REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ASIATRUST DEVELOPMENT BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6209

Members:

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

Promulgated:

JAN 20 2009 ; 4:00pm

x - x

DECISION

CASANOVA, *J.*:

STATEMENT OF THE CASE

This is a Petition for Review praying for the cancellation of the deficiency income, documentary stamp – regular, documentary stamp – industry issue, final withholding, expanded withholding, and fringe benefits tax assessments issued by respondent against the petitioner for the fiscal years ended June 30, 1996, 1997 & 1998 in the amounts of **ONE HUNDRED THIRTY ONE MILLION NINE HUNDRED NINE THOUSAND ONE HUNDRED SIXTY ONE AND 85/100 (P131,909,161.85)**, **EIGHTY THREE MILLION TWELVE THOUSAND TWO HUNDRED SIXTY FIVE AND 78/100 (P83,012,265.78)**, and **ONE HUNDRED FORTY FOUR MILLION TWELVE THOUSAND NINE HUNDRED EIGHTEEN AND 42/100 (P144,012,918.42)**, respectively.

STATEMENT OF THE FACTS

Asiatrust Development Bank, herein petitioner, is a corporation duly organized and existing under and by virtue of Philippine Laws, with principal address at 1424 Quezon Avenue, Quezon City. It is registered with the Securities and Exchange Commission (SEC) and likewise authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in banking operations as a thrift bank within the contemplation of Republic Act No. (R.A.) 7906, otherwise known as the "Thrift Bank Act of 1995".[1]

Commissioner of Internal Revenue, herein respondent, on the other hand, is duly appointed to perform the duties of his office, including, among others, the power to decide, cancel, and abate tax liabilities pursuant to Section 204(B) of the Tax Code, as amended by Republic Act No. (R.A.) 8424, otherwise known as the "Tax Reform Act of 1997".[2]

On February 16, 2000, petitioner received respondent's Formal Letter of Demand with twelve (12) Assessment Notices, sent through personal delivery, numbered ST-DST-97-0341-99, ST-DST-97-0342-99, ST-FT-97-0343-99, ST-WC-97-0344-99, ST-CP-97-0345-99, ST-EWT-97-0346-99, ST-EWT-97-0347-99, ST-DST2-97-0348-99, ST-CP-97-0349-99, ST-FT2-97-0350-99, ST-FT3-97-0351-99, and ST-INC-97-0352-99 for deficiency internal revenue taxes in the aggregate amount of P83,012,265.78 covering the fiscal year ended June 30, 1997.[3]

Subsequently, on February 21, 2000, likewise through personal service, petitioner received Formal Letter of Demand with Assessment Notice Nos. ST-DST1-96-229-2000, ST-DST2-96-0230-2000, ST-DST3-96-0231-2000, ST-OT-96-0232-

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[1] Paragraph 1, Petition for Review
[2] Paragraph 2, Ibid
[3] Paragraph 3, Ibid

2000, ST-WT-96-233-2000, ST-EWT-96-0234-2000, ST-WT2-96-0235-2000, ST-FWT-96-0236-2000, ST-WT-96-0237-2000, ST-INC-96-0238-2000, ST-RF2-96-0239-2000, ST-CP1-96-0240-2000, ST-CP1-96-0241-2000, ST-CP1-96-0242-2000, and ST-DST4-96-0243-2000 for deficiency internal revenue taxes in the aggregate amount of P131,909,161.85 covering the fiscal year ended June 30, 1996.[4]

On February 22, 2000, petitioner received through personal service the Formal Letter of Demand for deficiency internal revenue taxes in the aggregate amount of P144,012,918.42 covering the fiscal year ended June 30, 1998 under Assessment Notice Nos. ST-DST1-98-0322-2000, ST-DST2-98-0323-2000, ST-DST3-98-0324-2000, ST-OT-98-0325-2000, ST-WT-98-0326-2000, ST-WTC-98-0327-2000, ST-EWT-98-0328-2000, ST-FWT-98-0329-2000, ST-WC-98-0330-2000, ST-INC-98-0331-2000, ST-CP2-98-0332-2000, ST-RF-98-0333-2000, and ST-CP1-98-0334-2000.

On March 17, 2000, petitioner formally filed its protest letter contesting each item of deficiency internal revenue taxes[5] assessed against it and requested the cancellation and withdrawal of the same. In support thereof, petitioner submitted additional documents[6] on May 16, 2000 in accordance with Section 228 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Respondent having failed to act on petitioner's protest-letter within 180-days from the date of the submission of its supporting documents, petitioner then filed this present Petition for Review on December 11, 2000.

On January 22, 2001, respondent filed his Answer, raising his Special and Affirmative Defenses, summed up as follows:

1. The law allowing a period of three (3) years from the time the return was filed or should have been filed, whichever is the latter,

[4] Paragraph 4, Petition for Review
[5] Paragraph 4, Joint Stipulation of Facts & Issues
[6] Paragraph 5, Ibid

within which the government is authorized by law to make any assessment on taxable income, is the general rule. Section 222 of the Tax Code provides for the exceptions or the instances wherein the three (3) year period does not apply, among them, "if before the expiration of the three (3) year period for the assessment of the tax, there is an agreement in writing between the taxpayer and the BIR Commissioner" [Section 222(b)]. Records disclosed that petitioner, through its representative Rebecca R. Igot, executed a Waiver of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code, expressly waiving or renouncing its right to use as defense the prescriptive period allowed by law for the government to make the proper assessment on any taxable income.

2. Revenue Regulation No. 4-95 which implements R.A. 7906. Section 3 thereof explicitly provides that:

> **Section 3. Liability of Thrift Banks to Documentary Stamp Tax. – "All thrift banks shall be liable to the payment of documentary stamp tax on that portion of loaned amount in excess of fifty thousand pesos."**

From the foregoing, the exemption of thrift banks from documentary stamp tax extends only to loans not exceeding Fifty Thousand Pesos (Php 50,000.00). Verily and consistent with the well-settled principle that laws granting exemption from taxes are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power, the assessed deficiency documentary stamp tax against the petitioner is proper.

3. Income derived under the Expanded Foreign Currency Deposit System as sanctioned and prescribed by Presidential Decree 1034 as amended by P.D. 1035, and implemented by Revenue Regulations 14-77 with regards to domestic corporations; income derived by depositary 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 BSP to transact business with Foreign Currency Depositary System, are exempt from all taxes, except taxable income from such transaction as maybe specified by the Secretary of Finance. Moreover, interest income from foreign currency loans granted by the Depositary Banks under the said expanded system to residents (other than offshore banking units in the Philippines or other depositary banks under the expanded system) is subject to 10% onshore tax.

4. Section 57 of the National Internal Revenue Code (NIRC) as amended, specifically prescribes the withholding of taxes on royalties, prizes and other winnings, dividends, "interest on bank deposits, yields or any other monetary benefit from deposit substitutes and from trust fund and similar arrangements." Revenue Regulations No. 17-84 governs the manner of income taxation of interest income derived from deposit substitutes as provided for under P.D. No. 1959; and Section 3 thereof provides in part that "final withholding income tax on interest on savings and time deposits maintained with the bank shall be fifteen (15%) percent based on gross interest paid or accrued and the final withholding tax to be imposed on yield on deposit substitutes shall be fifteen (15%)". However, Revenue Regulations No. 10-86 amended Rev. Reg. No. 17-84 increasing the final withholding tax rate to twenty (20%). On the other hand, Section 4 of Revenue Regulations No. 17-84 provides that the final withholding tax on savings and time deposits shall be based on gross interest paid or accrued by banks on all savings and time deposits, and final withholding tax yield of deposit substitutes shall be based on gross interest or yield paid or accrued by banks and non-bank financial intermediaries on all its deposit substitutes or debt instrument issued.

   The compromise penalty imposed against petitioner for non-payment of the above-mentioned final withholding tax is based on the provision of Revenue Regulations 1-90.

5. Revenue Regulations No. 6-85 was promulgated to implement the withholding of creditable income taxes from certain income payment which are otherwise deductible from gross income of the payor and in conjunction with Revenue Regulation No. 2-90, wherein the payor is required to withhold tax on certain income payments made to residents of the Philippines. Certain income payments made by petitioner were not subjected to withholding tax in violation of said regulation and Section 57(B) of the Tax Code.

