REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EAST WEST BANKING CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. EB NO. 195
(C.T.A. Case No. 6845)

Present:

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

Promulgated:
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D E C I S I O N

BAUTISTA, J.:

The Case

This is an appeal by way of a verified Petition for Review under Section 18 of Republic Act ("R.A.") No. 1125, as amended by R.A. No. 9282, of:

1. The Decision dated March 2, 2006 of the Second Division of this Court ("Court in Division") in C.T.A. Case No. 6845 entitled *"East West Banking Corporation vs. Commissioner of Internal Revenue,"* affirming with modification, the decision of the Bureau of Internal Revenue ("BIR") which assessed petitioner P71,169,228.74 representing deficiency documentary stamp taxes ("DST") on its Savings Maximizer Deposit, for taxable year 1997; and

2. The Resolution dated July 6, 2006 of the Court in Division denying petitioner's Motion for Reconsideration of the abovementioned Decision.

Antecedent Facts

Antecedent facts to set Us on a proper perspective are those clearly set out by the Court in Division, to wit:

> "Petitioner East West Banking Corporation is duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 6795 Ayala Avenue, corner Rufino Street, Salcedo Village, Makati City. It is duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in commercial banking operations in the country.
>
> Respondent is the duly appointed official empowered, among others, to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court.
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> In a Formal Letter of Demand and Assessment Notice, both dated January 27, 2003, respondent assessed petitioner for deficiency Documentary Stamp Tax (hereafter "DST") on its special savings deposit transactions for 1997 in the amount of P71,169,228.74. Petitioner received this demand letter on February 21, 2003. Then, on March 21, 2003, petitioner filed its timely protest thereon.
>
> On December 8, 2003 petitioner received the Decision of respondent denying with finality its protest and affirming in all respects the assessment issued by the Bureau of Internal Revenue examiner, computed as follows:

Special Savings Account	P23,406,214,618.09
Rate of Documentary Stamp Tax	x P0.3.0/200

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Total DST Due	P	35,109,321.93
Less: Payments/Applications -		
Basic Deficiency DST	P	35,109,321.93
Add: Interest (until February 28, 2003)		36,059,906.81
TOTAL AMOUNT DUE	P	71,169,228.74
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Consequently, pursuant to *Section 228 of the NIRC* petitioner filed the present Petition for Review.

On February 16, 2004, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> '5. The governing law on the matter is Section 180 of the Tax Code of 1997 which provides:
>
> > "**Section 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; . . .
> >
> > xxx xxx xxx."
>
> 6. In the case of BPI vs. Commissioner of Internal Revenue, CA G.R. No. 29853, the decision of which was promulgated on September 19, 1994, the Court of Appeals defined a 'certificate of deposit' as 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, 706219 N.W. 40, cited in Agbayani, op cit, p. 44). The foregoing definition does not prescribe any particular form, nor does it qualify. It may any *(sic)* written acknowledgment by a bank of the receipt of money as deposit which a bank promises to pay to the depositor is a genus of a certificate of deposit subject to tax under Section 180 of the Tax Code*)*. The fact then that the MSD is evidenced by a passbook and not be *(sic)* a certificate of deposit is of no moment. What is important and controlling is the nature or meaning conveyed by the passbook and not the particular label or nomenclature attached to it, inasmuch as substance is paramount than form. Thus, in the case of **L.R. Heat Treating Co.**, 28 TC 874, it was declared that:
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> > "We have held that it matters little what the transaction is termed, as the facts control and not the terminology. . . . it is a well established

principle of law that the name by which an instrument or transaction is denominated is not controlling its true character."

7. It must be recalled that what distinguishes the Savings Maximizer from the ordinary savings account is the higher interest rate or premium rate which may be availed of by the depositor only if he does not withdraw his deposit before the prescribed holding period. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period before making the withdrawal. In the event that a withdrawal is made prior to the interest payment date, the deposit shall, in lieu of the premium interest rate therein provided, earn interest at the prevailing ordinary savings account interest rate. To our mind, this condition actually contradicts the idea that the deposit under the Savings Maximizer may be withdrawn anytime. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period to expire before making the withdrawal. Consequently, this restricts the depositor's right to withdraw on his deposit prior to the holding period. It sets a limitation by curtailing the depositor's freedom to withdraw, thus removing the element of free, absolute and unrestricted access to one's deposit.

8. The nature of the penalty imposed on both the MSD and the time deposit lends more credence in logically inferring that the MSD is a class of time deposit rather than a regular savings deposit. In both the MSD and time deposit, a considerable reduction of interest is exacted in cases of withdrawal and/or pretermination. However, in regular savings account, no such reduction occur *(sic)*.

9. To sum up, the Savings Maximizer and Time Deposit Account are one the *(sic)* same banking transaction. To evade payment of the documentary stamp tax, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a special passbook to document the Market Savings Deposits and by claiming that said special deposit has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the aforesaid two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate the passbook *(sic)* nor labeled as such, it has a fixed maturity date and for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest'.

10. Assuming *arguendo* that petitioner's Savings Maximizer account is not a certificate of deposit, it is a loan agreement because the relationship between a depositor and a bank is that of creditor and debtor (Integrated Realty Corp. vs. Philippine National Bank, 174 SCRA 295). As such, it is subject to DST under Section 180 of the Tax Code.

11. Moreover, the protest letter of the taxpayer dated March 20, 2003, duly stamped to have been received on March 21, 2003 by the Large Taxpayers Service, this Bureau, is only a pro-forma protest as it failed to substantially comply with the requirements prescribed under Section 3.1.5 of Revenue Regulations No. 12-99 which implements the provisions of the National Internal Revenue Code of 1997 governing the rules on assessment of National Internal Revenue Taxes, civil penalties and interest and the extra-judicial settlement of a taxpayer's criminal violation of the Code through payment of a suggested compromise penalty. The subject taxpayer, through its counsel failed to categorically specify the facts, the applicable

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law, rules and regulations, or jurisprudence on which its protest is based. For failure to comply with the provisions of Section 3.1.5 of Revenue Regulations No. 12-99, the protest made by the taxpayer is considered void and without force and effect.

12. It is basic in taxation that the burden of proof lies on the taxpayer to present evidence showing that the assessment was not validly issued. Mere allegation that the assessment is baseless, both in facts and in law, without being substantiated is not enough. Concrete proofs must be presented and failure to do so is fatal considering that the assessment of the Commissioner of Internal Revenue is presumed to be prima facie correct, unless controverted (CIR vs. Bohol Land Transportation, 107 Phil. 965).

13. The assessment was issued in accordance with law and regulation.

14. All presumptions are in favor of the correctness of tax assessments.'

Petitioner presented Clarinda B. Martinez, as witness, and documentary evidence marked as *Exhibits "A" to "D",* together with their submarkings, which were all admitted by the Court.

On the other hand, respondent presented Lilia G. Pascual, as witness, and formally offered in evidence *Exhibits "1", "1-a" and "2".*

Thereafter, both parties were granted thirty (30) days from notice within which to file their simultaneous memoranda.

Both parties having complied thereto, the case was deemed submitted for decision on November 16, 2005."

The Ruling of the Court in Division

The Court in Division agreed with respondent that in substance, petitioner's Savings Maximizer Deposit is similar to a Time Deposit. In both types of bank deposits, the bank acknowledges receipt of a sum of money on deposit, which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In a Savings Maximizer Deposit, the transaction is covered by a passbook, while in a Time Deposit, the transaction is evidenced by a certificate of deposit. Nonetheless, the fact that petitioner's Savings Maximizer Deposit is

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evidenced by a passbook and not by a certificate of deposit is of no moment. What is important and 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 than its form. Thus, the Court in Division held that for all intents and purposes, the passbook issued in relation to petitioner's Savings Maximizer Deposit is in itself a certificate of deposit as it has the same nature and substance of a certificate of deposit bearing interest.

The Court in Division also ruled that assuming *arguendo* that petitioner's Savings Maximizer Deposit is not a certificate of deposit, the same is a loan agreement which is subject to DST.

Finally, the Court in Division held petitioner liable for a penalty equivalent to twenty five percent (25%) of the amount due pursuant to Section 248 of the 1997 NIRC, as amended and for delinquency interest at the rate of twenty percent (20%) per annum from January 8, 2004 (the 31st day from petitioner's receipt of respondent's decision on the protest), until the amount is fully paid, pursuant to Section 249 of the same Code.

The dispositive portion of the abovementioned Decision reads as follows:

> "**WHEREFORE**, premises considered, the present Petition For Review is hereby **DISMISSED** for lack of merit. The decision dated November 24, 2003 of the Bureau of Internal Revenue is hereby **AFFIRMED**, with the **MODIFICATION** that a penalty equivalent to twenty five (25%) percent of P71,169,228.74, the amount due, is hereby imposed, plus delinquency interest of twenty (20%) percent per annum from January 8, 2004, until the amount is fully paid, pursuant to *Sections 248 and 249 of the NIRC of 1997, as amended.*
>
> SO ORDERED."

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Aggrieved, petitioner filed a Motion for Reconsideration on March 28, 2006 which the Court in Division denied for lack of merit in its Resolution dated July 6, 2006.

The Issues

Hence, petitioner initiated this Petition for Review, raising the following issues:

> "i. Whether Petitioner's Savings Maximizer is a time deposit and the passbook evidencing Petitioner's Savings Maximizer is a certificate of deposit subject to DST under *Section 180* of the *1977 Tax Code*.
>
> ii. Whether Petitioner's Savings Maximizer is a loan agreement subject to DST under *Section 180* of the *1977 Tax Code*.
>
> iii. Whether Petitioner is liable for penalties and delinquency interests."

Petitioner's Arguments

Petitioner contends that its Savings Maximizer Deposit is a regular savings deposit and not a time deposit because: [i] it has no specific maturity period; [ii] it is withdrawable anytime upon demand; and [iii] it is evidenced by a passbook. Under Section 180 of the Tax Code, the test of taxability as applied to time deposits is still the existence of the certificate of deposit and not the transaction. Otherwise, all deposits drawing interest, including regular savings accounts, would be subject to DST under Section 180 of the Tax Code. Petitioner's passbook issued in relation to its Savings Maximizer Deposit is not a certificate of deposit contemplated under Section 180 of the Tax Code. Petitioner's passbook is more of a receipt recording a depositor's transaction rather than an evidence of indebtedness. It also does not contain a promise to pay the depositor, his order, or some other person upon his order. Far from being a promissory note, a passbook merely records the customer's account with the bank.

Petitioner also proffers the view that Republic Act No. 9243 ("RA 9243") sought to place within the purview of the DST the "Special Savings Account" offered by banks. Thus, prior to RA 9243, there was simply no law that subjects Special Savings Account to DST.

Petitioner further avers that for purposes of imposing DST under Section 180 of the Tax Code, the term "loan agreement" acquires a specific meaning under Revenue Regulations (RR) No. 9-94. According to petitioner, the passbook issued to Savings Maximizer depositors is not a loan agreement as defined under RR No. 9-94 because the said passbook does not contain or embody an express stipulation between the bank and its depositors, whereby the depositors are obliged to deliver money and other consumables upon the condition that the same amount of the same kind and quality shall be paid by the Bank.

Lastly, petitioner posits that the imposition of the 25% surcharge and 20% interest is not warranted under the circumstances because this case presents a controversial issue involving the banking industry.

Respondent's Counter-Arguments

Respondent opines that the present Petition for Review raises the same issues that have been extensively, sufficiently and squarely addressed and resolved by the Court in Division in its Decision dated March 2, 2006. Hence, petitioner's Petition for Review should be dismissed for being pro-forma and for lack of merit.

The Ruling of the Court En Banc

The petition is devoid of merit.

The principal issue posed for resolution by the Court *En Banc* is whether petitioner's Savings Maximizer Deposit is subject to DST under Section 180 of the 1977 Tax Code, as amended.

There is nothing novel in this case as the principal issue raised herein has been consistently resolved by Us in the affirmative. In a number of cases[1], We have ruled that a deposit account which has the same features as a time deposit account, i.e. a fixed term in order to earn a higher interest rate, is subject to DST pursuant to Section 180 of the 1977 Tax Code, as amended. Said Section provides:

> "Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instrument 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 deposit 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, 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

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[1] United Overseas Bank Philippines v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 31, March 10, 2005; Traders Royal Bank v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 34, April 26, 2005; Allied Banking Corporation v. 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, C.T.A. E.B. NO. 69, July 11, 2005; Banco de Oro Universal Bank v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 39, October 28, 2005; Philippine Banking Corporation (Now: Global Business Bank, Inc.) v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 63, November 23, 2005; China Banking Corporation v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 66, January 3, 2006; International Exchange Bank v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 87, January 30, 2006; Banco de Oro Universal Bank v. Commissioner of Internal Revenue, C.T.A. E.B. NO. 165, August 16, 2006.

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. (As amended by R.A. 7660)" *(Italics supplied)*

Under the afore-quoted provision, the following documents are subject to DST:

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 deposit 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.

It is clear from the foregoing that DST is imposed on all certificates of deposit drawing interest. The Supreme Court has 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."[2] The Supreme Court neither referred to a particular form of deposit nor limited the coverage thereof to time deposits only. We are bound by such pronouncement.

[2] Far East Bank and Trust Company v. Querimit, G.R. No. 148582, January 16, 2002 (373 SCRA 665).

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The High Tribunal 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. Thus, a passbook representing an interest earning deposit account issued by a bank qualifies as a certificate of deposit drawing interest.

Both law and jurisprudence do not prescribe any particular form before a document covering a bank deposit can be considered as a certificate of deposit. Hence, to restrict the meaning of "certificates of deposit drawing interest" mentioned in Section 180 of the 1977 Tax Code to "certificates of time deposit" only will not be in accordance with both law and jurisprudence. Verily, a certificate of time deposit is only a type of a certificate of deposit drawing interest.

It is well-settled that certificates of time deposit are subject to the DST. In resolving the issue before Us, it is important to determine whether petitioner's Savings Maximizer Deposit has the same nature and characteristics as a time deposit. In this case, the Court in Division made the following findings:

> "A certificate of deposit, undeniably, being subject to documentary stamp tax, it is thus relevant to determine whether petitioner's Savings Maximizer Deposit bears the same nature or characteristics of a time deposit certificate.
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> In both the time deposit and petitioner's Savings Maximizer Deposit, the deposit may be withdrawn anytime, but the depositor gets to earn a high rate of interest if the money is kept in the bank within the specified number of days. The only difference lies on the document used as evidence of the transaction. While in Savings Maximizer Deposit, the transaction is covered by a passbook (*Exhibit "C"*), the time deposit is evidenced by a certificate of time deposit. Nonetheless, the fact that petitioner's Savings Maximizer Deposit is evidenced by a passbook and not by a certificate of deposit is of no moment. What is important and 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 than its form (*L.R. Heat Treating Co., 28 TC 874; BPI vs. Commissioner of Internal Revenue, et al., CA-G.R. SP No. 29853, September 19, 1994*).

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> Petitioner further claims that like its regular savings account, the Savings Maximizer comes with a passbook and can be withdrawn fully or partially anytime, upon presentation of the passbook and a duly accomplished withdrawal slip. However, it is to be noted that the same holds true also in the case of a time deposit. A depositor is also allowed to withdraw his time deposit prior to the maturity date, subject only to pretermination charges. In which case, the depositor loses his entitlement to earn the interest rate corresponding to the time deposit. Instead, he earns interest pertaining to that of a regular savings deposit. The fact is, in both cases, the deposit may be withdrawn anytime, but the depositor gets a lower rate of interest. The only difference lies on the evidence of deposit. However, as above stated, in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels.
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> The Court agrees with respondent that in substance, the Savings Maximizer Account and Time Deposits are akin to each other. In both cases, the bank acknowledges receipt of a sum of money on deposit, which the bank promises to pay to the depositor, bearer or to the order of a bearer on a specified period of time. The difference lies on the document issued to evidence the transaction. In Savings Maximizer Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.
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> For all intents and purposes, We hold that petitioner's Savings Maximizer Deposit is in itself a certificate of deposit as it has the same nature and substance of a certificate of deposit bearing interest."[3]

We see no cogent reason to reverse or modify the findings of the Court in Division that petitioner's Savings Maximizer Deposit is, in substance, a time deposit. In order for a Savings Maximizer depositor to earn the agreed higher interest rate, the required amount of deposit applicable to the account's amount range must not only be met but should also be maintained for a definite period i.e. until the agreed interest payment dates.[4] Such being the case, We agree with the finding that petitioner's Savings Maximizer Deposit is a deposit account with a

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[3] Pages 15 to 17, Decision, C.T.A. Case No. 6845, March 2, 2006.
[4] Sample Savings Maximizer Passbook, Page 156-161, CTA Records.

fixed term as stated by the respondent in his Answer filed with the Court in Division:[5]

> "7. It must be recalled that what distinguishes the Savings Maximizer from the ordinary savings account is the higher interest rate or premium rate which may be availed of by the depositor only if he does not withdraw his deposit before the prescribed holding period. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period before making the withdrawal. **In the event that a withdrawal is made prior to the interest payment date, the deposit shall, in lieu of the premium interest rate therein provided, earn interest at the prevailing ordinary savings account interest rate. To our mind, this condition actually contradicts the idea that the deposit under the Savings Maximizer may be withdrawn anytime. In order to be entitled to the premium rate, the depositor, just like in time deposits, must wait for the holding period to expire before making the withdrawal. Consequently, this restricts the depositor's right to withdraw on his deposit prior to the holding period. It sets a limitation by curtailing the depositor's freedom to withdraw, thus removing the element of free, absolute and unrestricted access to one's deposit.**
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> 8. The nature of the penalty imposed on both the MSD and the time deposit lends more credence in logically inferring that the MSD is a class of time deposit rather than a regular savings deposit. In both the MSD and time deposit, a considerable reduction of interest is exacted in cases of withdrawal and/or pretermination. However, in regular savings account, no such reduction occur.
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> 9. To sum up, the Savings Maximizer and Time Deposit Account are one the same banking transaction. To evade payment of the documentary stamp tax, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a special passbook to document the Market Savings Deposits and by claiming that said special deposit has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the aforesaid two (2) accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate the passbook nor labeled as such, it has a fixed maturity date and for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest'." *(Emphasis supplied)*

At this juncture, it bears emphasis that in determining whether a certain instrument is subject to DST, substance would control over form and labels.[6] Since

[5] Page 29 to 34, CTA Records.

the DST is an excise tax "upon documents . . . levied, collected and paid for, and in respect of the transaction so had or accomplished,"[7] the fact that the Savings Maximizer Deposit is evidenced by a passbook is immaterial considering that the rule on equality and uniformity in taxation requires the imposition of DST on documents evidencing transactions of the same kind, in this case, on all certificates of deposits drawing interest. "What is important and 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".[8]

The foregoing disquisition renders unnecessary the resolution of the second issue raised in the Petition.

With regard to petitioner's contention that the imposition of the 25% surcharge and 20% delinquency interest is not warranted under the circumstances since this case presents a controversial issue involving the banking industry, We find the same untenable. We find the imposition of surcharge and delinquency interest under Section 248 and Section 249 of the Tax Code to be in accord with the law.

Section 248(A) in relation to Section 249 of the Tax Code of 1997, provides that the imposition of the surcharge and interest on delinquency is mandatory. Reproduced below are the pertinent portions of the said provisions, *viz*:

"SECTION 248. Civil Penalties. —

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[6] Traders Royal Bank v. Commissioner of Internal Revenue, C.T.A. Case No. 6392, April 28, 2004 *citing Knudsa Creamery Co. of California v. US, 121 F. Suppl. 860, 26 U.S.C.A. 1800, 1801.*
[7] Section 173, 1977 Tax Code.
[8] Resolution, Philippine Banking Corporation, now: Global Business Bank, Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6395, January 14, 2005.

(A) There **shall** be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

(2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or

(3) **Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment;** or

(4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.

(B) xxx xxx xxx

SECTION 249. Interest. —

(A) In General. — There **shall** be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid.

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.

(D) xxx xxx xxx" *(Emphasis supplied)*

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The Supreme Court has declared that it is mandatory to collect penalty and interest at the stated rate in case of delinquency. "The intention of the law is to discourage delay in the payment of taxes due the Government and, in this sense, the penalty and interest are not penal but compensatory for the concomitant use of the funds by the taxpayer beyond the date when he is supposed to have paid them to the Government."[9]

WHEREFORE, the instant petition is hereby **DISMISSED.** Accordingly, the assailed Decision promulgated on March 2, 2006 and the Resolution dated July 6, 2006 of the Court in Division are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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[9] Philippine Refining Company (now known as "Unilever Philippines [PRC], Inc."), v. Court of Appeals, Court of Tax Appeals, and the Commissioner of Internal Revenue, G.R. No. 118794, May 8, 1996.

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CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII 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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