

FIRST DIVISION

[G.R. No. 170574, January 30, 2009]

PHILIPPINE BANKING CORPORATION (NOW: GLOBAL BUSINESS BANK, INC.), PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

CARPIO, J.:

The Case

The Philippine Banking Corporation, now, Global Business Bank, Inc., (petitioner) filed this Petition for Review^[1] to reverse the Court of Tax Appeals' Decision^[2] dated 23 November 2005 in CTA EB No. 63 (C.T.A. Case No. 6395). In the assailed decision, the Court of Tax Appeals *En Banc* ordered petitioner to pay P17,595,488.75 and P47,767,756.24 as deficiency documentary stamp taxes for the taxable years 1996 and 1997, respectively, on its bank product called "Special/Super Savings Deposit Account" (SSDA).

The Facts

Petitioner is a domestic corporation duly licensed as a banking institution.^[3] For the taxable years 1996 and 1997, petitioner offered its SSDA to its depositors. The SSDA is a form of a savings deposit evidenced by a passbook and earning a higher interest rate than a regular savings account. Petitioner believes that the SSDA is not subject to Documentary Stamp Tax (DST) under Section 180 of the 1977 National Internal Revenue Code (NIRC), as amended.^[4]

On 10 January 2000, the Commissioner of Internal Revenue (respondent) sent petitioner a Final Assessment Notice assessing deficiency DST based on the outstanding balances of its SSDA, including increments, in the total sum of P17,595,488.75 for 1996 and P47,767,756.24 for 1997. These assessments were based on the outstanding balances of the SSDA appearing in the schedule attached to petitioner's audited financial statements for the taxable years 1996 and 1997.^[5]

Petitioner claims that the SSDA is in the nature of a regular savings account since both types of accounts have the following common features:

- a. They are both evidenced by a passbook;
- b. The depositors can make deposits or withdrawals anytime which are not subject to penalty; and
- c. Both can have an Automatic Transfer Agreement (ATA) with the depositor's current or checking account.^[6]

Petitioner alleges that the only difference between the regular savings account and the SSDA is that the SSDA is for depositors who maintain savings deposits with a substantial average daily balance, and as an incentive, they are given higher interest rates than regular savings accounts. These deposits are classified separately in petitioner's financial statements in order to maintain a separate record for savings deposits with substantial balances entitled to higher interest rates.^[7]

Petitioner maintains that the tax assessments are erroneous because Section 180 of the 1977 NIRC does not include deposits evidenced by a passbook among the enumeration of instruments subject to DST. Petitioner asserts that the language of the law is clear and requires no interpretation.^[8] Section 180 of the 1977 NIRC, as amended,^[9] provides:

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 the 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 note 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. (Boldfacing supplied)

Petitioner insists that the SSDA, being issued in the form of a passbook, cannot be construed as a certificate of deposit subject to DST under Section 180 of the 1977 NIRC. Petitioner explains that the SSDA is a necessary offshoot of the deregulated interest rate regime in bank deposits.^[10] Petitioner elucidates:

With the removal of the respective interest rate ceilings on savings and time deposit, banks are enabled to legitimately offer higher rates on savings account which may even be at par with rates on time deposit. Practically, the distinction between a savings and a time deposit was removed insofar as interest rates are concerned. This being so, and for the legitimate purpose of further enticing deposits for savings account, banks have evolved a product – the Super/Special Savings Account – which offers the flexibility of a savings deposit but does away with the

rigidity of a time deposit account and with interest rate at par with the latter. This is offered as an incentive for depositors who maintain or who wish to maintain deposits with substantial average daily balance. Such depositors will be entitled to an attractive interest rate, a rate higher than that to which the regular savings account is entitled. Just like an ordinary savings, Super/Special Savings Deposits can be withdrawn anytime. Of course, to be entitled to preferential interest rate, such account must conform to a stated minimum deposit balance within a specified holding period. Otherwise, the depositor will lose the incentive of a higher interest rate and the account will revert to an ordinary savings account and be entitled only to prevailing rates of interest applicable to regular savings account. And unlike a time deposit account, the Super/Special Savings Account comes in the form of a passbook, hence need not be formally renewed in the manner that a time deposit certificate has to be formally surrendered and renewed upon maturity.

[11]

Petitioner argues that the DST is imposed on the basis of a mere inference or perceived implication of what the SSDA is supposed to be and not on the basis of what the law specifically states. Petitioner points out the differences between the SSDA and time deposits:[12]

Time Deposits	SSDA
1. The holding period is fixed beforehand.	1. The holding period floats at the option of the depositor. It can be 30, 60, 90 or 120 days or more and as an incentive for maintaining a longer holding period, the depositor earns higher interest.
2. There is pre-termination because there is no partial withdrawal of a certificate. Pre-termination results in the surrender and cancellation of the certificate of deposit.	2. No pre-termination and the passbook account is simply reverted to an ordinary savings status in case of early or partial withdrawal or if the required holding period is not met.