6. Section 33 of the Comprehensive Tax Reform Act imposes a gradual diminishing fringe benefit tax of 34%, 33%, and 32%, for the years 1998, 1999, and 2000, respectively, based on the grossed up monetary value of the fringe benefits furnished or granted. The fringe benefit granted is a form of compensation and thus constitutes an item of gross income.

7. The deficiency withholding tax on compensation was based on Section 78 of the Tax Code, in conjunction with Revenue Regulations No. 12-86.

8. The deficiency income tax was based mainly on the disallowance of some actual expenses, for which petitioner failed to prove that

they were made in relation to its business, attributed to the business activity of Foreign Currency Deposit Units (FCDUs) expenses not subjected to withholding tax.

9. Revenue Regulations No. 1-90 clearly requires the payment of annual registration fees on or before the last day of January and every year thereafter.

10. Revenue Regulations No. 4-96 requires the filing of Information Returns on or before the 10th day following the close of each month with respect to DST.

11. Revenue Regulations No. 1-90 requires the filing of Form 1701 B, 1743-IR and an Alpha List.

12. Compromise penalty imposed due to petitioner's failure to file the 1st and 2nd Quarter Income Tax Return.

13. Petitioner was informed of the law and the facts on which the assessments were made in compliance with Section 228 of the Tax Code.

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

15. All presumptions are in favor of the correctness of tax assessments.

After pre-trial, the parties submitted their Joint Stipulation of Facts and Issues on June 7, 2001, which was duly approved by this Court in a Resolution on June 14, 2001. Additional facts were stipulated by the parties on March 13, 2002, based on events which have transpired after the original Joint Stipulation was submitted to this Court, likewise duly approved by the Court on March 19, 2002. Accordingly, on December 28, 2001, respondent, through the examiners of the Enforcement Service, personally served petitioner a new Assessment Notice for deficiency taxes in the amounts of P112,816,258.73, P53,314,512.72, and P133,013,458.73 covering the fiscal years ended June 30, 1996, 1997, and 1998, respectively. Consequently, on the same date, petitioner paid partially the afore-mentioned deficiency tax assessments, with the remaining balances as follows:

Fiscal Year 1996	
Documentary Stamp Tax	P 13,497,227.80
Final Withholding Tax - Trust	8,770,265.07
Documentary Stamp Tax – Industry Issue	88,584,931.39
TOTAL	**P110,852,424.26**
Fiscal Year 1997	
Documentary Stamp Tax	P 10,156,408.63
Documentary Stamp Tax – Industry Issue	39,163,539.57
TOTAL	**P 49,319,948.20**
Fiscal Year 1998	
Documentary Stamp Tax	P 20,425,770.07
Final Withholding Tax - Trust	10,183,367.80
Documentary Stamp Tax – Industry Issue	93,430,878.54
TOTAL	**P124,040,016.41**

On August 15, 2005, petitioner filed a Manifestation stating that, on April 19, 2005, the National Evaluation Board of the Bureau of Internal Revenue approved its Offer of Compromise of the subject Documentary Stamp Tax - Regular assessments in the aggregate amount of P9,015,593.10, equivalent to 40% of the basic Documentary Stamp Tax assessed for the years 1996, 1997, and 1998. Petitioner attached a copy of the June 9, 2005 letter from the respondent confirming the said approval[7], and copies of the corresponding Compromise Settlement Payment Forms (BIR Form No. 0608)[8]. During the hearing on August 16, 2005[9], respondent's counsel manifested that he has received the copy of the said approved Compromise Settlement made by petitioner, and further manifested that, in view of the said payment, the only issues that remain unresolved for this Court's consideration are the deficiency final withholding tax with regard to petitioner's Trust Department, and the deficiency documentary stamp tax assessment with regard to its special savings account. However, on December 27, 2001, separate applications for the

[7] Annex "A", *Rollo*, page 376
[8] Annexes "B", "C", and "D", *Rollo*, page 378
[9] TSN, August 16, 2005, pages 7-8

abatement[10] of its deficiency final withholding tax –trust assessments for the fiscal years 1996 and 1998 were filed by petitioner. A favorable response from respondent has yet to be received by petitioner.

Both parties submitted their respective Memorandum on July 10, 2008 and August 4, 2008. This case was finally submitted for decision on August 11, 2008.

STIPULATED ISSUES

The parties originally jointly agreed to the following issues for the consideration of the Court, to wit:

1. Whether or not the Formal Letters of Demand and Assessment Notices issued by the respondent against the petitioner assessing deficiency taxes for taxable fiscal year 1996, 1997, and 1998, respectively, conform with the requirements set forth under Section 228 of the Tax Code, as amended.

2. Whether or not the right of the respondent to assess deficiency taxes for taxable fiscal year ending June 30, 1996 has already prescribed when it issued the Formal Letter of Demand and Assessment Notices covering the said taxable fiscal year.

3. Whether or not petitioner is exempt from documentary stamp tax (DST) pursuant to Section 17 of Republic Act No. 7906, otherwise known as the "Thrift Bank Act of 1995".

4. Whether or not the assessments for deficiency DST for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-DST1-96-0229-2000, ST-DST-97-0341-99, and ST-DST1-98-0322-2000, respectively, are proper.

5. Whether or not the assessments for deficiency DST for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-DST4-96-0243-2000, ST-DST2-97-0348-99, and ST-DST2-98-0323-2000, respectively, are proper.

6. Whether or not the assessments for deficiency DST for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-DST2-96-0230-2000, ST-DST2-97-0342-99, and ST-DST3-98-0324-2000, respectively, are proper.

7. Whether or not petitioner is liable for deficiency DST under Assessment Notice No. ST-DST3-96-0231-2000.

[10] Exhibits "EEEEE" ("4"), "FFFFF" ("5") & "GGGGG" ("6")

8. Whether or not the assessments for deficiency onshore tax for taxable fiscal year 1996, 1997, and 1998 under Assessment Notice Nos. ST-OT-96-0232-2000, ST-FT3-97-0351-99, and ST-OT-98-0325-2000, respectively, are proper.

9. Whether or not the assessments of deficiency final withholding tax for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-WT-96-0233-2000, ST-FT2-97-0350-99, and ST-WT1-98-0326-2000, respectively, are proper.

10. Whether or not the assessments for deficiency withholding tax on compensation for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-WT2-96-0235-2000, ST-WC-97-0344-99, and ST-WTC-98-0327-2000, respectively, are proper.

11. Whether or not the assessments of deficiency expanded withholding tax for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-EWT-96-0234-2000, ST-EWT-97-0346-99, and ST-EWT-98-0323-2000, respectively, are proper.

12. Whether or not the assessments for deficiency final withholding tax for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-FWT-96-0236-2000, ST-FT-97-0343-99, and ST-FWT-98-0329-2000, respectively, are proper.

13. Whether or not the assessment of deficiency fringe benefit tax for taxable fiscal year 1998 under Assessment Notice No. ST-WC-98-0330-2000 is proper.

14. Whether or not the assessments of deficiency income tax for taxable fiscal year 1996, 1997, and 1998 under Assessment Notice Nos. ST-INC-96-0238-2000, ST-INC-97-0352-99, and ST-INC-98-0331-2000, respectively, are proper.

15. Whether or not the assessments of registration fees for taxable fiscal years 1996, 1997, and 1998 under Assessment Notice Nos. ST-RF-96-0239-2000, ST-CP-97-0349-99, and ST-RF-98-0333-2000, respectively, are proper.

16. Whether or not the assessments of compromise penalty for taxable fiscal year 1996 under Assessment Notice Nos. ST-CP1-96-0240-2000, ST-CP1-96-0241-2000, ST-CP1-96-0242-2000, and ST-WT-96-0237-2000, are proper.

17. Whether or not the assessments of penalty for taxable fiscal year 1997 under Assessment Notice Nos. ST-CP-97-0345-99, and ST-EWT-97-0347-99 are proper.

18. Whether or not the assessments of compromise penalty for taxable fiscal year 1998 under Assessment Notice Nos. ST-CP1-98-0334-2000 and ST-CP2-96-0332-2000 are proper.

Considering the events that transpired during the course of the trial, before the case was submitted for decision, the remaining issues for this Court's consideration are as follows:

1. Whether or not the Formal Letters of Demand and Assessment Notices issued by the respondent against the petitioner assessing deficiency taxes for taxable fiscal year 1996, 1997, and 1998, respectively, conform with the requirements set forth under Section 228 of the Tax Code, as amended.

2. Whether or not the right of the respondent to assess deficiency taxes for taxable fiscal year ending June 30, 1996 has already prescribed when it issued the Formal Letter of Demand and Assessment Notices covering the said taxable fiscal year.

3. Whether or not the assessments of deficiency documentary stamp taxes as regards petitioner's special savings accounts for the fiscal years 1996, 1997, and 1998, are proper.

4. Whether or not the assessments of deficiency final withholding taxes – trust for the fiscal years 1996 and 1998, are proper.

DISCUSSION

As regards the first issue, petitioner argues that respondent failed to cite the legal basis on various deficiency tax assessments issued against it for the fiscal years ending June 30, 1996, 1997, and 1998. Respondent's penchant for procedural shortcuts – by not disclosing to petitioner the nature, details, and basis of the assessments – is a blatant disregard of Revenue Regulations 12-85 and 12-99. As such, the issuance of the subject assessments violates due process and fair play.

We do not subscribe to petitioner's argument.

The simple meaning of procedural due process is that a party to a case must be given sufficient opportunity to be heard. Its very essence is to allow all parties the opportunity to present evidence. In administrative cases, the requirement of due process is the right to a hearing, including the right of the party interested or affected to present his own case and submit evidence to support his allegation.

Contrary to its contention that no legal basis was cited, this Court rules that the assessment notices are valid and that the requirement of informing the taxpayer of the facts and the law upon which they were based has been substantially complied with.

There was substantial compliance with Section 228 because petitioner was able to protest the assessments intelligently[11], thereby implying that it had actual knowledge of the factual and legal bases of the assessments. The fact that petitioner was furnished the computation and brief explanation of how the assessment for deficiency quarterly income tax was arrived at[12], the requirement under Section 228 of the National Internal Revenue Code (NIRC) of 1997 Tax Code is deemed complied with. Petitioner was likewise notified of the specific provisions of law on which the assessment was based. This is evident in the Details of Discrepancies[13] annexed to the Demand Letter and Assessment Notices wherein sections and provisions of the applicable laws were written. The presence of the Details of Discrepancies thus belies petitioner's allegations that respondent failed to state the facts and the law on which the assessment notices were based. Evidently, petitioner was informed of the factual and legal bases on which the questioned assessments were based; the requirement set forth in Section 228 of the NIRC of 1997 being substantially complied with. Consequently, the assessment notices were valid.

[11] Exhibit "D[5]"
[12] Exhibits "A" to "A-2", "B" to "B-2", and "C" to "C-2"
[13] supra

As regards the second issue raised, for the fiscal year ending June 30, 1996, respondent has until 1999 within which to issue assessment notices against petitioner for any deficiency taxes covering the fiscal year 1996, pursuant to Section 203 of the NIRC of 1997, as amended. And under the same Section 203, it is provided that an assessment notice issued after the lapse of the 3-year prescriptive period is no longer valid and effective, except for certain exceptions, one of which is Section 222 (b) of the same Code, which provides:

> Section 222. *Exceptions as to the Period of Limitation of Assessment and Collection of Taxes.* –
>
> x x x
>
> (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.
>
> x x x

In this regard, it becomes necessary for this Court to determine the validity of the Waivers of the Statute of Limitations since the validity of the 1996 assessments depends upon the validity of the said waivers.

Respondent submits that petitioner, through its representative Rebecca R. Igot, executed a document denominated as a "Waiver of the Defense of Prescription under the Statute of Limitation of the National Internal Revenue Code". Accordingly, in the said undertaking, petitioner expressly waived or renounced its right to make use as defense the prescriptive period allowed by law for the government to make the proper assessment on any taxable income. Such being the case, petitioner is now estopped from questioning the validity of the assessment.

This Court does not agree.

In the case of **Philippine Journalists, Inc. vs. Commissioner of Internal Revenue**[14], the Supreme Court discussed the nature of a valid Waiver of the Statute of Limitations in this wise:

> "A waiver of the statute of limitations under the NIRC, to a certain extent, is a derogation of the taxpayers' right to security against prolonged and unscrupulous investigations and must therefore be carefully and strictly construed. The waiver of the statute of limitations is **not a waiver of the right to invoke the defense of prescription** as erroneously held by the Court of Appeals. It is an agreement between the taxpayer and the BIR that the period to issue an assessment and collect the taxes due is extended to a date certain. The waiver **does not mean that the taxpayer relinquishes the right to invoke prescription unequivocally particularly where the language of the document is equivocal.** For the purpose of safeguarding taxpayers from any unreasonable examination, investigation or assessment, our tax law provides a statute of limitations in the collection of taxes. Thus, the law on prescription, being a remedial measure, should be liberally construed in order to afford such protection. As a corollary, the exceptions to the law on prescription should perforce be strictly construed. . . ." (Emphasis supplied)

From the foregoing, contrary to respondent's argument, petitioner's execution of a waiver does not in itself result in petitioner waiving its right to invoke the defense of prescription.

A perusal of the records of the case would show that respondent failed to submit the said waiver to this Court for consideration. Noteworthy is the fact that respondent filed a Motion to Withdraw BIR Records on February 22, 2007 which was granted through this Court's Resolution on February 23, 2007. And records are bereft of proof that the withdrawn BIR Records were returned to this Court within the period allowed. Moreover, Section 34 of Rule 132 of the Revised Rules of Court specifically states that "(T)he court shall consider no evidence which has not been

[14] G.R. No. 162852, December 16, 2004

formally offered. The purpose for which the evidence is offered must be specified." Although respondent had the subject waivers marked before the Court during the February 11, 2004 hearing, the same was never formally offered as forming part of respondent's evidence.

Inasmuch as there is no Waiver of the Statute of Limitations to consider, consequently, the three-year prescriptive period provided for in Section 203 of the NIRC of 1997 was not suspended. Effectively, the subject assessment notices covering the fiscal year ended June 30, 1996 are void for having been issued beyond the prescriptive period allowed by law.

Going now to the remaining issues of the case, for the fiscal year ending June 30, 1997 and 1998, respondent assessed petitioner for deficiency documentary stamp taxes on its special savings accounts (SSA), interbank call loans (IBCL) and trust placements, and deficiency final withholding taxes – trust.

The issue on the taxability of Special Savings Accounts (SSA) is no longer of first impression. No other than the Supreme Court recently settled that the account Special Savings Deposits/Account is similar to a time deposit subject to documentary stamp taxes, when it sustained this Court sitting *En Banc* in the case of **Banco De Oro Universal Bank vs. Commissioner of Internal Revenue,**[15] the pertinent portion of the Decision is hereby quoted, thus:

> "*Second*, in practice, a time deposit transaction is covered by a certificate of deposit while petitioner's ISA transaction is through a passbook. However, despite the differences in form of the documents, a time deposit and ISA have essentially the same attributes and features. Petitioner admitted that the ISA deposit may be withdrawn at anytime even before its maturity but the depositor gets to earn a lower rate of interest similar to a time deposit account. The fact that the ISA

[15] CTA EB No. 138 (CTA Case No. 6588) as affirmed in *Banco De Oro Universal Bank vs. Commissioner of Inernal Revenue*, GR No. 173602, January 15, 2007

is documented in a passbook and with authorized termination of deposits prior to the lapse of the predetermined period does not detract from its nature as a certificate of deposit subject to DST.

Section 180 of the 1997 NIRC does not prescribe the form of a certificate of deposit. 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 instrument. **The definition of a certificate of deposit is all encompassing to include a savings account deposit such as ISA.**" (Emphasis supplied)

Moreover, in the case of **Philippine Banking Corporation vs. Commissioner of Internal Revenue,**[16] this Court explained 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. Effectively, when petitioner's client has a SSA, and he is issued a passbook serving as a record of his funds and their movement, the same is a manifestation of a written memorandum of the fact of deposit. The fact that a passbook evidences petitioner's SSA 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. This Court cannot allow the practice of banks in labeling their deposit account subject to DST as SSA or any other name in order to avoid tax liabilities.

To discuss further, 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

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

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.[17] 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 High Tribunal made a similar pronouncement in the recent case of **International Exchange Bank vs. Commissioner of Internal Revenue,**[18] where the Supreme Court again sustained the Decision of this Court *En Banc* on the same issue, the relevant portion of which reads:

> "As correctly found 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.
>
> xxx xxx xxx
>
> As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidenced 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."

The deposits of money in petitioner's SSAs are withdrawable anytime and have no maturity. However, as correctly argued by respondent, the depositor would forfeit the higher interest rate for SSA if the deposit is withdrawn before the

[17] *L.R. Heat Treating Co., 28 TC 874; BPI Family Bank vs. CIR, et al.*; CA-GR SP No. 29853, September 19, 1994.
[18] GR No. 171266, April 4, 2007

expiration of the holding period and the maintaining balance fell below the required minimum deposit. 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, bringing SSAs within the purview of "certificate of deposit".

As regards the issue of Interbank Call Loans (IBCL) being subject to documentary stamp taxes, this Court resolves that prior to the 1997 NIRC, as amended, IBCLs are not subject to DST.

The BSP, which exercises supervisory power among banks, requires banks to maintain a daily minimum cash reserve set as a proportion of their deposit liabilities. There are banks which may be holding on to a reserve surplus in a day, while others have deficiency in reserves. A bank may experience surplus in a day, but low reserves in some other days. To cover temporary deficits, banks normally borrow (usually on an overnight lending) from other banks with surpluses. This network allowing banks that are deficient in reserves to borrow from banks with surplus reserves is referred to as IBCL. In other words, IBCL transactions among banks are done primarily to correct reserve requirements. By availing of IBCLs, reserve deficient banks are able to avoid BSP sanctions and the surplus banks are able to earn income on their excess cash holdings.[19]

In this regard, the provisions of the NIRC of 1997, which took effect on January 1, 1998, apply for taxes accruing for the taxable year 1998. Section 22 (Y) the Code reads:

[19] *Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue*, CTA EB No. 269, October 30, 2007 citing Benedicta Du-Baladad, TAXATION OF FINANCIAL INSTITUTIONS IN THE PHILIPPINES, 2006 Edition, p. 48.

> "**SEC. 22. Definitions. — When used in this Title —**
>
> xxx xxx xxx
>
> (Y) The term "deposit substitutes" shall mean an alternative form of obtaining funds from the public (the term "public" means borrowing from twenty (20) or more individual or corporate lenders at any one time) other than deposits, through the issuance, endorsement, or acceptance of debt instruments for the borrower's own account, for the purpose of relending or purchasing of receivables and other obligations, or financing their own needs or the needs of their agent or dealer. These instruments may include, but need not be limited to, bankers' acceptances, promissory notes, repurchase agreements, including reverse repurchase agreements entered into by and between the Bangko Sentral ng Pilipinas (BSP) and any authorized agent bank, certificates of assignment or participation and similar instruments with recourse: Provided, however, That debt instruments issued for **inter-bank call loans with maturity of not more than five (5) days** to cover deficiency in reserves against deposit liabilities, including those between or among banks and quasi-bank, shall not be considered as deposit substitute debt instruments."
> (Emphasis supplied)

Concisely, IBCLs with a maturity period of more than five days and utilized to cover deficiency in reserves against deposit liabilities, including between or among banks and quasi-banks are treated as deposit substitutes. Effectively, the taxability of IBCLs as deposit substitutes is likewise governed by Section 180 of the same Code, *viz:*

> "**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 than 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 (P.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 a 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."

Considering that petitioner adopts the fiscal year as its accounting cycle, starting from July 1 to June 30 of the following year, only those IBLC accounts transacted from January 1, 1998[20] to June 30, 1998 to cover petitioner's fiscal year 1998 are taxable under the law. However, records are wanting of the lists of IBCL transactions, specimen of net transactions per counter-parties, specimen of interbank loan advice credit ticket, specimen of interbank repayment debit ticket, specimens of interbank repayment credit tickets, and specimen of daily statistics report for the petitioner, which would properly establish petitioner's transactions during the fiscal year ending June 30, 1998. This Court cannot thus distinguish with definiteness petitioner's claim. Consequently, for failure of petitioner to properly account for the transactions, this Court has no other alternative but to sustain respondent's assessment of the same.

Finally, petitioner has been assessed deficiency final withholding taxes on its regular interest and trust department. Although applications for the abatement of taxes were admittedly filed by petitioner, it further alleges that it had paid the basic final withholding tax – trust department on June 29, 2007 in the amounts of P4,187,683.27 and P6,097,825.03, for the fiscal years 1996 and 1998.

[20] When the National Internal Revenue Code of 1997 took effect

It is worthy to note that petitioner's alleged payment is a mere allegation wanting of any supporting documentary or testimonial evidence to prove the same. There are no other proffered documents to verify petitioner's allegation that it had indeed paid the subject final withholding tax assessments.

Nonetheless, this Court finds the assailed assessments worthy of affirmation. Petitioner does not dispute the factual findings of respondent; instead arguing that the tax base included accrued interest income which have not yet been received or distributed. Accordingly, the accrued interest income being not yet subject to the 20% final tax, it should not have formed part of the tax base.

Sections 50 (a) [now Section 57(A)], of the 1977 Tax Code provides that the withholding of final taxes on certain incomes prescribed therein shall be withheld by the payor-company in the same manner and subject to the same conditions as provided in the subsequent Section 51 of the same Code. Section 51 (a) [now Section 58 (A)] of the same Code, on the other hand, provides for the authority of the Commissioner of Internal Revenue, upon the approval of the Secretary of Finance, to require or implement rules as regards the withholding and payments of the taxes withheld. Corollary thereto, Section 3 of Revenue Regulations No. 17-84 provides that final withholding income tax on interest on savings and time deposits maintained with the banks shall be fifteen percent (15%) based on interest paid or **accrued** and final withholding tax to be imposed on yield on deposit substitute shall be fifteen percent (15%) to twenty percent (20%) by virtue of Revenue Regulations No. 10-86.

Verily, contrary to petitioner's argument, the withholding of tax on interest income includes those already paid and accrued. In this sense, it is emphasized that 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. Failure on the part of the one claiming to satisfactorily dispute otherwise leaves this Court with no other choice but to affirm the assailed assessments.

On another issue, petitioner raised the argument that it had availed of the provisions of Republic Act No. 9480, otherwise known as the Tax Amnesty Law of 2007, on March 6, 2008. Again, suffice it to say that petitioner's argument is a mere allegation which has not been properly supported by documentary and testimonial evidence proving its availment. In this regard, this Court takes no consideration of the same.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, Assessment Notices issued against petitioner for deficiency documentary stamp, final withholding, expanded withholding, and fringe benefits tax assessments the fiscal year ended June 30, 1996 are **VOID** for being issues beyond the prescriptive period allowed by law.

The Assessment Notices issued by respondent against petitioner for deficiency income, documentary stamp - regular, documentary stamp – trust, and fringe benefits tax assessments for the fiscal years ended June 30, 1997 & 1998 are hereby ordered **CANCELLED** and **WITHDRAWN.** Moreover, petitioner's deficiency documentary stamp tax – IBCL assessment for the fiscal year ended June 30, 1997 is ordered **CANCELLED** and **WITHDRAWN.**

However, petitioner's deficiency documentary stamp tax – Special Savings Account assessments for the fiscal years ended June 30, 1997 & 1998, and deficiency documentary stamp tax – IBCL and deficiency final withholding tax – trust assessments for the fiscal year ended June 30, 1998, in the aggregate amount of **P142,777,785.91** are hereby **AFFIRMED**. The said amount is broken down as follows:

Fiscal Year 1997	
Documentary Stamp Tax – Industry Issue	P 39,163,539.57[21]
Fiscal Year 1998	
Final Withholding Tax – Trust	10,183,367.80[22]
Documentary Stamp Tax – Industry Issue	93,430,878.54[23]
Total Deficiency Tax	**P142,777,785.91**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

[21] Paragraph 3, Joint Stipulation of Facts
[22] Paragraph 3, Joint Stipulation of Facts
[23] Supra

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
Chairman, First Division