REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

****

RIZAL COMMERCIAL BANKING CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6201

Members:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 15 2004

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DECISION

ACOSTA, E., P.J.:

This Petition for Review seeks for the cancellation of the fourteen (14) deficiency internal revenue tax assessments issued by the respondent against petitioner in the total amount of P4,170,058,634.49 representing deficiency income tax, gross receipts tax, final withholding tax, onshore tax, expanded withholding tax and documentary stamp tax for the calendar years 1994 and 1995.

Petitioner is a corporation duly organized and existing under and by virtue of Philippine Law, with principal office located at No. 333 Gen. Gil Puyat Avenue, Makati

City. It is duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in general banking operations.

For the calendar years 1994 and 1995, petitioner seasonably filed its 1994 and 1995 Corporation Annual Income Tax Returns for Foreign Currency Deposit Unit on April 17, 1995 and April 15, 1996, respectively *(Exhibits BBBBBBB and CCCCCCC).*

On August 15, 1996, petitioner received Letter of Authority No. 133959 authorizing the Special Audit Team composed of Revenue Officers T. Maroket, M. Rosario, A. Rosimo & R. Mendoza to be supervised by Group Head O. Lao to examine its books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 1994 to December 31, 1995 issued by the then Commissioner Liwayway Vinzons-Chato.

On January 23, 1997, petitioner executed two separate Waivers of the Defense of Prescription Under the Statute of Limitations of the National Internal Revenue Code for the examination of the internal revenue taxes for the corresponding years 1994 and 1995 extending the period to assess up to December 31, 2000 *(Annexes B and C).*

On January 27, 2000, petitioner received an undated Formal Letter of Demand with Annexes and fourteen (14) Assessment Notices issued by the Enforcement Service of the Bureau of Internal Revenue through its Assistant Commissioner Percival T. Salazar *(Exhibits A and A-1)* covering the following deficiency tax assessments:

Particulars	Basic Tax	Interest	Compromise Penalties	Total
Deficiency Income Tax				
1995 (ST-INC-95-0199-2000)	P 252,150,988.01	P 191,496,585.96	P 25,000.00	P 443,672,573.97
1994 (ST-INC-94-0200-2000)	216,478,397.90	207,819,261.99	25,000.00	424,322,659.89
Deficiency Gross Receipts Tax				
1995 (ST-GRT-95-0201-2000)	13,697,083.68	12,428,696.21	2,819,745.52	28,945,525.41
1994 (ST-GRT-94-0202-2000)	2,488,462.38	2,755,716.42	25,000.00	5,269,178.80
Deficiency Final Withholding Tax				
1995 (ST-EWT-95-0203-2000)	64,365,610.12	58,757,866.78	25,000.00	123,148,477.15
1994 (ST-EWT-94-0204-2000)	53,058,075.25	59,047,096.34	25,000.00	112,130,171.59
Deficiency Final Tax on FCDU Onshore Income				
1995 (ST-OT-95-0205-2000)	81,508,718.20	61,901,963.52	25,000.00	143,435,681.72
1994 (ST-OT-94-0206-2000)	34,429,503.10	33,052,322.98	25,000.00	67,506,826.08
Deficiency Expanded Withholding Tax				
1995 (ST-EWT-95-0207-2000)	5,051,415.22	4,583,640.33	113,000.00	9,748,055.55
1994 (ST-EWT-94-0208-2000)	4,482,740.35	4,067,626.31	78,200.00	8,628,566.66
Deficiency Documentary Stamp Tax				
1995 (ST-DST1-95-0209-2000)	351,900,539.39	315,804,946.26	250,000.00	667,955,485.65
1995 (ST-DST2-95-0210-2000)	367,207,105.29	331,535,844.68	300,000.00	699,042,949.97
1994 (ST-DST3-94-0211-2000)	460,370,640.05	512,193,460.02	300,000.00	972,864,100.07
1994 (ST-DST4-94-0212-2000)	223,037,675.89	240,050,706.09	300,000.00	463,388,381.98
TOTALS	P2,130,226,954.83	P2,035,495,733.89	P4,335,945.52	P4,170,058,634.49

On February 24, 2000, petitioner, through its external auditors, filed a protest contesting the aforementioned deficiency tax assessments *(paragraph 4, Joint Stipulation of Facts)*. On April 24, 2000, petitioner submitted to the respondent relevant documentary evidence to support its protest *(paragraph 5, Joint Stipulation of Facts)*.

