

SECOND DIVISION

[G.R. NO. 171266, April 04, 2007]

INTERNATIONAL EXCHANGE BANK, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

CARPIO MORALES, J.:

Is a Savings Account-Fixed Savings Deposit (FSD) evidenced by a passbook issued by International Exchange Bank (petitioner) subject to documentary stamp tax (DST) for the years 1996 and 1997?

Petitioner, a banking institution duly organized and existing under the laws of the Philippines, was on April 13, 1999 served Letter of Authority No. 000020535^[1] by the Commissioner of Internal Revenue (respondent) directing the examination by a "Special Team created pursuant to RSO 797-98" (Special Team) of petitioner's books of accounts and other accounting records for the year 1997 and "unverified prior years." An examination of said documents was in fact conducted.

Petitioner subsequently received on November 16, 1999 a "Notice to Taxpayer"^[2] from the Assistant Commissioner, Enforcement Service of the Bureau of Internal Revenue, notifying it of the results of the examination conducted by the Special Team regarding its tax liabilities, which amounted to P465,158,118.31 for 1996 and P17,033,311,974.23 for 1997, and requesting it to appear for an informal conference to present its side.

Between November^[3] and December^[4] 1999, petitioner's representatives met with the Special Team to discuss and/or dispute portions of the Special Team's audit findings. Eventually, the parties resolved issues relating to transactions involving payment of final withholding and gross receipts taxes.^[5]

On January 6, 2000, petitioner was personally served with an undated Pre-Assessment Notice^[6] (PAN) assessing it of deficiency on its purchases of securities from the Bangko Sentral ng Pilipinas or Government Securities Purchased-Reverse Repurchase Agreement (RRPA) and its FSD for the taxable years 1996 and 1997, viz:

Details of Discrepancies
(Taxable Year 1996)

INDUSTRY ISSUES

1. DOCUMENTARY STAMP TAX (DST) — On Government Securities Purchased-RRPA and Savings Deposits — SD totaling P25,180,492.15.

Government Securities Purchased-RRP amounting to P3,584,098,013.35 is subject to DST under Section 180 of the NIRC, as amended, since this falls under the classification of Deposits Substitutes as defined by RR 3-97.

Savings Deposit-FSD amounting to P9,845,497,800.27 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificate[s] of deposits subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificate[s] of deposits bearing interest and others not payable on sight or demand are subject to DST.^[7]

Details of Discrepancies
(Taxable Year 1997)

INDUSTRY ISSUES

1. DOCUMENTARY STAMP TAX (DST) — On Government Securities Purchased-RRPA and Savings Deposits-FSD totaling P75,383,751.55.

Government Securities Purchased-RRP amounting to P12,180.427,820.44 is subject to DST under Sec. 180 of the NIRC, as amended, since this falls under the classification of Deposit Substitutes as defined by RR 3-97.

Savings Deposits-FSD amounting to P28,024,239,673.35 should be treated as time deposits considering that its features are very much the same as time deposits (interest rates; terms). In substance, these are certificates of deposit subject to Documentary Stamp Tax under Section 180 of the NIRC which provides among others that certificate[s] of deposit bearing interest and others not payable on sight or demand are subject to DST.^[8] (Underscoring in the original)

The PAN advised petitioner that in case it was not agreeable to the above-quoted findings, it may "see the Assistant Commissioner-Enforcement Service to clarify issues arising from the investigation and/or review," and its failure to do so within 15 days from receipt of the PAN would mean that it was agreeable.^[9]

On January 12, 2000, petitioner received a Formal Assessment Notice^[10] (FAN) for deficiency DST on its RRPA and FSD, including surcharges, in the amounts of P25,180,492.15 for 1996 and P75,383,751.55 for 1997, and an accompanying demand letter^[11] requesting payment thereof within 30 days.

Acting on the FAN, petitioner filed on February 11, 2000 a protest letter^[12] alleging that the assessments should be reconsidered on the grounds that: (1) the assessments are null and void for having been issued without any authority and due process, and were made beyond the prescribed period for making assessments; (2) there is no law imposing DST on RRPA, and assuming that DST was payable, it is the Bangko Sentral ng Pilipinas which is liable therefor; (3) there is no law imposing DST on its FSD; and (4) assuming the deficiency assessments for DST were proper,

the imposition of surcharges was patently without legal authority.

Respondent failed to act on the protest, prompting petitioner to file a petition for review before the Court of Tax Appeals (CTA).

By Decision^[13] of October 26, 2004, the First Division of the CTA (CTA Division) disposed as follows:

WHEREFORE, petitioner's deficiency assessments pertaining to the reverse purchase agreements in the amounts of P6,720,183.77 and P22,838,302.16 inclusive of surcharges, for the years 1996 and 1997, respectively, are hereby CANCELLED and WITHDRAWN. However, the **deficiency assessments pertaining to savings deposits-FSD are hereby UPHELD** and petitioner is ORDERED to PAY the respondent the amount of P71,005,757.77 representing deficiency documentary stamp tax for the years 1996 and 1997. In addition thereto, petitioner is ORDERED to PAY respondent 20% delinquency interest from February 12, 2000 until fully paid pursuant to Section 249 of the 1997 NIRC.^[14] (Emphasis and underscoring supplied)

Petitioner moved for reconsideration of the CTA Division decision. Respondent moved too for a partial review of the decision.

Petitioner argued that its FSD is not subject to DST since it was not one of the documents enumerated either under the 1977 Tax Code (Tax Code) or the 1997 National Internal Revenue Code (NIRC). Respondent on the other hand argued that petitioner should be liable not only for DST on its FSD but also on its RRPA.

For lack of merit, the CTA Division, by Resolution^[15] of April 20, 2005, denied petitioner's motion for reconsideration and respondent's motion for partial reconsideration.

Only petitioner appealed to the CTA En Banc before which it proffered that its FSD cannot be considered a certificate of deposit subject to DST under Section 180 of the Tax Code for, unlike a certificate of deposit which is a negotiable instrument, the passbook it issued for its FSD was not payable to the order of the depositor or to some other person as the deposit could only be withdrawn by the depositor or by a duly authorized representative.^[16]

Petitioner likewise proffered that the legislative deliberations on the bill that was to become Republic Act No. (R.A.) 9243^[17] showed that the definition of certificates of deposit was amended to include "other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date" in order to plug a revenue loophole caused by the term "certificates of deposit" provided under the Tax Code and the NIRC.^[18]

Furthermore, petitioner argued that a "deposits [*sic*] evidenced by a passbook [which] have features akin to a time deposit," such as petitioner's FSD, is not subject to DST under the Tax Code and the NIRC.^[19]

Finally, petitioner argued that the FAN for 1996 and 1997 were issued in violation of its right to due process, they having been issued even before it could respond to the PAN; and that the 1996 assessment is null and void for having been issued beyond the 3-year prescriptive period.

By Decision^[20] of January 30, 2006, the CTA En Banc affirmed the decision of the CTA Division finding petitioner liable for payment of deficiency DST for its FSD.

In affirming the CTA Division Decision, the CTA En Banc held that a time deposit is a type of a certificate of deposit drawing interest, and petitioner's FSD has the same nature and characteristics as those of a time deposit; that the requirement of due process had been substantially complied with; and the 1996 assessment was not barred by prescription because there was no requirement for the filing of a DST return under the Tax Code.

Hence, the present petition for review on certiorari, petitioner reiterating the same grounds advanced before the CTA En Banc.

The issue, in the main, is whether petitioner's FSD is subject to DST for the years assessed.

The applicable provision is Section 180 of the Tax Code, as amended by R.A. 7660, ^[21] which reads:

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 deposit bearing interest and others not payable on sight or demand. — On all loan agreements 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 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 Thirty centavos (P0.30) on each two hundred pesos, 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 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. (Emphasis and underscoring supplied)

Petitioner posits that based on this Court's definition of a certificate of deposit in *Far East Bank and Trust Company v. Querimit*, ^[22] viz:

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. . . .^[23]

its FSD is not a certificate of deposit since there is nothing in the terms and conditions printed on the passbook evidencing it that can be construed to mean that the bank or banker acknowledges the receipt of a sum of money on deposit.^[24]

Petitioner moreover posits that the FSD, unlike a certificate of deposit, is not negotiable or payable to the order of some other person or his order but is "only withdrawable by the depositor or his authorized representative."^[25]

Petitioner's position does not lie.

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.^[26]

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.^[27] 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.^[28]

Contrary to petitioner's claim, not all certificates of deposit are negotiable. A certificate of deposit may or may not be negotiable as gathered from the use of the conjunction or, instead of and, in its definition. A certificate of deposit may be payable to the depositor, to the order of the depositor, or to some other person or his order.

In any event, the negotiable character of any and all documents under Section 180 is immaterial for purposes of imposing DST.

Orders for the payment of sum of money payable at sight or on demand are of course explicitly exempted from the payment of DST. Thus, a regular savings account with a passbook which is withdrawable at any time is not subject to DST, unlike a time deposit which is payable on a fixed maturity date.

As for petitioner's argument that its FSD is similar to a regular savings deposit because it is evidenced by a passbook,^[29] 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,^[30] the same does not lie.

The FSD, like a time deposit, provides for a higher interest rate when the deposit is not withdrawn within the required fixed period; otherwise, it earns interest