REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BANCO DE ORO UNIVERSAL BANK,
Petitioner,

C.T.A. CASE NO. 6588

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 0 5 2005
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DECISION

ACOSTA, E., PJ.:

This Petition for Review seeks the reversal and setting aside of Assessment No. DST2-98-000017 for alleged documentary stamp tax deficiency of petitioner for the fiscal year ending June 30, 1998 in the sum of PhP13,884,159.90 payment of which is demanded by respondent Commissioner of Internal Revenue.

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

Petitioner is a corporation organized under the laws of the Republic of the Philippines, licensed by the Bangko Sentral ng Pilipinas (BSP) to function as a universal bank. It has its principal office and place of business at No. 12 ADB Avenue Corner Julia Vargas Avenue, Ortigas Center, Mandaluyong City. Petitioner and Dao Heng Bank, Inc. (hereinafter "Dao Heng") entered into a statutory merger by executing a Plan of Merger and Articles of Merger on October 30, 2000, whereby, among others, Dao Heng merged into petitioner which continued as a surviving entity. On February 27, 2001, the BSP issued its

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favorable endorsement of the merger. On June 15, 2001, the Securities and Exchange Commission issued the definitive Certificate of Filing of Articles of Merger and Plan of Merger which rendered the merger effective.[1]

On May 2, 2002 Dao Heng received respondent's Pre-Assessment Notice dated April 2, 2002 informing that there has been found due from it deficiency documentary stamp tax on its special savings account product in the amount of P14,818,075.53 for the fiscal year ending June 30, 1998.[2]

Clause 1.4.4 of the Articles of Merger, provides that "any pending claim, action or proceeding brought by or against Dao Heng Bank, Inc. (DHBI) may be prosecuted by or against Banco de Oro Universal Bank (BDO)". BDO, as the surviving corporation in the merger has been conferred by operation of law with the legal personality and standing to address the assessment against Dao Heng . Thus, as successor-in-interest of Dao Heng, petitioner protested the said pre-assessment notice in a letter dated May 16, 2002.[3]

On June 11, 2002, petitioner received the formal letter of demand[4] and Assessment Notice No. DST2-98-000017[5] with due date on May 30, 2002, for deficiency documentary stamp tax liabilities covering its Investment Savings Account (ISA) for the fiscal year ended June 30, 1998 in the amount of Thirteen Million Eight Hundred Eighty Four Thousand One Hundred Fifty Nine and 90/100 Pesos (PhP13,884,159.90). On June 19, 2002, petitioner protested the said assessment.[6]

As of the filing of the Petition for Review on January 15, 2003, respondent has not acted on the protest.

Respondent raises the following Special and Affirmative Defenses:

"4. Petitioner's Investment Savings Account (ISA) deposits are considered time deposits and are subject to documentary stamp tax (DST) under Section 180 of the Tax Code.

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[1] Exhibit A
[2] Exhibit C
[3] Exhibit D
[4] Exhibit E
[5] Exhibit F
[6] Exhibit G

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5. In the case of the *BPI Family Bank v. Commissioner of Internal Revenue, CA-G.R. No. SP 29853*, promulgated on September 19, 1994, the Court of Appeals defined **'certificate of deposit'** as **a written acknowledgement 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** (Olsons Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit, p. 44).

6. In interpreting the provisions of Section 180 of the Tax Code, the Court of Appeals, in the case of *BPI-Family Bank v. CTA, CA-G.R. Sp. No. 29853*, September 19, 1994, held:

> ' A perusal of Section 180 of the Tax Code will show that it covers the following instruments: (1) promissory note, whether negotiable or not; (2) bills of exchange; (3) drafts; (4) **certificates of deposit**; and (5) debt instrument used for deposit substitute.'

7. The 'certificate of deposit' stated in Section 180 of the Tax Code does not prescribe any form, nor does it qualify. Xxx

8. The petitioner claims that by way of establishing the difference between the ISA Saving Account and a Certificate of Deposit, the former is payable on demand, while the latter has a specific or fixed term or maturity that is subject to the DST imposed by Section 180 of the Tax Code. xxx In essence therefore, the ISA Savings Account is just similar to Certificate of Deposit which has a maturity date and that in case of pretermination, it will earn interest similar to the lower rate applicable to the regular savings deposit. xxx an analytical look at the passbook issued for ISA Savings Account clearly reveals that although it does not have the form of a certificate nor labeled as such, it has a fixed maturity date, albeit hidden, and for all intents and purposes, it has the same nature and substance as a 'certificate of deposit bearing interest.'

9. Assuming *arguendo* that the ISA Savings Account is not a certificate of deposit, it is a loan agreement between the depositor and petitioner bank, hence, subject to DST under Section 180 of the Tax Code. xxx

10. Exemption from taxation are highly disfavored in law, and he who claims exemption must be able to justify his claim by the clearest grant of organic or statute law. An exemption from the common burden cannot be permitted to exist on vague implications. *[citations omitted]*

11. The assessment was issued in accordance with existing law and regulations.

12. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. *[citations omitted]*

13. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. *[citations omitted]*'

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The issues to be resolved by this Court are:

(1) Whether the letter of demand and the assessment are not void; and

(2) Whether petitioner's Investment Savings Account corresponds to a time deposit subject to documentary stamp tax (DST) contemplated under Section 180 of the Tax Code.

Petitioner claims that the demand letter and the assessment notice are void. Section 228 of the Tax Code provides that the taxpayer shall be informed in writing of the law and facts on which the assessment is made; otherwise, the assessment shall be void. The subject assessment notice and letter of demand do not state the facts, the law, the rules and regulations, or jurisprudence on which the assessment was based, hence, not valid.

We do not agree. There was substantial compliance with Section 228. As early as the pre-assessment notice dated April 2, 2002 *(Exhibit C)*, petitioner has been informed in writing of the facts and the law on which the assessment was made. Aside from the computation of the Documentary Stamp Tax Due per Audit, ANNEX A-1 thereof states that the special savings account of the bank is subject to DST under Section 180 of the 1997 NIRC.

The rationale behind the provision of the Tax Code requiring that the taxpayer be informed of the facts and the law upon which the assessment is made is to give the taxpayer ample opportunity to refute the findings of the examiner and give a more accurate and detailed explanation regarding the proposed assessment(s) *(Bank of America N.A. – Manila Branch vs. Commissioner of Internal Revenue, C.T.A. Case No. 6144, March 14, 2005 citing Belle Corporation v. Commissioner of Internal Revenue, C.T.A. Case No. 5930, April 4, 2002)*.

In the case at bar, petitioner cannot claim it has no knowledge of the facts and the law upon which the assessment against it was made. The protests against the pre-assessment notice[7] and against the letter of demand and assessment notice[8] disclose that

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[7] Exhibit D

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petitioner has full knowledge of the facts surrounding the assessment. The third paragraph of the protest to the Assessment Notice even states: "The Bureau premises the Assessment on the conclusion that Dao Heng's ISA Savings Account is the equivalent of a certificate of deposit and which would make it subject to documentary stamp taxes under Section 180 of the NIRC" *(Exhibit G).* Verily, at the time the assessment was issued, petitioner knew very well the law and the facts on which it was based. The purpose of the law having been served, Section 228 of the Tax Code is deemed to have been complied with.

Finding the Assessment Notice and the Formal Letter of Demand as valid, We now resolve the central issue of whether petitioner's Investment Savings Account is subject to documentary stamp tax.

Petitioner asserts that its special savings account product, particularly described as the Investment Savings Account (ISA) is not a time deposit. It maintains that the ISA documentation essentially consists in: (a) an ordinary savings account passbook and (b) an Investment Savings Account Conformation (Confirmation) that:

: states the amount of savings deposit accepted by the bank;

: quotes in a manner that essentially is *conditional*, the rate of interest applicable to the deposited amount;

: states that all or a portion of the deposit may be withdrawn anytime; and

: stipulates that the rate of interest *quoted conditionally* shall be substituted by the then applicable *regular* savings account interest rate, if any part of the deposit is withdrawn prior to a date specified in the confirmation.

According to the petitioner, the function of the confirmation is merely to confirm the amount of the deposit reflected in the passbook and sets out provisions supplementary to the passbook terms and conditions, specifically on the matter of interest that the deposit may earn. The Confirmation does not attempt to curtail or limit in any way the right of an ISA depositor to withdraw the entire or any part of the deposit at will.

Respondent, on the other hand, alleges that petitioner's ISA deposits are considered time deposits and are subject to documentary stamp tax under Section 180 of the Tax Code.

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[8] Exhibit G

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Citing the case of *BPI Family Bank v. Commissioner of Internal Revenue, CA-G.R. No. 29853*, September 19, 1994, 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. In interpreting Section 180 of the Tax Code the Court of Appeals therein held that:

> "A perusal of Section 180 of the Tax Code will show that it covers the following instruments: (1) promissory note, whether negotiable or not; (2) bills of exchange; (3) drafts; (4) **certificates of deposit**; and (5) debt instrument used for deposit substitute."

Respondent further elucidates that the "certificate of deposit" stated in Section 180 of the Tax Code does not prescribe any form, nor does it qualify. It may be any written acknowledgement by a bank of the receipt of money on deposit. The fact then that the ISA Savings Account is evidenced by a regular savings account passbook and not by a certificate of deposit is not material. What is important and controlling is the nature or substance conveyed by the document and not the particular document label or nomenclature attached to it, inasmuch as substance is paramount rather than its form.

We agree with the respondent. This case is definitely not one of first impression. In a long line of cases, this issue has already been settled by this Court.[9] Section 180 of the Tax Code provides [that] 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 xxx, deposit substitute debt instruments, ***certificates of deposits*** drawing interest, orders for the payment of any sum of money otherwise than at sight or on

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[9] United Overseas Bank Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6411, April 21, 2004; Traders Royal Bank vs. Commissioner of Internal Revenue, CTA Case No. 6392, April 28, 2004; Keppel Bank Philippines, Inc. vs. Commissioner of Internal Revenue, Hon. Guillermo L. Parayno, Jr. (as the successor of former Commissioner Rene G. Bañez), CTA Case No. 6560, June 23, 2004; Banco de Oro vs. Commissioner of Internal Revenue, CTA Case No. 6390; Philippine Banking Corporation (now:Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Case No. 6395, July 16, 2004; ING Bank N.V. Manila Branch vs. Commissioner of Internal Revenue, CTA Case No. 6187, August 9, 2004 [CTA E.B. No. 52, May 5, 2005]; China Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6400, October 14, 2004; International Exchange Bank vs. Commissioner of Internal Revenue, CTA Case No. 6159, October 26, 2004; Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6201, December 15, 2004; Prudential Bank vs. Bureau of Internal Revenue, represented by the Commissioner of Internal Revenue, CTA Case No. 6198, February 16, 2005 and Union Bank of the Philippines vs. Commissioner of Internal Revenue, CTA Case No. 6436, February 21, 2005

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demand, on all promissory notes, whether negotiable or non-negotiable xxx, there shall be collected a documentary stamp tax.

A certificate of deposit is without question one of those enumerated under Section 180 as subject to documentary stamp tax, it being 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 on order.

Petitioner's Investment Savings Account falls within the ambit of the aforesaid definition. The "ordinary savings account passbook" and the terms written on the Investment Savings Account Confirmation of petitioner's product cannot be taken independent of each other. Petitioner even said: "The Confirmation is not a stand-alone document and works together with the Passbook". The mere fact that the product's documentation consists principally in an "ordinary savings account passbook" does not change its essential feature, as admitted by petitioner, that "the rate of interest [of the deposit] shall be substituted by the then applicable *regular* savings account interest rate, if any part of the deposit is withdrawn prior to the date specified on the confirmation."

In *Traders Royal Bank vs. Commissioner of Internal Revenue, C.T.A. Case No. 6392, dated April 28, 2004,* [affirmed in Traders Royal Bank vs. Commissioner of Internal Revenue, CTA E.B. No. 32, February 14, 2005], We ruled:

> In the case at bar, petitioner, as earlier mentioned, claims that the bank's Special Savings Deposit is not subject to documentary stamp tax considering that it is not a time deposit and is not evidenced by a certificate of deposit.
>
> We do not agree.
>
> The following definitions would be helpful in the disposition of this case.
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> > **Certificate of Deposit.** A written acknowledgment by a bank or banker of a deposit with a promise to pay to depositor, to his order, or to some other person or to his order. Bank document evidencing the existence of a time deposit, normally paying interest. *(Underscoring Supplied)*
> >
> > **Time Deposit.** Another term for a savings account or certificate of deposit in a commercial bank. It is so called

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> because in theory **(though no longer in practice)** a person must wait a certain amount of time after notice of desire to withdraw part or all of his or her savings. Certificates of deposit usually carry penalties for early withdrawal. *(Emphasis and underlining supplied) (Black's Law Dictionary, 6th Edition)*

xxx xxx xxx

In an attempt to convince the court that the special savings account is not a time deposit, petitioner advances the argument that an SSA is withdrawable anytime and the interest of which depends on how long the money is kept by the depositor with the bank; while in the case of a time deposit, there is a specific maturity date evidenced by a certificate of deposit *(TSN, page 11, August 8, 2002).* It bears stressing though that xxx for a depositor under a Special Savings Deposit or Mega Savings Deposit to be able to avail of the higher rate of interest offered by the said kinds of deposit, the money should have been kept by the bank for a period not less than thirty (30) days *(TSN, pages 14-16, August 8, 2002)*; otherwise, the deposit earns interest pertaining to a regular savings deposit which is comparatively smaller.

It is to be noted that the same holds true **in case of a time deposit. A depositor is still allowed to withdraw his time deposit even before its maturity subject to pretermination charges and the depositor loses his entitlement to earn the interest corresponding to the time deposit. Instead, he earns interest likewise pertaining to a regular savings deposit. Clearly, petitioner's argument that one is withdrawable anytime and the other is not has no leg to stand on.** The fact is: in both cases, the deposit may be withdrawn anytime but the depositor gets to earn a lower rate of interest. The difference lies on the evidence of deposit *(Emphasis Ours)*.

But in determining whether a certain instrument is subject to documentary stamp tax, substance would control over the form and labels xxx **(Knudsa Creamery Co. of California vs. US, 121 F. Suppl. 860, 26 U.S. C.A. 1800, 1801).** The court agrees with the findings of the respondent that the nature of Special Savings Deposit and Time Deposits are akin to each other in such a way that 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 specified period of time. The difference lies on the document issued to evidence the transaction. In Special Savings Account, the transaction is covered by a passbook, while in time deposit, it is through a certificate of deposit.

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 clear evidence of such transaction in favor of the person whose name appears therein, subject to documentary stamp tax. (Underscoring Ours)

To stress, substance is paramount to form.

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WHEREFORE, the Petition for Review is **DENIED** for lack of merit. The assessment for deficiency documentary stamp tax on Investment Savings Account for the fiscal year ending June 30, 1998 is **AFFIRMED.** Accordingly, petitioner is **ORDERED TO PAY** the respondent the amount of PhP13,884,159.90 inclusive of interest, representing deficiency documentary stamp tax for 1998, plus 20% delinquency interest per annum from May 31, 2002 until fully paid pursuant to Section 249 (C) of the Tax Code.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

(With Concurring and Dissenting Opinion)
CAESAR A. CASANOVA
Associate Justice

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.

ERNESTO D. ACOSTA
Chairman, First Division
Presiding Justice

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