REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

PHILIPPINE VETERANS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. E.B. NO. 613
(C.T.A. CASE NO. 6950)

Present:

ACOSTA, PJ
CASTAÑEDA, JR.
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, JJ.

Promulgated:

SEP 0 3 2010 3:45 pm

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DECISION

UY, J.:

This Petition for Review filed before the Court of Tax Appeals *En Banc* on April 22, 2010 seeks a review of the Decision and Resolution by the Former Second Division of this Court (Court in Division)[1] in C.T.A. Case No. 6950, entitled "Philippine Veterans Bank, petitioner, vs. Commissioner of Internal Revenue, respondent"[2], to wit:

1) Decision promulgated on September 1, 2009[3] denying the Petition for Review with Prayer for the Suspension of Collection;

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[1] Chaired by Associate Justice Juanito C. Castañeda, Jr., with Associate Justice Erlinda P. Uy and Associate Justice Olga Palanca-Enriquez as members.
[2] Ponencia of Associate Justice Juanito C. Castañeda, Jr concurred by Associate Justice Erlinda P. Uy and Olga Palanca-Enriquez.
[3] Docket, pp. 49-69.

and accordingly, holding petitioner liable for deficiency documentary stamp taxes on Special Savings Deposits and stock dividends for taxable year 1997, as contained in Assessment Notice No. DST-97-000017, in the aggregate amount of ₱ 73,955,391.94, plus the additional amount equivalent to twenty percent (20%) thereof counted from April 17, 2004 until its full payment; and

2) Resolution promulgated on March 17, 2010[4] denying herein petitioner's Motion for Reconsideration for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner 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.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

On August 8, 2001, Hon. Rene G. Bañez, then Commissioner of Internal Revenue, through Hon. Virginia L. Trinidad, BIR Assistant Commissioner for Large Taxpayer Service, sent to petitioner a Formal Letter of Demand and Assessment Notice No. DST-97-000017, demanding from the latter the payment of deficiency documentary stamp tax (DST) in the total amount of ₱ 73,955,391.94.

[4] Ibid, at pp. 81-83.

In reply, Ricardo A. Balbido, Jr., President and CEO of petitioner, wrote to Commissioner Bañez on September 19, 2001, requesting that the enforcement of the Formal Letter of Demand be held in abeyance until the matter is finally resolved, since the issue involved is an industry issue.

Another letter dated September 28, 2001 was sent by petitioner to formally protest the said assessment anchored on the following grounds:

> "***Special Savings Deposit*** — This is an industry issue which has not been resolve. It was always been the stand of the banking industry that this is not subject to Documentary Stamp Tax as it is not a fixed term deposit since it is withdrawable anytime just like the regular savings account.
>
> ***Stock Dividend*** — The stock certificate has not yet issued nor delivered to the stockholders. We conclude that the Documentary Stamp Tax liability accrue(s) at the time certificate(s) are issued."

On March 17, 2004, petitioner received a copy of the assailed decision of respondent, captioned as "In the Matter of the Protest of Philippine Veterans Bank against Assessment Notice No. DST-97-000017 Demanding Payment of the Amount of ₱ 73,955,391.94 as Deficiency Documentary Stamp Tax for Taxable Year 1997", denying the protest and the request for deferment of payment.

Hence, petitioner filed its judicial claim before the Court in Division on April 16, 2004, through a "Petition for Review with Prayer for Suspension of Collection".

During trial, both parties presented documentary and testimonial evidence to prove their respective claim.

On July 28, 2008, petitioner filed a "Manifestation and Motion for Extension of Time to File Memorandum", praying for an extension of thirty (30) days from July 27, 2008 within which to file its Memorandum, while waiting for the Termination Letter to be issued by respondent. Petitioner allegedly availed of the Abatement Program extended by the BIR under Revenue Regulations Nos. 15-2006 and 15-2007 and paid the aggregate amount of ₱ 42,469,663.40 on January 24, 2007 and January 2, 2008, respectively.

The instant petition was submitted for decision on September 29, 2008, taking into consideration respondent's Memorandum filed on September 15, 2008, sans petitioner's Memorandum and Termination Letter.

On September 1, 2009, the Court in Division rendered its assailed Decision, the dispositive portion of which states:

> "**WHEREFORE**, the instant Petition for Review with Prayer for the Suspension of Collection is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent Commissioner of Internal Revenue the total amount of P73,955,391.94, representing deficiency documentary stamp taxes on Special Savings Deposit and stock dividends for taxable year 1997, as contained in Assessment Notice No. DST-97-000017, detailed as follows:

Documentary Stamp Tax	**1997**
Special Savings Deposit	P 37,144,688.40
Stock Dividends	5,324,975.00
Basic Documentary Stamp Tax Due	42,469,663.40
Interest	31,485,728.54
TOTAL	**P 73,955,391.94**

> In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) interest on the amount of P73,955,391.94, counted from April 17, 2004 until full payment thereof, pursuant to Section 249 of the Tax Code of 1977.
>
> **SO ORDERED**."

A Motion for Reconsideration of the assailed Decision was filed by petitioner before the Court *a quo* on September 29, 2009. Finding no valid or cogent reason to either disturb, reverse or modify the assailed Decision, the Court in Division denied said Motion for Reconsideration in the Resolution dated March 17, 2010.

Hence, this recourse before the Court *En Banc* praying that the assailed Decision dated September 1, 2009 and Resolution dated March 17, 2010 of the Court in Division, be reversed and nullified; that the payments made by petitioner should be taken into account in ruling that there is no more liability for the subject assessed tax deficiencies since the same had already been paid; and that pending final resolution of the instant case, collection of taxes allegedly due should be suspended.

On May 24, 2010, as directed by this Court in the Resolution dated April 30, 2010[5], respondent filed his Comment[6] to the instant Petition for Review. Consequently, this case was considered submitted for decision on June 28, 2010,[7] after petitioner filed its Memorandum on June 17, 2010[8] and respondent adopted her Comment dated May 24, 2010 as her Memorandum.

Hence, this Decision.

THE ISSUES

Petitioner submits the following issues for the consideration of this Court:

[5] Id., at pp. 91-92.
[6] Id., at pp. 93-104.
[7] Resolution dated June 28, 2010; Docket, p. 139.
[8] Petitioner's Memorandum; Docket, pp. 112-137.

1. "WHETHER OR NOT PVB'S (PETITIONER'S) SPECIAL SAVINGS ACCOUNTS ARE SUBJECT TO DOCUMENTARY STAMP TAX.";

2. "WHETHER OR NOT THE RECENT ENACTMENT OF REPUBLIC ACT NO. 9243 INVALIDATES RESPONDENT'S INTERPRETATION THAT SPECIAL SAVINGS ACCOUNTS ARE SUBJECT TO DOCUMENTARY STAMP TAX UNDER THE 1997 TAX CODE.";

3. "WHETHER OR NOT PVB (PETITIONER) IS EXEMPT FROM THE PAYMENT OF DOCUMENTARY STAMP TAX ON INCREASE IN CAPITALIZATION."; and

4. "WHETHER OR NOT THE ASSESSED AMOUNT FOR DEFICIENCY DOCUMENTARY STAMP TAXES IS CORRECT."

THE COURT EN BANC'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 for review readily reveal that the grounds relied upon, are mere restatements of petitioner's previous arguments raised before the Court *a quo*. However, although these matters have been exhaustively discussed and passed upon by the Court in Division in its assailed Decision and Resolution dated September 1, 2009 and March 17, 2010, respectively, We deem it necessary to discuss petitioner's arguments in seriatim.

Special Savings Account subject to Documentary Stamp Tax

At the outset, it bears emphasis that there is no novel issue in this case as the Supreme Court has previously and consistently ruled that special savings account (SSA) is subject to documentary stamp tax.

The taxability of SSAs is dependent on the nature and specific features thereof. It is thus conceded that if the SSAs are more akin to a time deposit account then the same would be subject to documentary stamp tax. However, if the SSAs are more akin to a regular savings deposit account then the same would not be subject to documentary stamp tax.

As correctly found by the Court in Division, SSAs are in fact certificates of deposits drawing interest subject to documentary stamp tax as provided for in Section 180 of the National Internal Revenue Code (NIRC).

The Supreme Court in the recent case of ***China Banking Corporation vs. Commissioner of Internal Revenue***,[9] citing *International Exchange Bank vs. CIR*[10] and *Philippine Banking Corporation vs. CIR*[11], ruled in this wise:

> "In *PBC*, this Court distinguished a regular savings account, a time deposit account and the Special/Super Savings Deposit Account (SSDA) in the following manner, to wit:

	Savings Account	**Time Deposit**	**SSDA**
Interest rate	Regular savings interest	Higher interest rate	Higher interest rate
Period	None	Fixed Term	Fixed Term
Evidenced by:	Passbook	Certificate of Time Deposit	Passbook
Pre-termination	None	With penalty	With penalty
Holding Period	None	Yes	Yes
Withdrawal	Allowed	Withdrawal amounts to pre-termination	Allowed provided the minimum amount to earn the higher interest rate is maintained, otherwise, the regular savings interest rate will apply.

[9] G.R. No. 172359, October 2, 2009.
[10] G.R. No. 171266, April 4, 2007.
[11] G.R. No. 170574, January 30, 2009.

Based on the foregoing comparison, the Court in *PBC* ruled that a "Special/Super Savings Deposit Account" has all the distinct features of a certificate of deposit, to wit:

> 'Based on the definition and comparison, it is clear that a certificate of deposit drawing interest as used in Section 180 of the 1977 NIRC refers to a time deposit account. As the Bureau of Internal Revenue (BIR) explained in Revenue Memorandum Circular No. 16-2003, the distinct features of a certificate of deposit from a technical point of view are as follows:
>
> a. Minimum deposit requirement;
> b. Stated maturity period;
> c. Interest rate is higher than the ordinary savings account;
> d. Not payable on sight or demand, but upon maturity or in case of pre-termination, prior notice is required; and
> e. Early withdrawal penalty in the form of partial loss or total loss of interest in case of pre-termination.
>
> The SSDA is for depositors who maintain savings deposits with substantial average daily balance and which earn higher interest rates. The holding period of an SSDA floats at the option of the depositor at 30, 60, 90, 120 days or more and for maintaining a longer holding period, the depositor earns higher interest rates. There is no pre-termination of accounts in an SSDA because the account is simply reverted to an ordinary savings status in case of early or partial withdrawal or if the required holding period is not met. Based on the foregoing, the SSDA has all of the distinct features of a certificate of deposit.'

In *International,* this Court held that a "Savings Account-Fixed Savings Deposit" is likewise subject to documentary stamp tax, to wit:

> 'The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest pertaining to a regular savings deposit. Having a fixed term and the reduction of interest rates in case of pre-termination are essential features of a time deposit. Thus, explains the CTA *En Banc*:

It is well-settled that certificates of time deposit are subject to the DST and that a certificate of time deposit is but a type of a certificate of deposit drawing interest. Thus, in resolving the issue before Us, it is necessary to determine whether petitioner's Savings Account-Fixed Savings Deposit (SA-FSD) has the same nature and characteristics as a time deposit. In this regard, the findings of fact stated in the assailed Decision [of the CTA Division] are as follows:

In this case, a depositor of a savings deposit-FSD is required to keep the money with the bank for at least thirty (30) days in order to yield a higher interest rate. Otherwise, the deposit earns interest pertaining only to a regular savings deposit.

The same feature is present in a time deposit. A depositor is allowed to withdraw his time deposit even before its maturity subject to bank charges on its pre[-]termination and the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining only to a regular savings deposit. Thus, petitioner's argument that the savings deposit-FSD is withdrawable anytime as opposed to a time deposit which has a maturity date, is not tenable. In both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. *The only difference lies on the evidence of deposit*, a savings deposit-FSD is evidenced by a passbook, while a time deposit is evidenced by a certificate of time deposit.'

In order for a depositor to earn the agreed higher interest rate in a SA-FSD, the amount of deposit must be maintained for a fixed period. Such being the case, *We agree with the finding that the SA-FSD is a deposit account with a fixed term. Withdrawal before the expiration of said fixed term results in the reduction of the interest rate. Having a fixed term and reduction of interest rate in case of pre-termination are essentially the features of a time deposit.* Hence, this Court concurs with the conclusion reached in the assailed Decision that petitioner's SA-FSD and time deposit are substantially the same. . . . (Italics in the original; underscoring supplied)

The findings and conclusions reached by the CTA which, by the very nature of its function, is dedicated exclusively to the consideration of tax problems and has necessarily developed an

> expertise on the subject, and unless there has been an abuse or improvident exercise of authority, and none has been shown in the present case, deserves respect."

Petitioner's version of special savings deposit (SSD) which is called the special savings account (SSA) has identical features and is essentially the same as the SSDs. Accordingly, petitioner's SSAs are certificates of deposits drawing interest as contemplated in Section 180 of the NIRC.

As to petitioner's contention that the subsequent enactment of Republic Act (RA) No. 9243 is a clear indication that indeed under the NIRC of 1997, SSAs are not subject to documentary stamp tax, the Supreme Court in the ***China Bank case***[12] likewise ruled:

> "This Court does not agree. In *International,* the Court held that the further amendment was intended to eliminate the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits. More importantly, the Court held that the amendment to include '*other evidences of deposits that are drawing interest significantly higher than the regular savings deposit*' was merely intended to eliminate the ambiguity as reflected in the exchanges between Mr. Miguel Andaya of the Bankers Association of the Philippines and Senator Ralph Recto, Senate Chairman of the Committee on Ways and Means, during the deliberations on Senate Bill No. 2518 which eventually became R.A. No. 9243. Contrary therefore to petitioner's position, *International* is categorical in that the said amendment did not signify that time deposits evidenced by a passbook were exempt from documentary stamp tax under Section 180 of the 1997 NIRC, but that it merely served to eliminate the ambiguity in the law."

Increase of Capitalization subject to DST

With regard to the issue on whether or not the increase in capitalization is subject to DST, it is worthy of emphasis that tax exemptions

[12] Supra on note 9.

are highly disfavored. The rule is that tax exemptions should be granted only by clear and unequivocal provision of law expressed in a language too plain to be mistaken. Thus, in the absence of clear provisions, tax exemptions cannot be granted.

After a careful scrutiny of petitioner's charter, We are not convinced that the law intends to exempt petitioner from payment of DST even in its original issue of shares of stock; thus, it necessarily follows that it is also not exempted from DST in its increase of capitalization.

Let it be emphasized, to the point of being repetitive, that taxation is the rule and exemption is the exception. Hence, a claim for exemption from tax payments must be clearly shown and based on language in the law too plain to be mistaken.[13]

Prayer for Suspension of Collection

With the above resolution of the legal issues raised in this petition, petitioner's prayer for suspension of collection of taxes pending the resolution of the instant appeal is rendered moot.

Furthermore, as to the contention that it has availed of BIR's tax amnesty/abatement programs, it is worthy to note that petitioner failed to submit a Termination Letter to prove the same. Considering that its application for abatement is pending with the BIR as early as January 24, 2007[14], it should have made a constant follow up with the BIR as to the status of its application as this Court will recognize tax abatements only if there is a

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[13] *Sea-Land Services, Inc. vs. Court of Appeals*, 359 SCRA 441.
[14] Annex "I", Docket, p. 84.

Termination Letter issued by the BIR signifying its acceptance and approval of the application for abatement. Absent any proof that its application for abatement was approved by the BIR, We cannot dispense petitioner's liability for the assessed tax deficiencies for having no legal or factual basis.

In view of the foregoing, this Court finds no reversible error committed by the Court in Division when it rendered the Decision dated September 1, 2009 and Resolution dated March 17, 2010.

WHEREFORE, premises considered, the instant petition is hereby **DENIED** for lack of merit. Accordingly, the Decision dated September 1, 2009 of the Court in Division in C.T.A. Case No. 6950 is **AFFIRMED IN TOTO**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
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*.

ERNESTO D. ACOSTA
Presiding Justice