REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILIPPINE VETERANS BANK,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 747
(CTA Case No. 6563)

Present:

Acosta, *PJ,*
Castañeda,Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla, and
Cotangco-Manalastas, *JJ.*

Promulgated:

DEC 2 0 2012 3:40 pm

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DECISION

COTANGCO-MANALASTAS, J.:

On appeal before the Court *En Banc* is the Decision of the CTA Former Second Division dated October 8, 2010, which ruled as follows:

> "WHEREFORE, the Petition for Review is hereby PARTIALLY GRANTED. The assessments for deficiency documentary stamp tax on the Increase in Capitalization issued by respondent against petitioner for taxable years 1995 and 1996 in the amounts of P12,337,500.00 and P5,209,066.80, respectively, are hereby CANCELLED and WITHDRAWN in view of the Termination Letter dated June 7, 2010 issued by respondent as regards petitioner's availment of the Abatement Program under Revenue Regulations No. 15-2006, as amended by Revenue Regulations No. 03-07, in relation to Sections 204 and 244 of the NIRC of 1997, as amended.

The assessments for deficiency documentary stamp tax on petitioner's Special Savings Accounts, Special Savings Deposits and Golden Vs for taxable years 1994, 1995, and 1996, are hereby AFFIRMED WITH MODIFICATION. Petitioner is hereby ORDERED TO PAY respondent the amount of P25,707,090.66, computed as follows:

xxx xxx xxx

In addition, petitioner is likewise ORDERED TO PAY interest thereon at the rate of twenty percent (20%) *per annum* commencing on November 8, 2002 until full payment thereof, pursuant to Section 248(d), in relation to Section 249, both of the NIRC of 1977, as amended.

The assessments for deficiency Gross Receipts Tax for taxable year 1996 and deficiency gross receipts tax for taxable year 1996, is also AFFIRMED WITH MODIFICATION. Petitioner is hereby ORDERED TO PAY respondent the amount of P3,499,320.78, computed as follows:

xxx xxx xxx

In addition, petitioner is likewise ORDERED TO PAY interest thereon at the rate of twenty percent (20%) *per annum* commencing from January 20, 1997 until full payment thereof, pursuant to the above-quoted Section 249(a) of the NIRC of 1997; and delinquency interest at the rate of twenty percent (20%) *per annum* commencing from November 8, 2002 until full payment thereof, pursuant to the said Section 249(c) of the same law."[1]

The Facts[2]

The facts, as found by the Court in Division are:

"Petitioner Philippine Veterans Bank is a commercial banking institution organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at PVB Building, 101 V.A. Rufino cor. Dela Rosa Sts., Legaspi Village, Makati City.

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[1] *Rollo*, CTA EB Case No. 747, pp. 69-71.
[2] *Rollo*, pp. 48-50.

Respondent is the duly appointed Commissioner of Internal Revenue with office address at the 4th floor, Bureau of Internal Revenue (BIR), National Office Building, Agham Road, Diliman, Quezon City.

On December 9, 1999, Mr. Percival T. Salazar, BIR Assistant Commissioner for the Enforcement Service of the BIR, sent petitioner a Final Notice of Assessment in the total amount of P22,092,035.21 as deficiency documentary stamp tax for taxable years 1994 and 1995. On December 13, 1999, Atty. Florencio Z. Sioson, the Executive Vice President-Chief Operating Officer of petitioner, replied to the aforesaid Notice of Assessment. In the reply, Atty. Sioson requested that the demand letter be held in abeyance pending the resolution of the issues involved.

Subsequently, the Appellate Division of the BIR scheduled conference hearings, wherein petitioner presented two witnesses and documentary evidence. After two conferences, petitioner submitted its position paper.

Thereafter, respondent issued a Formal Letter of Demand dated December 4, 2000 and Audit Results/Assessment Notices, requiring petitioner to pay deficiency gross receipts tax (GRT) for the year 1996 in the amount of P5,009,876.88 and deficiency documentary stamp tax (DST) for the year 1996 in the amount of P28,180,746.63. The said assessments were received by petitioner, and were protested in a letter dated January 10, 2001, wherein petitioner reiterated its request to hold in abeyance the enforcement of the assessments.

On August 8, 2002, herein respondent rendered the assailed Decision (numbered "P 21-02") *In the Matter of the Internal Revenue Tax Case of Philippine Veterans Bank involving the Total Amount of P55,282,658.72 as Deficiency Gross Receipts and Documentary Stamp Taxes for Taxable Years 1994, 1995 and 1996, Covered by Assessment Notice Nos. ST-DST-94-0114-99; ST-DST-95-0113-99; DST-96-000003; GRT-96-000005 dated December 9, 1999 and December 4, 2000, respectively.* In the said decision, respondent denied the request for deferment and protest of petitioner, and thus, ordered petitioner to pay, within a period of thirty (30) days from receipt thereof, the total amount of P55,282,658.72 as deficiency gross receipts and documentary stamp taxes for taxable years 1994, 1995, and 1996, plus interest that may have accrued thereon." (*Citations omitted*)

Upon receipt of said decision, petitioner filed its Petition for Review with the Court in Division, wherein the assailed Decision was issued.

Hence, this petition.

Issues

The issues raised by petitioner are the following:

I. Whether or not PVB's Special Savings Accounts are subject to Documentary Stamp Tax.

II. Whether or not final taxes withheld from gross interest income are deductible from gross receipts.

Ruling of the Court

The two remaining issues raised in this appeal by petitioner have already been passed upon and discussed by the Court in Division. In fact, the arguments raised herein are a mere rehash of the arguments set forth before the Court in Division, which upon further review of this Court, provides no compelling reason to reverse and set aside the assailed Decision.

Thus, we quote with approval the Division's assailed Decision, *to wit*:

> "Anent the first issue, considering that the assessed documentary stamp tax refer to those incurred before the effectivity of the provisions of the NIRC of 1997 (*i.e.*, on January 1, 1998), We will apply Section 180 of the NIRC of 1977, as amended by RA 7660, which provides as follows:
>
> > 'SECTION 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities,*

> *certificates of deposit bearing interest and others not payable on sight or demand.* – On all loan agreements 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 **or certificates of deposits drawing interest,** or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of an such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, 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 note 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.' (*Emphasis supplied*)

It is clear from the foregoing that certificates of deposit drawing interest are subject to documentary stamp tax. What is to be determined then is whether petitioner's Special Savings Accounts (SSA) is a 'certificate of deposit drawing interest' as contemplated in the above-mentioned provision.

A certificate of deposit is 'a written acknowledgement 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.' A certificate of deposit is also defined as "a receipt issued by a bank for an interest-bearing time deposit coming due at a specified future date." L

> Based on the foregoing, a document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.
>
> Such being the case, the fact that petitioner's Special Savings Accounts, like Ordinary Savings Deposits, are evidenced by a 'passbook' and by a 'certificate of time deposit', is of no moment in imposing DST.
>
> It must also be pointed out that in including 'certificates of deposits drawing interest' from the coverage of the imposition of the DST under the aforequoted Section 180, the law is indifferent whether 'additional or multiple deposits are allowed.' Thus, even when petitioner's Special Savings Deposit allows additional or multiple deposits, the same will have no bearing. Where the law does not distinguish, neither do We distinguish.
>
> Moreover, a certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order. From the use of the conjunction *or*, instead of *and*, the negotiable character of a certificate of deposit is immaterial in determining the imposition of DST.
>
> There being no further proof to the contrary, petitioner's Special Savings Account is correctly classified as a certificate of deposit bearing interest, which is subject to documentary stamp tax for taxable years 1994, 1995, and 1996, under Section 180 of the NIRC of 1977, as amended by RA 7660."[3] (*Citations omitted*)

With respect to the issue on whether the withheld final taxes from gross interest income are deductible from gross receipts, we agree with the Court Division's reliance on *Philippine National Bank vs. Commissioner of Internal Revenue*[4], which stated:

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[3] *Rollo*, pp. 57-59.
[4] G.R. No. 158175, October 18, 2007.

> "The issues raised herein are not novel. **In a catena of cases, we categorically ruled that the 20% FWT on a bank's interest income forms part of the taxable gross receipts for purposes of computing the 5% GRT. The 5% GRT, as imposed by Section 119 (now Section 121) of the Tax Code, by its nature applies to all the receipts without any deduction, unless otherwise provided by law.** Any deduction, exemption or exclusion from gross receipts is inconsistent with the policy of the law and is not normally allowed in a gross receipts tax, to maintain simplicity in tax collection, and to assure a steady source of state revenue even during periods of economic slowdown. It also changes the result and meaning of gross receipts to net receipts. (*Citations omitted; Emphasis supplied*)

Based on the foregoing, the twenty percent (20%) final taxes withheld from the gross interest income of petitioner should be included in determining its gross receipts for purposes of imposition of the Gross Receipts Tax.

WHEREFORE, premises considered, the instant Petition for Review is hereby DISMISSED for lack of merit.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

(on leave)
ERNESTO D. ACOSTA
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice