REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SOLIDBANK CORPORATION (now FIRST METRO INVESTMENT CORPORATION),
Petitioner,

-versus-

THE COMMISSIONER OF INTERNAL REVENUE and BUREAU OF INTERNAL REVENUE,
Respondents.

C.T.A. E.B. NO. 198
(C.T.A. CASE NO. 6889)

Present:

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

Promulgated:

NOV 20 2006 *Apolinario*

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Another case involving the issue on whether petitioner's Solid Savings Plus Account (hereafter "SSPA") which is a special savings deposit is subject to documentary stamp tax (hereafter "DST") is presented before the Court. The instant case is illustrative of the predicament in comprehending the nature of a special savings deposit.

THE CASE

This issue is again before Us in this Petition For Review filed by Solidbank Corporation (now First Metro Investment Corporation, 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, as amended*, which seeks the reversal of the Decision dated March 28, 2006 and Resolution dated July 11, 2006 issued by the First Division of this Court in C.T.A. Case No. 6889, the respective dispositive portions of which read:

> "**IN VIEW OF THE FOREGOING**, the Petition for Review is hereby **DENIED**. The subject Decision of the respondent Commissioner of Internal Revenue dated November 27, 2003 assessing petitioner of deficiency documentary stamp tax is hereby **AFFIRMED**.
>
> Accordingly, petitioner is hereby **ORDERED to PAY** the respondents the reduced amount of P7,471,690.47 [P7,496,690.47 – P25,000.00 (compromise realty)] plus 25% surcharge and 20% delinquency interest from March 13, 2004 until fully paid pursuant to Sections 248 and 249 of the National Internal Revenue Code of 1997.
>
> **SO ORDERED.**"
>
> "**WHEREFORE**, finding no justifiable reason to overturn Our Decision of March 28, 2006, petitioner's

Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

The facts of the case are undisputed.

Petitioner is a corporation duly organized and existing under the laws of the Philippines, with business address at the 20th Floor, G.T. tower International, Ayala Avenue corner H.V. de la Costa Street, Makati City. Respondents Commissioner of Internal Revenue and Bureau of Internal Revenue are the government official and bureau, respectively,charged with the duty of assessing and collecting taxes on documentary stamps, among others.

On September 11, 2002, petitioner received from respondent bureau a Formal Letter of Demand (Assessment No. DST-99-000019) assessing it of deficiency documentary stamp tax on its solid Savings Plus Accounts (SPAs), in the amount of P7,496,690.47 for the taxable year 1999 dated August 28, 2002.

On September 24, 2002, petitioner administratively protested the said assessment which respondent Commissioner denied in his decision dated November 27, 2003, a copy of which was received by petitioner on February 11, 2004.

On January 29, 2004, petitioner received from respondents a final Notice Before Seizure dated January 20, 2004 reiterating the demand for the payment of deficiency documentary stamp tax for the year 1999 under Assessment Notice No. DST 99-000016.

On March 12, 2004, petitioner filed a Petition For Review with this Court, docketed as C.T.A Case No. 6889.

In his Answer, respondent Commissioner of Internal Revenue alleged by way of special and affirmative defenses:

> "xxx xxx.
>
> 14. Petitioner's SSPAs are considered time deposits and are subject to documentary stamp tax (DST) under Section 180 of the National Internal Revenue Code of 1997 (United Overseas Bank of the Philippines vs. CIR, CTA Case No. 6421, April 21, 2004).
>
> 15. In the case of BPI-Family Savings Bank vs. CIR & CTA, CA-G.R. No. SP 29853, September 19, 1994, the Court of Appeals, in interpreting the provision of Section 180 of the NIRC, named with particularity the instruments subject to DST. Said the Court:
>
> 'A perusal of Section 180 of the Tax Code will show that it is [*sic*] covers the following instruments:

Qul

399

(1) promissory note, whether negotiable or not;
(2) bills of exchange;
(3) drafts;
(4) certificates of deposit; and
(5) debt instruments used for deposit substitutes.'

16. A 'certificate of deposit' as defined in the BPI-Family Bank case is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order (Olsons Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op. cit., p. 44)

17. Fragmenting the essential elements of the aforestated definition, it can be inferred that a certificate of deposit presupposes;
1. That a bank receives money on deposit;
2. From someone who is considered a 'depositor';
3. That the bank acknowledges receipt of the deposit in writing;
4. That the bank promises to pay to the depositor/bearer/or to some other person or order the deposit or any part thereof.

Having met all the above-mentioned technical requirements, SSPA of petitioner is unmistakably a 'certificate of deposit' for which taxability to DST lies.

18. The 'certificate of deposit' stated in Section 180 does not prescribe any particular form. The fact that the SSPA is evidenced by a passbook similar to those issued to the regular savings account, instead of a certificate of deposit does not alter the substance of the SSPA. What is 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 rather than its form.

19. Assuming arguendo that the SSPA is not a certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of creditor and debtor (Gullas vs. PNB, 62 Phil. 519; Integrated Realty Corp. vs. PNB, 124 SCRA 295). As such, it is subject to DST under Section 180 of the Tax Code.

20. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397) and failure to do so shall vest legality to respondent's actions and assessments."

After trial on the merits, the First Division rendered the assailed decision on March 26, 2006, denying the Petition For Review.

Not satisfied, petitioner moved for a reconsideration of the same, which the First Division denied in its Resolution dated July 11, 2006.

Hence, this Petition For Review, raising the following:

ISSUES

I

THE LAW AND REGULATIONS IN FORCE IN 1999 WERE AMBIGUOUS AS TO WHAT CONSTITUTED A "CERTIFICATE OF DEPOSIT DRAWING INTEREST".

II

IN 1999, PETITIONER'S SSPA DID NOT FALL UNDER THE SCOPE OF A "CERTIFICATE OF DEPOSIT DRAWING INTEREST" FOR THE FOLLOWING REASONS:

i. PETITIONER'S SSPA PASSBOOK IS NOT PAYABLE TO BEARER OR TO SOME OTHER PERSON OR ORDER.

ii. PETITIONER'S SSPA DOES NOT HAVE A HOLDING PERIOD AND ALLOWS WITHDRAWALS WITHOUT THE CONSEQUENCE OF PRE-TERMINATION OF THE ACCOUNT.

III

CONGRESS EXPRESSLY ADMITTED THAT SENATE BILL NO. 2518 WAS INTENDED TO CAPTURE SPECIAL SAVINGS ACCOUNTS "NOT YET WITHIN THE AMBIT" OF THE PREVIOUS LAW.

IV

THE INTEREST RATE CRITERION INTRODUCED BY SECTION 5, REPUBLIC ACT NO. 9243 CANNOT BE APPLIED RETROSPECTIVELY.

402

V

THE ACCEPTANCE BY THE BANGKO SENTRAL NG PILIPINAS OF PETITIONER'S CLASSIFICATION OF THE SSPA AS "SAVINGS DEPOSIT" SHOULD BE ACCORDED WEIGHT IN THE ABSENCE OF CONTROVERTING EVIDENCE.

On September 12, 2006, without necessarily giving due course to the petition, We required the respondents to file their comment thereto.

On September 20, 2006, the respondent filed his "Comment (Re: Petition For Review)".

Hence, the petition is now deemed submitted for resolution.

Principal Issue

The principal issue posed for resolution by this Court *En Banc* is whether petitioner's Solid Savings Plus Account is subject to DST under *Section 180 of the NIRC of 1997, as amended.*

There is nothing novel in this case as the principal issue raised herein had, in a long line of cases, been previously ruled by this Court in the affirmative.

Petitioner's Arguments

Petitioner claims that the law and regulations in force in 1999 were ambiguous as to what constituted a certificate of deposit drawing interest. The law did not define the phrase "certificate of deposit drawing interest". The revenue authority did not issue any regulation to clarify what the phrase meant or provide guidelines in determining what constituted a "certificate of deposit drawing interest". Because of said omission, taxpayers were not clearly and expressly apprised about what was not subject to the tax.