On September 11, 2000, respondent served upon petitioner through the Large Taxpayers' Assessment Division (LTAD), a Tax Verification Notice No. 00201062 dated August 31, 2000 *(page 2, BIR records)* authorizing Revenue Officer Wilfredo Reyes of LTAD to verify the supporting documents and/or pertinent records submitted by petitioner *(paragraph 6, Joint Stipulation of Facts)*.

On November 20, 2000, within thirty (30) days from the lapse of one hundred eighty (180) days from the submission of supporting documents with the respondent (falling on October 21, 2000), petitioner filed the instant Petition for Review pursuant to Section 228 of the 1997 Tax Code.

Meanwhile, another Formal Letter of Demand with attachments of recomputation and fourteen (14) Assessment Notices, all dated October 20, 2000, was received by petitioner on December 6, 2000 as the result of the reinvestigation requested by petitioner. The original assessments for deficiency internal revenue taxes were accordingly reduced to the following amounts:

Particulars	Basic Tax	Interest	Surcharge &/ Compromise	Total
Deficiency Income Tax				
1995 (INC-95-000003)	P 374,348.45	P 346,656.92		P 721,005.37
1994 (INC-94-000002)	1,392,366.28	1,568,605.52		2,960,971.80
Deficiency Gross Receipts Tax				
1995 (GRT-95-000004)	2,000,926.96	3,322,589.63	P 1,367,222.04	6,690,738.63
1994 (GRT-94-000003)	138,368.61	161,872.32		300,240.93
Deficiency Final Withholding Tax				
1995 (FT-95-000005)	362,203.47	351,287.75		713,491.22
1994 (FT-94-000004)	188,746.43	220,807.47		409,553.90
Deficiency Final Tax on FCDU Onshore Income				
1995 (OT-95-000006)	81,508,718.20	79,052,291.08		160,561,009.28
1994 (OT-94-000005)	34,429,503.10	40,277,802.26		74,707,305.36
Deficiency Expanded Withholding Tax				
1995 (EWT-95-000004)	520,869.23	505,171.80	25,000.00	1,051,041.03
1994 (EWT-94-000003)	297,949.95	348,560.63	25,000.00	671,510.58
Deficiency Documentary Stamp Tax				
1995 (DST-95-000006)	599,890.72		149,972.68	749,863.40
1995 (DST2-95-000002)	24,953,842.46		6,238,460.62	31,192,303.08
1994 (DST-94-000005)	905,064.74		226,266.18	1,131,330.92
1994 (DST2-94-000001)	17,040,104.84		4,260,026.21	21,300,131.05
TOTALS	P 164,712,903.44	P 126,155,645.38	P 12,291,947.73	P 303,160,496.55

On the same day, December 6, 2000, petitioner paid the following deficiency taxes, to wit:

Particulars	1994	1995	Total
Deficiency Income Tax	P2,965,549.44	P 722,236.11	P 3,687,785.55
Deficiency Gross Receipts Tax	300,695.84	6,701,893.17	7,002,589.01
Deficiency Final Withholding Tax	410,174.44	714,682.02	1,124,856.46
Deficiency Expanded Withholding Tax	672,490.14	1,052,753.48	1,725,243.62
Deficiency Documentary Stamp Tax	1,131,330.92	749,863.40	1,881,194.32
TOTALS[1]	P5,480,240.78	P9,941,428.18	P15,421,668.96

(Paragraphs 8 & 9, Joint Stipulation of Facts)

Hence, only the unpaid assessments for deficiency onshore tax and documentary stamp tax for the years 1994 and 1995 remain the subjects of the present Petition for Review, recapitulated as follows:

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	P 34,429,503.10	P 81,508,718.20	P115,938,221.30
Interest	40,277,802.26	79,052,291.08	119,330,093.34
Sub Total	P74,707,305.36	P160,561,009.28	P235,268,314.64
Deficiency Documentary Stamp Tax			
Basic	P 17,040,104.84	P 24,953,842.46	P 41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	P 21,300,131.05	P 31,192,303.08	P 52,492,434.13
TOTALS	P 96,007,436.41	P191,753,312.36	P287,760,748.77

The jointly stipulated issues to be resolved by the Court are the following:

1. Whether or not the right of the respondent to assess deficiency onshore and documentary stamp taxes for taxable years 1994 and 1995 had already prescribed when it issued the Formal Letter of Demand and Assessment Notices for the said taxable years.

