REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

ALLIED BANKING CORPORATION,
Petitioner,

- Versus - C.T.A. CASE NO. 6565

GUILLERMO L. PARAYNO, JR. in his Official capacity as the COMMISSIONER OF INTERNAL REVENUE, and ELEANOR N. LITAO, IN HER OFFICIAL CAPACITY AS chief, LT-COLLECTION and ENFORCEMENT DIVISION, BUREAU OF INTERNAL REVENUE,
Respondent.

Promulgated:

NOV 0 3 2004 [signature]

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DECISION

This Petition for Review seeks for the review and reversal of the following:

> 1) **Decision of Commissioner of Internal Revenue** promulgated on August 8, 2002 in Protest Case No. P 19-02 entitled "In the Matter of the Protest of Allied Banking Corporation against Assessment Notice No. ST-DST 2-97-00169-99 Demanding Payment of the Sum of FIFTEEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETY SEVEN PESOS AND 81/100 (P15,185,197.81) as Deficiency Documentary Stamp Tax for the year 1997, Mr. Pompeyo S. Tiu, Corporate Secretary, Taxpayer's Representative";
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> 2) Final Notice Before Seizure dated October 11, 2002 issued by respondent Eleanor N. Litao, Chief, LT-Collection and Enforcement Division, demanding that petitioner pay the total amount of FIFTEEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETY SEVEN PESOS AND 81/100 (P15,185,197.81) within ten (10) days from receipt thereof, otherwise, a Warrant of Distraint and/or Levy and Garnishment to enforce the collection of the amount will be served and executed against the petitioner.

The undisputed facts as culled from the records of the case are as follows:

Petitioner, Allied Banking Corporation, is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine laws, with principal office

141

address at Allied Bank Center, 6754 Ayala Avenue, Makati City, Metro Manila *(par. 1, "The Parties", Petition for Review)*.

On September 23, 1999, petitioner received from the Bureau of Internal Revenue Assessment Notice No. ST-DST 2-97-00169-99 dated September 20, 1999, which assessed petitioner for Deficiency Documentary Stamp Tax on its Market Savings Deposit placements for the taxable year 1997 in the total amount of FIFTEEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETY SEVEN PESOS AND 81/100 (P15,185,197.81), inclusive of 25% surcharge (*par 1, "Statement of Material Dates", Petition for Review*). The assessment based on the respondent's findings is reproduced below:

Total Market Savings Deposit (MSD)	P8,098,772,166.67
Rate of Tax	.30/200
Basic Documentary Stamp Tax Due	P 12,148,158.25
Add: 25% Surcharge	3,037,039.56
TOTAL AMOUNT DUE & PAYABLE	**P 15,185,197.81**

On September 24, 1999 petitioner filed with respondent Commissioner a letter-protest dated September 23, 1999 against the Assessment Notice.

On October 15, 2002, petitioner received a copy of the Decision rendered by the respondent, with the assailed Final Notice Before Seizure (*par 3, "Statement of Material Dates", Petition for Review*). The dispositive portion of the questioned Decision is quoted below for easy reference:

> *IN VIEW WHEREOF, this Office resolved to DENY the protest of ALLIED BANKING CORPORATION dated September 23, 1999. Assessment Notice No. ST-DST2-97-00169-99 dated September 20, 1999 issued by this Bureau demanding payment of the sum of P15,185,197.81, as deficiency documentary stamp tax for the year 1997, is hereby AFFIRMED in all respects. Consequently, the protestant-bank is hereby ordered to pay the above-stated amount plus interest that may have accrued thereon, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof,*

> *otherwise, the collection thereof will be effected through the summary remedies provided by law.*
>
> *This constitutes the final decision on the matter.*

Hence, this petition filed on November 14, 2002.

On December 19, 2002, respondent filed his Answer. However, on March 14, 2003, respondent filed his Motion to Admit Amended Answer, which was granted by this court. Thus, in his Amended Answer, respondent raised the following Special and Affirmative Defenses, to wit:

5. This Honorable Court has no jurisdiction over the instant case as the subject assessments have already become final, executory and demandable in accordance with Section 228 of the 1997 Tax Code, the pertinent portion of which states:

   > "xxx xxx
   >
   > If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

   Since the 30 day period expired from the lapse of the 180-day period without the petitioner having filed the instant petition as required by law, the assessments in question have become final.

6. Petitioner's Market Savings Deposit is considered a certificate of deposit contemplated and taxable under Section 180 of the Tax Code;

7. In the case of BPI-Family Bank vs. CIR & CTA, CA-GR No. SP 29853, September 19, 1994, the Court of Appeals, in interpreting the provision of Section 180 of the NIRC, named with particularity the instruments subject to DST. Said the Court:

   > "A perusal of Section 180 of the Tax Code will show that it covers the following instruments:
   >
   > (1) promissory note, whether negotiable or nor;
   > (2) bills of exchange;

(3) drafts;
(4) certificates of deposit; and
(5) debt instruments used for deposit substitutes.

8. A "certificate of deposit" is a written acknowledgment by a bank of the receipt of money on deposit which the bank promises to pay to the depositor, bearer or to some other person or order (Olson Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit., p.44).

9. Fragmenting the essential elements of the aforestated definition, it can be inferred that a certificate of deposit presupposes:

   1. That a bank received money on deposit;
   2. From someone who is considered a "depositor";
   3. That the bank acknowledges receipt of the deposit in writing;
   4. That the bank promises to pay to the depositor/bearer/or to some other person or order the deposit or any part thereof.

   Having met all the above-mentioned technical requirements, Market Savings Deposit of petitioner is unmistakably a "certificate of deposit" for which taxability to DST lies.

10. The "certificate of deposit" stated in Section 180 does not prescribed any particular form. Petitioner's allegation that Market Savings Deposit is evidenced by a passbook does not alter the substance of the said account. What is controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount rather than its form.

    But be that as it may, technically, a regular savings account passbook has the same substance, attributes and qualities as a "certificate of deposit". As defined in Section 180 of the Tax Code, it may be a written acknowledgment by a bank of the receipt of money on deposit. Hence, a traditional passbook, being a written acknowledgment of the receipt of money as deposit which a bank promises to pay to the depositor, bearer, or to some other person or order, is a genus of a certificate of deposit subject to DST.

11. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called (CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671). It is incumbent upon the taxpayer to prove the contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Antonio Tuazon, Inc., 173 SCRA 397), and failure to do so shall vest legality to respondent's actions and assessments.

164

After the parties have filed their respective Memorandum, this case was deemed submitted for decision on June 18, 2004.

Both parties having failed to submit their Joint Stipulation of Issues, this court shall resolve the following issues, as gathered from the facts, circumstances and evidence presented:

1. Whether or not the Honorable Court has jurisdiction over the instant case for failure of the petitioner to comply with Section 228 of the 1997 Tax Code.

2. Whether or not the Market Savings Deposit is of the same nature as that of Time Deposit and therefore subject to DST.

It is alleged by respondent that petitioner failed to file this instant case within the prescribed period as provided for under Section 228 of the Tax Code. Respondent avers that this Honorable Court has no jurisdiction over the case presented as the subject deficiency documentary stamp tax imposed upon the petitioner for the taxable year 1997 has become final, executory and demandable in accordance with Section 228 of the Tax Code, the pertinent portion of which states that:

> Section 228. *Protesting of Assessment.* - xxx
>
> xxx xxx xxx
>
> **If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.**
> (Emphasis supplied).

It is respondent's contention that since the 180-day period from September 24, 1999, or the date when petitioner had filed its protest-letter against the subject assessment

165

notice, had expired without petitioner having filed the instant petition as required by law, the assessment notice had become final, executory and demandable. In effect, the subject assessment notice having become final, executory and demandable, is no longer appealable to this court.

We do not agree.

The very text of Section 228 of the Tax Code clearly provides that it is only the decision not appealed by the taxpayer which becomes final, executory and demandable. Nowhere in the wordings of the said section does it mention the word assessment as becoming final, executory and demandable should the Bureau of Internal Revenue fail to act on the protest within one hundred eighty (180) days.

In the case of **Lascona Land Co., Inc. vs. Commissioner of Internal Revenue and Norberto R. Odulio, Regional Director, Revenue Region No. 8, Makati City, Bureau of Internal Revenue, CTA Case No. 5777, January 4, 2000**, this court had already settled this issue in this wise:

> "The wordings of Section 228 of the Tax Code clearly provide that it is only the decision not appealed by the taxpayer that becomes final, executory and demandable. Otherwise, the authors of the law could have easily included the words assessment as also becoming final, executory and demandable should the BIR fail to act on the protest within 180 days. As aptly cited by Petitioner, in Commissioner of Internal Revenue vs. Villa, 22 SCRA 3, the Supreme Court held:
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>> "The word 'decisions' in paragraph 1, Section 7 of Republic Act 1125, quoted above, has been interpreted to mean the decisions of the Commissioner of Internal Revenue on the protest of the taxpayer against the assessments. Definitely, said word does not signify the assessment itself. We quote what this Court said aptly in a previous case:
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>>> "In the first place, we believe the respondent court erred in holding that the assessment in question is the respondent Collector's decision or ruling appealable to it, and that consequently, the period of thirty days

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> prescribed by section 11 of Republic Act No. 1125 within which petitioner should have appealed to the respondent court must be counted from its receipt of said assessment. Where a taxpayer questions an assessment and asks the Collector to reconsider or cancel the same because he (the taxpayer) believes he is not liable therefor, the assessment becomes a 'disputed assessment' that the Collector must decide, and the taxpayer can appeal to the Court of Tax Appeals only upon receipt of the decision of the Collector on the disputed assessment, x x x"

The same interpretation finds support in Section 11 of Republic Act 1125, which states:

> **Section 11. Who may appeal; effect of appeal.** - Any person, association or corporation adversely affected by a decision or ruling of the Collector of Internal Revenue, the Collector of Customs or any provincial or city Board of Assessment Appeals may file an appeal in the Court of Tax Appeals within thirty days after the receipt of such decision or ruling."

Note that the law uses the word 'decisions', not 'assessments', thus further indicating the legislative intent to subject to judicial review the decision of the Commissioner on the protest against an assessment but not the assessment itself."

Verily, in cases of inaction, Section 228 of the Tax Code merely gave the taxpayer **an option**: first, he may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the one hundred eighty (180) day period provided for under the said section, or second, **he may wait until the Commissioner decides on his protest before he elevates his case**. This Court believes that the taxpayer was given this option so that in case his protest is not acted upon within the 180-day period, he may be able to seek immediate relief and need not wait for an indefinite period of time for the Commissioner to decide. But if he chooses to wait for a positive action on the part of the Commissioner, then the same could not result in the assessment becoming final, executory and demandable."
(Emphasis supplied.)

In this particular case, when the petition for review was filed on November 14, 2002

147

or within thirty (30) days from receipt of the Decision of the Commissioner of Internal Revenue,the case was filed on time.

And now to discuss the core issue of this case.

It is petitioner's stand that its product Market Savings Deposit is not the same as "Time Deposit", since it has no specific maturity date, unlike that of a time deposit. Accordingly, when a client invests his money in the Market Savings Deposit, he does not specify, and neither is he required by petitioner to specify any maturity date. He is completely at liberty to withdraw his money anytime and does not bind himself to petitioner as to any length of time that he will maintain his investment. Until the client actually withdraws his money, petitioner has no way of knowing how long the client will maintain his Market Savings Deposit. Clearly, then, there is no due date or maturity to speak of under this scenario. In fact, the regular savings account passbook evidencing the Market Savings Deposit transaction does not even indicate any due or maturity date.

Petitioner further argues that, in contrast to a "time deposit", when a client invests in it, he is required to determine, at the very outset, the term of the investment. On the basis of the term chosen by the client and the amount he will invest, petitioner then determines and informs the client the rate of interest his investment will earn. Accordingly, everything is predetermined, wherein both the client and petitioner are made fully aware from the start of the investment when the investment will mature and how much it will earn. To bolster its claim, petitioner offered in evidence the testimony of their witness who testified as to nature of its product, the Market Savings Deposit.

In addition, petitioner asserts that the regular savings passbook it issues as evidence of the Market Savings Deposit is no more than a bankbook, that is, the depositor's book in which a bank records deposits and withdrawals. It contains no such words normally found in a "certificate of deposit", either acknowledging petitioner's receipt of a sum of money on deposit or promising to pay to the depositor, to the order of the depositor, or to some other person or his order the sum of money, contrary to that of a "time deposit".

On the other hand, respondent counter-argues that petitioner's Market Savings Deposit has the features similar to a time deposit such as higher interest rate, a required minimum deposit balance and a holding period in order to avail of a preferential rate which is much higher than that of a regular savings account. The fact that the Market Savings Deposit is evidenced by a passbook does not remove it from the sphere of the definition. Furthermore, Section 180 of the Tax Code clearly mentions "certificates of deposits" drawings interests as subject to the documentary stamp tax. Thus, whether a deposit is evidenced by a certificate of deposit or a passbook, it is still subject to the provision of Section 180 of the Tax Code.

Respondent quotes the case of *Far East Bank & Trust Company vs Querimit, G.R. No. 148582, January 16, 2002, 373 SCRA 665,* wherein a certificate of deposit has been defined 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".

We agree with respondent.

Petitioner's argument that its product Market Savings Deposit is not the same as that of a "Time Deposit" is clearly erroneous. It is to be emphasized, at this point, that terminologies are mere matters which are capable of being overturned by circumstances. It has been held in a number of cases that 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.

169

The name by which an instrument or transaction is denominated is not controlling in determining its true character (L.R. Heat Treating Co., 28 TC 874).

This court believes that petitioner's appreciation and understanding of Section 180 of then Tax Code is misplaced. Said Section 180 of the Tax Code, provides that:

> **Section 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 (P200), 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: *xxx xxx*

From the foregoing, the law subjects a "certificate of deposit" to documentary stamp tax. And to define what is a documentary stamp tax, it is a privilege tax because it is really imposed on the privilege to enter into a transaction rather than on the document. The law taxes the document because of the transaction *(The Law on Transfer and Business Taxation, Hector S. de Leon, 1998 Ed., p 351)*. What is being taxed, therefore, is the privilege of the petitioner to enter into such a transaction.

On the other hand, it has been defined that a certificate of deposit is "any 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" *(Far East Bank & Trust Company vs Querimit, supra).* Certificate

170

of deposit being written instrument evidencing transaction between parties must be considered in the light of the same rule of law as other written instrument (*Montgomery v. Smith, 145 So. 822, 826, 226 Ala. 91*).

Clearly, therefore, by the very definition aforementioned, petitioner's Market Savings Deposit falls within the ambit of a "certificate of deposit". The fact that petitioner's Market Savings Deposit is evidenced by a passbook and not by a certificate is not an issue. It is clear from the definition that it does not prescribe or require any particular form nor does it qualify. In determining what instruments are subject to documentary stamp tax, substance would control over the form. In other words, what matters are the facts and circumstances that surround the document and the transaction itself.

Moreover, a "time deposit", which is also a form of a certificate of deposit, refers to a deposit account paying interest for a fixed term, with the understanding that funds cannot be withdrawn before maturity without giving advance notice. In practice, a "time deposit" is evidenced by a certificate of time deposit. Certificate of deposits or time deposits usually carry penalties for early withdrawal *(Black's Law Dictionary, 6th Edition)*. Verily, the main difference between a "savings deposit" and a "time deposit" is the penalty, which may come in a form of reduced interest rates, attached to it in instances when the depositor makes a withdrawal prior to the maturity of the deposit.

Thus, this court cannot but agree with respondent that petitioner's Market Savings Deposit and Time Deposits are akin to each other. In both cases, the bank acknowledges the receipt of the money or funds on deposit and which the bank promises to pay the depositor, bearer, or to the order on a specified period of time. Also, in both cases, the bank allows the withdrawal of the funds on deposit prior to the expiry of the pre-determined time but the rate of interest is lowered than the agreed interest. The difference lies on the

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document used to evidence the existence of the said transaction, which in the case of the time deposit, a certificate is issued, while that of the market savings deposit, a savings passbook is issued to the depositor. The argument of petitioner that there is no maturity date in their market savings deposit is clearly contradicted by the very testimony of its witness presented during the hearing on August 11, 2003. The testimony of its witness patently showed that the features of petitioner's Market Savings Deposit are akin to that of a "time deposit", to wit:

DIRECT EXAMINATION BY ATTY. LLAMAS

ATTY. LLAMAS:

Q. Madam Witness, you are saying that in a Market Savings Deposit, the client is given a premium rate that is not the same as the regular savings rate?

MS. JIMENEZ:

A. Yes.

ATTY. LLAMAS:

Q. Madam Witness, is there a **minimum period required for the client to maintain his deposit to be entitled to that premium rate that you have just referred to?**

MS. JIMENEZ:

A. **Yes, we give an incentive for a client who keeps his money for at least thirty (30) days.** Basically, this is just the counter part of the interest minimum period for loans. So, as I have mentioned, this is related to the proper matching of funds in a bank.

ATTY. LLAMAS:

Q. Madam witness, is this not akin to a maturity date?

MS. JIMENEZ:

A. No, this is not a maturity date because the client can withdraw anytime even before the interest setting. As I have mentioned, this is just a

172

guide for the premium.

ATTY. LLAMAS:

Q. Madam Witness, **at the outset, when the client makes a deposit, is he made to agree or choose a period within which he should maintain that deposit?**

MS. JIMENEZ:

A. Yes, he can choose thirty (30) or sixty (60) days.

CROSS EXAMINATION BY ATTY. BASTES

ATTY. BASTES

Q. You stated that in order for a depositor to earn the premium interest of the Market Savings Deposit, the deposit must be within certain and the minimum period is thirty (30) days and if the depositor withdraws the deposit before the thirty (30) day period, **he is not entitled to a premium interest rate?**

MS. JIMENEZ:

A. **Yes, sir.**
(pp 20-22; 28, Transcript of Records, August 11, 2003)
(Emphasis supplied.)

Apparently, in both cases of market savings deposit and time deposits, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. Petitioner may have insisted that there is no maturity date imposed on its Market Savings Deposit. Nonetheless, by the very testimony of its own witness, it is clear that its product offers a higher interest in cases where the money deposited is being kept by the bank for a period of thirty or sixty days without being withdrawn by the depositor. And the only difference lies on the evidence of deposit. In Market Savings Deposit, the transaction is covered by a passbook while in time deposits, it is through a certificate of deposit. However, in both cases, the bank acknowledges the receipt of a sum of money on deposit and which the bank promises to pay to the depositor, bearer or to the order of a bearer on a

173

specified period of time.

Considering that the transaction evidenced by the different documents are similar and that documentary stamp tax is an excise tax on the privilege to enter into a transaction, we find both the certificate of time deposit as well as the passbook evidencing market savings deposit, clear pieces of evidence of such transactions in favor of the person whose name appears thereon, subject to documentary stamp tax.

IN VIEW OF THE FOREGOING, the subject Petition for Review is hereby **DISMISSED** for lack of merit. The subject Decision of the Commissioner of Internal Revenue and the Final Notice Before Seizure issued by respondent Eleanor N. Litao, Chief of LT-Collection and Enforcement Division, dated August 8, 2002 and October 11, 2002, respectively, assessing petitioner of deficiency documentary stamp tax for the year 1997 are hereby **AFFIRMED**. Accordingly, petitioner is **DIRECTED TO PAY** the respondent the amount of **FIFTEEN MILLION ONE HUNDRED EIGHTY FIVE THOUSAND ONE HUNDRED NINETY SEVEN PESOS AND 81/100 (P15,185,197.81)**, plus 20% delinquency interest from November 14, 2002 up to the time such amount is fully paid.

SO ORDERED.

Juanito C. Castaneda, Jr.
JUANITO C. CASTANEDA, JR.
Associate Justice

I CONCUR:

ERLINDA P. UY
Associate Justice

174

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairman, Second Division

175