REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PHILIPPINE VETERANS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7034

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:

NOV 19 2007; 1:00 PM

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DECISION

BAUTISTA, J.:

This "Petition for Review with Prayer for Suspension of Collection" is seeking the nullification of the Final Decision of the Commissioner of Internal Revenue dated June 22, 2004, which found Philippine Veterans Bank liable for Documentary Stamp Tax (DST) for calendar year ending December 31, 2000 on its Special Savings Deposits amounting to P154,308,636.36, inclusive of interests.

Philippine Veterans Bank (Petitioner) is a commercial banking institution organized and existing under and by virtue of the laws of the Republic of Philippines,

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with principal office address at PVB Building, 101 V.A. Rufino cor. Dela Rosa Sts., Legaspi Village, Makati City.[1]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with office address at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.[2]

On April 25, 2002, Revenue Officers Edison O. Larin, Corazon Balinas, and Exaida Comitan were tasked to examine the books of accounts of petitioner through Audit Notice/Letter of Authority[3] No. 116000671704 for all of petitioner's internal revenue taxes for the period of January 1, 2000 to December 31, 2000.

During the first semester of calendar year 2003, the BIR, through Assistant Commissioner Edwin R. Abella issued a letter[4] dated April 30, 2003, requesting petitioner for an informal conference to discuss the initial findings of the BIR regarding its deficiency taxes. And on May 22, 2003, a conference with the officers of petitioner was held.

On August 28, 2005, a Memorandum Report[5] was submitted to Deputy Commissioner Estelita C. Aguirre reporting on the result of the investigation pursuant to Audit Notice No. 116000671704, which confirmed the previous finding of deficiency Documentary Stamp Taxes of petitioner's Special Savings Deposits (SSDs).

[1] Par. 1, Joint stipulation of Facts, Docket, p. 110.
[2] Par. 2, Joint Stipulation of Facts, Docket, p. 111.
[3] BIR Records, p. 1.
[4] BIR Records, p. 451.
[5] Exhibit "2," BIR Records, pp. 553-558.

On February 11, 2004, a Preliminary Assessment Notice[6] was issued assessing petitioner for deficiency DST in the amount of P137,756,156.95, among other tax liabilities.

Another Memorandum Report[7] dated March 9, 2004 was issued adjusting the liability of petitioner on its SSDs to P149,021,725.02.[8] Then, on April 21, 2004, respondent, through his Deputy Commissioner Estelita C. Aguirre, demanded payment from petitioner for the assessed DST on its SSDs via Formal Letter of Demand dated March 10, 2004, in the amount of P149,021,725.02, broken down as follows: [9]

Account Name	Tax Provision	Rate		Amount		Tax Due
Special Savings	Sec. 180	15%				
Private			P	5,462,345,025.81	P	8,193,517.54
Banks				966,580,212.75		1,449,870.32
Government				3,046,862,349.13		4,570,293.52
Trust				50,640,182,388.04		75,960,273.58
Basic Tax Due					P	90,173,954.96
Add:Interest						58,847,770.06
TOTAL Tax Due					***P***	***149,021,725.02***

Thereafter, petitioner filed a protest[10] on May 6, 2004, alleging that: (1) its SSDs are totally different from Time Deposits and should not be treated the same; (2) SSDs are payable on sight or demand, hence, specifically excluded from DST under Sec. 180 of the Tax Code; (3) the recent enactment of Republic Act (RA) No. 9243 clearly shows that under the Tax Code of 1997, SSDs are not subject to DST; and (4) assuming *arguendo* that petitioner is liable for the assessed tax deficiency, the computation made by the examiner is erroneous.

[6] BIR Records, p. 565.
[7] Exhibit "3", BIR Records, pp. 773-788.
[8] Exhibit "1," Docket, pp. 297-298.
[9] Paragraph 4, Joint Stipulation of Facts, Docket, p. 111; BIR Records, p. 827.
[10] Paragraph 5, Joint Stipulation of Facts, Docket, pp. 111-112; Exhibit "B," Docket, p. 200.

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In response to petitioner's protest letter, the BIR again authorized Revenue Officer Larin to conduct a reinvestigation via a Tax Verification Notice[11] (TVN) dated June 8, 2004. On July 13, 2004, petitioner received a copy of the Decision of the Commissioner dated June 22, 2004, finding petitioner liable for deficiency DST in the amount of P154,308,636.36, inclusive of interests.[12] The amount due is computed in the following manner:

Account Name	Tax Provision	Rate		Amount		Tax Due
Special Savings	Sec. 180	15%				
Private			P	5,462,345,025.81	P	8,193,517.54
Banks				966,580,212.75		1,449,870.32
Government				3,046,862,349.13		4,570,293.52
Trust				50,640,182,388.04		75,960,273.58
Basic Tax Due					P	90,173,954.96
Add:Interest						64,134,681.40
TOTAL Tax Due					***P***	***154,308,636.36***

Aggrieved by respondent's Decision, petitioner filed the instant Petition for Review on August 12, 2004, raising the following arguments[13]:

> "1. There is a clear violation of due process. Petitioner had not been granted ample opportunity to spell out its arguments particularly on the computation of the tax base while it was waiting for Revenue Officer Edison O. Larin to conduct a reinvestigation, respondent Commissioner suddenly issued the questioned decision dated June 22, 2004.
>
> 2. The Special Savings Accounts of herein petitioner are not among the documents covered under Section 180 of the NIRC of 1997 hence, not subject to DST.
>
> 3. The subsequent enactment of RA 9243 which specifically incorporates transactions in the nature of Special Savings Deposits (SSDs) is a clear indication that indeed, under the 1997 Tax Code and previous tax codes, SSDs are NOT subject to documentary stamp tax."

[11] Paragraph 6, Joint Stipulation of Facts, Docket, p. 112; Exhibit "C", Docket, p. 202.
[12] Petition for Review, Docket, p. 4.
[13] Petition for Review, Docket, p. 5.

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In his Answer[14], respondent countered, *inter alia*, that there was no denial of due process. From the time of petitioner's request for reinvestigation in May 6, 2004, up to one and a half months later, petitioner's position paper and supporting documents were considered. It was only on June 22, 2004 when the Final Decision on the deficiency DST was issued after due review of pertinent records and documents.[15] Respondent, in answer to petitioner's claim that its SSDs are not among the documents covered under Section 180 of the 1997 Tax Code, cited the case of **BPI Family Savings Bank vs. Commissioner of Internal Revenue and Court of Tax Appeals**[16], where the Court of Appeals defined the elements of a "certificate of deposit", namely: (1) that a bank receives money on deposit; (2) from one who is considered a "depositor"; (3) that the bank acknowledges receipt of the deposit in writing; and (4) that the bank promises to pay the depositor/bearer/some other person or order, the deposit or any part thereof. He alleged that the passbook of the SSD contain all these stipulations; hence, the SSD falls within the definition of a "certificate of deposit."[17] Likewise, respondent explained that the express inclusion of SSDs within the ambit of now Section 179 does not mean that it was excluded prior to the effectivity of RA 9243. The new phrase merely settled a long standing industry dispute which conclusively included SSDs within the definition of "certificate of deposits."[18]

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[14] Docket, pp. 80-86.
[15] Par. 4, Answer, Docket, p. 81.
[16] CA-G.R. SP No. 29853, September 19, 1994.
[17] Answer, Pars. 6-8, Docket, pp. 82-83.
[18] Answer, Par. 12, Docket, p. 84.

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During the hearing, both parties presented various testimonial and documentary evidence. Petitioner, however, waived his right to cross examine respondent's lone witness, making his testimony conclusive upon this Court.[19]

On March 26, 2007, in its hopes of availing the BIR Abatement Program, petitioner filed a "Motion to Allow BIR to Conduct Re-Computation of Basic Tax Liability"[20] to determine its true tax deficiency. The Court issued a Resolution denying the request for re-computation on the reasoning that this issue was raised for the first time on appeal contrary to the doctrine of exhaustion of administration remedies.[21]

After submission by respondent of his Memorandum on May 4, 2007, the case was deemed submitted for decision on August 13, 2007, absent petitioner's Memorandum.[22]

The issues,[23] jointly stipulated by the parties for this Court's resolution, are as follows:

> "1. Whether or not PVB's Special Savings Accounts are subject to documentary stamp tax under Section 180 of the 1997 Tax Code.
>
> 2. Whether or not petitioner is liable for the amount of P154,308,636.36 representing deficiency documentary stamp taxes for taxable year 2000.
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> 3. Whether or not there was a violation of due process.
>
> 4. Whether or not PVB's SSAs are payable on sight or demand.
>
> 5. Whether or not PVB's passbooks in SSA's are considered certificates of deposits.

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[19] TSN, November 23, 2006, pp. 13-14.
[20] Docket, pp. 310-312.
[21] Docket, pp. 348-349.
[22] Docket, p. 350.
[23] Joint Stipulation Facts, Docket, pp. 112-113.

6. Whether or not the subsequent passage of R.A. 9243 makes a clear indication that prior to the enactment of the law, SSAs are not yet subject to documentary stamp tax.

7. Whether or not the assessed amount is correct and accurate."

The first, second, fourth, and fifth issues will be discussed together inasmuch as they relate to the same question of whether or not petitioner's Special Savings Deposit is subject to Documentary Stamp Tax under Section 180 of the 1997 Tax Code.

This issue is no longer of first impression. No other than the Supreme Court recently settled that SSD is similar to a time deposit subject to DST when it sustained this Court sitting *En Banc* in the case of **Banco De Oro Universal Bank vs. Commissioner of Internal Revenue**[24], the pertinent portion of the Decision is hereby quoted, thus:

> "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 the 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 prescribed the form of a certificate of deposit. It may be any written acknowledgement 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."

The High Tribunal made a similar pronouncement in the recent case of **International Exchange Bank vs. Commissioner of Internal Revenue,**[25]

[24] GR No. 173602, January 15, 2007.
[25] GR No. 171266, April 4, 2007.

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where the Supreme Court again sustained the Decision of this Court *En Banc* on the issue, the relevant part of which is hereunder quoted, to wit:

> "As correctly ruled by the CTA En Banc, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.
>
> A document to be deemed a certificate of deposit requires no specific form as long as there is some written memorandum that the bank accepted a deposit of a sum of money from a depositor. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance, not form, is paramount.
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> xxx
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> As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidence by a passbook, and that based on the legislative deliberations on the bill which was to become R.A. 9243 which amended Section 180 of the NIRC (which is to a large extent the same as Section 180 of the Tax Code, as amended by R.A. 7660), Congress admitted that deposits evidenced by passbooks which have features akin to time deposits are not subject to DST, the same does not lie."

In the case at bar, when petitioner's client has Special Savings Deposit, he is issued a passbook serving as a record of his funds and their movement. As already explained by this Court in the case of **Philippine Banking Corporation vs. Commissioner of Internal Revenue**, that *as long as there is some written memorandum of the fact that the bank accepted a deposit of a sum of money from a depositor, the writing constitutes a certificate of deposit. Hence, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.*[26]

[26] Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA EB No. 63 (CTA Case No. 6395) November 23, 2005.

Admittedly, petitioner's Special Savings Deposit is not labeled as a "time deposit". However, the Court cannot ignore the fact that it has the same features as that of a time deposit. 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. In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificates of deposit or time deposits usually carry penalties for early withdrawals[27]. Summarizing the definition, it appears that a time deposit bears an interest for a fixed term and it cannot be withdrawn before maturity, otherwise there would be a corresponding penalty.

The deposits of money in petitioner's SSDs are withdrawable anytime and have no maturity. However, as correctly argued by respondent, the depositor would forfeit the higher interest rate for SSD if the deposit is withdrawn before the expiration of the holding period and the maintaining balance fell below the required minimum deposit.

