REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

BANK OF COMMERCE,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6975

Members:

CASTAÑEDA, JR., Chairman
UY, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

AUG 3 1 2006

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DECISION

PALANCA-ENRIQUEZ, J.:

Another case involving the issue on whether petitioner's Special Savings Deposit (hereafter "SSD") is subject to documentary stamp tax (hereafter "DST") is presented before the Court. The instant case is illustrative of the predicament in comprehending the nature of the SSD.

THE CASE

Before the Court is a Petition for Review filed by Bank of Commerce (hereafter "petitioner") seeking the reversal of the decision of the Bureau of Internal Revenue (hereafter "BIR") denying the protest of

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petitioner amounting to P41,442,887.51 for documentary stamp tax on the Special Savings Deposit of Traders Royal Bank.

THE FACTS

In their "Joint Stipulation of Facts and Simplification of Issues", the parties agreed on the following facts:

> "1. Petitioner is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 12th Floor, Bankers' Centre Building, 6764 Ayala Avenue, Makati City;
>
> 2. Respondent is the Commissioner of the Bureau of Internal Revenue duly appointed to perform the duties of his office, including among others, the power to decide, cancel and abate tax liabilities pursuant to Section 224(B) of the Tax Code, as amended by Republic Act ("RA") 8424, otherwise known as the 'Tax Reform Act' ("TRA") of 1997;
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> 3. On November 9, 2001, Petitioner Bank of Commerce (BOC) and Traders Royal Bank (TRB) executed a Purchase and Sale Agreement whereby it stipulated the TRB's desire to sell and the BOC's desire to purchase identified recorded assets of TRB in consideration of BOC assuming identified recorded liabilities;
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> 4. Under the Purchase and Sale Agreement, BOC and TRB shall continue to exist as separate corporations with distinct corporate personalities;
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> 5. On September 27, 2002, Petitioner Bank of Commerce received copies of the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, addressed to "TRADERS ROYAL BANK (now Bank of

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Commerce)", issued by Respondent demanding payment of the amount of P41,467,887.51, as deficiency documentary stamp taxes (DST) on Special Savings Deposit (SSD) of TRB for taxable year 1999;

6. On October 11, 2002, Traders Royal Bank filed its protest letter contesting the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, pursuant to Sec. 228 of the Tax Code;

7. On March 31, 2004, Petitioner Bank of Commerce received the Decision dated March 22, 2004 denying the protest filed by Traders Royal Bank on October 11, 2002. The last two paragraphs of the Decision stated that:

> "WHEREFORE, in view of all the foregoing, Assessment Notice No. DST-99-00-000049 demanding payment of the amount of P41,467,887.51 as deficiency stamp tax for the taxable year 1999 is hereby **MODIFIED AND/OR REDUCED** to P41,442,887.51. Consequently, Traders Royal Bank (now Bank of Commerce) is hereby ordered to pay the above-stated amount, plus interest that have accrued thereon until the actual date of payment, to the Large Taxpayers Service, B.I.R. National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof shall be effected through the summary remedies provided by law.
>
> This constitutes the **Final Decision** of this Office on the matter."

8. Pursuant to *Section 228* of the *Tax Code* in conjunction with *Section 4* of the same Code, as well as *Section 7 of R.A. 1125, as amended,*

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> otherwise known as an *"Act Creating the Court of Tax Appeals"*, this Honorable Court has the exclusive appellate jurisdiction to take cognizance of the instant Petition for Review."

In his Answer, the Commissioner of Internal Revenue (hereafter "respondent"), by way of Special and Affirmative defenses alleged: that Article II of the Purchase and Sale Agreement is very clear that the liabilities of TRB before the effectivity of the said Agreement shall be assumed by petitioner; that petitioner in its protest against the assessment, did not raise the issue that it is not liable for the assessment because there was no merger between it and TRB, hence, it cannot now raise said issue for the first time on appeal; that petitioner's Special Savings Deposit is considered a certificate of deposit contemplated and taxable under *Section 180* of the *Tax Code*; that a "certificate of deposit" is a written acknowledgement by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order; and that all presumptions are in favor of the correctness of tax assessments.

Petitioner presented Mr. Bayani R. Navarro, Head of the Administrative Services Group, as witness, and documentary evidence marked as *Exhibits "A" to "E"*, together with their submarkings, which were all admitted by the Court.

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On the other hand, respondent presented Mr. Ernesto P. Gamad, Revenue Officer III, National Investigation of BIR, as witness, and formally offered in evidence *Exhibits "1" and "2"*.

Thereafter, both parties having filed their respective memoranda within the period given by the Court, the case was deemed submitted for decision on April 18, 2006.

ISSUES

As stipulated upon by the parties, the following are the issues for this Court's consideration:

I

WHETHER PETITIONER BANK OF COMMERCE CAN BE HELD LIABLE FOR TRADERS ROYAL BANK'S ALLEGED DEFICIENCY DOCUMENTARY STAMP TAX LIABILITY ON SPECIAL SAVINGS ACCOUNT FOR TAXABLE YEAR 1999 IN THE AMOUNT OF P41,442,887.51, INCLUSIVE OF PENALTIES.

II

WHETHER TRB'S SPECIAL SAVINGS ACCOUNT FOR TAXABLE YEAR 1999 IS SUBJECT TO DOCUMENTARY STAMP TAX.

THE COURT'S RULING

The Petition has no merit.

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Principal Issue

The principal issue posed for resolution of this Court is whether petitioner's Special Savings Deposit is subject to DST under *Section 180 of the National Internal Revenue Code (hereafter "NIRC") of 1997, as amended*.

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.

Petitioner's Arguments

Petitioner insists that respondent erred in holding that the SSD is subject to DST as a certificate of deposit under *Section 180* of the *1997 Tax Code*. According to petitioner, there are four requirements for the imposition of DST under *Section 180*, with respect to bank deposits such as:

(1) there must be a certificate of deposit;

(2) the deposit must bear interest;

(3) the deposit must be payable otherwise than at sight or on demand; and

(4) the DST must be based on the face value of the certificate of deposit.

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Petitioner claims that the first requirement is absent. Petitioner further argues that the Traders Royal Bank does not issue a certificate of deposit in transacting the SSA but instead issues a passbook similar to that of the regular savings deposit account. It claims that the passbook cannot be considered as a certificate of deposit.

In addition, petitioner, in its attempt to draw away the passbook from the coverage of DST, quoted in its memorandum Senator Recto's sponsorship speech of R.A. 9243.

Respondent's Arguments

On the other hand, respondent claims that the controlling factor is the nature and message conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as the substance is paramount rather than its form. But be that as it may, technically, a regular savings account passbook has the same substance, attributes and qualities as a "Certificate of Deposit". As defined in *Section 180 of the Tax Code*, it may be a written acknowledgment by a bank of the receipt of money on deposit. Hence, a traditional passbook, being a written acknowledgment of the receipt of money as deposit, which a bank promises to pay to the depositor, bearer, or to some other person or order, is a genus of a certificate of deposit subject to DST.

Respondent alleges that the nature of SSD and Time Deposit are akin to each other in such a way that the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of bearer on a specified period of time. In both cases, the bank allows pretermination, but the rate of interest is lower than the agreed interest. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit. Considering that the transactions evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, both the certificate of time deposit as well as the passbook evidence of such transaction are subject to DST.

We rule for the respondent.

Section 180 of the NIRC of 1997, as amended, provides:

> "**SEC. 180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitutes, Debt Instruments, Certificates of Deposit Bearing Interest and Others Not Payable on Sight or Demand**. — On all bonds, loan agreements including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute, debt

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instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, 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 agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan whichever will yield a higher tax: Provided however, That loan agreements or promissory notes the aggregate of which does not exceed two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter, or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

A perusal of the above-quoted *Section 180* will show that it covers the following instruments:

1) bills of exchange,
2) drafts,
3) certificates of deposits drawing interest,
4) orders for the payment of any sum of money otherwise than at sight or on demand,
5) promissory notes, whether negotiable or non-negotiable, and
6) renewal of any such note.

A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created (*Far East Bank and Trust Company vs. Querimit, 373 SCRA 671*).

Section 180 subjects a "certificate of deposit" to documentary stamp tax. A documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right, or property incident thereto (*Hector S. De Leon, The National Internal Revenue Code, 2000 ed., p. 722*). It is in the nature of an excise tax imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted (*Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA* 92).

In the same vein, it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than a document. The law taxes the document because of the transaction *(Hector S. De Leon, The Law on Transfer and Business Taxation, 1998, ed., p. 351).* What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

On the other hand, a "time deposit", which is also a form of a certificate of deposit, refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days" (*BPI Family Savings Bank, Inc. vs. First Metro Investment Corporation, 429 SCRA 36*). In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal (*Black's Law Dictionary, 6th ed.*). Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rate. An instance is when the depositor makes a withdrawal prior to the maturity of the deposit.

Undeniably, a certificate of deposit, being subject to documentary stamp tax, it is thus relevant to determine whether petitioner's SSD bears the same nature or characteristics of a time deposit certificate.

In both cases in point, a time deposit and petitioner's SSD, the deposits may be withdrawn anytime, but the depositor gets to earn a higher rate of interest if the money is kept in the bank within the specified number of days. The only difference lies on the document used as evidence of the transaction. While in SSD, the transaction is covered by a SSD passbook, the time deposit is evidenced by a certificate of time deposit. Nonetheless, the fact that petitioner's SSD is evidenced by a SSD passbook and not by a certificate of time deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it,

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inasmuch as its substance is paramount than its form (*L.R. Heat Treating Co., 28 TC 874*).

For all intents and purposes, petitioner's Special Savings Deposit is deemed to be of the same nature and substance as a certificate of deposit bearing interest. Therefore, We hold that said Special Savings Deposit passbooks are in themselves certificates of deposit, subject to documentary stamp tax in accordance with *Section 180 of the NIRC of 1997, as amended*. While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents *(Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 435)*.

Moreover, if We accept petitioner's stand that the SSD, which has technically the same nature and substance as a time deposit, is not covered by DST would be to tolerate the practice of banks in their attempt to circumvent the law by using passbooks to avoid payment of taxes which the Court intends to sanction and put an end. It would also imply that such documents are tax-exempt from the coverage of DST, but this cannot be permitted because elementary is the rule that "taxation is the rule and exemption is the exception". The intention of the legislature to grant tax exemptions must be expressed in clear and unmistakable

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terms, it can never be implied from language that will admit of any reasonable construction. Exemptions are never presumed, the burden is upon the claimant to establish his right to exemption beyond reasonable doubt *(Japar B. Dimaampao, Tax Principles and Remedies, 1st ed., p. 103).*

Issues Not Raised
In the Administrative Level
Cannot be Raised for
The First time on Appeal

Anent the issue of whether an issue which was not raised in the administrative level before the BIR can be raised for the first time on appeal, We rule in the negative.

Petitioner contends that it cannot be held liable for the alleged deficiency tax because there was no merger that transpired between BOC and TRB. On the other hand, respondent counter argues that petitioner never raised the issue on merger before them.

We agree with respondent. A careful scrutiny of the evidence on record shows that petitioner never raised the issue of merger between BOC and TRB, which should have been its main concern in its letter of protest to protect its interest. Petitioner did not even offer as evidence the alleged letter of protest. The decision of herein respondent discussed only the issues raised in the letter of protest. And the letter of protest itself never questioned the proper party that should be held liable for such

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deficiency tax. It is but a natural inclination to establish first that one is not the proper party to be liable for taxes, rather than proving that a certain transaction is not taxable if such transaction was not related to the party at all. Petitioner, during the proceedings before the BIR, is deemed to have admitted that it is the proper party addressed by respondent and its only contest is that SSDs are not taxable. Petitioner actively participated in the proceedings before the administrative body without questioning the legitimacy of the proper party of interest.

The Bureau of Internal Revenue that assessed it of such liability is the proper forum to determine whether it is the proper party to be taxed. Thus, this question was resolved in the case of *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue and the Court of Tax Appeals* (*112 SCRA 140*), where the Supreme Court held:

> "To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum... This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal

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(Pampanga Sugar Dev. Co., Inc. v. CIR, 114 SCRA 725; Garcia v. CA, 102 SCRA 597; Matialonzo v. Servidad, 107 SCRA 726)."

Basic is the rule that all issues not raised in the administrative level cannot be raised for the first time on appeal.

In sum, all of petitioner's assigned errors failed in the light of jurisprudence and law.

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

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

I attest that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

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CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice

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