

THIRD DIVISION

[G.R. No. 178797, August 04, 2009]

**METROPOLITAN BANK AND TRUST CO., PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT**

D E C I S I O N

CHICO-NAZARIO, J.:

Before this Court is a Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court seeking the reversal and setting aside of the Decision^[1] dated 21 May 2007 and Resolution^[2] dated 9 July 2007 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. E.B. No. 247. The CTA *en banc* affirmed the assessment by the Bureau of Internal Revenue (BIR) against petitioner Metropolitan Bank and Trust Co. (Metrobank) for deficiency Documentary Stamp Tax (DST) for taxable year 1999.

There is no dispute as to the antecedent facts of this case.

Metrobank is a domestic corporation and a duly licensed banking institution. It offers to the public a product called the Universal Savings Account (UNISA). UNISA is for a depositor able to maintain a savings deposit with Metrobank with substantial average daily balance. A depositor is entitled to a higher interest rate in a UNISA, than in a regular savings account. When a depositor opens a UNISA, he/she is issued a passbook by Metrobank. The depositor may withdraw from his/her UNISA anytime. However, to be entitled to the preferential interest rate, the depositor must be able to conform to the stated minimum deposit balance for the specified holding period for the UNISA, otherwise, his/her account will revert to a regular savings account.

Pursuant to Letter of Authority No. LOA 2000 00052501 dated 26 June 2001, the BIR investigated Metrobank for its Gross Receipts Tax (GRT), Final Withholding Tax (FWT), and DST liabilities for 1999. As a result of said investigation, respondent Commissioner of Internal Revenue (CIR), through Edwin R. Abella (Abella), Assistant Commissioner of the Large Taxpayers Service (ACIR-LTS) of the BIR, issued on 30 September 2002, a Pre-Assessment Notice (PAN)^[3] assessing Metrobank for deficiency DST on its UNISA for 1999, based on Section 180 of the National Internal Revenue Code (NIRC). Said DST deficiency of Metrobank for 1999, together with surcharge and interest, amounted to P473,207,457.97, per the following calculation in the PAN:

Special Savings Account or UNISA	170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)	<u>0.15%</u>
Basic DST Due	256,471,485.71
Add: Surcharge	64,117,871.43

Interest until 12/31/02	<u>152,618,100.54</u>	<u>216,735,971.97</u>
TOTAL AMOUNT DUE		473,207,457.97

Metrobank filed with ACIR-LTS Abella on 11 December 2002 a protest to the PAN.^[4] Metrobank argued that its UNISA should not be subject to DST and it should not be made liable for the 25% surcharge on its alleged deficiency DST for 1999.

On 7 January 2003, ACIR-LTS Abella issued Assessment No. DST-2-99-000022 and a Formal Letter of Demand^[5] to Metrobank, requesting the latter to pay the deficiency DST on the UNISA for 1999, together with surcharge, interest, and compromise penalty, in the total amount of P477,588,959.62, computed as follows:

ASSESSMENT NO. DST-2-99-000022

Universal Savings		Php
Account (UNISA) (Gross Amount)		170,980,990,473.33
Rate of Tax (Sec. 180 NIRC)		<u>0.15%</u>
Basic DST Due		256,471,485.71
Add:		
Surcharge		Php
	64,117,871.42	
Interest (1/10/00-1/31/03)	156,974,602.49	
Compromise Penalty	<u>25,000.00</u>	<u>221,117,473.91</u>
Total DST Deficiency	Php	477,588,959.62

Metrobank filed with the CIR on 17 January 2003 a protest against Assessment No. DST-2-99-000022. Said protest was denied by the CIR in a Decision^[6] dated 2 March 2004, the *fallo* of which reads:

WHEREFORE, predicated on all the foregoing, METROBANK's protest against Assessment Notice No. DST-2-99-000022 is hereby DENIED. Consequently, METROBANK is hereby ordered to pay the total amount of P477,588,959.62, as deficiency documentary stamp tax for the taxable year 1999, plus increments that have legally accrued thereon until the actual date of payment, to the Large Taxpayer's Service, BIR National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof will be effected through the summary remedies provided by law.

This constitutes the Final Decision of this Office on the matter.

Petitioner filed a Petition for Review with the CTA on 21 April 2004. The Petition was docketed as C.T.A. Case No. 6955, and raffled to the CTA Second Division. The CTA Second Division failed to find merit in the Petition of Metrobank and, thus, decreed

in its Decision^[7] dated 1 September 2006:

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The Decision of the [CIR] dated March 2, 2004 is hereby **AFFIRMED** with modifications. The compromise penalty of P25,000.00 is hereby **CANCELLED** there being no mutual agreement arrived at between the parties.

Accordingly, [Metrobank] is **ORDERED TO PAY** the [CIR] the amount of P477,563,959.62 representing deficiency documentary stamp taxes for the taxable year 1999, computed as follows:

Basic Tax	P 256,471,485.71
Add: 25% Surcharge	64,117,871.42
Interest	<u>156,974,602.49</u>
	<u>P 477,563,959.62</u>

In addition, [Metrobank] is **ORDERED TO PAY** 20% delinquency interest on the amount of P477,563,959.62 computed from April 26, 2004 until full payment thereof, pursuant to Section 249(C) of the National Internal Revenue Code of 1997.

The Motion for Reconsideration of Metrobank was denied by the CTA Second Division in a Resolution^[8] dated 3 January 2007.

Metrobank thereafter filed a Petition for Review with the CTA *en banc*, docketed as C.T.A. E.B. No. 247. In a Decision promulgated on 21 May 2007, the CTA *en banc* affirmed the Decision dated 1 September 2006 and Resolution dated 3 January 2007 of the CTA Second Division in C.T.A. Case No. 6955, and dismissed the Petition of Metrobank. According to the CTA *en banc*, the decisive issue of whether special savings accounts evidenced by passbooks, such as the UNISA of Metrobank, were subject to DST under Section 180 of the NIRC, had already been resolved in the affirmative by this Court in its Resolution dated 15 January 2007 in *Banco de Oro Universal Bank v. Commissioner of Internal Revenue (BDO case)*^[9] and its Decision dated 4 April 2007 in *International Exchange Bank v. Commissioner of Internal Revenue (IEB case)*.^[10]

The CTA *en banc* denied the Motion for Reconsideration of Metrobank in a Resolution dated 9 July 2007.

Hence, Metrobank comes before this Court *via* the present Petition, raising the sole issue of whether the UNISA was subject to DST in 1999 under Section 180 of the NIRC, prior to the amendment thereof by Republic Act No. 9243, which took effect on 20 May 2004.

following documents or instruments:

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: x x x (Emphases ours.)

It is beyond question that a certificate of deposit issued by a bank for a time deposit was subject to DST under Section 180 of the NIRC. The CIR treated the UNISA of Metrobank like a time deposit, although a passbook is issued for the former, rather than a certificate of deposit. The CIR pointed out that in order to be entitled to the premium rate for UNISA, the depositor, just like in a time deposit, must wait for the holding period to expire before making the withdrawal. This constitutes a restriction on the depositor's right to withdraw from his deposit prior to the expiration of the holding period. Although the passbook issued by Metrobank for UNISA is not in the form of certificate nor is it labeled as such, it has a fixed maturity date and earns premium interest. Given the nature and substance of the passbook issued by Metrobank for UNISA, it is, for all intents and purposes, a certificate of deposit earning interest, which is subject to DST.

Metrobank opposes the assessment against it for deficiency DST on the UNISA for 1999 because the passbook issued for such an account was not among the documents subject to DST enumerated in Section 180 of the NIRC, prior to its amendment by Republic Act No. 9243. Section 180 of the NIRC imposed DST only on a certificate of deposit bearing interest that is **not** payable on sight or demand, such as the certificate issued by a bank for a time deposit.

Metrobank explains that a UNISA is not the same as a time deposit account. It is a new product developed by Metrobank after the removal of interest ceilings on both savings and time deposits. It offers the flexibility of a savings deposit account by doing away with the rigidity of a time deposit account, but with interest rate on par with the latter. A time deposit can be distinguished from a UNISA by the following features: (1) in a time deposit account, the depositor agrees that the bank shall keep the money for a fixed period; in a UNISA, the depositor can make withdrawals anytime, just like an ordinary savings account; to be entitled to the preferential interest rate for UNISA, however, the depositor must maintain the required minimum deposit balance within the specified holding period; (2) a time deposit

account is evidenced by a certificate of deposit; on the other hand, a UNISA is covered by a passbook; (3) for renewal, the certificate issued for a time deposit has to be formally surrendered upon maturity, while the passbook issued for UNISA need not be renewed in the same manner; and (4) the withdrawal of the money from a time deposit account before the expiration of the fixed period would mean the pretermination of said account; in comparison, there can be no pretermination of a UNISA, since the account simply reverts to an ordinary savings account in case the depositor makes a withdrawal, which would result in non-compliance with the required maintaining balance or holding period for UNISA.

Metrobank further insists that to be taxable under Section 180 of the NIRC, the certificate of deposit must be negotiable. It must be payable to the depositor, to his order, or to some other person or his order. A passbook, by all accounts, is not negotiable. It is merely a paper book issued by a bank or savings institution to a depositor to record deposits to, withdrawals from, and interest earned by a savings account.

Finally, Metrobank refers to the deliberations of both Houses of Congress on the precursor bills for Republic Act No. 9243. According to Metrobank, records of said deliberations reveal that the legislators acknowledged the existence of a loophole in Section 180 of the NIRC, as it was then worded, by virtue of which, banks offering special savings accounts, with high interest rates and specified holding periods, evidenced by passbooks instead of certificates of deposit, escape payment of DST. Thus, the legislators deemed it necessary to amend Section 180 of the NIRC through Republic Act No. 9243. Re-numbered as Section 179, the amended provision now reads:

SEC. 179. *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, **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**, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. (Emphasis ours.)