REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

KEPPEL BANK PHILIPPINES, INC., ***Petitioner,***	**C.T.A. E.B. NO. 38 (C.T.A. CASE NO. 6560)**
	Present:
-versus-	ACOSTA, Presiding Justice, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** MAR 18 2005 CAPApolinario

x -- x

DECISION

PALANCA-ENRIQUEZ, J.:

Pursuant to *Section 180 of the National Internal Revenue Code of 1993, as amended,* on all bills of exchange (between points within the Philippines), drafts or certificates of deposits drawing interest, or 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

10

of any such note, there shall be collected a documentary stamp tax of twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note.

Is petitioner's special savings deposit, more particularly known as the Anniversary Savings Deposit (hereafter "ASD"), a certificate of deposit bearing interest, and, thus, subject to documentary stamp tax (hereafter "DST")?

THE CASE

This issue is before Us in this Petition For Review filed by Keppel Bank Philippines, Inc. (hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43 of the 1997 Rules of Civil Procedure, as amended*, which seeks the reversal of the Decision dated June 23, 2004 and the Resolution dated October 4, 2004 issued by the Division of this Court in C.T.A. Case No. 6560, the respective dispositive portions of which read:

> "**WHEREFORE**, the Petition for Review is hereby **DENIED** for lack of merit. The assessment for deficiency

documentary stamp tax on Anniversary Savings Deposit for the taxable year 1994 is **AFFIRMED** while the deficiency documentary stamp tax assessment for the year 1995 is **MODIFIED**. Petitioner is **ORDERED TO PAY** the respondent the amounts of P3,888,142.71 and P4,213,180.87, inclusive of 25% surcharge, representing deficiency documentary stamp taxes for the years 1994 and 1995, plus 20% delinquency interest per annum from March 13, 2000 until fully paid pursuant to Sec. 249 of the National Internal Revenue Code of 1997.

SO ORDERED."

"Considering that the arguments raised by petitioner in its Motion for Reconsideration filed on July 16, 2004, are mere reiterations of its previous allegations which have already been passed upon and considered in the assailed Decision dated June 23, 2004, the Court hereby **RESOLVES** to **DENY** the said Motion for lack of merit.

SO ORDERED."

THE FACTS

The antecedent facts are not in dispute:

On August 14, 1996, the petitioner received a Letter of Authority No. 133984 dated August 9, 1996 issued by Commissioner Liwayway Vinzons-Chato of the Bureau of Internal Revenue authorizing Revenue Officers C.J. Abeleda, E. Dulfo, Ma. C. Valenzuela & T. Galicia to be supervised by Group Head A. Aluquin, all of the Special Audit Team, to

92

examine its books of accounts and other accounting records for all internal revenue taxes for the years 1994 and 1995. The said Letter of Authority was revalidated by Letter of Authority No. 134103 dated April 21, 1998, which was received by petitioner on April 29, 1998.

On different dates, the petitioner executed several waivers of the defense of prescription under the statute of limitations of the National Internal Revenue Code. The latest of which was accomplished on December 22, 1999 extending the period for respondent to assess all of petitioner's internal revenue tax liabilities for the years 1994 and 1995 until June 30, 2000.

On January 11, 2000, respondent issued assessment notices together with the demand letter covering the following 1994 and 1995 deficiency documentary stamp tax assessments, to wit:

	1994 Assessment No. ST-DST-94-0353-2000	1995 Assessment No. ST-DST-95-0354-2000
Tax Due (Sec. 7 of NIRC)	P 3,110,514.17	P 6,481,058.59
Add: 25% Surcharge (Sec. 248)	777,628.54	1,620,264.65
	P 3,888,142.71	P 8,101,323.24

ape

93

The foregoing assessment notices together with the corresponding demand letter were all received by petitioner on March 13, 2000 (*Joint Stipulation of Facts and Issues, par. 4*).

The deficiency taxes arose from the non-payment of petitioner of documentary stamp tax on special savings deposit, more particularly known as the Anniversary Savings Deposit.

On April 10, 2000, petitioner filed its administrative protest with the Enforcement Service of the Bureau of Internal Revenue, contesting the bases of the aforementioned deficiency tax assessments.

On August 8, 2002, judgment was rendered by the then Commissioner of Internal Revenue, Rene G. Bañez, the dispositive portion of which reads as follows:

> "**IN VIEW THEREOF**, this Office hereby resolves to DENY the protest of Keppel Monte Bank dated April 6, 2000. Assessment Notice No. ST-DST-94-0353-2000 and ST-DST-95-0354-2000 both dated January 11, 2000 issued by this Bureau demanding payment of the sum of P3,888,142.71 as deficiency documentary stamp tax for the year 1994 and P8,101,323.24 as deficiency documentary stamp tax for the year 1995, are hereby **AFFIRMED** in all respects. Consequently, the protestant-bank is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon, to the Large Taxpayers Service, BIR National Office, Diliman, Quezon City, within thirty

94

> (30) days from receipt hereof otherwise, the collection thereof will be effected through the summary remedies provided by law.
>
> This constitutes the final decision on the matter."