Petitioner also argues that even on the assumption that a passbook evidencing the SSDA is a certificate of deposit, no DST will be imposed because only negotiable certificates of deposits are subject to tax under Section 180 of the 1977 NIRC.[13] Petitioner reasons that a savings passbook is not a negotiable instrument and it cannot be denied that savings passbooks have never been taxed as certificates of deposits.[14]

Petitioner alleges that prior to the passage of Republic Act No. 9243^[15] (RA 9243), there was no law subjecting SSDA to DST during the taxable years 1996 and 1997. The amendatory provision in RA 9243 now specifically includes "certificates or 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."^[16] Petitioner admits that with this new taxing clause, its SSDA is now subject to DST. However, the fact remains that this provision was non-existent during the taxable years 1996

and 1997 subject of the assessments in the present case.^[17]

Respondent, through the Office of the Solicitor General, contends that the SSDA is substantially the same and identical to that of a time deposit account because in order to avail of the SSDA, one has to deposit a minimum of P50,000 and this amount must be maintained for a required period of time to earn higher interest rates.^[18] In a time deposit account, the minimum deposit requirement is P20,000 and this amount must be maintained for the agreed period to earn the agreed interest rate. If a time deposit is pre-terminated, a penalty will be imposed resulting in a lower interest income. In a regular savings account, the interest rate is fixed and there is no penalty imposed for as long as the required minimum balance is maintained. Thus, respondent asserts that the SSDA is a time deposit account, albeit in the guise of a regular savings account evidenced by a passbook.^[19]

Respondent explains that under Section 180 of the 1977 NIRC, certificates of deposits deriving interest are subject to the payment of DST. Petitioner's passbook evidencing its SSDA is considered a certificate of deposit, and being very similar to a time deposit account, it should be subject to the payment of DST.^[20]

Respondent also argues that Section 180 of the 1977 NIRC categorically states that certificates of deposit deriving interest are subject to DST without limiting the enumeration to negotiable certificates of deposit. Based on the definition of a certificate of deposit in *Far East Bank and Trust Company v. Querimit*,^[21] a certificate of deposit may or may not be negotiable, since it may be payable only to the depositor.^[22]

The Ruling of the Court of Tax Appeals

On 23 November 2005, the Court of Tax Appeals *En Banc* (CTA) affirmed the Decision and Resolution of the CTA's Second Division. The dispositive portion reads:

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.^[23]

The CTA ruled that a deposit account with the same features as a time deposit, i.e., a fixed term in order to earn a higher interest rate, is subject to DST imposed in Section 180 of the 1977 NIRC.^[24] It is clear that "certificates of deposit drawing interest" are subject to DST. The CTA, citing *Far East Bank and Trust Company v. Querimit*,^[25] defined a certificate of deposit 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 some other person or his order, whereby the relation of debtor and creditor between the bank and the depositor is created."^[26]

The CTA pointed out that this Court neither referred to a particular form of deposit

nor limited the coverage to time deposits only. This Court used the term “written acknowledgment” which means that for as long as there is some written memorandum of the fact that the bank accepted a deposit of a sum of money from a depositor, the writing constitutes a certificate of deposit. The CTA held that a passbook representing an interest-earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.^[27]

The CTA emphasized that Section 180 of the 1977 NIRC imposes DST on documents, whether the documents are negotiable or non-negotiable.^[28] The CTA held that petitioner’s argument that Section 180 of the 1977 NIRC imposes the DST only on negotiable certificates of deposit as implied from the old tax provision is erroneous.^[29] Section 217 of Commonwealth Act No. 466, as amended (old NIRC) reads:

Sec. 217. Stamp tax on negotiable promissory notes, bills of exchange, drafts, certificate 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 deposit drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, **or all negotiable promissory notes**, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of four 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. (As amended by Sec. 6, Republic Act No. 40)^[30] (Emphasis in the original)

The CTA observed that the requirement of negotiability pertains to promissory notes only. Such intention is disclosed by the fact that the word *negotiable* was written before *promissory notes* followed by a comma, hence, the word *negotiable* modifies promissory notes only. Therefore, with respect to all other documents mentioned in Section 217 of the old NIRC, the attribute of negotiability is not required.^[31] The CTA added that the applicable provision is Section 180 of the 1977 NIRC and not Section 217 of the old NIRC.^[32] Section 180 of the 1977 NIRC provides that the following are subject to DST, to wit: (1) Loan Agreements; (2) Bills of Exchange; (3) Drafts; (4) Instruments and Securities issued by the Government or any of its instrumentalities; (5) Certificates of Deposits drawing interest; (6) Orders for the payment of any sum of money otherwise than at sight or on demand; and (7) Promissory Notes, whether negotiable or non-negotiable. Therefore, the DST is imposed on all certificates of deposit drawing interest without any qualification.^[33]

The CTA held that a certificate of time deposit, a type of a certificate of deposit drawing interest, is subject to DST. The CTA observed that the SSDA has the same nature and characteristics as a time deposit.^[34] The CTA discussed the similarities of a time deposit account with an SSDA:

In order for the depositor to earn the agreed higher interest rate in a Special/Super Savings Account, the required minimum amount of deposit must not only be met but should also be maintained for a definite period. Thus, the Special/Super Savings Account is a deposit with a fixed term. Withdrawal before the expiration of said fixed term results to the