REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

ING BANK, N.V. MANILA BRANCH, *Petitioner,*	**C.T.A. E.B. NO. 52** **(C.T.A. CASE NO. 6187)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** APR 05 2005

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed by ING Bank, N.V. Manila Branch (hereafter "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*, which seeks the reversal of the Decision dated August 9, 2004 upholding respondent's assessments of deficiency withholding tax on compensation for taxable years 1996 and 1997, deficiency onshore tax for taxable year 1996 and deficiency documentary stamp tax (hereafter "DST") on the special savings account for taxable years 1996 and 1997, and the Resolution dated November 12, 2004 issued by the Division of this Court in C.T.A. Case No. 6187. The respective dispositive portions of the Decision and Resolution read as follows:

> "**WHEREFORE**, the assessments for 1996 and 1997 deficiency income tax, 1996 and 1997 deficiency branch profit remittance tax and 1997 deficiency documentary stamp tax on IBCLs exceeding five days are hereby **CANCELLED** and **WITHDRAWN**. However, the assessments for 1996 and 1997 deficiency withholding tax on compensation, 1996 deficiency onshore tax and 1996 and 1997 deficiency documentary stamp tax on special savings accounts are hereby **UPHELD** in the following amounts:

Particulars	Basic Tax	Surcharge	Interest	Total
Deficiency Withholding Tax on Compensation				
1996 (ST-WC-96-0175-99)	P 105,939.86		P 61,445.11	P 167,384.97
1996 (ST-WC-97-0184-99)	287,795.44		109,362.26	397,157.70
Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	544,991.20	P 136,247.80	316,094.89	997,333.89
Deficiency Documentary Stamp Tax				
1996 (ST-DST-96-0178-99)	3,838,753.06	959,688.27		4,798,441.33
1997 (ST-DST-97-0180-99)	186,997,288.84	46,749,322.21		233,746,611.05
TOTALS	P191,774,768.40	P47,845,258.28	P 486,902.26	P 240,106,928.94

Accordingly, petitioner is **ORDERED** to **PAY** the respondent the aggregate amount of P240,106,928.94, plus 20% delinquency interest per annum from February 3, 2000 until fully paid, pursuant to Section 249 (C) of the National Internal Revenue Code of 1997.

SO ORDERED."

"**WHEREFORE**, the respondent's Motion for Partial Reconsideration and the petitioner's Motion for Reconsideration are hereby **DENIED** for lack of merit. The pronouncement reached in the assailed decision is **REITERATED**.

SO ORDERED."

THE FACTS

Petitioner is the Philippine branch of Internationale Nederlanden Bank N.V., a foreign banking corporation incorporated in the Netherlands. It is duly authorized by the Bangko Sentral ng Pilipinas to operate as a branch with full banking authority in the Philippines. Its principal office address is at 20th Floor, Tower I, Ayala Triangle, Ayala Avenue, Makati City.

For the calendar year 1996, petitioner simultaneously filed on April 14, 1997, its Corporation Annual Income Tax Returns for Offshore Banking Unit, Foreign Currency Deposit Unit and Regular Banking Unit

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(*paragraphs 5, 6 and 7, Joint Stipulation of Facts and Issues*). Likewise, for calendar year 1997, petitioner filed its Corporation Annual Income Tax Returns for its Foreign Currency Deposit Unit and Regular Banking Unit on April 15, 1998 (*paragraphs 8 and 9, Joint Stipulation of Facts and Issues*).