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[1] The difference in the amounts per reduced assessments and that of the payments made by petitioner was due to the updating of interest up to December 6, 2000.

2. Whether or not petitioner is liable for deficiency onshore tax for taxable years 1994 and 1995 in the amounts of P74,707,305.36 and P160,561,009.28, respectively.

3. Whether or not the petitioner is liable for deficiency documentary stamp tax – industry issue for taxable years 1994 and 1995 in the amounts of P21,300,131.05 and P31,192,303.08 for taxable years 1994 and 1995, respectively.

Petitioner seeks for the cancellation of the 1994 and 1995 deficiency assessments for onshore income and documentary stamp taxes primarily on the ground of prescription. Petitioner avers that the right of respondent to assess had already prescribed inasmuch as all the assessment notices were issued beyond the three-year period allowed under Section 203 of the 1997 Tax Code which provides:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* — Except as provided in Section 222, internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day *(Underling supplied).*

Petitioner avers that for taxable years 1994 and 1995, the 10% onshore tax and documentary stamp tax were *supposed* to be remitted and the returns therefor filed monthly, not later than the 10th day of the month following the month of the covered transaction. Therefore, the last dates for respondent to issue assessments for onshore tax and documentary stamp tax for the years 1994 and 1995 are January 10, 1998 (for December 1994 transaction) and January 10, 1999 (for December 1995 transaction), respectively. However, the undated formal letter of demand was personally served upon petitioner only on January 27, 2000, while the second or revised formal letter of demand dated October 20, 2000 was personally served upon petitioner on December 6, 2000. Clearly, both the aforementioned formal letters of demand were issued beyond the three-year prescriptive period.

Respondent, on the other hand, maintains that the right of respondent to assess has not prescribed citing Section 222(b) of the Tax Code as his legal anchor, to wit:

> Section 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) xxx
>
> (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon *(Underlining supplied).*

The two waivers both dated January 23, 1997 for the corresponding years 1994 and 1995 which were executed by petitioner and Deputy Commissioner Sixto Esquivias IV show that the period of respondent to assess was extended up to December 31, 2000. Hence, the demand letters with their attached assessment notices issued on January 27, 2000 and December 6, 2000 were not time-barred.

Petitioner admits that the three-year rule on prescription is not absolute. However, it questions the validity of the said waivers pursuant to Section 222(b) of the Tax Code and Revenue Memorandum Order No. 20-90. According to petitioner, the waiver extending the right of respondent to assess must be agreed upon both by the Commissioner and the taxpayer (petitioner in the instant case) in accordance with the provision of Section 222(b). Petitioner also points out that in cases where an assessment involves one million pesos and above, the officer authorized to sign the waiver is only the Commissioner of Internal Revenue. Likewise, there must be an acceptance on the part of the Commissioner.

However, these requirements were not evident in the accomplished waivers. The assessments involved in the instant case were valued more than one million pesos but the officer who signed the waivers was only Deputy Commissioner Sixto S. Esquivias IV and he only attested to the execution of the waivers contrary to the provision of Section 222(b) which requires the Commissioner "have agreed in writing". The waivers also failed to indicate the date of 'acceptance' by the Bureau. With these infirmities, the waivers were invalid and the right of respondent to assess was not extended resulting to the issuance of the assessments beyond the period allowed by law.

We are not swayed.

Petitioner cannot question the validity of the waivers with respect to the deficiency onshore and documentary stamp taxes when it paid the deficiency taxes assessed for income tax, gross receipts tax, final withholding tax, expanded withholding tax and documentary stamp tax all of which were covered by the same waivers. If petitioner really believes that the waivers were not valid and the subject assessments were issued by the respondent out of time, then it should not have made any payments.

In one case, the Supreme Court ruled that a party is estopped from raising the issue of payment of the 25% ad valorem tax by claiming that there was no removal of pyrite from the mine site where it had paid the same for the tax year.[2] In the same way, We cannot allow petitioner to question the waivers covering the same recomputed assessed taxes and it paying the same while at the same time to assail the other assessed taxes it refused to pay.

