REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BANK OF COMMERCE,
Petitioner,

C.T.A. EB NO. 259
(C.T.A. Case No. 6975)

-versus-

Present:

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 17 2007 GwApolinario

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A M E N D E D   D E C I S I O N

BAUTISTA, *J.*:

On June 27, 2007, We dismissed the petition at bar and affirmed *in toto* the Decision dated August 31, 2006 and Resolution promulgated on January 8, 2007 of the Second Division of this Court, which held petitioner liable for the

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assessment of deficiency Documentary Stamp Tax ("DST") on the Special Savings Deposit ("SSD") accounts of Traders Royal Bank ("TRB") for taxable year 1999, in the amount of ₱41,442,887.51.

On July 18, 2007, the petitioner timely filed a Motion for Reconsideration.[1] It assails the Decision on the following grounds:

> "I
>
> There was no merger between Bank of Commerce and Traders Royal Bank as already decided by this Honorable Court in a decision dated 18 June 2007; hence Petitioner cannot be held liable for the tax liability of Traders Royal Bank;
>
> II
>
> Petitioner could not have raised the issue of non-merger of Petitioner and Traders Royal Bank in the proceedings before the Respondent because it was never a party to the proceedings before the Respondent. Contrary to the Court's findings, the issue of non-merger is no longer an issue but a fact stipulated by both parties;
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> III
>
> The Respondent's decision holding Petitioner liable for TRB's tax liability is void since Petitioner was not a party to the proceedings before the Respondent."

On August 10, 2007, respondent filed his Comment,[2] opposing petitioner's Motion for Reconsideration.

The lone ***issue*** is whether or not petitioner can be held liable for the assessment of deficiency DST on the Special Savings Deposit ("SSD") accounts of TRB for taxable year 1999.

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[1] *Rollo,* pages 79 to 112, with Annexes.
[2] *Rollo,* pages 115 to 120.

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We ***now hold*** that petitioner cannot be held liable for the amount of ₱41,442,887.51 representing the assessment of deficiency DST on the SSD accounts of TRB for taxable year 1999.

First. While Our Decision dated June 27, 2007 did not contain a categorical pronouncement that there was a merger between petitioner and TRB, the First Division of this Court rendered a Resolution dated June 18, 2007[3] in *Traders Royal Bank v. Commissioner of Internal Revenue, C.T.A. Case No. 6392*, which held that there was no merger between the petitioner and TRB.

In the *Traders Royal Bank* case, which involved a deficiency DST assessment against TRB for taxable years 1996 and 1997, the same respondent attempted to implement a writ of execution against herein petitioner Bank of Commerce by merely inserting the name of Bank of Commerce beside the name of TRB in the Motion for Execution, even when Bank of Commerce was never made a party to the case. Thus, petitioner Bank of Commerce filed a *"Motion to Quash (By Way of Special Appearance)"* which the First Division granted.

In the said Resolution, the First Division agreed with petitioner that the deficiency DST amounting to ₱27,698,562.92 for taxable years 1996 and 1997 was not one of the liabilities assumed by the Bank of Commerce in the Purchase and Sale Agreement. It ratiocinated as follows:

> *"First*, a close reading of the *Purchase and Sale Agreement* shows the following self-explanatory provisions:
>
> a) Items in litigation, both actual and prospective, against the petitioner are excluded from the liabilities to be assumed by the Bank of Commerce (Article II, Paragraph 2); and

[3] *Rollo,* pages 100 to 103, Annex "B" of petitioner's Motion for Reconsideration.

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b) The Bank of Commerce and Traders Royal Bank shall continue to exist as separate corporations with distinct corporate personalities (Article III, paragraph 1).

Second, aside from the foregoing, the *Purchase and Sale Agreement* does not contain any provision that the Bank of Commerce acquired the identified assets of petitioner solely in exchange for the latter's stocks. Merger is defined under Section 40 (C)(6)(b) of the Tax Code as follows:

'(b) The term **"merger"** or **"consolidation"**, when used in this Section, shall be understood to mean: (i) the ordinary merger or consolidation, or (ii) the acquisition by one corporation of all or substantially all the properties of another corporation solely for stock: *Provided,* That for a transaction to be regarded as a merger or consolidation within the purview of this Section, it must be undertaken for a *bona fide* business purpose and not solely for the purpose of escaping the burden of taxation:xxx'

Since the purchase and sale of identified assets between the two companies does not constitute a merger under the foregoing definition, the Bank of Commerce is considered an entity separate from petitioner. **Thus, it cannot be held liable for the payment of the deficiency DST assessed against petitioner**." (*Emphasis supplied*)

In the interest of substantial justice and to be consistent with the foregoing Resolution of the First Division, herein petitioner cannot be held liable for the deficiency DST assessed on the SSD accounts of TRB for taxable year 1999.

Second. The fact that the "Purchase and Sale Agreement" did not result in a merger between Bank of Commerce and TRB, was recognized by the respondent in BIR Ruling No. 10-2006 dated October 6, 2006 which was addressed to petitioner through its President, Mr. Raul De Mesa.[4] Then Commissioner of Internal Revenue Jose Mario C. Buñag ruled as follows:

"This refers to your letter dated August 8, 2006 requesting in effect for a ruling on the taxability of Bank of Commerce (Bancommerce for brevity) relative to its purchase of certain identified recorded assets of Traders Royal

[4] *Rollo,* pages 104 to 108, Annex "C" of petitioner's Motion for Reconsideration.

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Bank (hereinafter referred to as TRB) in consideration of the assumption of certain identified recorded liabilities of TRB.

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The Purchase and Sale Agreement states that 'TRB desires to sell and Bancommerce desires to purchase identified recorded assets of TRB in consideration of Bancommerce assuming identified recorded liabilities of TRB including booked contingent accounts per Consolidated Statement of Condition as of August 31, 2001, subject to adjustment at the closing date as may be agreed upon by Bancommerce and TRB and subject further to the approval of Bangko Sentral ng Pilipinas (BSP) and Philippine Deposit Insurance Corporation (PDIC).'

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On November 8, 2001, the Monetary Board of Bangko Sentral Ng Pilipinas (BSP) approved the purchase and assumption of the identified recorded assets and liabilities of TRB. It is noted that TRB retained its corporate existence and it is now known as 'Royal Traders Holding Company, Inc.' Bancommerce did not absorb the employees of TRB as they were all retired and their retirement benefits were paid by the latter. Moreover, it did not issue or exchange its shares of stock for the assets acquired from TRB because the consideration was the assumption of specified recorded liabilities of TRB.

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After a careful perusal of the facts presented as well as the details of the instant case, it is observed by this Office that the transaction was purely concerning acquisition and assumption of Bancommerce of the recorded liabilities of TRB. The Agreement did not mention with respect to the issuance of shares of stock of Bancommerce in favor of the stockholders of TRB. Such transaction is absent of the requisite of a stock transfer and same belies the existence of a merger. As such, **this Office considers the Agreement between Bancommerce and TRB as one of a 'sale of assets with assumption of liabilities' rather than 'merger'**.

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....To reiterate, this Office has ruled in the foregoing discussion that the transaction is one of sale of assets with assumption of identified recorded liabilities of TRB. **As such, the liabilities assumed by Bancommerce amounted only to P10,401,436,000.00 with some enumerated exclusion in the Agreement. Yet, it did not include deficiency taxes that may be imposed by the BIR because such liability was not yet determined at the time of the execution of the Agreement**. As aptly said, it would be **unreasonable and unjust** to hold Bancommerce liable for the deficiency

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> assessment against TRB which Bancommerce did not expressly assume in the Agreement." (*Emphasis supplied*)

In fine, the Commissioner of Internal Revenue ruled that liabilities which were not assumed by petitioner should not be enforced against it, since its liability is limited to liabilities of TRB that were already identified as of August 21, 2001.

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."[5]

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.

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[5] 203 SCRA 504 [1991].

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In view of the foregoing, petitioner cannot be held liable for the amount of ₱41,442,887.51 representing the assessment of deficiency DST on the SSD accounts of TRB for taxable year 1999. While taxes are the lifeblood of every civilized nation, the power to tax must be exercised with fairness.[6] Perhaps the Bureau of Internal Revenue can run after the assets of TRB, as the deficiency DST assessment involved TRB's SSD accounts.

WHEREFORE, petitioner'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 ₱41,442,887.51 representing the assessment of deficiency Documentary Stamp Tax on the Special Savings Deposit accounts of Traders Royal Bank for taxable year 1999.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

[6] Jardine Pacific Finance, Inc. (formerly MB Finance Corporation), v. Commissioner of Internal Revenue, C.T.A. Case No. 6195, April 12, 2004.

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

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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