Petitioner further points out that its SSPA passbook is not payable to bearer or to some other person or order. Petitioner's passbook is a "book issued by a bank to an account-holder recording sums deposited and withdrawn (*p. 111, Complete Wordfinder, Reader's Digest Oxford, 1994*) precisely because the depositor is allowed to make additional deposits and withdrawals from the account". Unlike a time deposit which has no subsequent depositors activity, the SSPA required a record of subsequent deposits and/or withdrawals. The medium used was a passbook, and not a certificate, because a passbook fulfilled the functional requirement of recording subsequent transactions.

It further asserts that its SSPA does not provide a holding period, and allows withdrawals without the consequence of pre-termination. The SSPA depositor is not contractedly obligated to maintain the amount of the deposit during the 30-day period. Thus, the 30-day period is not a holding period.

Petitioner further claims that the First Division disregarded the admission of Congress that bank products like petitioner's SSPA were not previously within the ambit of tax laws and regulations.

It further maintains that the acceptance by the Bangko Sentral ng Pilipinas of petitioner's classification of the SSPA as a "savings deposit" should be accorded weight in the absence of controverting evidence.

Respondents' Arguments

Respondents, on the other hand, argue that it is beyond doubt that what being taxed under *Section 180 of the Tax Code* is not just a time deposit certificate, but a certificate of deposit. Otherwise, said provision would have a restricted and limited application. Accordingly, a certificate of deposit should not be construed as synonymous with a time deposit certificate. The latter is a mere genus or sample of the former.

He further asserts that to put forth the argument that the SSPA is evidenced by a passbook and not a certificate, is therefore not taxable, is contrary to Philippine tax law and sound legal principles. Seen in its totality and taking into consideration the substantial features of a time deposit, one can readily unveil that the SSPA is nothing more than a time deposit product written on a passbook. First, it is petitioner's contention that in an SSPA, the money placed can be withdrawn anytime. This is only half the picture. The money placed is subject to a holding period. In order to earn interest at the preferential rate, the depositor must agree that the bank will "hold" the money within the agreed period. Being a SSPA, the money deposited will be locked up for a definite time. Second, in order to qualify as an SSPA, the depositor must place a substantial amount of money amounting to not less than P50,000.00. Aside from the substantial amount of money required, the said amount must be maintained within a certain period. If we accept petitioner's argument, there will be an absurd situation where opening a savings account is more burdensome than opening a time deposit.

THE COURT *EN BANC's* RULING

The petition is without merit.

Section 180 of the NIRC of 1997, as amended, provides:

> "SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on sight or Demand.* – On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise that at sight or on demand, 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 Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided*, *however*, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his

ave

407

> purchase on installment for his personal use or that of his family and not for business, resale, barter or hire a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

A perusal of the above-quoted *Section 180* will show that it covers the following instruments:

1) bonds;
2) loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines;
3) bills of exchange (between points within the Philippines);
4) drafts, instruments and securities issued by the government or any of its instrumentalities;
5) deposit substitute debt instruments;
6) certificates of deposits drawing interest;
7) orders for the payment of any sum of money otherwise than at sight or on demand;
8) on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation; and
9) on each renewal of any such note.

From the foregoing, it is clear that the law subjects a "certificate of deposit" to the payment of documentary stamp tax. As defined, a documentary stamp tax is an excise tax upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto. The law taxes the document because of the transaction (*J. Vitug and E. Acosta, Tax Law and Jurisprudence, 2nd ed., p. 274*). It is not imposed upon the business transacted, but is an excise upon the privilege, the opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself (*Lincoln Philippine Life Insurance Company, Inc. vs. Court of Appeals and Commissioner of Internal Revenue, 293 SCRA 99*). What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

In *Far East Bank and Trust Company vs. Querimit, 373 SCRA 671*, the Supreme Court defined a certificate of deposit as follows:

> "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 xxx."