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

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

We hold that petitioner is estopped from questioning the validity of the waivers. Its act in paying the assessed taxes covered by the same waivers is conclusive that

[2] Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. No. 105563, March 10, 1995.

the assessments were valid. Petitioner cannot now deny their validity. This Court cannot countenance petitioner's act of adopting inconsistent postures regarding the waivers.

We will now proceed to the merits of the disputed assessments.

Petitioner was assessed of deficiency onshore tax for the years 1994 and 1995 on its interest income derived from foreign currency loans granted to residents under its expanded foreign currency deposit system pursuant to Section 24(e)(3) of the National Internal Revenue Code of 1993 which provides:

> SEC. 24. **Rates of tax on domestic corporations.** – (a) In general. – xxx.
>
> xxx xxx xxx
>
> (e) **Tax on certain incomes derived by domestic corporations.** – (1) xxx.
>
> xxx xxx xxx
>
> (3) **Tax on income derived under the Expanded Foreign Currency Deposit System**. – Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks; *Provided,* That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax. *(Underlining supplied).*

Respondent is of the opinion that petitioner fails to pay 10% final tax on interest income from its foreign currency loans extended to resident clients which yields to the subject assessments for deficiency onshore tax for 1994 and 1995, computed as follows:

	1994	1995
FCDU Gross Onshore Income	P 411,022,871.00	P 845,092,232.00
Multiply by Final Tax Rate	10%	10%
Deficiency Tax Due	P 41,102,287.10	P 84,509,223.20
Less: Final Tax Paid per Return	6,672,784.00	3,000,505.00
Basic Deficiency Final Tax Due	P 34,429,503.10	P 81,508,718.20
Add: Interest (up to Nov. 30, 2000)	40,277,802.26	79,052,291.08
Total Gross Onshore Tax Deficiency	P 74,707,305.36	P 160,561,009.28

Petitioner assails the validity of above assessments claiming that it is not liable to 10% onshore tax. The 10% final tax on onshore income is the liability of the payor-borrower who is the constituted withholding agent of the respondent. Petitioner avers that it is the payors-borrowers who have the obligation to deduct, withhold and remit the said taxes to the Bureau of Internal Revenue pursuant to Section 50 [now Section 57(A)] of the National Internal Revenue Code of 1993. Petitioner, being the lending OBU/FCDU, cannot be held liable for deficiency onshore tax even if the withholding agents failed to remit the tax to respondent. Petitioner also questions the manner of computation of the deficiency onshore tax. In addition, petitioner asserts that the assessment for deficiency onshore tax was based on the mere presumption that its borrowers-withholding agents did not remit the tax. Hence, the assessment was devoid of merit because it must be based on actual facts, and not on mere presumption.

We find the above arguments of petitioner untenable.

While it is true that the payor-borrower is the one constituted by law to withhold and remit the 10% final 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.

In the case of ***Commissioner of Internal Revenue vs. The Court of Appeals, Court of Tax Appeals and A. Soriano Corp., G.R. No. 108576, January 20, 1999,*** the Supreme Court elucidated the operation of the withholding tax system in this wise:

> In the operation of the withholding tax system, the withholding agent is the payor, a separate entity acting no more than an agent of the government for the collection of the tax in order to ensure its payments; the payer is the taxpayer — he is the person subject to tax imposed by law; and the payee is the taxing authority. In other words, the withholding agent is merely a tax collector, not a taxpayer. Under the withholding system, however, the agent-payor becomes a payee by fiction of law. His (agent) liability is direct and independent from the taxpayer, because the income tax is still imposed on and due from the latter. The agent is not liable for the tax as no wealth flowed into him — he earned no income. The Tax Code only makes the agent personally liable for the tax arising from the breach of its legal duty to withhold as distinguished from its duty to pay tax xxx *(Underlining supplied).*

The law and the 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 earned by it ***(ING BANK N.V. MANILA BRANCH vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case***

No. 6187, August 9, 2004). Corollarily, if the withholding agent is also assessed for the same kind of tax, such assessment was not for the payment of the required tax but as a penalty for failure to withhold as required by law. The penalty is imposed on the withholding agent for failure to fulfill an obligation to withhold as distinguished from the taxpayer's liability for the payment of tax.

We now proceed with the proper computation of 1994 and 1995 deficiency onshore taxes.

