Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

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,
Respondents.

C.T.A. E.B. NO. 69
(C.T.A. Case No. 6565)

Present:

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

Promulgated:

JUL 11 2005

x - x

DECISION

UY, *J.*:

This is a Petition for Review before the Court of Tax Appeals *en banc* filed on March 8, 2005 under Republic Act No. 9282, seeking the reversal of the Decision and subsequent Resolution rendered by the Second Division of the Court of Tax Appeals in C.T.A. Case No. 6565, of the same title, to wit:

> 1. Decision promulgated on November 3, 2004 dismissing the petition for review for lack of merit and directing petitioner to pay respondent the amount of P15,185,197.81 plus 20% delinquency interest from November 14, 2002 up to the time such amount is fully paid; and
>
> 2. Resolution promulgated on February 2, 2005 denying petitioner's Motion for Reconsideration of the aforementioned Decision.

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

Petitioner is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine laws, with principal office address at Allied Bank Center, 6754 Ayala Avenue, Makati City, Metro Manila. Respondents, Guillermo L. Parayno and Eleanor N. Litao, are herein impleaded in their official capacity as the duly designated Commissioner of Internal Revenue and incumbent Chief of the LT-Collection and Enforcement Division of the Bureau of Internal Revenue, respectively. Both respondents hold office at the National Office Building of the Bureau of Internal Revenue, Diliman, Quezon City.

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, assessing petitioner of deficiency Documentary Stamp Taxes 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.

On September 24, 1999, petitioner filed with respondent Commissioner a letter-protest dated September 23, 1999 on the said assessment notice.

On October 15, 2002, petitioner received a copy of the Decision rendered by the respondent, with the assailed Final Notice Before Seizure.

A Petition for Review was filed on November 14, 2002, which petition, assigned to the Second Division of this Court, was dismissed on November 3, 2004 for lack of merit. Likewise, the Motion for Reconsideration filed on November 26, 2004 was denied through a Resolution issued by the same division on February 2, 2005 and received by herein petitioner on February 7, 2005.

Hence, this recourse.

Petitioner raises the lone assignment of error, to wit:

> "The Honorable Court Second Division of the Court of Tax Appeals erred in holding that petitioner's market savings deposit is akin to a time deposit subject to documentary stamp tax."

Petitioner argues that its market savings deposits:

1. are withdrawable any time without the necessity of giving advance notice to the petitioner;

2. are not payable for a specified term;

3. do not specifically acknowledge the receipt of the money deposited;

4. offer a higher interest rate as an incentive in maintaining the deposit for a longer period; and

5. do not penalize the depositor for there is no pretermination of investment.

There is nothing new in the arguments presented by herein petitioner. This instant Petition for Review merely raised issues and arguments which have already been thoroughly discussed in the assailed Decision and Resolution.

To reiterate, petitioner cannot hide behind mere terminologies to escape from its tax responsibility to the government. What is vital to petitioner's case are the surrounding circumstances capable of overturning the same.

It may be true that a depositor of petitioner's market savings deposit may make a withdrawal at anytime without having to give notice to the petitioner, and unlike that of a time deposit, its market savings deposit does not penalize the depositor but rather offers an incentive for maintaining the deposit for a longer period of time. It is not incomprehensible to conclude that offering an incentive to a depositor for something he has to do is the opposite of penalizing him for something that he ought not to do. In the case of petitioner's market savings deposit, petitioner contends that there is no penalty to speak of considering that the depositor is not obliged to maintain his investment for a specified period of time. Petitioner asserts that there is only an incentive offered to the depositor in cases when he decides to maintain his deposit for a longer period of time. However, in contradiction, petitioner's witness also testified that the depositor, at the beginning of his deposit, is made to agree or choose a period within which he should maintain his deposit *(pp. 20-22, Transcript of Records, August 11, 2003)*. By obligating the depositor to choose or agree to a specified period of time within which to maintain his deposit is the same as giving him a maturity date. It is as simple as providing a higher rate of interest if the depositor lets his money stay longer with the bank, that is, giving a maturity date, but, reducing said interest rate to a minimum in case the depositor decides to withdraw his money, or preterminating the said account. The issue on the subject "penalty" is clear. In both the time deposit and petitioner's market savings deposit accounts, the depositor gets to withdraw his money anytime before the specified term, however, a lower rate of interest is given. The mere fact that a different or a lower rate of interest is given to the depositor in case where he withdraws his money prior to the expiration of the specified period, is a clear case of penalizing the depositor for something he ought not to do.

Further, petitioner's argument that there is no acknowledgment of the receipt of the money or funds on deposit in case of its market savings deposit is untenable. Again, it must be emphasized that for its market savings deposit, it issues a passbook stating the amount of the deposit, the date, the interest and the balance as well as the transaction code which is obviously for the bank's use. The mere fact that it is the bank which prints or types these figures and data, is enough acknowledgment of the funds received from the depositor.

Lastly, the Court notes that this petition was filed fourteen (14) days late as petitioner had until February 22, 2005 within which to file the instant petition for review. Records show that the same was filed only on March 8, 2005. On this technical ground, this petition will likewise not prosper.

All the foregoing considered, this Court *en banc* finds no reversible error committed by the Division of this Court in rendering the assailed Decision dated November 3, 2004 and Resolution dated February 2, 2005.

WHEREFORE, the instant petition is hereby **DENIED** due course and hereby **DISMISSED** for lack of merit. Accordingly, this Court's Decision dated November 3, 2004 and Resolution dated February 2, 2005 are hereby **AFFIRMED** in *toto*.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(Inhibit)
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 before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice