REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE ,
Petitioner,

C.T.A. EB No. 378
(C.T.A. Case No. 7034)

Present:

-versus-

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

PHILIPPINE VETERANS BANK,
Respondent.

Promulgated: G.D.Apolinario
OCT 15 2008 3:10 p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

For review are the Decision dated November 19, 2007 only insofar as the Court in Division declared the cancellation of deficiency documentary stamp taxes ("DST") on trust accounts in the amount of P75,960,273.58

for the calendar year ending December 31, 2000, and the Resolution dated March 4, 2008 denying petitioner's motion for partial reconsideration for lack of merit in CTA Case No. 7034.

THE FACTS

Under the 1997 National Internal Revenue Code ("NIRC"), the Commissioner of Internal Revenue ("petitioner") is tasked to decide disputed assessments, grant refunds or tax credits of erroneously or excessively paid internal revenue taxes; while the Philippine Veterans Bank ("respondent") is engaged in the commercial banking business organized and existing under and by virtue of the laws of the Republic of the Philippines.

On January 16, 2004, the petitioner through Deputy Commissioner Estelita C. Aguirre issued a preliminary assessment notice ("PAN") which was received by the respondent on February 11, 2004 disclosing its liability for various internal revenue taxes including DST in the amount of P137,756,156.95, inclusive of interest and surcharge for the calendar year ending December 31, 2000.[1] But on the basis of a Memorandum Report dated March 9, 2004, respondent's DST liability was later adjusted in the amount of P149,021,725.02, inclusive of penalties.[2]

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[1] BIR Records, p.562.
[2] Exhibit 3, BIR Records, p. 776.

On April 21, 2004, the petitioner through Deputy Commissioner Aguirre demanded payment of DST deficiencies on special savings deposits ("SSDs") which include trust accounts in the cumulative amount of P149,021,725.02 against the respondent evidenced by a Formal Letter of Demand dated March 10, 2004 with attached Assessment Notice ("FAN") No. DST2-00-000048, reading as follows:

Account Name	Tax Provision	Rate	Amount	Tax Due
Special Savings	Sec. 180	15%		
Private			P5,462,345,025.81	P 8,193,517.54
Banks			966,580,212.75	1,449,870.32
Government			3,046,862,349.13	4,570,293.52
Trust			**50,640,182,388.04**	**75,960,273.58**
Basic Tax Due				P 90,173,954.96
Add: Interest				58,847,770.06
Total Tax Due				**P 149,021,725.02**[3]

Disagreeing with petitioner's findings, the respondent through President Ricardo A. Balbido, Jr. filed a protest against the FAN on May 6, 2004.[4] However, on July 13, 2004, the respondent received a copy of the petitioner's Decision dated June 22, 2004 which reiterated payment of its DST deficiencies in the increased amount of P154,308,636.36, inclusive of interests for the calendar year ending December 31, 2000.[5]

Dissatisfied, the respondent as the petitioner filed a "petition for review with a prayer for suspension of collection" docketed as CTA Case

[3] Joint Stipulation of Facts and Issues, CTA Case No. 7034, p. 111 and BIR Records, p. 827.
[4] Joint Stipulation of Facts and Issues, CTA Case No. 7034, p.111.
[5] Ibid.

No. 7034, entitled, "Philippine Veterans Bank vs. Commissioner of Internal Revenue" before the Court in Division on August 12, 2004.[6]

In the Decision dated November 19, 2007, the Court in Division partially granted respondent's petition. The Court in Division ordered the cancellation of its DST deficiency on trust accounts, however, it ordered the payment of DST on SSDs pertaining to private, bank, and government accounts in the cumulative amount of P27,876,339.22, inclusive of surcharge and interests pursuant to Section 180 of the 1997 NIRC. The Court in Division explained that a trust account is distinct and different from SSDs. Thus, respondent is not subject to DST on trust account transactions.[7] The dispositive portion of the assailed Decision states:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. The assessment for deficiency DST on petitioner's trust accounts is deemed **CANCELLED**, but the assessment for deficiency DST on its Special Savings Deposits of private, bank, and government accounts are **AFFIRMED**.
>
> Accordingly, petitioner is hereby ORDERED to PAY the following deficiency assessment:

Account Name	Tax Provision	Rate	Amount		Tax Due
Special Savings	Sec. 180	15%			
Private			P5,462,345,025.81	P	8,193,517.54
Banks			966,580,212.75		1,449,870.32
Government			3,046,862,349.13		4,570,293.52

[6] CTA Case No. 7034, p.1.
[7] Rollo, pp. 22-36. The Decision in CTA Case No. 7034 was penned by Associate Justice Lovell R. Bautista and concurred in by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

Basic Tax Due			P	14,213,681.38
Surcharge	Sec. 248	25%		3,553,420.35
Add: Interest				10,109,237.50
Total Tax Due			**P**	**27,876,339.22**

Likewise, petitioner is hereby **ORDERED to PAY** an additional 20% delinquency interest on P27,876,339.22, computed from June 13, 2007 until fully paid, pursuant to Section 249 of the 1997 Tax Code, as amended.

SO ORDERED.[8]

During the interim of the proceedings, the respondent filed a Manifestation dated December 14, 2007 informing the Court in Division that it settled DST deficiencies on SSDs in the amount of P30,725.920.57.[9]

Unfazed, the petitioner moved to partially reconsider the assailed Decision which was later denied for lack of merit in the Resolution dated March 4, 2008.[10]

THE ISSUE

The partly unfavorable ruling of the Division prompted petitioner to seek redress with the Court *en banc* by way of an appeal on the sole ground that:

WHETHER OR NOT THE TRUST ACCOUNTS OF RESPONDENT ARE DIFFERENT FROM TIME DEPOSITS AND/OR SPECIAL

[8] Rollo, p. 36.
[9] Rollo, p. 76.
[10] Rollo, pp. 38-39.

SAVINGS DEPOSITS (SSD) HENCE, NOT REQUIRED TO PAY DOCUMENTARY STAMP TAX (DST).[11]

According to the petitioner, the Court in Division failed to consider that the basis of the assessment is the transaction entered into by the respondent as a trustee of different trustors, and not the trust indenture agreement. As trustee, the respondent invested a part of the corpus of the trust into SSDs which is why it was assessed of DST deficiency on SSDs, and not for the trust agreement.

The Bangko Sentral ng Pilipinas ("BSP") requires banks such as the respondent to keep a separate book for its trust operation. The trust department of a bank monitors the money deposited by a trustor to the bank acting as a trustee, and its related income and expenses such as management fee, all recorded in a separate financial statement.

Petitioner further argues that had the respondent recorded its assets held in trust in its book, it would have done the same under a contingent liability account, and not in its regular liability account under SSDs. The revenue examiners made a break down of the SSD ledger account into its different sub-ledger accounts as presented in respondent's books, namely: private, banks, government and trust accounts. The sub-ledger accounts show the source of the money deposited under the SSDs.

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[11] Rollo, p. 14.

Respondent's books of accounts, financial statements, the trust sub-ledger account and the testimony of Revenue Examiner Edison O. Larin clearly establish that the money deposited stems from its trust department and not from the identure agreement. Hence, the respondent is liable to pay DST on trust account transactions in accordance with the provision of Section 180 of the 1997 NIRC.

Respondent, on other hand, alleges that the petitioner cannot assume that trust accounts are SSDs and hence, taxable.

THE COURT'S RULING

The petition is devoid of merit.

The BSP Manual of Regulations for Banks defines a trust account as an account where transactions arising from a trusteeship are kept and recorded. A trust is a relationship or an arrangement whereby a person called a trustee such as the respondent, is appointed by a person called a trustor to administer, hold and manage funds and/or property of the trust or for the benefit of a beneficiary.[12]

[12] See subsections (o) and (d) of Section X403 of the BSP Manual of Regulations for Banks.

In resolving the issue, it is necessary to determine if a trust account is subject to DST under Section 180 of the 1997 NIRC which provides:

> SEC. 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(P.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: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to 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.

Section 180 of the 1997 NIRC imposes DST on transactions arising from the following: 1) bonds; 2) loan agreements; 3) promissory notes; 4)bills of exchange; 5) drafts; 6) instruments and securities issued by the Government or any of its instrumentalities; 7) deposit substitute debt instruments; and 8)certificates of deposits bearing interest, and 9) others not payable on sight or demand. Nowhere does Section 180 treat trust account transactions taxable. Corollarily, trust account transactions cannot be likened to SSDs and time deposit transactions documented in certificates of deposit or any written memorandum of fact that the bank accepted a deposit of a sum of money from a depositor.

The Supreme Court elucidated on the nature of a certificate of deposit in the case of *Spouses Ramon M. Nisce vs. Equitable PCI Bank*[13], *viz:*

> When petitioner Natividad Nisce deposited her US$20,500.00 with the PCIB on July 19, 1984, PCIB became the debtor of petitioner. However, when upon petitioner's request, the amount of US$20,000.00 was transferred to PCI Capital (which forthwith issued Certificate of Deposit No. 01612), PCI Capital, in turn, became the debtor of Natividad Nisce. **Indeed, a certificate of deposit is a written acknowledgment by a bank or borrower of the receipt of a sum of money or deposit which the Bank or borrower promises to pay to the depositor, to the order of the depositor; or to some other person; or to his order whereby the relation of debtor and creditor between the bank and the depositor is created. The issuance of a certificate of deposit in exchange for currency creates a debtor-creditor relationship.**[14] (Emphasis supplied).

Clearly, a certificate of deposit serves as a proof of the existence of a debtor-creditor relationship. In this type of relationship, the bank becomes the owner of the money deposited by the depositor evidenced in a document such as a certificate of deposit with the obligation on the part of the former to return the equivalent money deposited at a determinable period.[15] This is contradistinguished from a trust where there is no

[13] G.R. No. 167434, February 19, 2007, 516 SCRA 231.
[14] Ibid.
[15] Articles 1980 and 1953 of the New Civil Code respectively read: Art. 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan. ART. 1953. A person who receives a loan of money or

absolute transfer of ownership to the trustee bank, but which merely manages and invests the object of the trust under the instructions of the trustor-client. A fiduciary relationship is created among the parties.

The Court in Division correctly relied on the case of *Traders Royal Bank vs. Commissioner of Internal Revenue*[16] declaring that trust transactions are not bank money deposit transactions which ruling was adopted by this Court in the cases of Commissioner of Internal Revenue vs. Traders Royal Bank[17] and *Commissioner of Internal Revenue vs. SOLIDBANK CORPORATION (Now: FIRST METRO INVESTMENT CORPORATION)*[18]*:*

> The Court En Banc has ruled that a trust agreement is not a bank deposit,xxx
>
> The Manual for Regulations of Banks issued by the Central Bank of the Philippines has defined the trust business as "... any activity resulting from a trustor-trustee relationship (trusteeship) involving the appointment of a trustee for the administration, holding, management of funds and/or properties of the trustor by the trustee for use, benefit or advantage of the trustor or others called beneficiaries (Sec. X403[a])."
>
> As correctly explained in the questioned Decision, "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.
>
> Petitioner's contention that there is a complete transfer of ownership from the trustor to the trustee bank because the funds may be invested by the bank in whatever manner it may deem necessary and the trustor having no control whatsoever over his funds is contrary to petitioner's allegation in the Petition that "A contract of trust under the

any other fungible thing acquires the ownership thereof, and is bound to pay to the creditor an equal amount of the same kind and quality.

[16] C.T.A Case No. 6392, April 28, 2004. See also *Metropolitan Bank & Trust Co. vs. Commissioner of Internal Revenue*, CTA Case No. 6504, October 25, 2006 and Philippine Bank of Communications vs. Commissioner of Internal Revenue, CTA Case No. 6207, May 6, 2008.

[17] C.T.A EB Case No. 32, February 14, 2005.

[18] C.T.A EB Case No. 114, February 22, 2007.

> Civil Code is defined as the legal relationship between one person having an equitable ownership in the property and another person owning legal title to such property, the equitable ownership of the former entitling him to the performance of duties and the exercise of certain powers by the latter." The petitioner, in effect, admits that the trustee bank holds legal title over the funds (i.e. has legal ownership of the funds), and is entitled to exercise certain powers such as the investment of the funds in behalf of the trustor(which is the essence of the trust business).[19]

To recapitulate, DST cannot be imposed on trust account transactions because they are not among the enumerated transactions subject to DST under the law.

WHEREFORE, premises considered, the petition is hereby **DISMISSED**.

SO ORDERED.

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

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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[19] Ibid.

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice