REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 83
(C.T.A. CASE NO. 6201)

Present:

ACOSTA, Presiding Justice,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 27 2005

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

In issue is the validity of the waiver executed by RIZAL COMMERCIAL BANKING CORPORATION, hereafter referred to as "petitioner". The waiver spoke of in the instant case refers to the one effected by taxpayers in order to extend the assessment period provided by law. This will allow tax collectors/agents to conduct a reinvestigation and to reassess petitioner's tax deficiency, beyond the prescribed period.

Peculiar in this case, however, is that the waiver, allegedly, did not comply with Section 222(b) of the Tax Code. Petitioner, now, questions the validity thereof, but only after it has benefited from the reassessments, and it further avers that in view of its invalidity the period to assess deficiency tax had already expired. This is the crucial issue to address since from the said disputed reassessments flow the rest of the issues, to wit: deficiency assessments on both the onshore taxes and documentary stamp taxes. Thus, if prescription will be proven, then the foregoing reassessments shall be declared null and void.

THE CASE

Before us is a Petition For Review filed by 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 December 15, 2004 upholding the 1994 and 1995 deficiency onshore tax and deficiency documentary stamp tax on special savings account, and the Resolution dated April 11, 2005 issued by the Division of this Court in C.T.A. Case No. 6201. The assailed Decision disposed as follows:

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"**WHEREFORE**, the Petition for Review is hereby **PARTIALLY GRANTED**. The assessments for 1994 and 1995 deficiency income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax (not an industry issue) having been paid are now considered **CLOSED** and **TERMINATED**. However, the 1994 and 1995 deficiency onshore tax and deficiency documentary stamp tax on special savings account are hereby **UPHELD** in the following amounts:

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	P22,356,324.43	P16,067,952.86	P115,938,221.30
Interest	26,153,837.08	15,583,713.19	119,330,093.34
Sub Total	P48,510,161.51	P31,651,666.05	P119,330,093.34
Deficiency Documentary Stamp Tax (Industry Issue)			
Basic	P17, 040,104.84	P24,953,842.46	P 41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	P21,300,131.05	P31,192,303.08	P 52,492,434.13
TOTALS	P69,810,292.56	P62,843,969.13	P171,822,527.47

Accordingly, petitioner is **ORDERED** to **PAY** respondent the aggregate amount of P171,822,527.47, plus 20% delinquency interest per annum from December 1, 2000 until fully paid, pursuant to Section 249 (C) of the Tax Code.

SO ORDERED."

The Motion For Reconsideration was resolved by the Division in the assailed Resolution dated April 11, 2005, the dispositive portion of which reads as follows:

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"**ACCORDINGLY**, the dispositive portion of Our decision dated December 15, 2004 in the above-entitled case is hereby **MODIFIED** to read as follows:

'**WHEREFORE,** the Petition For Review is hereby **PARTIALLY GRANTED**. The assessments for 1994 and 1995 deficiency income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax (not an industry issue) having been paid are now considered **CLOSED** and **TERMINATED**. However, the 1994 and 1995 deficiency onshore tax and deficiency documentary stamp tax on special savings account are hereby **UPHELD** in the following amounts:

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	P22,356,324.43	P16,067,952.86	P 38,424,277.29
Interest	26,153,837.08	15,583,713.19	41,737,550.27
Sub Total	P48,510,161.51	P31,651,666.05	P 80,161,827.56
Deficiency Documentary Stamp Tax (Industry Issue)			
Basic	P17,040.104.84	P24,953,842.46	P 41,993,947.30
Interest	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	P21,300,131.05	P31,192,303.08	P 52,492,434.13
T O T A L S	P69,810,292.56	P62,843,969.13	P132,654,261.69

Accordingly, petitioner is **ORDERED** to **PAY** the respondent the aggregate amount of P132,654,261.69, plus 20% delinquency interest per annum from December 1, 2000 until fully paid, pursuant to Section 249(C) of the National Internal Revenue Code of 1993.

SO ORDERED.'

SO ORDERED."

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THE FACTS

On November 20, 2000, petitioner filed a Petition For Review which seeks to cancel the fourteen (14) deficiency internal revenue tax assessments issued by the Commissioner of Internal Revenue (hereafter "respondent") against petitioner in the total amount of P4,170,058,634.49 representing deficiency income tax, gross receipts tax, final withholding tax, onshore tax, expanded withholding tax and documentary stamp tax for the calendar years 1994 and 1995.

In his Answer filed on May 21, 2001, respondent alleged the following special and affirmative defenses:

> "4. The assessments were issued within the prescriptive period provided for by law because Section 222 of the Tax Code authorizes the taxpayer and the government to extend by mutual agreement the prescriptive periods for the assessment and collection of taxes.
>
> While it is true that the Commissioner of Internal Revenue did not sign the Waiver of Statute of Limitations, Deputy Commissioner Sixto Esquivias IV was authorized by the Commissioner to sign the waiver pursuant to Revenue Memorandum Order No. 20-90 which provides in part thus:
>
> > '3. The following revenue officials are authorized to sign the waiver.
> >
> > A. In the National Office

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xxx xxx xxx

2. Deputy Commissioner'

With the extension of the prescriptive period for the assessment of taxes, the right of the respondent to assess deficiency taxes for the years 1994 and 1995 has not prescribed.

5. Respondent cited the legal basis for the assessments in compliance with Section 228 of the Tax Code.

6. The gross onshore final withholding tax was assessed pursuant to Section 24 (e)(3) of the Tax Code which provides for the imposition of ten (10%) percent final tax on interest income earned by depositary bank under the expanded foreign currency system on foreign currency loans granted to residents. The gross onshore income was identified as reflected in the financial statement and the 10% final withholding tax was applied.

7. Documentary stamp tax is being imposed on Special Savings Placements (Account) pursuant to Section 180 of the NIRC, as amended because the said account is an interest-bearing deposit and has a feature of a time deposit account. It has a required deposit balance and holding period in order to avail of a preferential rate which is much higher than a regular savings account.

8. The compromise penalty was imposed pursuant to the provisions of Sec. 204 of the NIRC, as implemented by RMO 1-90.

9. The assessments were issued in accordance with law and regulations.

10. All presumptions are in favor of the correctness of tax assessments (CIR vs. Construction Resources of Asia, Inc., 145 SCRA 67), and the burden to prove otherwise is upon petitioner."

After trial on the merits, the Division of this Court rendered the assailed Decision on December 15, 2004.

Not satisfied, petitioner moved for a reconsideration of the same, which the Division resolved in the aforesaid Resolution dated April 11, 2005.

Hence, this recourse.

ISSUES

Petitioner submits the following issues for Our consideration.

I

WHETHER OR NOT THE RIGHT OF THE RESPONDENT TO ASSESS DEFICIENCY ONSHORE TAX AND DOCUMENTARY STAMP TAX FOR TAXABLE YEAR 1994 AND 1995 HAD ALREADY PRESCRIBED WHEN IT ISSUED THE FORMAL LETTER OF DEMAND AND ASSESSMENT NOTICES FOR THE SAID TAXABLE YEARS.

II

WHETHER OR NOT PETITIONER IS LIABLE FOR DEFICIENCY ONSHORE TAX FOR TAXABLE YEAR 1994 AND 1995.

III

WHETHER OR NOT PETITIONER'S SPECIAL SAVINGS ACCOUNT IS SUBJECT TO DOCUMENTARY STAMP TAX UNDER THEN SECTION 180 OF THE 1993 TAX CODE.

On May 18, 2005, We required the respondent to file his comment on the petition, and on June 3, 2005, the respondent filed his "Comment (To Petitioner's Petition For Review)".

THE COURT EN BANC'S RULING

The petition has no merit.

First Issue:
Prescription

Petitioner avers that the two (2) waivers of the Statute of Limitations executed by petitioner on January 23, 1997 were merely attested to by Mr. Sixto Esquivias, Coordinator of the Bureau of Internal Revenue, which runs counter to the provision of Section 222(b) that requires the Commissioner, himself, to agree in writing. Thus, said waivers are not valid. Petitioner advanced the case of *Philippine Journalists, Inc. vs. Commissioner of Internal Revenue,447 SCRA 214*, where the Supreme Court held that an invalid waiver does not extend the 3-year period within which to assess deficiency taxes.

It further claims that petitioner's actuations before and after payment of the other deficiency taxes unmistakably show that it did not abandon or give up its right to question the validity of the waivers. Moreover, invoking the case of *Hanopol vs. Shoemart, Incorporated, 390 SCRA 439*, petitioner contends that it cannot be estopped from questioning the validity of the waivers even after it has paid the other assessed taxes. Considering that respondent has alleged the validity of the waivers even before petitioner paid the other assessed taxes, it cannot be said that petitioner's act of paying the other taxes assessed for taxable years 1994 and 1995 induced the respondent to believe that the waivers are valid.

On the other hand, respondent counters that petitioner accepted the benefits of the reduced assessment by paying a portion of the same. By accepting the binding effect of portions of the reduced assessment, it follows that it ratified the validity of the incidents that brought about the paid portions of the reduced assessments. He argues that the fact that petitioner agreed to these reduced assessments and paid the same, the issue of the validity of the assessments was obviously abandoned by petitioner. It cannot hold the waivers valid and invalid at the same time.

Moreover, respondent insists the fact that petitioner's non-payment of the assessments for deficiency final taxes on FCDU onshore income and deficiency Documentary Stamp Tax cannot be construed to mean that the latter still maintains that the waivers are invalid as all the deficiency taxes, including the foregoing, were all covered by the same waivers executed.

Finally, respondent posits that since petitioner itself adopted the validity of the waivers by its own action and as such, as correctly held by the Division, the issue of validity has become moot. Therefore, the case of *Philippine Journalists vs. Commissioner of Internal Revenue, 447 SCRA 214*, advanced by petitioner finds no applicability in the instant case.

We find for the respondent.

When petitioner voluntarily executed and signed the subject waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code on January 23, 1997, it may be said that it submitted to the stipulations thereof. Besides, petitioner, itself, "indirectly" adopted the waiver by paying the reduced assessment, which was the subject matter of its protest. Hence, in so doing, it cannot anymore question the validity of the aforesaid waivers.

On January 27, 2000, petitioner received a Formal Letter of Demand and 14 assessment notices covering deficiency income taxes, deficiency gross receipt taxes, deficiency final taxes on FCDU onshore income, deficiency expanded withholding taxes and deficiency documentary stamp tax, all for the taxable years 1994 and 1995, amounting to P4,170,058,634.49, which are all covered by the aforesaid waivers. Petitioner then filed a protest to said assessments.

On November 20, 2000, petitioner filed its Petition For Review before this Court. On December 6, 2000, while the petition was pending before this Court, petitioner received from respondent another Formal Letter of Demand and 14 assessment notices. This was the result of the reinvestigation requested by petitioner from respondent. The original assessments in the total amount of P4,170,058,634.49 were reduced to

P303,160,495.55. On even date, petitioner paid the assessments for Deficiency Income Tax, Deficiency Gross Receipts Tax, Deficiency Final Withholding Tax, Deficiency Expanded Withholding Taxes and Deficiency Documentary Stamp Tax.

By receiving and accepting the reduced assessment, and paying portions of the reduced assessments thereof, petitioner in effect binds itself to the new assessment. Consequently, it follows that petitioner recognized the validity of the waivers. Petitioner cannot now question its validity, specially, after it has received and accepted certain benefits as a result of the execution of the subject waivers. A party should not, after its opportunity to enjoy the benefits of an agreement, be allowed later to dispute the same, when the terms thereof ultimately would prove to operate against its hopeful expectations. This is a settled rule in this jurisdiction.

As aptly ruled by the Division:

> "Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax all of which were covered by the same waivers if petitioner really

believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.

In one case, the Supreme Court ruled that a party is estopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it had paid the same for the tax year. In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay.

To reiterate, petitioner received a letter of authority relative to the examination of all its internal revenue taxes from January 1, 1994 to December 31, 1995. On January 23, 1997, it executed waivers extending the period to assess up to December 31, 2000. On January 27, 2000, an undated letter of demand with fourteen (14) assessment notices attached were issued by the respondent. On December 6, 2000, petitioner received another formal demand letter with recomputed assessments. On the same day, petitioner paid the deficiency taxes assessed except for the onshore tax and documentary stamp tax on special savings accounts.

In disputing the assessments for these onshore and documentary stamp taxes, petitioner now assails the validity of the waivers which covered all the other assessed taxes it already paid.

We hold that petitioner is estopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that the assessments were valid. Petitioner cannot now deny their validity. This Court cannot countenance petitioner's act of adopting inconsistent postures regarding the waivers."

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Second Issue:
Deficiency Onshore Tax

Petitioner avers that under the operation of the final withholding tax system, it is the withholding agent, and not the payee, who is directly liable for the payment of the 10% onshore tax. Such fact has always been the rule since the promulgation of P.D. 1034 which established the offshore banking units and P.D. 1035 which launched the foreign currency deposit units of banks.

It further claims that *Section 24(e)(3) of the 1993 Tax Code* does not explicitly state that the depository bank earning the interest income shall be directly liable for the payment of the 10% onshore tax. It contends that *Section 24(e)(3) of the 1993 Tax Code,* as worded, simply states that "xxx interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax." Said provision, according to petitioner, cannot therefore be cited as basis for holding that petitioner, as income earner, is directly liable for the payment of the 10% onshore tax, in the light of *Sections 50 and 51 of the 1993 Tax Code* and their implementing regulations and various other issuances and pronouncements of the respondent which expressly state that it is the withholding agent that is primarily liable for the payment of the 10% onshore tax.

On the other hand, respondent counters that the recipient of the income is the payer of the tax imposed by law. The recipient of the income is the one liable for the tax as the wealth, subject of the tax flowed to him. The withholding agent is merely the collector, an agent of the government. In case of breach by the agent of this legal duty he is assessed not for the collection of income tax, but is merely penalized pursuant to *Section 53 of the same Tax Code*. Therefore, in case of such breach, and no income taxes were withheld by the agent, and the agent is penalized, the fact will remain that the income taxes were uncollected because what was collected from the agent is the penalty and not the tax. The tax cannot be collected from the agent because as stated in the above case, "The agent is not liable for the tax as no wealth flowed into him –

he earned no income." Logically, the one who earned the income and the one subject to tax imposed by law, will pay the tax.

Respondent further claims that no evidence was presented by petitioner to show that the borrowers withheld and remitted said tax. Absent an iota of evidence to the contrary, it can only be deduced therefore, that the borrowers failed to perform its duty to withhold.

Again, We disagree with petitioner's contention.

Pursuant to *Section 25 (a)(4) and (a)(6)(B) of the NIRC of 1993, as amended*, it is conceded that the payor-borrower is merely designated by law to withhold and remit said tax. It follows then that the 10% onshore tax should be imposed on the petitioner, being the payee-bank. The foregoing finds support in the case of *Commissioner of Internal Revenue vs. Court of Appeals and A. Soriano Corp., 301 SCRA 170,* where the Supreme Court has had the occasion to expound on the operation of the withholding tax system, to wit:

> "In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer – he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the

> withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him – he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax since:
>
> > 'the government's cause of action against the withholding agent is not for the collection of income tax, but for the enforcement of the withholding provision of Section 53 of the Tax Code, compliance with which is imposed on the withholding agent and *not* upon the taxpayer.'"

Third Issue:
Deficiency DST on Special Savings Account (SSA)

Citing various issuances of the Bangko Sentral ng Pilipinas (hereafter "BSP") and of the respondent, petitioner insists that its special savings account (hereafter "SSA") clearly qualifies as a savings deposit and not a time deposit. This is because the SSA, as borne by the evidence presented, is withdrawable anytime upon demand and is evidenced by a passbook (*Exhibits "B", "B-1" and "B-2"*).

According to petitioner, the condition in petitioner's SSA stating that: "if the depositor does not make a withdrawal within 30 days, the account earns a premium or a higher interest rate" does not necessarily make the SSA one with a specific maturity. This is because notwithstanding the offer of premium interest rate, the depositor is still absolutely free to withdraw his/her SSA deposit anytime.

It further claims that the matter of giving higher interest rates is a business prerogative of banks, and is not a criterion in determining whether a deposit is a time or savings deposit under the various issuances issued by the BSP and the respondent.

We sustain the findings of the Division.

Section 180 of the NIRC of 1993, as amended, provides:

> "SEC. 180. Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or demand. - **On all bills of exchange (between points within the Philippines), drafts 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 any such note, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note."**

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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 in determining whether petitioner's SSA bears the same nature or characteristics of a time deposit certificate.

In both cases in point, a time deposit and petitioner's SSA, 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 SSA, the transaction is covered by a SSA passbook, the time deposit is evidenced by a certificate of time deposit. Nonetheless, the fact that petitioner's SSA is evidenced by a SSA 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, inasmuch as its substance is paramount than its form (*L.R. Heat Treating Co., 28 TC 874*).

For all intents and purposes, We hold that petitioner's SSA is in itself a certificate of deposit as it has the same nature and substance of a certificate of deposit bearing interest. Therefore, petitioner's SSA is subject to DST under *Section 180 of the NIRC of 1993, 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*).

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

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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 Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice

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