

670 Phil. 339

FIRST DIVISION

[G.R. No. 180390, July 27, 2011]

PRUDENTIAL BANK, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

DECISION

DEL CASTILLO, J.:

A certificate of deposit need not be in a specific form; thus, a passbook of an interest-earning deposit account issued by a bank is a certificate of deposit drawing interest. [1]

This Petition for Review on *Certiorari* [2] under Rule 45 of the Rules of Court assails the Decision [3] dated March 30, 2007 and the Resolution [4] dated October 30, 2007 of the Court of Tax Appeals (CTA) in CTA EB No. 185.

Factual Antecedents

Petitioner Prudential Bank [5] is a banking corporation organized and existing under Philippine law. [6] On July 23, 1999, petitioner received from the respondent Commissioner of Internal Revenue (CIR) a Final Assessment Notice No. ST-DST-95-0042-99 and a Demand Letter for deficiency Documentary Stamp Tax (DST) for the taxable year 1995 on its Repurchase Agreement with the *Bangko Sentral ng Pilipinas* [BSP], Purchase of Treasury Bills from the BSP, and on its Savings Account Plus [SAP] product, in the amount of P18,982,734.38, broken down as follows:

a. Repurchase Agreement --
BSP Seller

Basic $\frac{1,656,000,000.00}{200} \times .30$ P2,484,000.00

Add: 25% Surcharge 621,000.00

Compromise Penalty	<u>25,000.00</u>	P3,130,000.00
b. <u>Purchase of [Treasury] Bills from BSP</u>		
Basic $\frac{5,038,610,000.00}{200} \times .30$		P7,557,915.00
Add: 25% Surcharge	1,889,478.75	
Compromise Penalty	<u>25,000.00</u>	P9,472,393.75
c. <u>Savings Account Plus (page 1307 of the docket)</u>		
Basic $\frac{3,389,515,000.00}{200} \times .30$		P5,084,272.50
Add: 25% Surcharge	1,271,068.13	
Compromise Penalty	<u>25,000.00</u>	P6,380,340.63
GRAND TOTAL		<u>P18,982,734.38</u> [7]

Petitioner protested the assessment on the ground that the documents subject matter of the assessment are not subject to DST. [8] However, respondent denied [9] the protest on December 28, 2001.

Thus, petitioner filed a Petition for Review before the CTA which was raffled to its First Division and docketed as CTA Case No. 6396. [10]

Ruling of the First Division of the Court of Tax Appeals

On February 10, 2006, the First Division of the CTA affirmed the assessment for deficiency DST insofar as the SAP is concerned, but cancelled and set aside the assessment on petitioner's repurchase agreement and purchase of treasury bills [11] with the BSP. Thus, it disposed of the case as follows:

WHEREFORE, the instant petition is hereby **PARTIALLY GRANTED**. The subject Decision of the Commissioner of Internal Revenue dated December 28, 2001 assessing petitioner of deficiency documentary stamp taxes is hereby **AFFIRMED** insofar as the Savings Account Plus is concerned. The deficiency

assessment on petitioner's repurchase agreements and treasury bills are hereby **CANCELLED** and **SET ASIDE**.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the reduced amount of P6,355,340.63 plus 20% delinquency interest from August 23, 1999 up to the time such amount is fully paid pursuant to Section 249 (c) of the [old] NIRC, as amended, covered by Assessment Notice No. ST-DST-95-0042-99 as deficiency documentary stamp tax for the taxable year 1995, recomputed as follows:

Savings Account Plus	P5,084,272.50
Add: 25% Surcharge	<u>1,271,068.13</u>
TOTAL	<u>P6,355,340.63</u>

SO ORDERED. [12]

Petitioner moved for partial reconsideration but the same was denied by the First Division of the CTA in its Resolution dated May 22, 2006. [13]

Thus, petitioner appealed to the CTA *En Banc*.

Ruling of the Court of Tax Appeals En Banc

On March 30, 2007, the CTA *En Banc* denied the appeal for lack of merit. It affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest subject to DST under Section 180 of the old National Internal Revenue Code (NIRC), as amended by Republic Act (RA) No. 7660. [14]

Petitioner sought reconsideration but later moved to withdraw the same in view of its availment of the Improved Voluntary Assessment Program (IVAP) pursuant to Revenue Regulation (RR) No. 18-2006 [15] in relation to RR No. 15-2006 [16] and Revenue Memorandum Order (RMO) No. 23-2006. [17]

On October 30, 2007, the CTA *En Banc* rendered a Resolution [18] denying petitioner's motion to withdraw for non-compliance with the requirements for abatement. It found that the amount paid for purposes of the abatement program was not in accordance with Revenue Memorandum Circular (RMC) No. 66-2006, [19] which provides that the amount to be paid should be based on the original assessment or the court's decision, whichever is

higher. [20] It also noted that petitioner failed to comply with RMO No. 23-2006, specifically with the requirement to submit the letter of termination and authority to cancel assessment signed by the respondent. [21] In the same Resolution, the CTA *En Banc* denied petitioner's motion for reconsideration for lack of merit. [22]

Issues

Hence, the present recourse by petitioner raising the following issues:

I.

WHETHER X X X PETITIONER'S [SAP] WITH A HIGHER INTEREST IS SUBJECT TO DOCUMENTARY STAMP TAX.

II.

WHETHER X X X THE CTA *EN BANC* ERRED IN NOT ALLOWING THE WITHDRAWAL OF THE PETITION AND/OR CANCELLATION OF THE DST ASSESSMENT ON PETITIONER'S [SAP] ON THE GROUND THAT PETITIONER HAD ALREADY PAID AND SUBSTANTIALLY COMPLIED WITH RR NO. 15-2006 AND RMO NO. 23-2006. [23]

Petitioner's Arguments

Petitioner contends that its SAP is not subject to DST because it is not included in the list of documents under Section 180 of the old NIRC, as amended. [24] Petitioner insists that unlike a time deposit, its SAP is evidenced by a passbook and not by a deposit certificate. [25] In addition, its SAP is payable on demand and not on a fixed determinable future. [26] To support its position, petitioner relies on the legislative intent of the law prior to Republic Act (RA) No. 9243 [27] and the historical background of the taxability of certificates of deposit. [28]

Petitioner further contends that even assuming that its SAP is subject to DST, the CTA *En Banc* nonetheless erred in denying petitioner's withdrawal of its petition considering that it has paid under the IVAP the amount of P5,084,272.50, which it claims is 100% of the basic tax of the original assessment of the Bureau of Internal Revenue (BIR). [29] Petitioner insists that the payment it made should be deemed substantial compliance considering the refusal of the respondent to issue the letter of termination and authority to cancel

assessment. [30]

Respondent's Arguments

Respondent maintains that petitioner's SAP is subject to DST conformably with the ruling in *International Exchange Bank v. Commissioner of Internal Revenue*. [31] It also contends that the CTA *En Banc* correctly denied the motion to withdraw since petitioner failed to comply with the requirements of the IVAP. [32] Mere payment of the deficiency DST cannot be deemed substantial compliance as tax amnesty, like tax exemption, must be construed strictly against the taxpayer. [33]

Our Ruling

The petition lacks merit.

Petitioner's Savings Account Plus is subject to Documentary Stamp Tax.

DST is imposed on certificates of deposit bearing interest pursuant to Section 180 of the old NIRC, as amended, to wit:

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 (P250,000.00) 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 supplied.)

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." [34]

In this case, petitioner claims that its SAP is not a certificate of deposit bearing interest because unlike a time deposit, its SAP is payable on demand and is evidenced by a passbook and not by a certificate of deposit.

We do not agree.

In *China Banking Corporation v. Commissioner of Internal Revenue*, [35] we held that the Savings Plus Deposit Account, which has the following features:

1. Amount deposited is withdrawable anytime;
2. The same is evidenced by a passbook;
3. The rate of interest offered is the prevailing market rate, provided the depositor would maintain his minimum balance in thirty (30) days at the minimum, and should he withdraw before the period, his deposit would earn the regular savings deposit rate;

is subject to DST as it is essentially the same as the Special/Super Savings Deposit Account in *Philippine Banking Corporation v. Commissioner of Internal Revenue*, [36] and the Savings Account-Fixed Savings Deposit in *International Exchange Bank v. Commissioner of Internal Revenue*, [37] which are considered certificates of deposit drawing interests. [38]

Similarly, in this case, although the money deposited in a SAP is payable anytime, the withdrawal of the money before the expiration of 30 days results in the reduction of the interest rate. [39] In the same way, a time deposit withdrawn before its maturity results to a lower interest rate and payment of bank charges or penalties. [40]

The fact that the SAP is evidenced by a passbook likewise cannot remove its coverage from Section 180 of the old NIRC, as amended. A document to be considered a certificate of deposit need not be in a specific form. ^[41] Thus, a passbook issued by a bank qualifies as a certificate of deposit drawing interest because it is considered a written acknowledgement by a bank that it has accepted a deposit of a sum of money from a depositor. ^[42]

In view of the foregoing, we find that the CTA *En Banc* correctly affirmed the ruling of its First Division that petitioner's SAP is a certificate of deposit bearing interest and that the same is subject to DST.

The CTA En Banc's denial of petitioner's motion to withdraw is proper.

The CTA *En Banc* denied petitioner's motion to withdraw because it failed to show that it was able to comply with the requirements of IVAP.

To avail of the IVAP, a taxpayer must pay the 100% basic tax of the original assessment of the BIR or the CTA Decision, whichever is higher ^[43] and submit the letter of termination and authority to cancel assessment signed by the respondent. ^[44] In this case, petitioner failed to submit the letter of termination and authority to cancel assessment as respondent found the payment of P5,084,272.50 not in accordance with RMC No. 66-2006. Hence, we find no error on the part of the CTA *En Banc* in denying petitioner's motion to withdraw.

Petitioner's payment of P5,084,272.50, without the supporting documents, cannot be deemed substantial compliance as tax amnesty must be construed strictly against the taxpayer and liberally in favor of the taxing authority. ^[45] Nevertheless, the amount of P5,084,272.50 paid by petitioner to the BIR must be considered as partial payment of petitioner's tax liability.

WHEREFORE, the petition is hereby **DENIED**. The assailed Decision dated March 30, 2007 and the Resolution dated October 30, 2007 of the Court of Tax Appeals in CTA EB No. 185 are hereby **AFFIRMED** with **MODIFICATION** that petitioner Prudential Bank's payment be considered as partial payment of its tax liability.

SO ORDERED.

Corona, C.J., (Chairperson), Leonardo-De Castro, Bersamin, and Villarama, Jr., JJ., concur.

[1] *International Exchange Bank v. Commissioner of Internal Revenue*, G.R. No. 171266, April 4, 2007, 520 SCRA 688, 697.

[2] *Rollo*, pp. 178-345, with Annexes "A" to "L" inclusive.

[3] *Id.* at 222-230; penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez.

[4] *Id.* at 232-235; penned by Associate Justice Erlinda P. Uy and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Olga Palanca-Enriquez.

[5] On May 2, 2000, petitioner acquired the entire assets and liabilities of Pilipinas Bank through a merger. (*Id.* at 223-224)

[6] *Id.* at 223.

[7] *Id.* at 224.

[8] *Id.* at 225.

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.* at 223.

[13] *Id.* at 225.

[14] AN ACT RATIONALIZING FURTHER THE STRUCTURE AND ADMINISTRATION OF THE DOCUMENTARY STAMP TAX, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, ALLOCATING FUNDS FOR SPECIFIC PROGRAMS, AND

FOR OTHER PURPOSES. December 23, 1993.

[15] Improved Voluntary Assessment Program (IVAP) for Taxable Year 2005 and Prior Years under Certain Conditions.

[16] Implementing a One-Time Administrative Abatement of all Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006.

[17] Prescribing the Guidelines and Procedures on the One-Time Administrative Abatement of all Penalties/Surcharges and Interest on Delinquent Accounts and Assessments (Preliminary or Final, Disputed or Not) as of June 30, 2006 as implemented by Revenue Regulations No. 15-2006.

[18] *Rollo*, pp. 232-235.

[19] Clarification to Revenue Regulations No. 15-2006 Implementing Section 204 (B) of the Tax Code, as amended.

[20] *Rollo*, pp. 233-234.

[21] *Id.* at 234.

[22] *Id.*

[23] *Id.* at 414.

[24] *Id.* at 414-417.

[25] *Id.* at 419.

[26] *Id.*

[27] An Act Rationalizing The Provisions On The Documentary Stamp Tax Of The National Internal Revenue Code of 1997, As Amended, And For Other Purpose. Approved on February 17, 2004.

[28] *Rollo*, pp. 421-439.

[29] Id. at 440-443.

[30] Id. at 443.

[31] Supra note 1.

[32] *Rollo*, pp. 364-366.

[33] Id. at 367.

[34] *Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009, 577 SCRA 366, 380, citing *Far East Bank and Trust Company v. Querimit*, 424 Phil. 721, 730 (2002).

[35] G.R. No. 172359, October 2, 2009, 602 SCRA 316, 332.

[36] Supra note 34.

[37] Supra note 1.

[38] *China Banking Corporation v. Commissioner of Internal Revenue*, supra note 35 at 331-332.

[39] *Rollo*, p. 359.

[40] *International Exchange Bank v. Commissioner of Internal Revenue*, supra note 1 at 698-699.

[41] Id. at 697.

[42] Id.

[43] RMC No. 66-2006

Q-17 Can civil tax cases pending in courts, decision for which has not yet become final and executory, be the subject of abatement? If the amount already assessed by the BIR was reduced or increased based on the court's decision, what will be the basis of

the abatement?

A-17 Yes. The amount of the original assessment or the court's decision **whichever is higher** shall be the basis for availment of abatement.

[44] RMO No. 23-2006

SECTION 4. PROCEDURES IN THE AVAILMENT OF THE ABATEMENT PROGRAM

4.1 Any person/taxpayer, natural or juridical, with existing delinquent account or assessment which has been issued as of June 30, 2006, may avail of this Abatement Program.

4.2 Taxpayer may avail by submitting an application for abatement (Annex "A") for every tax type to the concerned office, as follows:

x x x

4.5 For cases pending in courts, the concerned taxpayer shall fully pay the amount equal to One Hundred Percent (100%) of the basic tax before the same should be withdrawn, following the existing legal procedures.

x x x

4.7 Within fifteen (15) days after payment of the basic tax, the following procedures shall be followed:

4.7.1 Attached proof of payment (Revenue Official Receipt/BIR Form 0605 with machine validation) and the application form to the docket of the case;

4.7.2 Prepare Termination Letter (Annex B) for every tax type for the signature of the Commissioner of Internal Revenue;

4.7.3 Prepare Authority to Cancel Assessment (Form 17.58-ATCA) to cancel assessments for penalties (surcharge, interest and compromise penalty), following the existing rules and procedures in RDAO 6-2001, to be signed only after the Termination Letter has been issued;

4.7.4 Thereafter, the docket of the case, page numbered and with Table of Contents, shall be forwarded to the Office of the Commissioner for the

signature of the Termination Letter, through the Deputy Commissioner -
Operations Group, Attention : The Assistant Commissioner for Collection;

X X X

[45] *Commissioner of Internal Revenue v. Marubeni Corp.*, 423 Phil. 862, 874 (2001).

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