On January 3, 2000, petitioner received a Final Assessment Notice (FAN) with the Details of Assessment and thirteen (13) Assessment Notices, all dated December 3, 1999, issued by the Enforcement Service of the Bureau of Internal Revenue through its Assistant Commissioner Percival T. Salazar (*Exhibits A, A-1 and A-14*), covering the following deficiency tax assessments:

Particulars	Basic Tax	Surcharge	Interest	Total
Deficiency Income Tax				
1996 (ST-INC-96-0174-99)	P 20,916,785.03		P 11,346,639.55	P 32,263,424.58
1997 (ST-INC-97-0185-99)	133,533,114.54		45,730,518.68	179,263,633.22
Deficiency Withholding Tax On Compensation				
1996 (ST-WC-96-0175-99)	1,027,267.20		602,288.17	1,629,555.37
1997 (ST-WC-97-0184-99)	2,505,925.25		968,042.36	3,473,967.61
Deficiency Onshore Tax				
1996 (ST-OT-96-0176-99)	8,267,437.54		4,847,209.95	13,114,647.49
Deficiency Branch profit Remittance Tax				
1996 (ST-RT-96-0177-99)	39,215,700.00		22,992,218,63	62,207,918.63
1997 (ST-RT-97-0181-99)	92,587,381.60	P 6,729,180.18	40,799,690.39	140,116,252.17
Deficiency Documentary Stamp Tax				
1996 (ST-DST-96-0178-99)	3,838,753.06	959,688.27		4,798,441.33
1997 (ST-DST-97-0181-99)	1,569,990.18	392,497.55		1,962,487.73
1997 (ST-DST-97-0180-99)	186,997,288.84	46,749,322.21		233,746,611.05
Compromise Penalty				
1996 (ST-CP-96-0179-99)	1,000.00			1,000.00
1997 (ST-CP-97-0186-99)	1,000.00			1,000.00

Deficiency Final Tax 1997 (ST-FT-97-0183-99)	53,200.89		20,551.58	73,752.47
TOTALS	P 490,514,844.13	P54,830,688.21	P127,307,159.31	P 672,652,691.65

On February 2, 2000, petitioner paid the deficiency assessments for 1996 compromise penalties, 1997 deficiency documentary stamp tax and 1997 deficiency final tax in the respective amounts of P1,000.00, P1,000.00 and P75,013.25, originally in the amount of P73,752.47 but was increased to P75,013.25 due to additional interest (*paragraph 1, Joint Stipulation of Facts and Issues*). However, on the same date petitioner protested the remaining ten (10) deficiency tax assessments in the total amount of P672,576,939.18 (*Annex E, Petition for Review*).

On March 31, 2000, petitioner submitted documentary evidence in support of its protest pursuant to *Section 228 of the National Internal Revenue Code of 1997* (*paragraph 4, Facts, Joint Stipulation of Facts and Issues*).

On October 26, 2000, within thirty (30) days from the lapse of the 180-day period given to the respondent to decide on the administrative protest, petitioner filed a Petition For Review with this Court, docketed as C.T.A. Case No. 6187. ope

Respondent, in his answer, by way of special and affirmative defenses, averred:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Prior to the issuance of the assessment, petitioner was informed of the proposed assessment and the basis thereof which it protested. Hence, the requirement under Section 228 of the Tax Code that the taxpayer shall be informed of the law and the facts on which the assessment is made, is deemed to have been complied with.

5. INCOME TAX (1996 and 1997)

Investigation on petitioner's income and expenses claimed as deductions for income tax purposes disclosed that interest expense Due to Head Office and Other Branches for 1996 amounting to P109,392,349.95 and for 1997 in the amount of P385,864,274.39 was disallowed because this account 'Due to Head Office and Other Branches' is part of the capital account of foreign branches.

6. WITHHOLDING TAX ON COMPENSATION (1996 AND 1997)

Not all the accrued bonuses were subjected to withholding tax, contrary to Section 73(a) of the NIRC which provides that the employer shall be liable for the withholding and remittance of the correct amount of tax on salaries and wages of employees.

7. EXPANDED WITHHOLDING TAXES (1996 and 1997)

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Deficiency taxes represent compromise penalty for failure of petitioner to file BIR Form 1701 B (on income payments exempt from withholding tax), in accordance with Section 250 of the Tax Code.

8. <u>20% FINAL WITHHOLDING TAX</u> (1997)

The final tax on interest paid on deposits/deposit substitutes was verified to have been inadequately remitted after comparison with the amount of interest expenses reflected in petitioner's financial statements. (Sections 25(a)(6)(A), Tax Code).

9. <u>10% ONSHORE</u> TAX (1996)

A portion of the onshore income was not subjected to the 10% final tax (Section 25(a)(4) and 25(a)(6)(B), Tax Code).

The 10% Gross Onshore Tax takes the place of all other taxes pursuant to Revenue Regulation 10-76, Section 3 of which states in part.

> 'Rate of Income Tax to be imposed. -
>
> The rates of income tax to be imposed, which shall be in lieu of all other taxes such as, but not limited to privilege tax, gross receipt tax, documentary and science stamp tax and profit remittance tax x x x.'

10. <u>BRANCH PROFIT REMITTANCE TAX</u> (1996 and 1997)

Respondent has verified that not all of the amounts of petitioner's branch profit remittance to its Head Officer were subjected to a tax of 15%, pursuant to Section 25(a)(5) of the Tax Code.

11. DOCUMENTARY STAMP TAX (1997)

Petitioner was assessed deficiency taxes for non-payment of documentary stamp tax on its Interbank Call Loans which exceed five (5) days, pursuant to Section 180 of the Tax Code.

12. DST INDUSTRY ISSUE (1996 and 1997)

Special savings account (SSA) classified as time Deposits are subject to documentary stamp tax, pursuant to Section 180 of the Tax Code.

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

14. All presumptions are in favor of the correctness of tax assessments."

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

"JOINT STIPULATION OF FACTS AND ISSUES

PETITIONER and RESPONDENT, through the undersigned counsels and to this Honorable Court, most respectfully submit their stipulation of facts and issues in this case as follows:

FACTS

1. On February 2, 2000, Petitioner paid in full the deficiency assessments averred in AN Nos. ST-CP-96-0179-99, ST-DST-97-0186-99 and ST-FT-97-0183-99, amounting to P1,000.00, P1,000.00 and P75,013.25, respectively.
2. On February 2, 2000, Petitioner filed with the BIR its 14-page protest letter dated February 1, 2000.
3. Authenticity and due execution of the protest-letter dated February 1, 2001 filed with the BIR on February 2, 2001.
4. On March 31, 2000, Petitioner filed with the BIR its documentary evidence in support of the protest-letter.
5. Authenticity and due execution of the Corporation Annual Income Tax Return for calendar year ended December 31, 1996 and all the documents attached therewith, filed by International Nederlanden Bank N.V. Offshore Banking unit on April 14, 1997.
6. Authenticity and due execution of the Corporation Annual Income Tax Return for calendar year ended December 31, 1996 and all the documents attached therewith, filed by International Nederlanden Bank N.V. Foreign Currency Deposit Unit on April 14, 1997.
7. Authenticity and due execution of the Corporation Annual income Tax Return for calendar year ended December 31, 1996 and all the documents attached therewith, filed by Internationale Nederlanden Bank N.V. Regular Banking Unit on April 14, 1997.
8. Authenticity and due execution of the Corporation Annual Income Tax Return for calendar year ended December 31, 1997 and all the documents attached therewith, filed by Internationale Nederlanden Bank N.V. Foreign Currency Deposit Unit on April 15, 1998.

9. Authenticity and due execution of the Corporation Annual income Tax Return for calendar year ended December 31, 1997 and all the documents attached therewith, filed by Internationale Nederlanden Bank N.V. Regular Banking Unit on April 15, 1998.
10. Authenticity and due execution of Audited Financial Statements-ING Bank-Manila Branch-Regular Banking Unit as of December 31, 1996 and 1995.
11. Authenticity and due execution of Audited Financial Statements-ING Bank-Manila Branch-Foreign Currency Deposit Unit as of December 31, 1997 and 1996.
12. Authenticity and due execution of Audited Consolidated Financial Statements-ING-Bank-Manila Branch as of December 31, 1997 and 1996.

ISSUES

1. Whether or not the amounts of P109,392,349.95 and P385,864,274.39 are deductible from Petitioner's gross income in taxable years 1996 and 1997, respectively, for income tax purposes.
2. Whether or not the assessment of deficiency withholding tax on compensation for taxable years 1996 and 1997 is proper.
3. Whether or not Petitioner can be held liable for deficiency onshore tax in taxable year 1996.
4. Whether or not the remittances of branch profits in taxable years 1996 and 1997, respectively, are subject to branch profits remittance tax.
5. Whether or not the SSA deposits are subject to DST under Section 180 of the Tax Code.
6. Whether or not IBCLs with tenors exceeding five days are subject to DST under Section 180 of the Tax Code.

7. Whether or not the assessments for alleged deficiency taxes for taxable years 1996 and 1997 conform with the requirements set forth under Section 228 of the 1997 Tax Code."

After trial on the merits, the Division rendered its assailed Decision on August 9, 2004 in the terms earlier set forth.

Not satisfied, petitioner filed a "Motion For Reconsideration", while the respondent filed a "Motion For Partial Reconsideration", both of which were denied by the Division in a Resolution dated November 12, 2004.

THE ISSUES

Hence, this Petition For Review raising the following issues:

I

PETITIONER CANNOT BE HELD LIABLE FOR DEFICIENCY WITHHOLDING TAX ON COMPENSATION FOR THE ACCRUED BONUSES THAT WERE NOT YET DISTRIBUTED IN 1996 AND 1997, PURSUANT TO THE HOLDING OF THE RESPONDENT HIMSELF IN BIR RULING NO. 555-88.

II

THE OBLIGATION OF PAYING THE 10% FINAL TAX ON ONSHORE INCOME RESTS ON THE PAYOR-BORROWER, HENCE, THE PETITIONER CANNOT BE HELD LIABLE FOR DEFICIENCY ONSHORE TAX.

III

THE SPECIAL SAVINGS ACCOUNTS (SSA) ARE NOT SUBJECT TO DST AS CERTIFICATES OF DEPOSIT UNDER SECTION 180 OF THE 1977 TAX CODE.

THE RULING OF THE COURT EN BANC

First Issue:
Deficiency Withholding Tax On Compensation

Petitioner claims that in *BIR Ruling No. 555-88* the respondent categorically stated that "the withholding tax on the bonuses should be deducted upon the distribution of the same to the officers and employees entitled thereto and remitted to the Bureau of Internal Revenue." Based on the aforequoted ruling, petitioner cannot be held liable for deficiency withholding tax on compensation on the accrued bonuses for the taxable years 1996 and 1997 because the bonuses were then mere accruals as they were not yet distributed to the officers and employees.

Petitioner further argues that withholding, as an additional condition to deductibility of an expense, applies only if in fact the tax is required to be withheld. *BIR Ruling No. 555-88* precisely tackled the issue of whether bonuses, accrued as of the end of the year and deducted for tax purposes in the same year, are already subject to withholding tax even if the same will only be distributed in the following year.. The BIR, having ruled that the bonuses will be subject to withholding tax only upon distribution for the reason that individuals are subject to tax on cash basis, the inescapable conclusion is that no tax is required to be deducted and withheld on accrued bonuses. Therefore, the additional requirement for deductibility under *Section 29(j) of the 1993 Tax Code* does not apply to accrued bonuses.

We do not agree.

Section 29(j) of the National Internal Revenue Code of 1993, as amended, provides:

> "(j) *Additional requirement for deductibility of certain payments.* - Any amount paid or payable which is otherwise deductible from, or taken into account in computing gross income or for which depreciation or amortization may be allowed under this section, shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue in accordance with this section, Sections 51 and 74 of this Code."

The above provision was amplified by *Section 3 of Revenue Regulations No. 8-90*, which provides:

> "Sec. 9. (a) Requirement for deductibility. Any income payment, which is otherwise deductible under

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> Sections 29 and 54 of the Tax Code, as amended, shall be allowed as a deduction from the payor's gross income only if it is shown that the tax required to be withheld has been paid to the Bureau of Internal Revenue in accordance with Sections 50, 51, 72, and 74 also of the Tax Code."

Pursuant to the aforequoted provisions, an expense shall be allowed as a deduction only if it is shown that the tax required to be deducted and withheld therefrom has been paid to the Bureau of Internal Revenue whether the same is paid or payable.

Considering that the bonuses were not subjected to withholding tax during the year they were claimed as an expense, the same should be disallowed to be deducted as expense from the gross income pursuant to the above-quoted provisions.

As aptly ruled by the Division:

> "With the preceding defense notwithstanding, petitioner now maintained that the portion of the disallowed bonuses in the amounts of P3,879,407.85 and P9,004,402.63 for the respective years 1996 and 1997, were actually payments for reimbursements of representation, travel and entertainment expenses of its officers. These expenses according to petitioner are not considered compensation of employees and likewise not subject to withholding tax.
>
> In order to prove that the discrepancy in the accrued bonuses represents reimbursement of expenses, petitioner availed of the services of an independent CPA pursuant to

CTA Circular No. 1-95, as amended. As a consequence, Mr. Ruben Rubio was commissioned by the court to verify the accuracy of petitioner's position and to check its supporting documents.

In a report dated January 29, 2002, the commissioned independent CPA noted the following pertinent findings: (*Exhibit MM*)

Findings and Observations	1997	1996
Supporting document is under the name of the employee	P 930,307.56	P1,849,040.70
Supporting document is not under the name of the Bank nor its employees (addressee is "cash"/ blank	537,456.37	53,384.80
Supporting document is under the name of the Bank	7,039,976.36	1,630,292.14
Supporting document is in the name of another person (other than the employee claiming the expense)	362,919.59	62,615.91
Supporting document is not dated within the period (i.e., 1996 and 1997	13,404.00	423,199.07
Date/year of transaction is not indicated	31,510.00	26,126.49
Amount is not supported by liquidation document(s)	313,319.09	935,044.28
TOTAL	**P 9,228,892.97**	**P 4,979,703.39**

Based on the above report, only the expenses in the name of petitioner's employee and those under its name can be given credence. Therefore, the following expenses are valid expenses for income tax purposes:

	1996	1997
Supporting document is under the name of the employee	P 1,849,040.70	P 930,307.56
Supporting document is under the name of the Bank	1,630,292.14	7,039,976.36
TOTAL	**P 3,479,332.84**	**P7,970,283.92**

Consequently, petitioner is still liable for the amounts of P167,384.97 and P397,157.70 representing deficiency withholding taxes on compensation for the respective years of 1996 and 1997, computed as follows:

	1996	1997
Total Disallowed Accrued Bonus	P 3,879,407.85	P 9,004,402.63
Less: Substantiated		
Reimbursement of Expense	3,479,332.84	7,970,283.92
Unsubstantiated	P 400,075.01	P 1,034,119.43
Tax Rate	26.48%	27.83%
Basic Withholding Tax Due Thereon	P 105,939.86	P 287,795.44
Interest (Sec. 249)	61,445.11	109,362.26
Deficiency Withholding Tax on Compensation	P 167,384.97	P 397,157.70”

Second Issue:
Deficiency Onshore Tax

Petitioner claims that there is no deficiency onshore tax for the simple reason that all taxes due on onshore interest income had been withheld and remitted to the BIR. Citing *Sections 50 and 51 of the 1977*

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Tax Code, petitioner maintains that the 10% onshore tax is collected in the form of final withholding tax and is to be paid and remitted to the BIR by the payor-borrower, and not by the petitioner. That the payor-borrower is directly liable for the payment of onshore tax has always been the rule since the promulgation of *P.D. 1034 and P.D. 1035*, as clearly evident from *Section 5(b) of R.R. No. 10-76, as amended by R.R. No. 14-77.* Said Section states that the payee need not include the onshore income in the quarterly income tax return to be filed, as the income payor is constituted as the withholding agent charged with the obligation of deducting, withholding and remittance to the Commissioner of Internal Revenue the income tax due thereon.

Petitioner further argues that the payment of the onshore tax to the BIR is a direct obligation and/or liability of the payor-borrower and the payee-bank cannot therefore be held liable for failure on the part of the payor-borrower to remit the tax to the BIR. Thus, in case of his failure to withhold the tax, as in case of under withholding, the deficiency tax shall be collected from the payor-borrower.

We are not persuaded.

While it is true that the payor-borrower is the one constituted by the law to withhold and remit the 10% tax on onshore income, the obligation of paying the 10% final tax on onshore income rests on petitioner being the one directly liable for it, pursuant to *Section 24(e)(3) of the National Internal Revenue Code of 1993, as amended.*

Thus, the Division correctly ruled:

> "In the case of Commissioner of Internal Revenue vs. The Court of Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999, the Supreme Court elucidated the operation of the withholding tax system, viz:
>
> > '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 impose (sic) 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 xxx.'

> Indubitably, the law and jurisprudence do not dispense the liability of the taxpayer with respect to the payment of 10% final tax on onshore income if the withholding agent fails to deduct and remit the same to the Bureau of Internal Revenue. After all, it is the taxpayer who earns the income. Truly, the obligation to pay the 10% onshore tax lies with petitioner because the onshore income was obviously earned by it."

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

In the Traders Royal Bank case promulgated on April 28, 2004 resolving the same issue raised in this petition, this Court subjected the Special Savings Account Deposit or Mega Savings Deposit of said bank to DST in accordance with *Section 180 of the Tax Code*. In the said case, the Division ratiocinated "that for a depositor under a Special Savings Account Deposit or Mega Savings Deposit to be able to avail of the higher rate of interest offered by said kinds of deposit, the money should have been kept by the bank for a period of not less than thirty (30) days (xxx); otherwise, the deposit earns interest pertaining to a regular savings deposit which is comparatively smaller."

Petitioner claims that the foregoing features of the Traders Royal Bank's Special Savings Account Deposit or Mega Savings Deposit, which led the Court to subject the same to DST under *Section 180 of the Tax Code*, are not present in petitioner's SSA.

Petitioner further points out that the record is bereft of any evidence showing that the deposit has to be kept by the petitioner (as a bank) for a period of not less than thirty (30) days in order for the depositors to avail of the higher rate of interest. Quite the contrary, the evidence on record shows that petitioner's SSAs were withdrawable anytime on demand and without any stipulation for the reduction of interest rate or penalty if withdrawn before thirty (30) days (*Exhibit "S"*).

Petitioner claims that the Deposit Confirmation Advice (*Exhibit "S"*) it issued to depositors cannot be considered as a certificate of deposit within the contemplation of *Section 180 of the Tax Code*. Unlike the Certificate of Deposit, the Deposit Confirmation Advice does not contain a promise to pay the depositor, to the order of the depositor, or to some other person or his order. As such, the Deposit Confirmation Advice is not subject to DST. Considering that *Section 180 of the 1977 Tax Code* refers specifically to certificates of deposit, the aforesaid section shall be interpreted as one that taxes certificates of deposit bearing interest.

We sustain the findings of the Division.

Section 180 of the National Internal Revenue Code 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."**

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

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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).

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 vs. First Metro Investment Corp., G.R. No. 132390, May 21, 2004, citing 10 Am. Jur. 2d., p. 652*). 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.

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

In both the time deposit and petitioner's SSA, the deposit may be withdrawn anytime, but the depositor gets to earn a high 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 Deposit Confirmation Advice (*Exhibit "S"*), the time deposit is evidenced by a certificate of time deposit. Nonetheless, the fact that petitioner's SSA is evidenced by a Deposit Confirmation Advice and not by a certificate of 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 Cc., 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 National Internal Revenue Code 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

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