

## FIRST DIVISION

[ G.R. No. 180529, November 13, 2013 ]

### COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF COMMERCE, RESPONDENT.

#### D E C I S I O N

#### LEONARDO-DE CASTRO, J.:

This is a Petition for Review on *Certiorari*<sup>[1]</sup> filed by the Commissioner of Internal Revenue (CIR) wherein the September 17, 2007 Amended Decision<sup>[2]</sup> and November 15, 2007 Resolution<sup>[3]</sup> of the Court of Tax Appeals *En Banc* (CTA) in C.T.A. EB No. 259, are sought to be nullified and set aside.<sup>[4]</sup>

The facts of the case, as stipulated by the parties are as follows:

1. [Bank of Commerce (BOC)] is a banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at 12th Floor, Bankers' Centre Building, 6764 Ayala Avenue, Makati City.
2. Respondent is the Commissioner of the Bureau of Internal Revenue [(CIR)], duly appointed to perform the duties of his office, including, among others, the power to decide, cancel and abate tax liabilities pursuant to Section 244(B) of the Tax Code, as amended by Republic Act ("RA" No.) 8424, otherwise known as the 'Tax Reform Act' ("TRA") of 1997.
3. On November 9, 2001, [BOC] and Traders Royal Bank (TRB) executed a Purchase and Sale Agreement<sup>[5]</sup> whereby it stipulated the TRB's desire to sell and the BOC's desire to purchase identified recorded assets of TRB in consideration of BOC assuming identified recorded liabilities.
4. Under the Purchase and Sale Agreement, BOC and TRB shall continue to exist as separate corporations with distinct corporate personalities.
5. On September 27, 2002, [BOC] received copies of the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, addressed to "TRADERS ROYAL BANK (now Bank of Commerce)", issued by [the CIR] demanding payment of the amount of P41,467,887.51, as deficiency documentary stamp taxes (DST) on Special Savings Deposit (SSD) [account] of TRB for

taxable year 1999.

6. On October 11, 2002, [TRB] filed its protest letter contesting the Formal Letter of Demand and Assessment Notice No. DST-99-00-000049 dated September 11, 2002, pursuant to Sec. 228 of the Tax Code.
7. On March 31, 2004, [BOC] received the Decision dated March 22, 2004 denying the protest filed by [TRB] on October 11, 2002. The last two paragraphs of the Decision stated that:

**"WHEREFORE**, in view of all the foregoing, Assessment Notice No. DST-99-00-000049 demanding payment of the amount of P41,467,887.51, as deficiency stamp tax for the taxable year 1999 is hereby **MODIFIED AND/OR REDUCED** to P41,442,887.51. Consequently, Traders Royal Bank (now Bank of Commerce) is hereby ordered to pay the above-stated amount, plus interest that have accrued thereon until the actual date of payment, to the Large Taxpayers Service, B.I.R. National Office Building, Diliman, Quezon City, within thirty (30) days from receipt hereof; otherwise, collection thereof shall be effected through the summary remedies provided by law.

This constitutes the **Final Decision** of this Office on the matter."<sup>[6]</sup>

On April 30, 2004, the Bank of Commerce (BOC) filed a Petition for Review,<sup>[7]</sup> assigned to the CTA 2<sup>nd</sup> Division, praying that it be held not liable for the subject Documentary Stamp Taxes (DST).

As also stipulated by the parties, the issues before the CTA 2nd Division were:

1. Whether [BOC] can be held liable for [TRB]'s alleged deficiency [DST] liability on [its SSD] Account[s] for taxable year 1999 in the amount of P41,442,887.51, inclusive of penalties.
2. Whether TRB's [SSD] Account[s] for taxable year 1999 is subject to [DST].<sup>[8]</sup>

In support of the first issue, BOC called the attention of the CTA 2nd Division to the fact that as stated in Article III of the Purchase and Sale Agreement, it and Traders Royal Bank (TRB) continued to exist as separate corporations with distinct corporate personalities. BOC emphasized that there was no merger between it and TRB as it only acquired certain assets of TRB in return for its assumption of some of TRB's liabilities.<sup>[9]</sup>

### ***Ruling of the CTA 2<sup>nd</sup> Division***

In a Decision<sup>[10]</sup> dated August 31, 2006, the CTA 2<sup>nd</sup> Division dismissed the petition for lack of merit. It held that the Special Savings Deposit (SSD) account in issue is subject to DST because its nature and substance are akin to that of a certificate of deposit bearing interest, which under the then Section 180 of the National Internal Revenue Code (NIRC), is subject to DST.

As for BOC's liability, the CTA 2<sup>nd</sup> Division said that since the issue of non-merger between BOC and TRB was not raised in the administrative level, it could not be raised for the first time on appeal. The CTA 2<sup>nd</sup> Division also noted how BOC "actively participated in the proceedings before the administrative body without questioning the legitimacy of the proper party [in] interest."<sup>[11]</sup>

When its Motion for Reconsideration<sup>[12]</sup> was denied<sup>[13]</sup> on January 8, 2007, BOC filed a Petition for Review<sup>[14]</sup> before the CTA *En Banc*, adducing the following grounds:

**THE HOLDING OF THE HONORABLE SECOND DIVISION THAT [BOC] IS DEEMED TO HAVE ADMITTED THAT IT IS THE PROPER PARTY ASSESSED BY THE [CIR] BECAUSE IT DID NOT RAISE THE ISSUE OF MERGER IN THE LETTER OF PROTEST FILED WITH THE [CIR] IS WITHOUT BASIS AND VIOLATES ELEMENTARY RULES OF DUE PROCESS.**

**THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT TRB'S SSD ACCOUNTS FOR TAXABLE YEAR 1999 ARE SUBJECT TO [DST] UNDER THEN SECTION 180 OF THE TAX CODE.<sup>[15]</sup>**

***Ruling of the CTA En Banc  
on BOC's Petition for Review***

On June 27, 2007, the CTA *En Banc* affirmed the CTA 2<sup>nd</sup> Division's Decision and Resolution, ruling that BOC was liable for the DST on TRB's SSD accounts.<sup>[16]</sup>

Citing this Court's decision in *International Exchange Bank v. Commissioner of Internal Revenue*,<sup>[17]</sup> the CTA *En Banc* said that the CTA 2<sup>nd</sup> Division was correct when it deemed TRB's SSD accounts to be certificates of deposit bearing interest, subject to DST under Section 180 of the NIRC, as they involved deposits, which though may be withdrawn anytime, earned a higher rate of interest when kept in the bank for a specified number of days.<sup>[18]</sup>

Proceeding then to what it considered to be the pivotal issue, the CTA *En Banc*, agreeing with the decision of the CTA 2<sup>nd</sup> Division, held that BOC was liable for the DST on the subject SSD accounts. The CTA *En Banc* also noted that BOC was inconsistent in its position, for claiming that it was the one that filed the protest letter with the BIR, in its Petition for Review before the CTA 2<sup>nd</sup> Division and Pre-Trial Brief, while stating that it was TRB that filed the protest letter, in its Joint Stipulation of Facts and Issues. The CTA *En Banc* added that it would not be unfair

to hold BOC liable for the subject DST as TRB constituted an Escrow Fund in the amount of Fifty Million Pesos (P50,000,000.00) to answer for all claims against TRB, which are excluded from the Agreement.<sup>[19]</sup>

Undaunted, BOC filed before the CTA *En Banc* a Motion for Reconsideration<sup>[20]</sup> of its June 27, 2007 Decision, positing the following grounds for reconsideration:

### I

**There was no merger between [BOC] and [TRB] as already decided by this Honorable Court in a decision dated 18 June 2007; hence [BOC] cannot be held liable for the tax liability of [TRB.]**

### II

**[BOC] could not have raised the issue of non-merger of [BOC] and [TRB] in the proceedings before the [CIR] because it was never a party to the proceedings before the [CIR]. Contrary to the Court's findings, the issue of non-merger is no longer an issue but a fact stipulated by both parties.**

### III

**The [CIR]'s decision holding [BOC] liable for TRB's tax liability is void since [BOC] was not a party to the proceedings before the [CIR].<sup>[21]</sup>**

### ***Ruling of the CTA En Banc on BOC's Motion for Reconsideration***

On September 17, 2007, the CTA *En Banc*, in its Amended Decision, reversed itself and ruled that BOC could not be held liable for the deficiency DST of TRB on its SSD accounts. The dispositive portion of the CTA *En Banc's* Amended Decision reads:

**WHEREFORE**, [BOC]'s Motion for Reconsideration is hereby **GRANTED**. The Decision in the case at bar promulgated on June 27, 2007 is **REVERSED**. The appealed Decision in C.T.A. Case No. 6975 is **SET ASIDE** and a new one is hereby **ENTERED** finding petitioner Bank of Commerce **NOT LIABLE** for the amount of P41,442,887.51 representing the assessment of deficiency Documentary Stamp Tax on the Special Savings Deposit accounts of Traders Royal Bank for taxable year 1999.<sup>[22]</sup>

In its Amended Decision, the CTA *En Banc* said that while it did not make a categorical ruling in its June 27, 2007 Decision on the issue of merger between BOC and TRB, the CTA 1<sup>st</sup> Division **did** in its June 18, 2007 Resolution<sup>[23]</sup> in C.T.A. Case No. 6392, entitled *Traders Royal Bank v. Commissioner of Internal Revenue*.

The *Traders Royal Bank* case, just like the case at bar, involved a deficiency DST assessment against TRB on its SSD accounts, albeit for taxable years 1996 and 1997. When the CIR attempted to implement a writ of execution against BOC, which was not a party to the case, by simply inserting its name beside TRB's in the motion for execution, BOC filed a Motion to Quash (By Way of Special Appearance) with the CTA 1<sup>st</sup> Division,<sup>[24]</sup> which the CTA 1<sup>st</sup> Division granted in a Resolution on June 18, 2007, primarily on the ground that there was no merger between BOC and TRB.

With the foregoing ruling, the CTA *En Banc* declared that BOC could not be held liable for the deficiency DST assessed on TRB's SSD accounts for taxable year 1999 in the interest of substantial justice and to be consistent with the CTA 1st Division's Resolution in the *Traders Royal Bank* case.<sup>[25]</sup>

The CTA *En Banc* also gave weight to BIR Ruling No. 10-2006<sup>[26]</sup> dated October 6, 2006 wherein the CIR expressly recognized the fact that the Purchase and Sale Agreement between BOC and TRB did not result in their merger.<sup>[27]</sup> Elaborating on this point the CTA *En Banc* said:

By practice, a BIR ruling contains the official written interpretative opinion of the Commissioner of Internal Revenue addressed to a particular taxpayer regarding his taxability over certain matters. Moreover, well-settled is the rule that the interpretation of an administrative government agency like the BIR, is accorded great respect and ordinarily controls the construction of the courts. The reason behind this rule was explained in *Nestle Philippines, Inc. vs. Court of Appeals*, in this wise: "The rationale for this rule relates not only to the emergence of the multifarious needs of a modern or modernizing society and the establishment of diverse administrative agencies for addressing and satisfying those needs; it also relates to the accumulation of experience and growth of specialized capabilities by the administrative agency charged with implementing a particular statute.

Here, We have no reason to disregard the interpretation made by the Commissioner as it is in accord with the aforementioned Resolution of the First Division.<sup>[28]</sup> (Citation omitted.)

With the reversal of the CTA *En Banc*'s June 27, 2007 Decision, the CIR filed a Motion for Reconsideration<sup>[29]</sup> praying that BOC be held liable for the deficiency DST of TRB on its SSD accounts for taxable year 1999. In support of its motion, the CIR presented the following arguments:

**[BOC] is estopped from raising the issue that it is not the party held liable for Trader[s] Royal Bank (TRB)'s deficiency DST assessment because it was not a party to the proceeding before [the] Bureau of Internal Revenue (BIR).**<sup>[30]</sup>

**Issues not raised in the administrative level cannot be raised for the first time on appeal.**<sup>[31]</sup>