

## THIRD DIVISION

**[ G.R. No. 172359, October 02, 2009 ]**

### CHINA BANKING CORPORATION, PETITIONER, VS. THE COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

### D E C I S I O N

#### PERALTA, J.:

Before this Court is a Petition for Review on *Certiorari*<sup>[1]</sup> under Rule 45 of the Rules of Court seeking to set aside the January 3, 2006 Decision<sup>[2]</sup> and March 20, 2006 Resolution<sup>[3]</sup> of the Court of Tax Appeals (CTA) *En Banc* in C.T.A. EB No. 66 (C.T.A Case No. 6400).

The facts of the case.

Petitioner China Banking Corporation, a universal banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, was engaged in the transaction of accepting special savings deposits (SSD), otherwise known as "Savings Plus Deposit."<sup>[4]</sup>

On September 23, 1999, petitioner received a Pre-Assessment Notice<sup>[5]</sup> (PAN) issued by respondent Commission on Internal Revenue, assessing it for deficiency documentary stamp tax on its Reverse Repurchase Agreements (RRA) and SSDs for the taxable years 1994 and 1995 in the total amount of Php 27,451,844.09 including increments thereon.

On October 6, 1999, petitioner sent a letter<sup>[6]</sup> to respondent whereby it manifested its formal disagreement to the PAN.

Subsequently, petitioner received a Final Assessment Notice (FAN) dated October 8, 1999, which reiterated petitioner's liability for deficiency documentary stamp tax on its RRAs and SSDs for the taxable years 1994 and 1995. The same was detailed as follows, to wit:

#### **For the year 1994**

A. Reverse Repurchase Agreements	P 424,000,000.00
B. Special Savings Accounts	2,142,305,326.67
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	-
Total	2,566,305,326.67
Rate of Tax	0.15%

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Total	Tax	due		
thereon				
	Add:			
		25%	962,364.50	
		Surcharge		
		Compromise	25,000.00	987,364.50
		Penalty		
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				-
<b>Total Deficiency</b>				<b>P4,836,822.48<sup>[7]</sup></b>
<b>DST-Industry</b>				
<b>Issue</b>				

For the year 1995				
A.	Reverse			P
Repurchase			9,773,000,000.00	
Agreements				
B.	Special Savings		2,275,011,526.88	
Accounts				
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				-
Total			12,048,011,526.88	
Rate of Tax			0.15%	
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				-
Total	Tax	due		P 18,072,017.29
thereon				
	Add:			
		25%	4,518,004.32	
		Surcharge		
		Compromise	25,000.00	4,543,004.32
		Penalty		
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				-
<b>Total Deficiency DST-Industry Issue</b>				<b>P</b>
				<b>22,615,021.61<sup>[8]</sup></b>

On November 24, 1999, petitioner filed a formal protest<sup>[9]</sup> questioning the legality and basis of both the PAN and the FAN. In said protest, petitioner contested the basis of the assessment of deficiency documentary stamp tax on its SSDs in the following manner, to wit:

x x x x

B. On the Special Savings Account:

With respect to the Savings Plus Deposit transactions, the latter is also not subject to documentary stamp tax because by the very nature of the transaction which is just a variation of the regular savings account, the same is not taxable under the aforequoted Section 180. Let us consider some salient features of the product that differentiates it from a Time Deposit Account:

1. The terms and conditions of the Savings Plus Deposit are provided for in the traditional passbook form as distinguished from a Time Deposit Account which is evidenced by a certificate of deposit.

2. In a time deposit, there is no partial withdrawal. The term is preterminated and the certificate of deposit is cancelled and surrendered and the entire amount is paid to the depositor. In the case of Savings Plus Deposit, however, there is partial withdrawal, which is posted in the passbook. The amount withdrawn is paid to the depositor and the passbook is returned to the depositor. In other words, the Savings Plus Deposit, contrary to the basis for assessment, represents a continuing fund which is open to deposits and withdrawals anytime, and therefore, falls under the category of certificates of deposit at sight or on demand which is exempt from documentary stamp tax.

3. When fifty percent (50%) of the term of a Time Deposit had lapsed, interest to be paid is fifty percent (50%) of the agreed rate. When less than fifty percent (50%) of the term had lapsed, interest to be paid is twenty-five percent (25%) of the agreed rate. In the case of a Savings Plus Deposit, however, amount withdrawn earns only the regular fixed savings rate of three percent (3%).

4. The features of the product in no way resemble that of a promissory note or a certificate of indebtedness, and

5. The intention, not any occasional error in the implementation of the product, should be the basis of taxation. A correctible error in the implementation does not convert a non-taxable product into a taxable one.

In view of all the foregoing reasons and considerations, we hereby request that subject assessment notice be recalled and/or reconsidered, the same not being due and demandable from China Bank, under the premises.<sup>[10]</sup>

On December 20, 1999, petitioner received a Preliminary Agreement Notice<sup>[11]</sup> dated December 17, 1999, assessing petitioner's deficiency documentary stamp taxes on its RRAs and SSDs covering the taxable years 1996 and 1997. Like in the first assessment, petitioner sent a letter<sup>[12]</sup> manifesting its disagreement thereto.

On December 29, 1999, a formal letter of demand<sup>[13]</sup> was received by petitioner whereby respondent demanded the total amount of P13,781,350.00, representing deficiency documentary stamp tax on petitioner's RRAs and SSDs for the taxable years 1996 and 1997.

On January 26, 2000, petitioner sent a letter<sup>[14]</sup> to respondent reiterating its position that the RRAs and SSDs were not subject to documentary stamp tax.

On February 18, 2000, respondent sent a notice<sup>[15]</sup> to petitioner setting an informal hearing with regard to the protest made by the latter on the assessment of

deficiency documentary stamp tax on its RRAs and SSDs. On April 7, 2000, petitioner submitted its final position paper.<sup>[16]</sup>

On January 11, 2002, respondent rendered a Decision<sup>[17]</sup> resolving to cancel and withdraw the assessments for deficiency documentary stamp tax on petitioner's RRAs covering the taxable years 1994, 1995 and 1996. However, said decision affirmed the assessments for alleged deficiency documentary stamp tax on petitioner's RRAs for the year 1997 as well as on its SSDs covering the taxable years 1994 to 1997. The dispositive portion of said decision is hereunder quoted, to wit:

IN VIEW WHEREOF, this Office do hereby resolved the following:

1. The protest of herein protestant bank on the deficiency stamp taxes on RRP's covering the years 1994, 1995 and 1996 under the following Assessment Notices, to wit:

Assessment Notice No.	Amount	Year
ST-DST-94- 0054-99	P 820,000.00	1994
ST-DST-95- 0055-99	P18,349,375.00	1995
ST-DST-96- 0374-99	P 1,976,250.00	1996

are hereby withdrawn and cancelled and the same are considered closed and terminated.

2. The protest of herein protestant bank on the deficiency stamp tax on RRP's for 1997 under Assessment Notice No. ST-DST-97-0372-99 demanding payment of P3,523,600.00 is hereby affirmed and reiterated.

3. The protest of herein protestant bank on the deficiency stamp taxes on SSA covering the taxable years 1994, 1995, 1996 and 1997 under the following Assessment Notices, to wit:

Assessment Notice No.	Amount	Year
ST-DST-94- 0054-99	P4, 041,822.48	1994
ST-DST-95- 0055-99	4,290,646.61	1995
ST-DST-96- 0371-99	1,633,750.00	1996

are hereby affirmed in all respects.

Consequently, the protestant bank is hereby ordered to pay the above-stated amounts plus interest that may have accrued thereon until actual payment to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise, the collection

thereof shall be effected through the summary remedies provided by law.

This constitutes the final decision of this Office on the matter.<sup>[18]</sup>

On February 22, 2002, petitioner appealed to the Court of Tax Appeals (CTA) *via* a Petition for Review,<sup>[19]</sup> the same was docketed as C.T.A. Case No. 6400.

On October 14, 2004, the CTA rendered a Decision<sup>[20]</sup> partially granting the petition, the dispositive portion of which reads:

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby PARTIALLY GRANTED. Assessment Notice No. ST-DST-97-0372-99 for deficiency documentary stamp taxes on petitioner's Reverse Repurchase Agreement Transactions in the amount of P3,523,600.00 covering the taxable year 1997 is hereby CANCELLED AND WITHDRAWN. However, Assessment Notice Nos. ST-DST-94-0054-99, ST-DST-95-0055-99, ST-DST-96-0371-99, and ST-DST-96-0373-99 for deficiency documentary stamp taxes on petitioner's Special Savings Deposit Accounts for the taxable years 1994, 1995, 1996 and 1997, respectively, are UPHELD but in the following modified amounts:

x x x x

Accordingly, petitioner is ORDERED TO PAY the above recomputed documentary stamp tax liabilities of P4,016,822.48, P4,265,646.61, P1,218,750.00 and P1,890,000.00 or in the total amount of P11,391,219.09, plus 20% delinquency interest from February 24, 2002 until full payment thereof pursuant to Section 249 (c) of the 1997 Tax Code.

SO ORDERED.<sup>[21]</sup>

On November 9, 2004, petitioner filed a Motion for Partial Reconsideration,<sup>[22]</sup> specifically assailing the portion of the CTA Decision affirming the assessment of deficiency documentary stamp tax on its SSDs.

On February 2, 2005, the CTA issued a Resolution<sup>[23]</sup> denying petitioner's motion for partial reconsideration.

Aggrieved with the Decision and Resolution of the CTA, petitioner then filed a petition for review<sup>[24]</sup> before the CTA *en banc*.

On January 3, 2006, the CTA *en banc* rendered a Decision<sup>[25]</sup> denying said petition, the dispositive portion of which reads:

WHEREFORE, the instant petition is hereby DENIED DUE COURSE, and accordingly, DISMISSED for the above-stated reasons. The assailed Decision and Resolution are hereby AFFIRMED.<sup>[26]</sup>