From the foregoing definition of a certificate of deposit, the Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. The Supreme Court used the term "written acknowledgment" which means that for as long as there is some written memorandum of the fact that the bank accepted 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.

In this regard, petitioner's contention that the First Division of this Court retroactively applied *Far East Bank and Trust Company vs. Querimit* (*373 SCRA 665*) and *BPI Family Savings Bank vs. First Metro Investment Corporation* (*429 SCRA 31*), in clear contravention of the principle that judicial interpretations shall be applied prospectively cannot be sustained.

Article 8 of the Civil Code of the Philippines provides:

> "ART. 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Pursuant to the above provision, decisions of the Supreme Court although in themselves not laws, are nevertheless evidence of what the laws mean and this is the reason why under *Article 8 of the New Civil Code,* "Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." The interpretation placed upon a law by the Supreme Court constitutes, in a way, a part of the law as of the date that law was originally passed, since the Court's construction merely established the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim "legis interpretatio legis vim obtinet" – the interpretation placed upon the written law by a competent court has the force of law (*People vs. Jabinal, 55 SCRA 612*).

Clearly, the "certificate of deposit drawing interest" stated in *Section 180* does not prescribe any particular form, nor does it qualify. As defined above, it may be any "written acknowledgment by a bank of the receipt of money on deposit". A certificate of deposit, being a written instrument evidencing transaction between parties, must be considered in the light of the same rule of law as other written instruments.

Hence, a traditional passbook, being a written acknowledgment of the receipt of money as a deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit, subject to DST under *Section 180 of the NIRC of 1997, as amended.*

We also find no merit on the claim that petitioner's SSPA is but a regular savings account and a different transaction from a time deposit. In petitioner's SSPA, the transaction is covered by a special passbook, while in time deposit, it is through a certificate of deposit. However, in both cases, the bank acknowledges the receipt of a sum of money on deposit, which the bank promises to pay to the depositor on a specified period of time. Clearly therefore, the SSPA has the same substance, attributes and qualities of a certificate of deposit. The fact then that petitioner's SSPA is evidenced by a special passbook 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 Co., 28 TC 874*).

It has been held that "in determining whether certain instruments were subject to documentary stamp taxes, substance would control over form and labels". Since the DST is an excise tax "upon documents xxx levied, collected and paid for, and in respect of the transaction so had or accomplished (*Section 173, NIRC of 1997, as amended*), the fact that petitioner's SSPA deposit is evidenced by a passbook is immaterial considering that the rule on legality and uniformity in taxation requires the imposition of DST on documents evidencing transactions of the same kind, in this case on certificates of deposit drawing interest.

Petitioner further claims that its SSPA does not have a holding period and allows withdrawals without consequence of pre-termination of the account. However, it bears stressing that the same holds true also in the case of a time deposit. A depositor is also allowed to withdraw his time deposit prior to the maturity date, subject only to pre-termination charges. In which case, the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining to that of a regular savings deposit. The fact is, in both cases, the deposit may be withdrawn anytime, but the depositor gets a lower rate of interest. The only difference lies on the evidence of deposit. However, as previously stated, the issuance of passbooks, rather than the usual certificates of time deposit, is not controlling to determine the nature of the deposits. Passbooks and certificates are mere evidence of different types of bank deposits. What distinguishes one from the other is not the passbook or the certificate, but the features of each account the banks offer to the public.

We cannot also sustain petitioner's argument that a reading of Senator Ralph G. Recto's sponsorship speech on *Senate Bill No. 2518, the origin of R.A. No. 9243 (An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997)* shows that Congress enacted *R.A. No. 9243* for the purpose of expanding the coverage of the documentary stamp tax by "capturing special savings accounts xxx which is not within the ambit of the law right now". It is basic that the interpretation of statutes is for the courts. Courts utilize minutes of legislative proceedings as an aid in statutory construction in case the provision of law is not clear. In our case, the provision of law can be clearly interpreted by way of literal interpretation.

Petitioner further contends that the acceptance of the Bangko Sentral ng Pilipinas (hereafter "BSP") of petitioner's classification of the SSPA as a "savings deposit" should be accorded weight. Again, We are not persuaded. There is no clear and convincing proof that the BSP indeed prescribed the classification. Admittedly, petitioner prepared said document. Hence, it cannot be implied that by mere acceptance of the said document, the BSP approved said classification. We, therefore, cannot give evidentiary value on the alleged acceptance of such classification.

As atply ruled by the First Division:

> "In **United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA EB No. 31 [CTA Case no. 6411], March 10, 2005,** the Court *En Banc* held in wise:
>
> > 'Hence, a traditional passbook, being written acknowledgment of the receipt of money as a deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit, subject to DST under *Section 180 of the National Internal Revenue Code of 1993, as amended.*
> >
> > We, therefore, find no merit on the claim that the SPA (Savings Plus Account), is but a regular savings account and a different transaction from a time deposit. In petitioner's SPA, the transaction is covered by a special passbook, while in time deposits, it is through a certificate of deposit. However, in both cases, the bank acknowledges the receipt of a sum of money on deposit, which the bank promises to pay to the depositor on a specified period of time. Clearly therefore, the SPA has the same substance, attributes and qualities of a certificate of deposit. The fact then that petitioner's Savings Plus Account is evidenced by a special passbook 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 Co., 28 TC 874)' (Underscoring Ours)*

Further, the Court *En Banc* in **Allied Banking Corporation vs. Guillermo L. Parayno, Jr., in his official capacity as the Commissioner of Internal Revenue, and Eleanor N. Litao, in her official capacity as Chief, LT-Collection and Enforcement Division, Bureau of Internal Revenue, CTA EB No. 69 [CTA Case no. 6565], July 11, 2005** stressed:

'To reiterate, petitioner cannot hide behind mere terminologies to escape from its tax responsibility to the government. What is vital to petitioner's case are the surrounding circumstances capable of overturning the same.

It may be true that a depositor of petitioner's market savings deposit may make a withdrawal at anytime without having to give notice to the petitioner, and unlike that of a time deposit, its market savings deposit does not penalize the depositor but rather offers an incentive for maintaining the deposit for a longer period of time. It is not incomprehensible to conclude that offering an incentive to a depositor for something he has to do is the opposite of penalizing him for something that he ought not to do. In the case of petitioner's market savings deposit, petitioner contends that there is no penalty to speak of considering that the depositor is not obliged to maintain his investment for a specified period of time. Petitioner asserts that there is only an incentive offered to the depositor in cases when he decides to maintain his deposit for a longer period of

416

time. However, in contradiction, petitioner's witness also testified that the depositor, at the beginning of his deposit, is made to agree or choose a period within which he should maintain his deposit (*pp. 20-22, Transcript of Records, August 1, 2003*). By obligating the depositor to choose or agree to a specified period of time within which to maintain his deposit is the same as giving him a maturity date. It is as simple as providing a higher rate of interest if the depositor lets his money stay longer with the bank, that is, giving a maturity date, but, reducing said interest rate to a minimum in case the depositor decides to withdraw his money, or preterminating the said account. The issue on the subject 'penalty' is clear. In both the time deposit and petitioner's market savings deposit accounts, the depositor gets to withdraw his money anytime before the specified term, however, a lower rate of interest is given. The mere fact that a different or a lower rate or interest is given to the depositor in case where he withdraws his money prior to the expiration of the specified period, is a clear case of penalizing the depositor for something he ought not to do.

Further, petitioner's argument that there is no acknowledgment of the receipt of the money or funds on deposit in case of its market savings deposit is untenable. Again, it must be emphasized that for its market savings deposit, it issues a passbook stating the amount of the deposit, the date, the interest and the balance as well as the transaction code which is obviously for the bank's use. The mere fact that it is the bank which prints or types these figures and data, is enough acknowledgment of the funds received from the depositor.' (*Underscoring Ours*)

ac

417

> Applying the foregoing jurisprudence, it is quite clear that for all intents and purposes, petitioner's SSPA is deemed to be of the same nature and substance as that of a certificate of deposit bearing interest. Hence, the Court rules that said special savings account, even if evidenced by a passbook, is subject to DST in accordance with Section 180 of the 1997 NIRC, as amended.
>
> As regards petitioner's argument that the Congress admitted that its SSPA was not within the ambit of Section 180, the same is misplaced. The amendment made on the provision on documentary stamp tax was made precisely to settle the issue of the taxability of all forms of time deposits. It was made so as not to further misinterpret the said provision. **(Keppel Bank Philippines, inc. vs. commissioner of Internal Revenue, CTA EB No. 38 [CTA Case No. 6560], March 18, 2005)**."

For all the foregoing, this Court finds that the appealed decision is not flawed by reversible error, but, on the contrary, conforms to the evidence of record and the applicable law and jurisprudence. We, therefore, affirm the assailed decision dated March 20, 2006 and Resolution dated July 11, 2006.

Having reached the foregoing conclusion, We deem it unnecessary to discuss the other questions raised in this case by petitioner.

918

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

(With Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice

419

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SOLIDBANK CORPORATION (now FIRST METRO INVESTMENT CORPORATION), Petitioner,	CTA EB CASE NO. 198 (CTA CASE No.6889)
-versus-	Members: ACOSTA, CASTAÑEDA BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, *JJ.*
HON. GUILLERMO L. PARAYNO, JR., In his official capacity as the COMMISSIONER OF INTERNAL REVENUE, and the BUREAU OF INTERNAL REVENUE, Respondents.	Promulgated: NOV 2 0 2006 GAApolinario

x- -x

Dissenting Opinion

This is a Petition for Review filed by Solidbank Corporation (now First Metro Investment Corporation) under Section 11 of republic Act No. 9282, in relation to Rule 43 of the 1997 Rules of Civil Procedure, as amended, seeking for the reversal of the Decision dated March 28, 2006 and Resolution dated July 11, 2006 promulgated by the First Division of this Court in CTA Case No. 6889.

In support of the instant Petition for Review, petitioner raised the following issues:

I.

THE LAW AND REGULATIONS IN FORCE IN 1999 WERE AMBIGUOUS AS TO WHAT CONSTITUTED A "CERTIFICATE OF DEPOSIT DRAWING INTEREST".

420

II.

IN 1999, PETITIONER'S **SSPA** DID NOT FALL UNDER THE SCOPE OF A "CERTIFICATE OF DEPOSIT DRAWING INTEREST" FOR THE FOLLOWING REASONS:

i. PETITIONER'S **SSPA** PASSBOOK IS NOT PAYABLE TO BEARER OR TO SOME OTHER PERSON OR ORDER.

ii. PETITIONER'S **SSPA** DOES NOT HAVE A HOLDING PERIOD AND ALLOWS WITHDRAWALS WITHOUT THE CONSEQUENCE OF PRE-TERMINATION OF THE ACCOUNT.

III.

CONGRESS ADMITED THAT SENATE BILL NO. 2518 WAS INTENDED TO CAPTURE SPECIAL SAVINGS ACCOUNTS "NOT YET WITHIN THE AMBIT" OF THE PREVIOUS LAW.

IV.

THE INTEREST RATE CRITERION INTRODUCED BY SECTION 5, REPUBLIC ACT NO. 9243 CANNOT BE APPLIED RETROACTIVELY.

V.

THE ACCEPTANCE BY THE BANGKO SENTRAL NG PILIPINAS OF PETITIONER'S CLASSIFICATION OF THE SSPA AS "SAVINGS DEPOSIT" SHOULD BE ACCORDED GREAT WEIGHT IN THE ABSENCE OF CONTROVERTING EVIDENCE.