On November 6, 2002, petitioner filed a Petition for Review with this Court, docketed as C.T.A. Case No. 6560.

After trial on the merits, the Division of this Court rendered the assailed Decision on June 23, 2004 denying the Petition For Review for lack of merit.

Not satisfied, petitioner moved for a reconsideration of the same, which the Division denied in a Resolution dated October 4, 2004.

THE ASSIGNED ERROR

Hence, this Petition for Review where petitioner maintains that the only issue to be resolved in this petition is –

> WHETHER OR NOT PETITIONER'S ANNIVERSARY SAVINGS DEPOSIT IS A CERTIFICATE OF DEPOSIT BEARING INTEREST, AND THUS SUBJECT TO DST.

On November 19, 2004, without necessarily giving due course to the petition, We required the respondent to file comment on the petition, not a motion to dismiss, within ten (10) days from notice. On January 4, 2008, the respondent filed his Comment, which the Court En Banc admitted in its Resolution dated January 28, 2005.

THIS COURT EN BANC'S RULING

The petition has no merit.

The principal issue posed for resolution by this Court En Banc is whether petitioner's Anniversary Savings Deposit can be classified as a Certificate of Deposit drawing interest, and thus, subject to DST under *Section 180 of the National Internal Revenue Code of 1993, as amended.*

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

Petitioner claims that its Anniversary Savings Deposit does not fall within the meaning of "time deposit" or "certificate of deposit bearing interest" under *Section 180 of the NIRC of 1993, as amended.* Petitioner's ASD is a special type of savings deposit. It is evidenced by a passbook. In petitioner's balance sheet, the ASD is classified as a savings deposit.

96

Petitioner further points out that its ASD is not in the nature of a time deposit account. Petitioner has a separate product of this nature. Neither can it be considered within the meaning of the general description "certificate of deposit bearing interest" under *Section 180 of the NIRC of 1993, as amended*, because the essential elements of a certificate of deposit, as clarified by the BIR itself in Revenue Memorandum Circular No. 16-03, are lacking. The ASD does not have a maturity date and the client can withdraw his money any time. There is likewise no penalty for early withdrawal; the interest is the same and adjusted on a daily basis.

Petitioner further argues that the Division failed to make any reference to the records of this case in support of its finding that petitioner's ASD is subject to DST.

We disagree.

Section 180 of the National Internal Revenue Code of 1993, as amended, provides:

> "SEC. 180. Stamp tax on promissory notes, bills of exchange, drafts, certificates of deposit bearing interest and others not payable on sight or demand. - **On all bills of exchange (between points within the Philippines), drafts or certificates of deposits drawing interest, or 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 twenty centavos on each two hundred pesos, or fractional part thereof, of the face value of any such bill of exchange, draft, certificate of deposit, or note."**

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

1) bills of exchange,
2) drafts,
3) certificates of deposits drawing interest,
4) orders for the payment of any sum of money otherwise than at sight or on demand,
5) promissory notes, whether negotiable or non-negotiable, and
6) renewal of any such note.

A certificate of deposit is defined as a written acknowledgment by a bank or banker of the receipt of a sum of money on deposit which the bank or banker promises to pay to the depositor, to the order of the depositor, or to some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created (*Far East Bank and Trust Company vs. Querimit, 373 SCRA 671*).

From the aforequoted provision of *Section 180*, the law 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 imposed on the privilege, opportunity or facility offered at exchanges for the transaction of the business and not upon the business transacted (*Lincoln Phil. Life Insurance Co., Inc. vs. Court of Appeals, 293 SCRA* 92).

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 (*Hector S. De Leon, The Law on Transfer and Business Taxation, 1998, ed., p. 351*). What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

On the other hand, 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 advance notice. Ordinarily, a time deposit is defined as "one, the payment of which cannot legally be required within such a specified number of days" (*BPI Family Savings Bank vs. First Metro*

Investment Corp., G.R. No. 132390, May 21, 2004, citing 10 Am. Jur. 2d., p. 652). In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal (*Black's Law Dictionary, 6th ed.*). Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in the form of reduced interest rate. An instance is when the depositor makes a withdrawal prior to the maturity of the deposit.

A certificate of deposit, undeniably, being subject to documentary stamp tax, is thus relevant to determine whether the ASD bears the same nature or characteristics of a time deposit certificate.

As correctly found by the Division of this Court, an ASD is an interest-bearing account; it requires a minimum deposit balance and a holding period before the depositors can avail of the preferential interest rate, which is higher than the regular savings account. The only difference is that, in a time deposit account, a certificate of deposit is issued, while in ASD, a passbook is issued (*TSN, dated April 24, 2002, pp. 17-19*).

Moreover, as admitted by petitioner, in an ASD, if the depositor withdraws the deposit before the 30-day posting of interest or the anniversary date and the balance falls below the minimum amount of P50,000.00, the interest is reduced. The reduction of interest rate and/or the imposition of penalty in case of pretermination is a condition akin to that imposed on time deposits.

The penalty imposed on both the ASD and the time deposit being of the same nature, the conclusion is that the ASD is a class of time deposit rather than a special savings deposit. While in both the ASD and time deposit a considerable reduction of interest is exacted in cases of withdrawal and/or pretermination, in a regular savings account no such reduction is imposed.

For all intents and purposes, petitioner's ASD is deemed to be of the same nature and substance as a certificate of deposit bearing interest. Therefore, We hold that said ASD passbook is in itself a certificate of deposit, subject to documentary stamp tax in accordance with *Section 180, National Internal Revenue Code of 1993, as amended.* While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents (*Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 435*).

Citing the ruling in *Traders Royal Bank vs. Commissioner of Internal Revenue, C.T.A Case No. 6392*, promulgated on April 28, 2004, which resolved the very same issue in this petition, the Division of this Court correctly ruled that a special savings account is subject to documentary stamp tax.

The Division aptly ruled:

> "Likewise House Bill No. 4481 and Senate Bill No. 2368 cited by petitioner do not support its cause. Both bills even proposed that 'OTHER EVIDENCES OF TIME deposits bearing/(drawing) interest' is subject to documentary stamp tax. Thus our ruling that ASD which has the same features of a time deposit certificate but evidenced by a passbook (which is other form of evidence of time deposit) is really subject to documentary stamp tax. The current Section 180 of NIRC, which said bills propose to amend, change the phrase 'Certificate of Deposit Bearing Interest' to 'OTHER EVIDENCES OF TIME Deposits Bearing/(Drawing) Interest' so as not to further misinterpret the said provision. Indeed, the certificate of deposit bearing interest under Section 180 of the NIRC refers to time deposit account. And ASD is a time deposit account."

102

Petitioner contends that the imposition of the DST on the average month-end balance of the ASD has no factual and legal basis. It argues that should the DST be due, the same should be imposed on the amount of new deposits.

As correctly ruled by the Division of this Court:

> "The position of petitioner that the computation should be based on the amount of new deposit is unfounded considering that petitioner did not provide the details of new deposit under ASD account during the years 1994 and 1995. What was offered in evidence was the schedule of ASD's balances as of the end of the month of the years 1994 and 1995 (Exhibit C)." (*Decision, p. 9, dated June 23, 2004*)

It is settled that tax assessments by the examiners are presumed correct and made in good faith. Taxpayers have the burden of proof to show clearly that the assessment is erroneous, in order to relieve himself from it (*Cagayan Robina Sugar Milling Co. vs. Court of Appeals, 342 SCRA 663*). Petitioner failed in this regard. Other than its own bare allegations, the imputation of erroneous computation was not substantiated.

The taxpayer's burden to dispute or impugn the validity of the tax assessment is made manifest by the provisions of Revenue Regulations No. 12-99, which in part provides: gul

> "3.15. Disputed Assessment.---
>
> The taxpayer shall state the facts, the applicable law, rules and regulations, or jurisprudence on which his protest is based, otherwise, his protest shall be considered void and without force and effect. If there are several issues involved in the disputed assessment and the taxpayer fails to state the facts, the applicable law, rules and regulations, or jurisprudence in support of his protest against some of the several issues on which the assessment is based, the same shall be considered undisputed issue or issues, in which case, the taxpayer shall be required to pay the corresponding deficiency tax or taxes attributable thereto."

It is understood that the 30-day period or the anniversary date is the reckoning period for which the posting of interest on the ASD is made. Said 30-day period is deemed to be the maturity date of the ASD, and if said maturity date is extended, the ASD is considered renewed (*BIR Ruling No. 039, April 7, 1986*). Such being the case, the ASD, the maturity date of which has been extended, is therefore, considered renewed, and is thus subject to DST at the same rate as the tax on the original document (*BIR Ruling No. 041-80, April 8, 1986*). Accordingly, no error was committed by the Division when the imposition of the DST was based on the average monthly balance of the ASD.

In view of the foregoing, We see no reason to reverse the decision of the Division.

WHEREFORE, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

C E R T I F I C A T I O N

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.

ERNESTO D. ACOSTA
Presiding Justice

104