In examining the passbook of petitioner, respondent in the direct examination of Revenue Officer Larin showed that SSDs have a fixed term and is subject to penalty in case of termination before maturity. The excerpt of Mr. Larin's tesimony is as follows:[28]

"**ATTY. VIRTUDES:**

Q. Mr. Witness, in your Affidavit, you mentioned that a premium savings account is a kind of a time deposit. What made you say this, Mr. Witness?

[27] Black's Law Dictionary, 6th Edition.
[28] TSN, November 23, 2006, pp. 12-13; Exhibits "4," "5," "6," BIR Records, pp. 286-288.

MR. LARIN:

A. You Honors, based on the addendum to the Passbook Savings Account it clearly states that, If I may be allowed to read it Your Honors. "Premium Savings Account No. (Blank), Passbook Serial No. (blank), in addition to the standard provision of the Philippine Veterans Bank and applicable laws of Central Bank. Circulars on savings deposit now hereinafter in effect, subject savings account shall be governed by the following special interest rate: **The deposit in this Passbook of (blank) in the amount of (blank) shall earn interest at the rate of (blank) per annum provided the amount is not withdrawn for a period of (blank) or until (blank). It is understood however, that the special rate will not apply if the minimum deposit balance and or period of deposit agreed above is not complied with. In which case, the prevailing regular savings rate shall apply**." (*Emphasis supplied*)

Petitioner's witness and employee, Ms. Maritha Vargas, also made the following testimony:[29]

"**ATTY. VIRTUDES:**

Q. Now in your Affidavit, you stated that a Special Savings Deposit earns a relatively higher interest than a regular savings deposit. What is the interest rate for special savings deposit?

MS. VARGAS:

A. Around four (4%) percent.

ATTY. VIRTUDES:

Q. And for ordinary savings deposit?

MS. VARGAS:

A. One (1%) percent.

xxx xxx xxx

[29] TSN, June 29, 2006, pp. 10, 12-14.

ATTY. VIRTUDES:

Q. So, there's a holding period in order to avail of the 4% interest rate?

MS. VARGAS:

A. That is one of the conditions which a special savings account, it would be subjected to a higher maintaining balance and higher interest rate, if ever there will be a withdrawal, you cannot get the original interest rate of 4% instead you will be getting the regular interest rate.

ATTY. VIRTUDES:

Q. So the interest will be lower?

MS. VARGAS:

A. Yes Ma'am." (*Emphasis supplied*)

Clearly, this is similar to having a maturity date and the penalty for early withdrawal is under the guise of a reduction in the interest, which the deposit may earn, if not for the early withdrawal. Obviously the right of the depositor is constrained. These are features which are prevalent in a time deposit, bring SSDs within the purview of "certificate of deposit".

The fact that a passbook evidences petitioner's SSD is immaterial. 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.[30] This Court cannot allow the practice of banks in labeling their deposit account subject to DST as SSD or any other name in order to avoid tax liabilities.

[30] L.R. Heat Treating Co., 28 TC 874; BPI vs. CIR, et al, CA-GR SP No. 29853, September 19, 1994.

Anent petitioner's claim that since SSDs are not payable on sight or demand, *viz.* not negotiable, thus, it is not a certificate of deposit, the High Tribunal has the following answer:

> **"Contrary to petitioner's claim, not all certificates of deposit are negotiable. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction or, instead of and, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order.**
>
> **In any event, the negotiable character of any and all documents under Section 180 is immaterial for purposes of imposing DST.**
>
> Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date." (*Emphasis supplied*)

The Court will now address the sixth issue.

Petitioner contends that the enactment of R.A. 9243 indicates that prior thereto, SSDs are not subject to DST.

The High Court had also explained that the enactment of R.A. 9243 merely confirmed the liability of SSDs for DST in the case of **International Exchange Bank vs. Commissioner of Internal Revenue**[31], in this wise:

> **"The further amendment of Section 180 of the NIRC and its renumbering as Section 179 by R.A. 9243**, which was approved on February 17, 2004, viz:
>
> xxx
>
> **does not mean that as proffered, prior to its further amendment on said date, Section 180 of the Tax Code and the NIRC time deposits for which passbooks were issued were exempted from payment of DST.**

[31] *Supra.*

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> **If at all, the further amendment was intended to eliminate precisely the scheme used by banks of issuing passbooks to "cloak" its time deposits as regular savings deposits.** This is reflected from the following 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. 9243: xxx" (*Emphasis supplied*)

As regards the allegation that there was violation of due process, the Court is constrained to disagree.

The essence of due process is opportunity to be heard. Provided that a party is given the opportunity to defend himself, there is compliance with this constitutional right. Where he is given the chance to present evidence on his behalf, his right is amply protected.

A perusal of the records of the case reveals that as early as the year 2002, petitioner bank was issued a Letter of Authority[32] informing that Revenue Officer Larin will be conducting an investigation of their records and financial statements. Petitioner was likewise invited to an informal conference where a discussion of its tax deficiency was conducted.[33] Several requests for presentation of records also appear on record.[34] In addition, petitioner was served Preliminary Assessment Notice, Final Demand, and Final Decision on its tax deficiency.[35] Consequently, on this issue, the Court rules that more than ample notices and opportunities to be heard were given to petitioner.

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[32] BIR Records, p. 1.
[33] BIR Records p. 451.
[34] BIR Records, p. 235.
[35] BIR Records, pp. 565, 827, 858.

Finally, on the issue of accuracy and correctness of the amount assessed, petitioner contends that respondent erred in considering trust accounts as similar to time deposit, which effectively, included them as subject to the DST assessment.

This Court had resolved this matter in the case of **Traders Royal Bank vs. Commissioner of Internal Revenue**[36]; explaining that the relationship of the parties in trust accounts is that of a trustor-trustee as described in the Civil Code, and not that of a creditor-debtor, similar to that governing depositors and banks. Given this type of relationship, trust accounts are different from time deposits and/or SSDs; hence, not required to pay DST. The pertinent portions of the ruling are hereunder quoted for ready reference, to wit:

> "A Trust Indenture Agreement has a different feature and concept from a certificate of deposit. When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture. The yield or return of investment is higher and varies depending on the actual profit earned. In some trust agreements, a depositor may even get a negative return of investment. The fact that there is an "expected rate of return" does not necessarily convert a trust agreement into a time deposit. Under Section X407 of the Manual of Regulations for Banks it is provided that "the basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment."

Although tax assessments are presumed correct and done in good faith and that the burden to prove otherwise dwells upon the one claiming its irregularity or factual error; this principle will not apply where the inclusion of trust agreements in assessment for deficiency DST is in question. Since it is settled that trust accounts are not subject to DST, to this extent, the Court decides in favor of petitioner.

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[36] CTA Case No. 6392, April 28, 2004.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment for deficiency DST on petitioner's trust accounts is deemed **CANCELLED**, but the assessment for deficiency DST on its Special Savings Deposits of private, bank, and government accounts are **AFFIRMED**.

Accordingly, petitioner is hereby **ORDERED to PAY** the following deficiency assessment:

Account Name	Tax Provision	Rate		Amount		Tax Due
Special Savings	Sec. 180	15%				
Private			P	5,462,345,025.81	P	8,193,517.54
Banks				966,580,212.75		1,449,870.32
Government				3,046,862,349.13		4,570,293.52
Basic Tax Due					P	14,213,681.38
Surcharge	Sec. 248	25%				3,553,420.35
Add:Interest						10,109,237.50
TOTAL Tax Due					***P***	***27,876,339.22***

Likewise, petitioner is hereby **ORDERED to PAY** an additional 20% delinquency interest on P27,876,339.22, computed from June 13, 2007 until fully paid, pursuant to Section 249 of the 1997 Tax Code, as amended.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division