After an exhaustive review of the voluminous evidence and records of the case, We agree with the computation presented by petitioner for its 1994 and 1995 onshore income except as to the final taxes it presumed to be 'absorbed and withheld by borrowers' *(Exhibits D and VV).* Pursuant to Section 51(b) of the 1993 Tax Code, every withholding agent is required to issue to its income recipient a certificate of withholding taxes, to wit:

> **SEC. 51. Returns and payment of taxes withheld at source. – (a) xxx.**
>
> **(b) Statement of income payments made and taxes withheld.** – Every withholding agent required to deduct and withhold taxes under Section 50 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not later than the 20th day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.

Clearly, every withholding agent must issue statement of income payments to the income recipients as proof of payment of the tax withheld. Inasmuch as petitioner failed to present proof for the withholding of the said absorbed tax by its clients, this court cannot accept the validity of such claim.

In sum, petitioner is still liable to the amounts of P48,510,161.51 and P31,651,666.05 as deficiency onshore taxes for 1994 and 1995, respectively, detailed as follows:

	1994	1995
Gross Onshore Income	P411,022,871.00	P 845,092,232.00
Add: Accrued interest receivable, beg.	71,508,161.00	75,948,930.00
Less: Accrued Interest receivable, end	(75,948,930.00)	(112,619,053.00)
Onshore Income Subject to Tax	P406,582,102.00	P 808,422,109.00
Multiply by Tax Rate	10%	10%
Final Tax Due	P 40,658,210.20	P 80,842,210.90
Less: Remittances	18,301,885.77	64,774,258.04
Deficiency Onshore Tax Due	P 22,356,324.43	P 16,067,952.86
Add: Interest	26,153,837.08	15,583,713.19
Total Deficiency Onshore Tax Due	P 48,510,161.51	P 31,651,666.05

With the above recomputation, the last issue raised by petitioner becomes moot and academic for discussion.

Respondent opines that special savings accounts (SSAs) are classified as time deposits subject to documentary stamp tax as certificate of deposits drawing interest pursuant to Section 180 of the National Internal Revenue Code of 1993. The 1994 and 1995 deficiency documentary stamp taxes on SSAs are computed as:

	1994	1995
Special Savings Placements	P11,360,069,891.50	P16,635,894,973.89
Basic	P 17,040,104.84	P 24,953,842.46
Add: 25% Surcharge	4,260,026.21	6,238,460.62
Amount Due and Payable	P 21,300,131.05	P 31,192,303.08

Petitioner, on the other hand, argues that in both form and substance, the SSA cannot be classified as a time deposit. The SSA is neither a promissory note nor a bill of exchange. Further, it cannot be classified as a loan agreement, draft or security issued by the government. Therefore, petitioner posits that its SSA is not subject to documentary stamp tax under Section 180 of the National Internal Revenue Code of 1993.

We find against petitioner.

We already have ruled in a number of cases[3] that special savings account is subject to documentary stamp tax. In the case entitled ***Philippine Banking Corporation (Now: Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6395, July 16, 2004),*** We ruled in this wise:

> To recapitulate, this court finds that the Special/Super Savings Account and Time Deposit are similar if not just one and the same banking transaction. Equity and law always exalt substance over form. ***(Maceda vs. Macaraig, Jr., G.R. No. 88291, June 8, 1993: CIR vs. CTA, et. al., G. R. No. L-64768, November 5, 1987; Kilosbayan, Inc. et.al. vs. Manuel Morato, G.R. No. 118910, July 17, 1995.)*** The superficial distinction between the two, specifically, the use a passbook to document the said account placed by petitioner is nothing but a futile effort to evade payment of the DST. The scheme failed to

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[3] 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 Case No. 6565, November 3, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; China Banking Corporation vs. The Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 2004; Banco de Oro vs. Commissioner of Internal Revenue, CTA Case No. 6390, July 1, 2004; Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, Hon. Guillermo L. Parayno, Jr. (as the successor of former Commissioner Rene G. Bañez), CTA Case No. 6560, June 23, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, dated April 28, 2004; and United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, dated April 21, 2004.

create a real and substantial distinction. Any similarity between the Special/Super Savings Account and a savings deposit is a sham.

At this juncture, the court deems it appropriate to consult Section 180 of the 1977 Tax Code, as amended by R.A. 7660 inasmuch as it is the focal point of contention of the controversy before us, which states thus:

> "Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, 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, or certificates of deposit drawing interest, 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 thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of 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 purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

From the foregoing, it is clear that the Documentary Stamp Tax is imposed on all:

1. Bonds
2. Loan Agreements
3. Promissory Notes

4. Bills of Exchange
5. Drafts
6. Instruments and Securities issued by the Government
7. Certificates of deposits drawing interest
8. Orders for the payment of any sum of money otherwise than at sight or demand.

However, contrary to what petitioner contends, what is being taxed under Section 180 of the NIRC is not just a time-deposit certificate but a certificate of deposit.

What then is a "certificate of deposit?"

A Certificate of Deposit as defined in the case of **BPI Family Bank vs. Commissioner of Internal Revenue**, CTA Case No. 4256 dated August 7, 1992 and affirmed in CA-G.R. SP No. 29853 dated September 19, 1994 "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. (Re: Olson's Estate, 206 Iowa, 706, 219 N. W. 40 cited in Agbayani, op cit. p. 441.)

This court has provided the following definitions in the case of **United Overseas Bank Philippines vs. CIR**, CTA Case No. 6411, April 21, 2004, thus:

> "Certificate of deposit" is defined to be a written acknowledgement by a bank of the receipt of a sum of money on deposit which it promises to pay to the depositor, to his order, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created. Certificate of deposit being written instrument evidencing transaction between parties must be considered in the light of same rules of law as other written instrument (Montgomery vs. Smith, 145 So. 822, 826, 226 Ala. 91).
>
> Moreover, a certificate of deposit, like a deposit credited in a passbook, represents money actually left with the bank for safekeeping, which are to be retained until the depositor demands them (Bank of Commerce vs. Harrison, N.M., 66 P 460, 461). And it is generally made negotiable. (Reed vs. Board of Education, 39, Ohio St. 635, 638) (Words and Phrases, Permanent Edition p. 432).

> Based on the foregoing definitions, a certificate of deposit clearly should not be construed as synonymous with a time-deposit certificate. The latter is a mere genus or sample of the former. In other words, not all certificates of deposits are time-deposit certificates. But necessarily, a time-deposit certificate is a certificate of deposit. So even assuming that SSD does not fall under the category of a time deposit, the passbook used to record the transaction is still within the parameters of the definition of the term "certificate of deposit." It has the basic feature of a time-deposit but a passbook is being used to cover up its true nature.
>
> Furthermore, the basis of the tax is not the certificate alone. Well-settled is the rule that a documentary stamp tax is an excise tax, the purpose of which is to raise revenues. The High Tribunal explained in the case of **Philippine Home Assurance Corporation et. al vs. Court of Appeals**, G.R. No. 119446, January 21, 1999, that, "while it is true that a documentary stamp tax is levied on the document and not the property involved, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document."
>
> Accordingly, the fact that the Special/Super Savings Deposit is evidenced by a passbook does not take it outside the coverage of Section 180 of the 1977 Tax Code, as amended.

We find the above pronouncement in all fours with the case at bar. Indeed, the SSA of petitioner is subject to documentary stamp tax.

As to the argument of petitioner that the assessments failed to clearly and sufficiently state the facts and law upon which said assessments were based as required under Section 228 of the Tax Code, the same has no leg to stand on. Records show that petitioner was fully informed of the bases in fact and in law of the assailed assessments. In fact, parties have already jointly stipulated the issues of the present case and such issue was not enumerated.

Clearly, we find petitioner liable for 1994 and 1995 deficiency documentary stamp taxes in the amounts of P21,300,131.05 and P31,192,303.08, respectively, as assessed by the respondent.

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

Particulars	1994	1995	Total
Deficiency Final Tax on FCDU Onshore Income			
Basic	P 22,356,324.43	P16,067,952.86	P 115,938,221.30
Interest	26,153,837.08	15,583,713.19	119,330,093.34
Sub Total	p 48,510,161.51	P31,651,666.05	P 119,330,093.34
Deficiency Documentary Stamp Tax (Industry Issue)			
Basic	P 17,040,104.84	P24,953,842.46	P 41,993,947.30
Surcharge	4,260,026.21	6,238,460.62	10,498,486.83
Sub Total	P 21,300,131.05	P31,192,303.08	P 52,492,434.13
TOTALS	P 69,810,292.56	P62,843,969.13	P 171,822,527.47

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the First Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice