REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILIPPINE BANKING CORPORATION
(NOW: GLOBAL BUSINESS BANK, INC.),
Petitioner.

- versus - **C.T.A. CASE NO. 6395**

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:
JUL 16 2004

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DECISION

The instant Petition for Review is an appeal from the decision of the respondent denying petitioner's protest against deficiency documentary stamp tax (DST) assessments covered by Final Assessment Notice No. ST-DST-96-6112-99 for P17,595,488.75 and Final Assessment Notice No. ST-DST-97-0024-99 for P47,767,756.24 for the taxable years 1996 and 1997, respectively, arising from petitioner's Special/Super Savings Deposit transactions.

The facts of the case as culled from the records are as follows:

Petitioner is a domestic corporation duly licensed as a banking institution, with business address at 777 Paseo de Roxas Street, Makati City, offering to the banking public, among others, a product called the Special/Super Savings Deposit during the years 1996 and 1997.

On January 10, 2000, petitioner received from the respondent through the Assistant Commissioner for Enforcement Service, Final Assessment Notice No. ST-DST-96-6112-99 for taxable year 1996, representing alleged deficiency DST based on

196

the outstanding balances of its Special/Super Savings Deposit account including increments thereon in the total sum of P17,595,488.75 and Final Assessment Notice No. ST-DST-97-0024-99 for taxable year 1997 also for deficiency DST on the same bank product including increments thereon amounting to P47,767,756.24.

In response to the Final Assessment Notices, petitioner filed its protest via its letters dated December 17, 1999 and February 7, 2000. In support of its protest petitioner also submitted to the respondent copies of samples of its Special/Super Savings Deposit Passbook and Signature Card attached to a letter dated April 6, 2000.

In a Decision dated December 21, 2002, respondent denied the protest of petitioner by ruling with finality that "the Special/Super Savings Account and Time Deposit are similar if not just one and the same banking transaction, hence, subject to DST."

Thus, on February 19, 2002, twenty-nine (29) days from the date of receipt of the BIR's decision on January 21, 2002, the petitioner filed herein Petition for Review, maintaining that the Special/Super Savings Account is a form of savings deposit evidenced by a non-negotiable instrument in the form of a passbook which deposit transaction or instrument is not subject to documentary stamp tax under Section 180 of the National Internal Revenue Code.

In his Answer filed on April 4, 2002, respondent asserted the following Special and Affirmative Defenses, to wit:

"4. This Honorable Court has no jurisdiction over the instant case as the subject deficiency documentary stamp taxes for the years 1996 and 1997 have already become final, executory and demandable in accordance with Section 228 of the 1997 Tax Code, the pertinent portion of which states that:

197

> "xxx xxx
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> If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Since the 180-day period from April 7, 2000 the date of submitting supporting documents expired without the petitioner having filed the instant petition as required by law, the assessments in question have become final.

5. Assuming that the Honorable Court has jurisdiction to take cognizance of the instant case, nonetheless, the assessments were issued in accordance with law.

6. Petitioner's Special/Super Savings Accounts are certificates of deposit subject to documentary stamp tax (DST) under Section 180 of the National Internal Revenue Code of 1977.

7. In the case of BPI –Family Bank vs. CIR & CTA, CA-GR. No. SP29853, 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 covers the following instruments:
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> (1) promissory note, whether negotiable or not;
> (2) bills of exchange;
> (3) drafts
> (4) certificate of deposit; and
> (5) debt instruments used for deposit substitutes.

198

8. 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 some other person or order (Olsons Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op.cit., p.44).

9. 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, the Special/Super Savings Deposit Account of petitioner is unmistakably a "certificate of deposit" for which taxability to DST lies.

10. The "certificate of deposit" stated in Section 180 does not prescribe any particular form. The fact that Special/Super Savings account is evidenced by a passbook and not by a certificate of deposit 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 rather than its form.

11. 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. Antonio Tuazon, Inc., 173 SCRA 397) and the failure to do so shall vest legality to respondent's actions and assessments.

During the course of the trial, the parties decided to stipulate the issues to be resolved by the court, namely:

1. Whether or not the Honorable Court has jurisdiction over the instant case for failure of the petitioner to file the instant petition within thirty (30) days from the lapse of the 180 day period pursuant to Section 228 of the 1997 Tax Code.
2. Whether or not the Super/Special Savings Deposit (SSD) is subject to documentary stamp tax under Section 180 of the Tax Code. (*Joint Stipulation of Facts and Issues, page 81, CTA Records*)

After considering the attending facts, the evidence adduced and the applicable laws and jurisprudence, the court upholds the validity of the subject Assessments.

The respondent questions the CTA's jurisdiction over the present case based on the allegation that the questioned DST deficiency assessments for the years 1996 and 1997 have already become final, executory and demandable. In the case at bar, the petitioner instead of elevating this case to the CTA after the lapse of the one hundred eighty (180)-day period chose to appeal on February 19, 2002 or twenty-nine (29) days from its date of receipt of the final decision of the BIR on its protest. Respondent uses as basis for its arguments Section 228 of the Tax Code of 1997, which states in part thus:

> "If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal

200

> to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

This issue, however, has long been settled by the CTA in the case entitled **Lascona Land Co., Inc. vs. Commissioner of Internal Revenue, et. al.**, *CTA Case No. 5777, January 4, 2000.* This court explained that under **Section 228 of the 1997 Tax Code**, the taxpayer is given an option to either appeal to the CTA within thirty (30) days from the lapse of the 180-day period in case of inaction of the Revenue Bureau or from the decision of the Commissioner of Internal Revenue. The significant portions are hereunder quoted for easy reference, thus:

> "**Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer an option: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, he may wait until the Commissioner decides on his protest before he elevates his case. This Court believes that the taxpayer was given an option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable.**
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> We agree with Petitioner that to adopt the interpretation of respondent will not only sanction inefficiency, but will likewise condone the Bureau's inaction. This is especially true in the instant case when despite the fact that respondent found Petitioner's arguments to be in order, the assessment will become final, executory and demandable for Petitioner's failure to appeal before us within the thirty (30) day period." *(Emphasis supplied)*

Here, there is no dispute that petitioner filed the present petition within the thirty (30)-day period from receipt of the final decision of the respondent as an

201

exercise of one of its two available options pursuant to the above Lascona ruling. Hence, this court has jurisdiction over the instant petition.

We now proceed to the second issue.

Petitioner maintains that the nature of Special/Super Savings Account is basically the same as that of a Regular Savings Account, both having common features, namely:

1. They are both evidenced by a passbook;
2. The depositors can make deposits or withdrawals which are not subject to penalty; and
3. Both can have an Automatic Transfer Agreement (ATA) with the depositor's current/checking account.

The only difference is that, Special/Super Savings Accounts are for depositors who maintain deposits with substantial average daily balance with the bank, and thus, they are given additional interests on top of the interest rate on regular savings accounts. Moreover, such deposits are classified as Special/Super Savings Account in the bank's financial statement in order to maintain a separate record for savings deposits having substantial balances and higher interest rates.

Respondent claims otherwise. According to respondent, Special/Super Savings Deposit is an interest-bearing account and has the same feature of a time deposit account. There is a required minimum deposit balance and a holding period in order to avail of the preferential interest rate that is higher than that of the regular savings account. The only difference is that petitioner does not issue any certificate but only a passbook. But the "certificate of deposit" stated in Section 180 of the Tax

Code imposes no particular form. Therefore, the fact that the Special/Super Savings Deposit is evidenced by a passbook and not by a certificate is irrelevant.

Respondent adds that it is pointless to deny the similarities of a Special/Super Savings Deposit and a Time deposit. Petitioner only placed a superficial distinction between the two deposit accounts by using a regular passbook to document the Special/Super Savings Account and by claiming that the said special deposit has no specific maturity date. However, an in-depth scrutiny of the issued passbook exposes that although it is not in the form of a certificate, it has a fixed maturity date and is of the same nature and substance as a "certificate of deposit bearing interest." Thus, it is tantamount to a "certificate of deposit" contemplated in Section 180 of the 1977 Tax Code, as amended by R.A. No. 7660.

We agree with the respondent.

The contention of petitioner to refute the assessments is basically, that Section 180 of the 1977 Tax Code, as amended applies to specific documents which include certificate of deposit, particularly, a time deposit account which Special/Super Savings Deposit is not. Accordingly, it is not subject to DST.

This argument suffers two infirmities, namely: (1) despite petitioner's play of semantics, evidence proves that Special/Super Savings Deposit is a time-deposit account and (2) even if Special/Super Savings Deposit is not a time-deposit account, the term "certificate of deposit" in Section 180 of the 1977 Tax Code, as amended is broad enough to make it liable for DST.

As correctly pointed out by respondent in his questioned Final Decision on the assessment protests, it is easy to be misled and to consider petitioner's Special/Super Savings Deposit as a savings deposit if one examines the features on a piecemeal

203

basis. But when the same is seen in its totality it is revealed as a time deposit written on a passbook.

Admittedly, the amount deposited can be withdrawn anytime. However, the negative effects of such early withdrawal make it unadvisable to avail. This is due to the fact that in order for the Special/Super Savings Account holder to be entitled to the preferential interest rates, the required amount must be maintained within a certain period. If the depositor withdraws the money and the balance falls below the "minimum balance", the interest is reduced. The reduction of interest rate and/or the imposition of penalties in cases of pre-termination successfully restrain the depositor's right to withdraw from the account. This situation is admittedly identical to that imposed on time deposits.

Likewise, based on the finding of respondent as stated in his Final Decision to petitioner's protest, in order to qualify for the petitioner's Special/Super Savings Deposit Account, the depositor must place a substantial amount of money amounting to not less than P50,000.00 which is larger than what is needed in order to open a time deposit which is P20,000.00. The depositor stands to lose the agreed higher interest rate if the money is withdrawn before the period or if it falls below P50,000.00. This condition is not inherent in a savings deposit but fundamental in a time deposit account.

Moreover, petitioner claims that like in a Regular Savings Account, the Special/Super Savings Account holder may opt to have an Automatic Transfer Agreement (ATA) with the depositor's current/checking account. This feature, however, is not an essential element of a savings deposit. Accordingly, it must not be

204

considered as a litmus test to determine whether an account is a savings deposit. It is rather a service given to a depositor for convenience.

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 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

205

> 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

206

> 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*).
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> 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.

WHEREFORE, the instant petition is **DENIED** for lack of merit. Accordingly, the petitioner is hereby **ORDERED** to **PAY** the amounts of P17,595,488.75 and P47,767,756.24 as deficiency documentary stamp taxes for the taxable years 1996 and 1997, plus 25% surcharge for late payment and 20% annual delinquency interest for late payment from January 20, 2002 until fully paid pursuant to Sections 248 and 249 of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

108

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice