REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

TRADERS ROYAL BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6392

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 2 8 2004

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DECISION

This is a petition seeking for the cancellation of the assessments issued by respondent against petitioner for deficiency documentary stamp taxes for taxable years 1996 and 1997 in the amounts of P10,517,740.57 and P18,349,556.33, respectively, inclusive of surcharges.

Petitioner is a domestic corporation duly registered with the Securities and Exchange Commission and duly authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in commercial banking, with principal business address at 6764 Ayala Avenue, Makati City ***(Par. 2, Joint Stipulation of Facts and Issues).***

On December 27, 1999, respondent issued to petitioner a formal letter of demand and Assessment Notice Nos. ST-DST-96-0234-99 and ST-DST-97-0233-99 demanding payment of the respective amounts of P10,517,740.57 and P18,349,556.33, as deficiency documentary stamp taxes (DST) for the years 1996 and 1997 ***(Par. 4, Joint Stipulation of Facts and Issues)***, computed as follows:

	1996	1997
Industry issues on:		
Special Savings Deposit	P5,041,882,798.03	P9,579,733,184.65
Trust Fund	567,500,927.00	55,783,860.92
Mega Savings Deposit	77,911.32	150,872,997.87
Total	P5,609,461,636.35	P9,786,390,043.44
Tax Rate	P.30/P200	P.30/P200
Basic	8,414,192.45	14,679,645.07
Add: Surcharge	2,103,548.11	3,669,911.27
TOTAL	P 10,517,740.57	P 18,349,556.33

On January 7, 2000, petitioner filed a protest letter with the respondent ***(Par. 5, Joint Stipulation of Facts and Issues)***, pursuant to Sec. 228 of the 1997 Tax Code, advancing the following arguments: (a) That Special Savings Deposits being savings deposit accounts are not subject to documentary stamp taxes; and (b) That Trust Indenture Agreement *(sic)* are likewise not subject to documentary stamp taxes because the relationship established between the parties under such contract is that of a trustor and trustee wherein the funds and/or properties of the trustor are given to the trustee-bank not as a deposit but under common trust fund maintained and to be managed by the trustee ***(Par. 4, Petition for Review)***.

Respondent, however, in a letter dated December 20, 2001, which was received by petitioner on January 15, 2002, denied petitioner's protest ***(Par. 6, Joint Stipulation of Facts and Issues)***. The last two paragraphs of the respondent's letter stated that:

> "**IN VIEW WHEREOF**, this Office has resolved to **DENY** the protest of herein protestant-bank. Assessment Notice Nos. ST-DST-96-0234-99 and ST-DST-97-0233-99 demanding payment of the respective amounts of P10,517,740.57 and P18,349,556.33 as documentary stamp taxes for taxable years 1996 and 1997 are hereby **AFFIRMED** in all respects. Consequently, the protestant-bank is hereby ordered to pay the above-stated amounts plus interest that may have accrued thereon until actual payment, to the Collection Service, BIR National Office, Diliman, Quezon City, within thirty (30) days from receipt hereof, otherwise collection shall be effected through the summary remedies provided by law.

This constitutes the **final decision** of this Office on the matter."
(Par. 5, Petition for Review, admitted in Par. 2 of Answer).

As a result of the denial by respondent of petitioner's protest, petitioner, on February 15, 2002, filed the instant petition for review.

On March 12, 2002, respondent filed his Answer, alleging the following Special and Affirmative Defenses:

"4. The petitioner's Special Savings and Mega Savings deposits are considered time deposits and are subject to Documentary Stamp Tax (DST) as provided in Section 180 of the Tax Code of 1977, as amended, which states: x x x

5. The Court of Appeals, in interpreting the above quoted provision of law categorically declared:

"A perusal of Section 180 of the Tax Code will show that it covers the following instruments: (1) promissory notes, whether negotiable or not; (2) bills of exchange; (3) <u>certificates of deposit</u>; and (*sic*) (5) debt instruments used for deposit substitute. (BPI-Family Bank vs. CIR & Court of Tax Appeals, CA-GR No. SP 29853, prom. September 19, 1994)."

6. The use of an ordinary savings account passbook instead of a certificate of a deposit does not alter the substance of the Special Savings Deposit. It is a well established principle of law that the name by which an instrument or transaction is denominated is not controlling in determining its true character. (L.R. Heat Treating co., 28TC874)

In the case of "BPI-Family Bank vs. Commissioner of Internal Revenue," CA-GR No. SP 29853, promulgated on September 19, 1994 (CTA Case No. 4256), 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. (Olsons Estate 206, Iowa, 706, 219 N.W. 40, cited in Agbayani, op cit, p. 44). A close scrutiny of an ordinary savings account passbook discloses the following entries which are reflected in separate columns, to wit: date, withdrawals, deposit/interest, balance and remarks. From these entries, it is evident that on a certain date, the depositor made either a deposit or withdrawal and that after making such transaction the amount appearing in the 'balance column' is what remains of his money that is kept by the bank. In the 'remarks column', the banks representative attaches his initial/signature. The initial/signature signifies that the bank acknowledges the correctness, authenticity and veracity of all the entries therein. Clearly, therefore, the regular savings account passbook has the same substance, attributes and qualities as a "certificate of deposit".

7. A contract of trust under the Civil Code is defined as the legal relationship between one person having an equitable ownership in property and another person owing (*sic*) the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and exercise of certain powers by the latter. In the bank's "trust agreement", once the specific funds or properties of the trustor are placed under the common trust fund, there is a complete transfer of ownership from the trustor to the trustee-bank. It is manifested by the fact that said funds or properties may be invested by the bank in whatever manner it may deem necessary, the trustor having no control whatsoever over his funds. Further, all benefits from the transactions involving properties from the common trust fund will be received solely by the trustee-bank, the trustor's only consolation being limited to receiving higher rate of interest from his property. In effect, the "trust agreement", although termed as such, is but a form of deposit, hence, subject to documentary stamp tax.

8. The assessments were issued in accordance with law and regulations.

9. All presumptions are in favor of the correctness of tax assessments."

On September 10, 2003, this court, after both parties have already filed their respective Memorandum, submitted the case for decision.

The parties stipulated the following issues to be resolved by this court:

A. Whether or not Special Savings Deposits and Mega Savings Deposits (both are Special Savings Accounts [SSA]) are subject to documentary stamp tax (DST) under Section 180 of the Tax Code.

B. Whether or not the ordinary savings account passbook issued by the petitioner for its Special Savings Deposit (SSA) can be considered a certificate of deposit subject to documentary stamp tax (DST).

C. Whether or not the Trust Indenture Agreements are subject to documentary stamp tax (DST) under Section 180 of the Tax Code.

We shall now discuss the first two issues jointly.

Petitioner argues that its Special Savings Deposits and Mega Savings Deposit are not among those documents enumerated under Section 180 of the 1977 Tax Code which are subject to Documentary Stamp Tax which reads:

> "Sec. 180. **Stamp tax on loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposits bearing interest and others not payable on sight or on 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 <u>certificates of deposits drawing interest</u>, 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 xxx" ***(Underscoring supplied)***.

Based on the above-cited section, petitioner claims that the Special Savings Account (SSA), or the SSA passbook which evidences the same, is neither a promissory note nor a bill of exchange. Definitely, it cannot be classified as a loan agreement, draft or security issued by the Government or a certificate of deposit ***(pars. 10-11, Memorandum of Petitioner, page 112, CTA Records)***. As a consequence, respondent erred in assessing petitioner Documentary Stamp Taxes for its Special Savings Accounts for the following amounts:

	1996	1997
Special Savings Deposit	P 5,041,882,798.03	P 9,579,733,184.65
Mega Savings Deposit	77,911.32	150,872,997.87
Total	P 5,041,960,709.35	P 9,730,606,182.52

Further, petitioner states that Section 180 of the Tax Code clearly taxes the <u>certificates</u> of deposit drawing interest, not the underlying transaction (deposit drawing interest). The passbook issued by petitioner cannot be considered as a "Certificate of Deposit" ***(par. 12, Petition for Review)***.

On the other hand, "respondent believes that Special Savings and Mega Savings deposits and time deposit which is another form of certificate of deposit, are akin to each other. Efforts were made by petitioner to place a superficial distinction between the two deposit accounts by introducing an innovation using a regular passbook to document said deposits by claiming that the said special deposit has no specific maturity date. At first glance, the innovative scheme may be accomplished in putting a semblance of difference between the aforesaid two deposit accounts, but an analytical look at the passbook issued clearly reveals that although it does not have the form of a certificate nor labelled 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." In fact, it could be said that the passbook is itself a certificate of deposit." ***(pars. 8-9, Memorandum of Respondent, pages 140-141, CTA Records)***

We agree with respondent.

At this point, we find it noteworthy to discuss the nature of a documentary stamp tax. In the case of ***Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6149, promulgated March 5, 2003***, this court citing the case of ***Philippine Home Assurance Corporation, et al. vs. Court of Tax Appeals, SP-32531, April 27, 1994, which was later on affirmed by the Supreme Court in the case of Philippine Home Assurance Corporation vs. The Hon. Commissioner of Internal Revenue, GR. No. 4208-4211, January 21, 1999***, held, thus:

> "The respondent court correctly characterized a documentary stamp tax as in the nature of an excise tax. As such, it is imposed on the privilege of conducting a particular business or transaction and not on the business or transaction itself. x x x This means then that the documentary stamp tax accrues when the privilege is exercised. As the

> respondent Court stated, while it is true that a documentary stamp tax is levied on the document and not on the property, which it described, the documentary stamp tax is not intended to be a tax on the document alone. The law taxes the document because of the transaction so that the tax becomes due and payable at the time the transaction is had or accomplished, in this case, at the time of the issuance of the document."

Documentary stamp tax 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 ***(Hector S. De Leon, Comprehensive Review of Taxation, 2000 edition, page 381)***. What is being taxed here is the privilege of the petitioner to enter into such a transaction.

In the case at bar, petitioner, as earlier mentioned, claims that the bank's Special Savings Account 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.

> **Certificate of Deposit**. A written acknowledgment by a bank or banker of a deposit with promise to pay to depositor, to his order, or to some person or to his order. <u>Bank document evidencing existence of a time deposit, normally paying interest</u>. ***(Underscoring supplied)***
>
> **Time Deposit**. <u>Another term for a savings account or certificate of deposit in a commercial bank</u>. It is so called 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. <u>Certificates of deposit usually carry penalties for early withdrawal</u>. ***(Emphasis supplied) (Black's Law Dictionary, 6th Edition)***

From the above-quoted definitions, in relation to then Section 180 of the 1977 Tax Code, it is clear that a certificate of deposit is a taxable document. Petitioner also admitted in its pleadings that a time deposit falls under Section 180. Since the SSA falls within the definition of a time deposit, then, this court believes that said SSA is also subject to documentary stamp tax.

In its 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 petitioner's witness himself, Mr. Bayani R. Navarro, admitted that 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 the 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 rate 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 only difference lies on the evidence of deposit.

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.

Anent the last issue, petitioner submits that the Trust Indenture Agreements are not subject to the DST under Section 180 because the relationship established between the parties under such contracts is that of a trustor and trustee wherein the funds and/or properties of the trustor are given to the trustee bank **not as deposit but under common trust fund** maintained and to be managed by the trustee. Sec. X407, Part IV of the Manual of Regulations for Banks (**Exhibit "A"**) states:

> "**Sec. X407 Non-trust, Non-fiduciary and/or Non-Investment Management Activities** - The basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment. x x x Any agreement/arrangement that does not conform to these shall not be considered as trust, other fiduciary and/or investment management relationship. x x x"
> ***(par. 49, p. 17, Petitioner's Memorandum, page 123, CTA Records)***

Respondent, however, disagrees. We quote hereunder the Decision dated December 20, 2001 of respondent denying petitioner's protest against the assessment, to wit:

"In an earlier case involving the same industry issue, We ruled that the essential features/characteristics of a Trust Agreement are as follows:

A) The required minimum deposit is Php 50,000.00;
B) The shortest maturity date is 30 days;
C) It is not payable on sight or demand, in case of pretermination, prior written notice is required;
D) It is automatically renewed in case the depositor fails to withdraw the deposit at maturity date;
E) The bank used confirmation of participation to evidence the acceptance of the funds from the trustor.

Based on the foregoing features it is evident that the contention of the bank is misplaced. Although the contract is termed as "trust agreement", it can be considered as a misnomer because the relationship existing between the parties in the subject contract is actually not a trustor-trustee relationship but that of a creditor-debtor relationship, the same relationship governing deposits of money in banks.

A contract of trust under the Civil Code is defined as the legal relationship between one person having an equitable ownership in property and another person owning the legal title to such property, the equitable ownership of the former entitling him to the performance of certain duties and the exercise of certain powers by the latter. (Commentaries and Jurisprudence on the Civil Code of the Philippines by Arturo M. Tolentino Vol. 4, p. 669)

In the said contract of trust under the Civil Code, there is only an equitable transfer of ownership by the trustor to the trustee, the trustor retains his legal title to the subject property. On the other hand, in the bank's "trust agreement", once the specific funds or properties of the trustor are placed under the common trust fund, there is a complete transfer of ownership from the trustor to the trustee-bank. It is manifested by the fact that said funds or properties may be invested by the bank in whatever manner it may deem necessary, the trustor has no control whatsoever over his funds. Another point of distinction between the two contracts is that, in the contact of trust every transaction involving the trust property must be entered into by the trustee for the benefit of the trustor or his designated beneficiary; while in the bank's "trust agreement", all benefits from the transactions involving properties from the common trust fund will be received solely by the trustee-bank, the trustor's only consolation is limited to receiving higher rate of interest from his property. In effect, the subject "trust agreement" although termed as such is but a form of a deposit.

> The fact that the subject trust agreement is evidenced by a "confirmation of participation" and not by a certificate of deposit is immaterial. As discussed above, what is important and controlling is the nature or meaning conveyed by the document and not the particular label or nomenclature attached to it, inasmuch as its substance is paramount than its form. Therefore, the examiners are correct in imposing documentary stamp tax on the bank's "trust agreement".

We concur with the petitioner.

A Trust Indenture Agreement has a different feature and concept from a certificate of deposit. When a depositor enters into a trust agreement, what is created is a trustor-trustee relationship. The money deposited is placed in trust to a common fund and then invested by the Trust Department into a profitable venture. The yield or return of investment is higher and varies depending on the actual profit earned. In some trust agreements, a depositor may even get a negative return of investment. The fact that there is an "expected rate of return" does not necessarily convert a trust agreement into a time deposit. Under Section X407 of the Manual of Regulations for Banks it is provided that "the basic characteristic of trust, other fiduciary and investment management relationship is the absolute non-existence of a debtor-creditor relationship, thus, there is no obligation on the part of the trustee, fiduciary or investment manager to guarantee returns on the funds or properties regardless of the results of the investment."

WHEREFORE, the assessments for deficiency documentary stamp taxes on trust fund against petitioner for taxable years 1996 and 1997 are hereby **CANCELLED**. However, the assessments for deficiency documentary stamp taxes on special savings deposit and mega savings deposit for same taxable years 1996 and 1997 are hereby **AFFIRMED**.

ACCORDINGLY, petitioner is **ORDERED TO PAY** the respondent the deficiency documentary stamp taxes for the years 1996 and 1997 in the respective amounts of

P9,453,676.33 and P18,244,886.69 (all inclusive of 25% surcharge) totalling P27,698,562.92, computed as follows:

	1996	1997	Total
Special Savings Deposit	P 5,041,882,798.03	P 9,579,733,184.65	
Mega Savings Deposit	77,911.32	150,872,997.87	
Total Amount Subject to DST	P 5,041,960,709.35	P 9,730,606,182.52	
Tax Rate	.30/200	.30/200	
Basic Deficiency DST Due	P 7,562,941.06	14,595,909.27	
Add: 25% Surcharge	1,890,735.27	3,648,977.32	
Total Deficiency DST Due	P 9,453,676.33	P 18,244,886.59	P27,698,562.92

In addition, petitioner is **ORDERED TO PAY** the respondent 20% delinquency interest on P27,698,562.92 computed from February 14, 2002 until fully paid pursuant to Section 249 of the Tax Code, as amended.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice