Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

BANCO DE ORO UNIVERSAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA-E.B. NO. 39
(C.T.A. Case No. 6390)

Present:

Acosta, *P.J.,*
Castañeda, Jr.,
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, *JJ.*

Promulgated:

OCT 28 2005

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DECISION

UY, *J.*:

Petitioner elevates its case to the Court *En Banc* by filing on October 27, 2004, a Petition for Review pursuant to Section 1, Rule 43 of the Revised Rules of Court, seeking the reversal of the Decision dated July 1, 2004 and the Resolution dated October 8, 2004 of the Court of Tax Appeals[1] in CTA Case No. 6390, entitled "*Banco de Oro vs. Commissioner of Internal Revenue.*"

[1] Now a Division of the Court after R.A. No. 9282 ("An Act Expanding the Jurisdiction of the Court of Tax Appeals, Elevating Its Rank to the Level of a Collegiate Court With Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes") was enacted.

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In arguing that the assailed Decision and Resolution were issued without any basis in fact and law, petitioner submits that its Mega Savings is not a "deposit" subject to documentary stamp tax under Section 180 of the National Internal Revenue Code of 1997 and that the legislative intent behind said section is to exclude savings deposits.

Respondent, in his Comment filed on January 11, 2005, counters that petitioner's Mega Savings Deposit is nothing more that a time deposit product written on a passbook subject to documentary stamp tax under Section 180 of the National Internal Revenue Code of 1997. He further posits that petitioner's Mega Savings Deposit, assuming it is not a certificate of deposit subject to documentary stamp tax, is a loan agreement and thus, subject to documentary stamp tax. He concludes that while the power to declare what the law shall be lies in the legislative, the power to construe a law is essentially judiciary.

Petitioner reiterates its arguments in its Reply filed on March 1, 2005. It further added that its Mega Savings Deposit is not a loan agreement subject to documentary stamp tax. The "loans' referred to in Section 180 of the National Internal Revenue Code of 1997 are those evidenced by loan agreements or promissory notes.

These are the uncontroverted facts of the case.

Petitioner is a domestic corporation duly organized and existing under Philippines laws and duly licensed as a universal bank by the Bangko Sentral ng Pilipinas with principal office located at Banco de Oro Building, No.12 ADB Avenue corner Julia Vargas, Ortigas Center, Pasig City; while respondent is an official of the Republic of the Philippines charged with the duty of assessing and collecting national

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internal revenue taxes holding office at the BIR National Office Building, Diliman, Quezon City.

As a result of the investigation conducted by the Bureau of Internal Revenue on petitioner's internal revenue tax liabilities for the taxable years 1995, 1996 and 1997, the latter received on December 3, 1999 a pre-assessment notice (PAN) for deficiency documentary stamp taxes due on its Mega Savings Deposits for the taxable years 1996 & 1997. Petitioner filed a protest letter against the PAN on December 14, 1999.

Subsequently or on January 10, 2000, petitioner received Formal Assessment Notice Nos. ST-DST-96-0199-99 and ST-DST-97-0200-99, both dated December 14, 1999, for deficiency documentary stamp tax liabilities due on its Mega Savings Deposits for the taxable years 1996 & 1997, including surcharge, in the total amount of SEVEN MILLION NINE HUNDRED FOURTEEN THOUSAND TWO HUNDRED FORTY AND 46/100 PESOS (P7,914,240.46).

Petitioner received another pre-assessment notice, also for deficiency documentary stamp tax liabilities but for the taxable year 1995, on January 19, 2000 and filed a protest letter on January 25, 2000.

On February 9, 2000, petitioner filed a Protest-Letter against the formal assessment notices dated December 14, 1999.

Petitioner received on March 31, 2000 a Formal Assessment Notice No. ST-DST-96-0036-2000 dated January 28, 2000 for deficiency documentary stamp taxes due on its Mega Savings Deposits for the taxable year 1995, including surcharges, in the total amount of SEVEN MILLION TWO HUNDRED SIX THOUSAND SEVEN HUNDRED NINETY SEVEN AND 13/100 PESOS (P7,206,797.13) and filed its protest-letter against the said notice on April 4, 2000.

Finally, on January 21, 2002, petitioner received respondent's Decisions, both dated December 21, 2001, denying its protests and thereby affirming the Formal Assessment Notices issued for the taxable years 1995, 1996 & 1997.

Thereafter, petitioner filed its Petition for Review dated February 13, 2002 with this Court. The First Division of this Court rendered its assailed Decision promulgated on July 1, 2004, declaring, among others, that the Mega Savings Deposits of petitioner fall under the category of "certificates of deposits" pursuant to Section 180 of the Tax Code and are subject to documentary stamp tax. Such deposits have all the features of a "time deposit", although the form is modified by the usage of a passbook instead of a certificate. What is controlling is the nature and the true character of the transaction as it is conveyed by the instrument or document attached to it. The name by which an instrument or transaction is denominated is not controlling in determining its true character.

Petitioner immediately filed its Motion for Reconsideration on July 21, 2004. The First Division of this Court found no compelling reason to either modify or alter its Decision, and correspondingly denied the same in a Resolution dated October 8, 2004. Hence, this instant petition.

The solitary issue raised before the Court *En Banc* is:

> "WHETHER OR NOT PETITIONER'S MEGA SAVINGS ACCOUNT IS SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 180 OF THE TAX CODE OF 1997"

The Court *En Banc* notes that petitioner failed to raise new matters which the Court of Tax Appeals did not exhaustively discuss and resolve in the assailed Decision. However, the Court *En Banc* shall dispose of the case on the merits

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considering the impact of the contested Decision upholding the petitioner's liability to pay documentary stamp tax due from its mega savings deposits on the entire banking industry.

Petitioner's arguments, as stated in its Petition for Review and Memorandum, is summed up as follows:

> "1. Section 180 covers only documents and/or transactions that provide for payment of money otherwise than at sight or demand;
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> 2. 'Passbooks,' being in the nature of an order for the payment of money at sight or demand, are NOT 'certificates of deposit' subject to DST under Section 180;
>
> 3. Mega Savings is withdrawable at sight or on demand;
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> 4. While Mega Savings has features akin to 'time deposits,' it was grave error for the CTA Division to conclude that it is covered by Section 180 and subject to tax thereunder;
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> 5. That a Mega Savings Depositor gets a reduced rate of interest by withdrawing his deposit before the end of the holding period does not detract from the fact that Mega Savings is withdrawable at sight or on demand and, thus, not subject to DST under Section 180;
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> 6. Far East Bank & Trust Co. vs. Querimit, G.R. No. 148582, 16 January 2002, is not at all relevant to this case; and
>
> 7. Contrary to Respondent CIR's claim, a passbook is not an evidence of a loan agreement within the purview of Section 180."

The Court *En Banc* finds petitioner's arguments untenable.

Section 180 of the National Internal Revenue Code of 1997 imposes documentary stamp tax on: (a) bonds; (b) loan agreements; (c) promissory notes; (d) bills of exchange; (e) drafts; (f) instruments and securities issued by the government or any of its instrumentalities; (g) deposit substitutes; (h) debt instruments; and (i)

certificates of deposit bearing interest and others not payable on sight or demand. While said section did not define what is "certificate of deposit", the same should be understood to mean as used in ordinary parlance.

The ruling of the Supreme Court in *Far East Bank and Trust Company vs. Quirimit*[2] serves the purpose of putting to rest the meaning or the interpretation to be given to "certificate of deposit" and is binding to this Court. Construction of statutes rests with the courts and the Supreme Court, being the court of last resort, has the final say on the construction and/or interpretation of what the statute means. Settled now is the meaning of "certificate of deposit" as "a written acknowledgement 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."

The question now is whether petitioner's Mega Savings Deposits payable on sight or demand or not considering that passbooks, instead of certificates, are issued?

The Court *En Banc* rules in the affirmative.

Petitioner cites, as mentioned in the assailed Decision, Revenue Regulations No. 12-80 in support of its contention. Such regulation, intended to govern the manner of taxation of certain income derived from banking activities, provides the definitions of "savings deposit" and "time deposit". To reiterate, "time deposit" is a deposit which has a definite time of maturity and cannot be withdrawn by the depositor until maturity **except in cases of authorized pretermination**; while "savings deposit" is a deposit which may be withdrawn at any time, subject only to

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2 373 SCRA 665, January 16, 2002

the right of the depositary bank to require reasonable prior notice in writing before withdrawal may be made.

With the above definitions, petitioner's Mega Savings Deposits possess two essential features of a time deposit, namely: the holding period and the preferential interest upon the completion of the holding period. Removing the two distinguishing features will make such deposits no different from petitioner's regular savings deposits.

Otherwise stated, petitioner treats its Mega Savings Account as though it is a regular savings account whenever money deposited therein is withdrawn prior to the lapse of the holding period, by applying the interest rate of a regular savings account. This is really an authorized pre-termination of deposits. The account shall earn the preferential rate or earn "mega savings" only after the holding period is/are completed. The preferential rate is not rightfully earned and cannot be demanded from petitioner to apply on deposits prior to expiration of the holding period, thus, making such Mega Savings Deposits not payable on sight or demand.

The issuance of passbooks, rather than the usual certificates of time deposit, is not controlling to determine the nature of the deposits. Passbooks and certificates are mere evidence of different types of bank deposits. What distinguishes one from the other is not the passbook or the certificate, but the features of each account the banks offer to the public. Even petitioner admits that the use of passbooks for time deposits is an innovation offered by the banks in response to public clamor for convenience.

Petitioner clearly forgot that documentary stamp tax is in the nature of an excise tax. It is not imposed upon the business transacted but is an excise upon the privilege, opportunity or facility offered at exchanges for the transaction of the business. It is an excise upon the facilities used in the transaction of the business separate and apart from the business itself.[3]

Certainly, income derived from any banking activities is subject to tax which respondent has the duty to assess and collect. While tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade payment of just taxes.[4] A claim of exemption from tax payments must be clearly shown and based on language too plain to be mistaken. Simply stated, taxation is the rule and exemption therefrom is the exception.[5]

The finding of the First Division of this Court in its assailed Decision that time deposits evidenced by passbooks are subject to documentary stamp tax under Section 180 of the National Internal Revenue Code of 1997 received an affirmation with the passage of Republic Act No. 9243 ("An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes") by Congress and signed into law by President Gloria Macapagal-Arroyo on February 17, 2004.

R.A. No. 9243 states that it is "rationalizing" the provisions of the documentary stamp tax of the present Tax Code. The lawmaking body unmistakably adopted this Court's interpretation of Section 180 of the National Internal Revenue Code of 1997, and made clearer the language used to include therein "certificates and other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit" or "drawing interest and having a specific maturity date,

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[3] *Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc.*, 145 SCRA 671, November 25, 1986.
[4] *Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Co., Inc.*, 379 SCRA 423, March 19, 2002
[5] *Mactan Cebu International Airport Authority vs. Marcos*, 261 SCRA 667, September 11, 1996.

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orders for payment of any sum of money otherwise than at sight or on demand."[6] When a statute is re-enacted or revised after it has received judicial construction, it is presumed that the legislature intended that construction to continue[7].

The intent is the vital part, the essence of the law, and the primary rule of construction is to ascertain and give effect to the intent. The intention of the legislature in enacting a law is the law itself, and must be enforced when ascertained, although it may not be consistent with the strict letter of the law. Courts will not follow the letter of statute when it leads away from the true intent and purpose of the legislature and to conclusions inconsistent with the general purpose of the statute. Intent is the spirit which gives life to a legislative enactment. The proper course is to start out and follow the true intent of the lawmaking body and to adopt that sense which harmonizes best with the context and promotes in the fullest manner the apparent policy and objects of the legislature.[8]

WHEREFORE, premises considered, the instant Petition for Review is **DISMISSED** for lack of merit.

ERLINDA P. UY
Associate Justice

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6 Microsoft® Encarta® Reference Library 2003 defines "rationalize" as: (1) **offer a reasonable explanation:** to attempt to justify behavior normally considered irrational or unacceptable by offering an apparently reasonable explanation; (2) **make something more logical or rational:** to make something rational, logical, or consistent; (3) **interpret something logically:** to interpret something from a logical or rational perspective; (4) MATHEMATICS **eliminate radicals:** to eliminate irrational numbers from an expression or an equation; and (5) **make something more efficient and profitable:** to make something more efficient and profitable, especially by getting rid of staff, equipment, or parts of the business that are considered to be inefficient or unprofitable.

Webster's Third New International Dictionary defines "rationalization" as "the act, process, or result of rationalizing: as xxx the provision of plausible reasons to explain to oneself or others behavior for which one's real motives are different and unknown or unconscious."

7 (Black on Interpretation of Laws, 2nd, Ed., p. 135)

8 Vda. De Ongsiako vs. Gamboa, 86 Phil 50, April 8, 1950

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WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

(Please see original decision as my Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice

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