With due respect to my esteemed colleagues, I am dissenting with the majority opinion dismissing the instant Petition for Review for lack of merit thus, holding petitioner Solidbank Corporation liable for Deficiency Documentary Stamp Tax on its Solid Savings Plus Accounts (**SSPA**).

It is my opinion that the **SSPA**, unlike a time deposit, has no holding period or maturity date in order to avail a higher interest. A time deposit has a maturity date wherein the parties mutually agree that the bank will pay the depositor the stipulated interest rate only upon the expiration of a definite, fixed and predetermined date. The depositor in a time deposit is bound by the maturity date agreed upon; otherwise, he or she will be penalized by not receiving the high interest as stated in the certificate of deposit. In contrast,

SSPA has no maturity date. The period offered to a prospective **SSPA** depositor is a length of time provided in a schedule of placement, for which a corresponding rate is given. Still, the depositor is at liberty to withdraw his or her deposit at any time upon the presentation of his or her passbook.

SSPA is an innovative product offered by the petitioner to its clients. It is a crossbreed between a regular savings deposit and a time deposit and as such, it contains essential features of both products. This new product offers higher interest rates upon certain conditions similar to a time deposit, but this does not automatically classify it as such.

From the text of Section 180 of the Tax Code, a "certificate of deposit" subject to DST must have the features of a time deposit. A "time deposit", is another term for a savings account or certificate of deposit in a commercial bank. It is so called because in theory (though no longer in practice) a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings. Certificates of deposits usually carry penalties for early withdrawal. Cash in a bank earning interest; contrast with demand deposit (*Black's Law Dictionary, 6th Edition*). Thus, it is incorrect for the respondent to conclude that **SSPA** falls within the definition of a "certificate of deposit" to make it liable for DST.

In a Supreme Court decision, it was held that:

> "The Court takes this occasion to reiterate the hornbook doctrine in the interpretation of the tax laws that "(a) statute will not be construed as imposing a tax unless it does so clearly, expressly, and unambiguously. Xxx (a) tax cannot be imposed without clear and express words for that purpose. Accordingly, the general rule of requiring adherence to the letter in construing statutes applies with peculiar strictness to tax laws and the provisions of a taxing act are not to be extended by implication. Parenthetically, in answering the question of who is subject to tax statutes, it is basic that "in case of doubt, such statutes are to be construed most strongly against the government and in favor of the subject citizens because burdens are not to be imposed nor presumed to be imposed beyond what statutes expressly and clearly import." (*CIR vs. Court of Appeals, Court of Tax Appeals and Ateneo de Manila, 271 SCRA 605*)

422

There must be a law or legislative enactment that mandates the imposition of any tax in order for it to be due and demandable. The legislative intent behind Section 180 of the Tax Code is to include time deposits only as those liable for DST. It is through the introduction of **SSPA** and similar transactions by the banking industry that Congress deemed it necessary to enact a new law to specifically cover the said product within the purview of said law.

Republic Act # 9243, "An Act Rationalizing the Provisions of the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes" was enacted into law on February 17, 2004. Section 5 of the said law reads, as follows:

> "**SEC. 5.** Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:
>
> SEC. 179. **Stamp Tax on All Debt Instruments. –** On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or a fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instrument, <u>certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date</u>, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation."

423

The above-cited law clearly subjects to DST not only time deposits but also *other evidences of deposits that are drawing interest significantly higher than the regular savings deposit taking into consideration the size of deposit and the risks involved.* Under this provision, bank deposits drawing interest higher than the regular savings rate, even though the same may be withdrawn anytime, are subject to DST. The enactment of Section 5 of RA # 9243 settled the conflict between the Office of the Commissioner of Internal Revenue and the banking industry with regard to the imposition of DST on **SSPA** and similar transactions. The fact that Congress amended Section 180 of the Tax Code shows that the old law was inapplicable to the instant case. There was no law before the passage of RA # 9243 subjecting the **SSPA** of the petitioner to DST.

WHEREFORE, premises considered, I vote to **GRANT** the instant Petition for Review.

CAESAR A. CASANOVA
Associate Justice

424