revenue v. Heald Lumber Co. G.R. No. L-16340, Feb. 29, 1964)

At this juncture, definition of terms would be helpful, thus:

> A foreign bill of exchange is one of which the drawer and drawee are residents of countries foreign to each other. (Bovier's Law Dictionary, Vol. I, p.250)

> A bill of exchange drawn by a citizen of one state on a firm in another state, and payable in the latter state, is a foreign bill of exchange. (Vol. 17, p. 284, Words and Phrases)

Since the petitioner cannot show exemption from the payment of the tax in question nor payment of the same, it follows that it cannot escape liability thereof by simply passing the burden to the Central Bank. It must state in clear and express terms that it is exempt from payment of documentary stamp tax before it can be entitled to it.

"Under settled jurisprudence," exemption from taxation is not favored and never presumed, so that if granted it must be strictly construed against the taxpayer. Affirmately put, the law frowns on exemption from taxation, hence, an exempting provision should be construed <u>strictissimi juris</u>." (Manila Electric Co. vs. Vera, L-29987, Oct. 22, 1975, 67 SCRA 351, Caltex (Phils.) Inc. vs. Comm. of Internal Revenue, CTA Case No. 2871, January 29, 1986

Besides, upon proper investigation of Revenue Examiner Sarah B. Mopia, it was ascertained that China Banking Corporation had engaged in the sale of foreign bills of exchange with the Central Bank of the Philippines and other commercial banks.

The report of Ms. Sarah B. Mopia is herein reproduced to wit:

April 20, 1987

MEMORANDUM FOR:

The Commissioner
Bureau of Internal Revenu
(Thru Channels)

SUBJECT: CHINA BANKING CORPORATION
Dasmarinas, Manila
(1986 Documentary Stamps Tax)

This is a report on the original investigation conducted by the undersigned examiner on the 1986 documentary stamp tax liabilities of the above-named subject on foreign bills of exchange under Section 195 (NIRC) pursuant to Letter of Authority No. 0012260 NA issued on February 19, 1987.

The investigation disclosed that China Banking Corporation had engaged in the sale of foreign bills of exchange with the Central Bank of the Philippines and other commercial banks. The correct amount of documentary stamps were properly affixed on its sales made to other commercial banks. On the other hand, no documentary stamps were affixed on its sale made to the Central Bank of the Philippines on the ground that these are tax-exempt entities. It is alleged that it is the practice in the banking industry that the buyer assumes the liability for the documentary stamps, and since the buyers in these instances are tax-exempt entities, the documentary stamps tax were not paid. Presidential Decree 1994, however, amending Section 222 (Now Sec. 186) of the NIRC, and which took effect on January 1, 1986 clearly states:

"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 to the tax."

In view of the foregoing, it is respectfully recommended by the undersigned examiner that the total amount of P523,851.53, including surcharge be assessed against China Banking Corporation representing deficiency documentary stamp tax on foreign bills of exchange.

Respectfully submitted:

SARAH B. MOPIA
Examiner

It is the practice in the banking industry that the buyer assumes the liability for the documentary stamps, and since the buyers in these instances are tax-exempt entities, the documentary stamp tax were not paid. However, Presidential Decree 1994 amending Section 222 (now Sec. 186) of the NIRC, which took effect on January 1, 1986 clearly states:

> "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 to the tax." (Exh. "ii", p. 19, BIR Records)

And more, the passage of E.O. 93 already revoked exemption previously granted to the CB, other government entities and to petitioner by law, from payment of documentary stamp tax on sale of foreign bills of exchange. Therefore, respondent is correct in assessing petitioner in the amount of P523,851.53 as deficiency documentary stamp tax for 1986 on sales of foreign bills of exchange to Central Bank. Under Section 195 (now Section 182 of the Tax Code) parties to transaction on the sale of foreign bill of exchange are liable to the tax in question. Any of them or either of them can be assessed and be made to pay for documentary stamp tax. The only way to escape liability from payment is to prove that one is exempted or it has already paid the tax, wanting in such proof of payment, liability subsists.

In fine, petitioner is not correct in passing the buck of responsibility to the Central Bank for payment of documentary stamp tax on the sale of foreign bill of exchange.

It is a time-honored principle that exemptions from taxation are construed strictissimi juris against the taxpayer and liberally in favor of the taxing authority. (Philippine Petroleum Corporation v. Municipality of Pililla, G.R. Nos. 90776, June 3, 1991.)

To our mind, it is not just nor equitable to simply pass the tax burden to the other party to the transaction and say he is liable just because exemption had already been revoked by operation of law. China Banking which is a party to the transaction is therefore, legally assessed for deficiency documentary stamp tax on the sale of foreign bill of exchange which it must pay.

Tax assessments are presumed correct and made in good faith. Taxpayer has duty to prove otherwise. (Commissioner of Internal Revenue vs. Construction Resources of Asia Inc., 145 SCRA 671).

WHEREFORE, premises considered, petitioner is hereby ordered to pay respondent, Commissioner of Internal Revenue, the amount of P523,581.53 as deficiency documentary stamp tax for 1986 plus 20% annual interest from November 28, 1988 until fully paid pursuant to Sec. 283 of the Tax Code as amended by P.D. 1994, effective January 11, 1986, with costs.

SO ORDERED.

Quezon City, Metro Manila, December 22, 1993.

MANUEL K. GRUBA
Associate Judge

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Judge

RAMON O. DE VEYRA
Associate Judge

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge
Court of Tax Appeals