REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED OVERSEAS BANK PHILIPPINES,
Petitioner,

C.T.A. CASE NO. 6869

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 21 2006

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DECISION

ACOSTA, E., PJ.:

Before Us is a Petition for Review of respondent's Final Decision on Disputed Assessment dated January 14, 2004 denying petitioner's protest against the assessment for deficiency documentary stamp tax on its Special Savings Deposit accounts for taxable year 2000 in the amount of P6,050,119.52 inclusive of increments.

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws with principal office located at 17th Floor Pacific Star Bldg., Senator Gil Puyat corner Makati Ave., Makati City. Petitioner is duly registered with the Bangko Sentral ng Pilipinas to engage in general banking operations in the Philippines.

Respondent is the Commissioner of Internal Revenue, duly appointed to perform the duties of his office, including, *inter alia*, the power to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court, and holds office at the 5th Floor, Bureau of Internal Revenue ("BIR") National Office Building, BIR Road, Diliman, Quezon City.

In the Formal Letter of Demand dated December 15, 2003, respondent assessed petitioner of deficiency documentary stamp tax ("DST") on Special Savings Deposit ("SSD") accounts for taxable year 2000 in the amount of P6,050,119.52, inclusive of increments.[1] Petitioner protested the same in a letter dated January 5, 2004 which was denied by the respondent in a letter dated January 14, 2004 and received by the petitioner on February 4, 2004.

In accordance with Section 228 of the National Internal Revenue Code of 1997 ("Tax Code"), petitioner has thirty (30) days from February 4, 2004 within which to appeal the decision to the Court of Tax Appeals. Thus, the instant petition filed on February 24, 2004 with this Court is well within the period allowed by law.

In his Answer, respondent maintains that petitioner's SSD account has features similar to a time deposit, hence, taxable under Section 180 of the Tax Code; assuming arguendo that the SSD is not a certificate of deposit, it is a loan agreement because the relationship between a bank and a depositor is that of a debtor and creditor; all presumptions are in favor of the correctness of tax assessment, the good faith of tax assessors and the validity of their actions are presumed. Moreover, petitioner was informed of the law and the facts on which the assessment was made pursuant to Section 228 of the Tax Code.

The parties have jointly stipulated on the following issues for the resolution of this Court:

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[1] Exhibits A to A-2

1. Whether the Formal Letter of Demand and Assessment Notice, sufficiently informed the petitioner of the law and the facts on which the assessment is made, as required under Section 228 of the Tax Code;

2. Whether petitioner's SSD account is in substance a time deposit; and

3. Whether the passbook evidencing the SSD account is subject to DST under Section 180 of the Tax Code.

<u>Formal Letter of Demand and Assessment Notice should sufficiently inform the taxpayer of the law and the facts on which the assessment is made, as required under Section 228 of the Tax Code</u>

Petitioner alleges that the Decision, as well as the Formal Letter of Demand and Assessment Notice that it affirms, did not sufficiently inform petitioner of the law and the facts on which the assessment is made as required under Section 228 of the Tax Code, hence, null and void. In support of this averment petitioner cites the case of *Abbott Laboratories, Inc. v. Commissioner of Internal Revenue,* (C.T.A. Case No. 5718 dated February 16, 2001), which substantially states that the requirement of Section 3, Revenue Regulations No. 12-99 is intended to apprise the taxpayer of the reason why he is being taxed and to give him the opportunity to dispute an assessment or agree with it. Section 228 of the Tax Code "requires the Respondent to inform the taxpayer in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. As thus worded, the Respondent has the bounden duty to inform the taxpayer not only of the law but more importantly, the surrounding circumstances supporting the assessment, for it is only through a detailed appraisal of its basis that the taxpayer may be able to dispute the imposition or agree with it".

We rule against the petitioner. Section 228 of the Tax Code, pertinently provides:

"SEC. 228. *Protesting of Assessment.* – xxx

xxx xxx xxx

The taxpayers shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void."

The requirement of Section 228 of the Tax Code is a fundamental part of due process. Section 3 of Revenue Regulations No. 12-99 which implements Section 228 of the Tax Code provides:

"SECTION 3. Due Process Requirement in the Issuance of a Deficiency Tax Assessment. -

3.1. Mode of procedure in the issuance of a deficiency tax assessment:

xxx xxx xxx

3.1.4. Formal Letter of Demand and Assessment Notice. – The formal letter of demand and assessment notice shall be issued by the commissioner or his duly authorized representative. The letter of demand calling for payment of the taxpayer's deficiency tax or taxes shall state the facts, the laws, rules and regulations, or jurisprudence on which the assessment is based, otherwise, the formal letter of demand and assessment notice shall be void. xxx

xxx xxx xxx

3.1.6. Administrative Decision on a Disputed Assessment. – The decision of the Commissioner or his duly authorized representative shall (a) state the facts, the applicable law, rules and regulations, or jurisprudence on which such decision is based, otherwise, the decision shall be void xxx"

Based on the foregoing, the taxpayer should be informed in writing of the law and the facts on which the assessment is made. It does not, however, provide a specific form as to the notice to be sent by the respondent or his duly authorized representative to the taxpayer.

In the present case, this Court finds that the questioned Formal Letter of Demand and Assessment Notice are sufficient in form and substance. Petitioner was informed that, as a result of the examination conducted by the BIR examiners pursuant to Letter of Authority No. 2432 dated November 7, 2002, they found that the petitioner had a total documentary stamp tax deficiency of P6,050,119.52. Petitioner was informed that the said amount was being assessed as "an industry issue pursuant to the provision of Section 180 of the Tax Code" *(Exhibit "A")*. Petitioner was being informed that it was being assessed of deficiency DST, plus increments, for taxable year 2000. And it was furnished the details of the computation.[2]

This Court is therefore not swayed into believing that petitioner was not informed of the laws and the facts upon which the assessment was made that would warrant the declaration for its nullity. Petitioner was able to intelligently argue its cause through the letter protest it promptly submitted to the BIR in response to the assessment notice it received.[3]

Is petitioner's Special Savings Deposit Account, evidenced by a passbook, in substance a time deposit to be subject of documentary stamp tax under Section 180 of the Tax Code?

Petitioner contends that the Special Savings Deposit (SSD) Account, in form and substance, is not a time deposit and the passbook evidencing the SSD account transactions cannot be considered as a certificate of deposit bearing interest.

According to petitioner Section 2(1) of Revenue Regulations No. 12-80 dated November 7, 1980 and Section 2(g) of Revenue Regulations No. 17-84 dated October 12, 1984, define time deposit as "a deposit which has definite time of maturity and cannot be withdrawn by the depositor until maturity, except in cases of authorized pretermination." On the other hand, a savings deposit is defined as a deposit which "may be withdrawn by the depositor at any time, subject only to the right of the depository bank to require reasonable prior notice in writing before withdrawal may be made: (Section 2(e) Revenue Regulations No. 12-80; Section 2(g) Revenue Regulations No. 17-84, Revenue Audit Memorandum Order (RAMO) dated February 28, 2000)".

Petitioner further submits that the issuance of a certificate of deposit to evidence a time deposit is an essential feature provided for by law to distinguish it from a regular

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[2] Exhibit A-1
[3] Exhibit B

103

savings deposit. It posits that this certificate of deposit is not merely a formal requirement, but constitutes an essential element of a time deposit. Accordingly, the following are the essential features of a time deposit: (1) it has a maturity period; (2) it can be withdrawn only upon maturity; and (3) it is evidenced by a certificate of deposit. Taking into consideration the foregoing, petitioner's SSD cannot be considered as a time deposit since it has none of the aforementioned essential elements of a time deposit: it has no maturity period; it is withdrawable anytime by the depositor upon presentation of SSD passbook and duly accomplished withdrawal slip; and it is not evidenced by a certificate. The SSD passbook does not show the due date and interest rate of the deposit, it does not have to be signed by the cashier and countersigned by the president or manager of the bank as required by the Bangko Sentral ng Pilipinas.

Petitioner likewise claims that "[W]hile a certificate of deposit is basically a promissory note, a passbook is merely a record of the customer's account with the bank, *Walde v. Edwards,* 99 SE 160, 161, 23 Ga. App. 677 cited in 31 A Words and Phrases, p. 11)". Moreover, petitioner alleges that the SSD passbook is no different from a regular savings account deposit.

Respondent, however counter-argues that petitioner's Special Saving Deposit account has features similar to a time deposit, hence, taxable under Section 180 of the Tax Code. He avers that the "certificate of deposit stated in Section 180 does not prescribe any particular form [and] that petitioner's allegation that SSD account is evidenced by a passbook does not alter the substance of SSD. What is controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance is paramount rather that its form.

We agree with the respondent. Section 180 of the Tax Code provides that:

> "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 (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: *Provided,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: *Provided, however,* That loan agreement, 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."

A perusal of the above-quoted provision of law will show that it covers the following instruments:

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

The Special Savings Deposit Account passbook which petitioner issues its depositor is a certificate of deposit that is a proper subject of documentary stamp tax under Section 180 of the Tax Code. In *Far East Bank and Trust Company vs. Querimit* (373 SCRA 665), the Supreme Court defined a certificate of deposit as "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, whereby the relation of debtor and creditor between the bank and the depositor is created."

Section 180 subjects a "certificate of deposit" to documentary stamp tax. A documentary stamp tax is a tax on documents, instruments and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto (*Hector S. De Leon, The National Internal Revenue Code, 2000 Ed., p. 722*). It is in the nature of an excise tax. It is not imposed upon the business transacted, but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself (*Lincoln Philippines Life Insurance Co., Inc. vs. Court of Appeals,* 293 SCRA 99). It is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than a document. The law taxes the document because of the transaction. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction (*Philippine Home Assurance Corporation vs. Court of Appeals,* 301 SCRA 447, 448).

In the case at bar, petitioner presented Mr. Teofisto Rey, its Manager of General Accounting to testify as to the distinction among Special Savings Deposit account, Time Deposit and regular savings account.[4] Mr. Rey explained that a Special Savings Deposit account is a savings account product of the bank which is called Savings Plus Account (SPA). An SPA is a peso savings product that offers premium interest rate. He further explained the intricacies of SPA and regular savings account which are both classes of deposit accounts, to wit:

> <u>As to initial deposit requirement</u>: SPA requires a higher minimum deposit of P100,000.00, the regular savings account requires a minimum deposit of P2,000.00, Time Deposit requires minimum deposit of P1,000.00.

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[4] TSN, September 6, 2004

As to period of deposit: In both SPA and regular savings account, the depositor may deposit anytime and their respective transactions are recorded in the passbook. In Time Deposit, the depositor can only deposit once. If he wishes to add additional deposit, he is required to open a new account.

As to period of withdrawal: There is no distinction between depositors of SPA and the regular savings account since both can withdraw from their respective accounts at any time. The withdrawal procedure is much the same, depositors but need to fill withdrawal slips as the case may be and their respective transactions will be recorded in their passbooks. The only difference is that SPA transactions will be accordingly stamped as such. With respect to Time Deposits, the depositor is not permitted to withdraw his deposit before the maturity period, otherwise, he will be required to close his account and surrender the Certificate of Time Deposit. Partial Withdrawals are not allowed in Time Deposits.

As to the premium interest: The premium interest rate for SPA, in year 2000, is "more or less 7%, [while] [f]or a regular savings account, it is 3% xxx in Time Deposit, it is more or less 5%".[5] In case of Special Savings Account, in order that said account will earn premium interest rate, the minimum balance should be P100,000.00 and if it falls below such amount, the interest rate shall be that which is prescribed in regular savings deposit account. In SPA, apart from the minimum balance requirement of P100,000.00, there has to be a thirty (30)-day minimum holding period in order that the premium interest for SPA may be received. If the depositor withdraws ahead of the 30-day holding period, his deposit will only earn interest at the rate prescribed for regular savings account. His account, however, will be reinstated to being a Special Savings Account if he replenishes his deposit to P100,000.00 again.

Clearly, the testimony of the above-named witness for petitioner contradicted the latter's claim that its SPA accounts are without maturity period.

Revenue Regulations No. 12-80 defines a "time deposit" as a deposit which has a definite time of maturity and cannot be withdrawn by the depositor until maturity except in cases of authorized pre-termination". This being so and with the testimony of the above-named witness for petitioner, petitioner's SPA are not akin to regular savings accounts but are in fact a genre of time deposits, therefore, subject to documentary stamp taxes under Section 180 of the Tax Code.

The nature of reduction of interest rate in case of withdrawal below the minimum balance required is akin to that of pre-termination in time deposits; in regular savings

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[5] TSN, September 6, 2004, p. 41

account, however, there is no such reduction of interest rate per annum. Hence, petitioner's SPA is a class of time deposit rather than of a regular savings deposit. The use of an ordinary savings account passbook instead of a certificate of deposit does not change the true character of Special Savings Deposit account as time deposit. The passbooks that petitioner issue to its depositors or holders of Special Savings Deposit accounts, are certificates of deposit that are proper subject of Documentary Stamp Tax.

To reiterate, documentary stamp tax is in the nature of an excise tax, which is a tax imposed upon the privilege, opportunity or facility offered at exchanges for the transactions of the business. And, tax laws should not be allowed to be circumvented by various arrangements and schemes in order to evade payment of just taxes.[6]

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Final Decision on Disputed Assessment dated January 14, 2004 of the Bureau of Internal Revenue is hereby **AFFIRMED** with some modifications. The compromise penalty of P25,000.00 is hereby *CANCELLED* there being no mutual agreement between the parties,[7] however, a 25% surcharge is hereby imposed pursuant to Section 248 of the Tax Code.

Accordingly, petitioner is **ORDERED to PAY** the respondent the amount of P6,966,544.45 representing deficiency documentary stamp taxes for the taxable year 2000, computed as follows:

Basic tax	P 3,765,699.70
Add: 25% Surcharge	941,424.93
20% Interest	2,259,419.82
TOTAL	P 6,966,544.45

In addition, petitioner is **ORDERED to PAY** 20% delinquency interest on P6,966,544.45 computed from March 8, 2004 until full payment thereof pursuant to Section 249(C) of the Tax Code.

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[6] Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Co., Inc., supra
[7] Collector of Internal Revenue vs. UST, 104 Phil 1062

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division