Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

PRUDENTIAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 185
(C.T.A. CASE NO. 6396)

Present:

ACOSTA, *P.J.*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

MAR 3 0 2007 Gn Apolinario

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DECISION

***UY, J.*:**

This petition for review filed before the Court of Tax Appeals *En Banc* on June 21, 2006 seeks a review of the Decision of the First Division of this Court in CTA Case No. 6396 entitled "Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue" promulgated on February 10, 2006[1], as well as the Resolution promulgated on May 22, 2006 pursuant to Section 11 of Republic Act No. 9282, the respective dispositive portions of which read as follows:

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[1] Under the ponentia of Associate Justice Lovell R. Bautista with dissenting opinion rendered by Associate Justice Caesar Casanova.

Decision dated February 10, 2006 in CTA Case No. 6396

"**WHEREFORE,** the instant petition is hereby **PARTIALLY GRANTED.** The subject Decision of the Commissioner of Internal Revenue dated December 28, 2001 assessing petitioner of deficiency documentary stamp taxes is hereby **AFFIRMED** insofar as the Savings Account Plus is concerned. The deficiency assessment on petitioner's repurchase agreements and treasury bills are hereby **CANCELLED** and **SET ASIDE.**

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of **P6,355,340.63** plus 20% delinquency interest from August 23, 1999 up to the time such amount is fully paid pursuant to Section 249 (c) of the 1977 NIRC, as amended, covered by Assessment Notice No. ST-DST-95-0042-99 as deficiency documentary stamp tax for the taxable year 1995, recomputed as follows:

Savings Account Plus	P5,084,272.50
Add: 25% Surcharge	1,271,068.13
TOTAL	**P6,355,340.63**

SO ORDERED."

Resolution dated May 22, 2006

"**WHEREFORE,** there being no cogent or justifiable reason that would warrant the reversal, modification or departure from the assailed Decision, petitioner's Motion for Partial Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

Central to this petition is the taxability for Documentary Stamp Tax (DST) of savings account deposits evidenced by a passbook or what is commonly called "Special Savings Account" by most banks.

THE FACTS

These are the undisputed facts of the case.

Petitioner is a banking corporation organized and existing under the laws of the Republic of the Philippines with principal office at Prudential Bank Building, Ayala Avenue, Makati City. Petitioner (as surviving corporation) merged with Pilipinas Bank (as absorbed corporation) on May 2, 2000 whereby the entire assets and liabilities of Pilipinas Bank were transferred to and absorbed by petitioner.

On the other hand, respondent Commissioner of Internal Revenue is the head of the Bureau of Internal Revenue (BIR), the government agency tasked with the enforcement of revenue laws and collection of internal revenue taxes with office address at the BIR National Building, Diliman, Quezon City.

On July 23, 1999, petitioner received from the respondent Final Assessment Notice No. ST-DST-95-0042-99 as well as a Demand Letter for deficiency documentary stamp tax amounting to P18,982,734.38 covering taxable year 1995, detailed as follows:

a. Repurchase Agreement – BSP Seller

Basic	$\frac{1,656,000,000.00}{200}$ x .30 P2,484,000.00		
Add: 25% Surcharge		621,000.00	
Compromise Penalty		<u>25,000.00</u>	**P 3,130,000.00**

b. Purchase of T-Bills from BSP

Basic	$\frac{5,038,610,000.00}{200}$ x .30 P7,557,915.00		
Add: 25% Surcharge		1,889,478.75	
Compromise Penalty		<u>25,000.00</u>	**P 9,472,393.75**

c. Savings Account Plus (page 1307 of the docket)

Basic	$\frac{3,389,515,000.00}{200}$ x .30 P5,084,272.50		
Add: 25% Surcharge		1,271,068.13	
Compromise Penalty		<u>25,000.00</u>	**P 6,380,340.63**

GRAND TOTAL	**P18,982,734.38**

On January 25, 2000, petitioner received from the respondent another Final Assessment Notice and demand letter with number ST-DST-96-0142-2000 for deficiency documentary stamp tax amounting to P16,006,828.04 covering the taxable year 1996.

In two separate letters dated July 30, 1999 and February 1, 2000, which respondent respectively received on August 4, 1999 and February 3, 2000, petitioner administratively disputed/protested the said assessments alleging, among others, that the documents subject matter of the assessments are not subject to documentary stamp tax.

On January 21, 2002, petitioner received from the respondent a copy of the decision dated December 28, 2001, denying said protests. Thereafter, petitioner appealed the said decision of the respondent on February 20, 2002 to this Court by way of a petition for review docketed as CTA Case No. 6396.

On February 10, 2006, the First Division of this Court rendered the assailed decision denying the petition for review on the issue of the imposition of Documentary Stamp Tax or DST on special savings accounts, but cancelled and set aside the respondent's DST assessment on petitioner's repurchase agreements and treasury bills. A motion for partial reconsideration was subsequently filed by petitioner on March 3, 2006 but the same was denied in the Resolution promulgated on May 22, 2006. Hence, this recourse before the Court of Tax Appeals *En Banc*.

In support of its Petition for Review, petitioner submits the following arguments:

Petitioner posits that it was serious error on the part of the First Division of this Court to conclude that a special savings account deposit evidenced by a passbook is akin to a time deposit account because in substance and in form, the savings account is by far not in any way a time deposit account as supported by the very testimony of its witnesses who testified on the major distinctions between the said accounts, to wit:

1) A special savings account is evidenced by a passbook; while a time deposit is evidenced by a time deposit certificate;

2) A time deposit is payable at a fixed determinable future time; while a Special Savings Account Deposit is payable on demand;

3) A time deposit is renewable upon maturity of the certificate; while Special Savings Account Deposit is not renewable but with a continuing balance after withdrawal is made;

4) In a time deposit, the deposit certificate must be surrendered and stamped paid upon maturity; while the Special Savings Account Deposit, withdrawal is evidenced by an entry made on the Special Savings Account Deposit passbook as evidenced by a withdrawal slip;

5) A time deposit is similar to a promissory note; while a Special Savings Account Deposit is not because it is evidenced by a passbook which is not negotiable;

6) In a time deposit, there is no lowest minimum running balance to be maintained; while in Special Savings Account Deposit, there is a minimum running balance to be maintained by the depositor; and

7) Under existing banking rules, a special savings account is classified as a savings account and not a time deposit account. This is evident in the way the Bangko Sentral ng Pilipinas pursuant to its Manual of Accounts requires banks to present its various deposit accounts.

It is petitioner's view that the document subject to DST under Section 180 of the 1977 National Internal Revenue Code (NIRC), as amended, is a certificate of deposit bearing the following features: it bears interest and it is not payable on sight or demand. Allegedly, by the very definition, this document pertains to the certificates commonly issued by banks to evidence money market time deposit placements of their depositors. But this type of certificate is not, and cannot allegedly be equated to include a passbook which evidences a different type of transaction, in this particular case, a savings account transaction.

Furthermore, petitioner contends that the DST under Section 180 of the 1977 NIRC, as amended, is a tax on document which facilitated the transaction and not on the transaction per se; that without a document issued, allegedly there is no taxable event arises even in the presence and consummation of the transaction which should have been documented. The DST, according to petitioner, cannot and should not be imposed on the premise that the subject special savings accounts are not among those considered as certificates of deposits under the aforementioned section of the Code.

In addition, petitioner reiterates other arguments it previously raised in the First Division of this Court as can be gleaned from the records of the case.

Respondent filed his Comment thereto on July 18, 2006 and prayed for the dismissal of the present petition for being pro forma and for lack of merit as petitioner raised issues that have been extensively, sufficiently and squarely addressed and resolved by the First Division of this Court in its 16-page Decision in CTA Case No. 6396, and in its 2-page Resolution on petitioner's motion for partial reconsideration dated February 10, 2006 and May 22, 2006, respectively. Hence, this Decision.

THE ISSUES

The issues being raised by petitioner in the instant petition for review are as follows:

> "I. THE DECISION AND RESOLUTION OF THE 1ST DIVISION ARE NOT IN ACCORD WITH THE LAW AND JURISPRUDENCE ON THE MATTER
>
> II. THE 1ST DIVISION ERRED IN NOT CONSIDERING THE LEGISLATIVE INTENT BEHIND THE LAW IN ARRIVING AT THE ASSAILED DECISION AND RESOLUTION
>
> III. THE 1ST DIVISION ERRED IN TOTALLY DISREGARDING PETITIONER'S EVIDENCE AND ARGUMENTS THAT THE ASSESSMENT HAS NO FACTUAL BASES"

THE COURT'S RULING

We find no merit in the petition.

A careful and closer look at the arguments set forth by the petitioner in the instant petition would readily reveal that the grounds relied upon and the matters raised herein are mere restatements of petitioner's previous arguments raised before the First Division of this Court which had already been exhaustively discussed and passed upon in its assailed Decision and Resolution promulgated on February 10, 2006 and May 22, 2006, respectively.

Moreover, in line with the most recent pronouncement of the Supreme Court, it has finally settled, in effect, that a bank's product such as petitioner's special savings account is subject to documentary stamp tax. To quote:

> "On April 7, 2006, the CTA *en banc* rendered the herein challenged decision affirming the findings of its First Division that petitioner's ISA is the equivalent of the certificate of deposit and which would make it subject documentary stamp tax under Section 180 of the NIRC.
>
> The CTA *en banc* likewise declared that in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. Despite the differences in the form of documents, the CTA *en banc* ruled that a time deposit and ISA have essentially the same attributes and features. It explained that like time deposit, ISA transactions bear a fixed term or maturity because the bank acknowledges receipt of a sum of money on deposit which the bank promises to pay the depositor, bearer or to the order of a bearer on a specified period of time. Section 180 of the 1997 NIRC does not prescribe the form of a certificate of deposit. It may be any 'written acknowledgment by a bank of the receipt of money on deposit.' The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.
>
> As we see it, even without the technical lapse earlier observed in our October 9, 2006 resolution, the petition must still be denied, there being no reversible error committed by the CTA *en banc*.
>
> Dedicated exclusively to the study and consideration of tax problems, the CTA has necessarily developed an expertise in the subject of taxation that this Court has recognized time and again. For this reason, the findings of fact of a division of the CTA, particularly when affirmed *en banc*, are generally conclusive on this Court absent grave abuse of

discretion or palpable error, which are not present in this case."[2] *(Underscoring Ours)*

In view of the foregoing proclamation and consistent with the factual and legal findings of the First Division of this Court, We uphold that, for all legal intents and purposes, petitioner's Savings Account-Plus (SA-Plus) accounts are deemed to be of the same nature and substance as a certificate of deposit bearing interest. Therefore, said SA-Plus passbook is in itself a certificate of deposit, subject to DST in accordance with Section 180 of the 1977 NIRC, as amended.

In the light of the foregoing considerations, We find no reversible error committed by the First Division of this Court when it rendered the assailed Decision dated February 10, 2006, and Resolution dated May 22, 2006.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
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

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[2] Banco De Oro Universal Bank vs. Commissioner of Internal Revenue, G.R. No. 173602, Resolution dated January 15, 2007.

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.

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