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FIRST DIVISION

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

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **BANK OF COMMERCE,** *respondent.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATION CODE; MERGER; THE CLEAR TERMS OF THE AGREEMENT BRING COMMISSIONER OF INTERNAL REVENUE (CIR) TO A CONCLUSION THAT THE PURCHASE AND SALE DID NOT RESULT IN A MERGER BETWEEN BANK OF COMMERCE (BOC) AND TRADERS ROYAL BANK (TRB).— [T]he CTA 1st Division's Resolution in *Traders Royal Bank*, explicitly addressed the issue between BOC and TRB. The CTA 1st Division, relying on the provisions in both the Purchase and Sale Agreement and the Tax Code, determined that the agreement did not result in a merger. x x x Thus, when the CTA *En Banc* took into consideration the above ruling in its Amended Decision, it necessarily affirmed the findings of the CTA 1st Division and found them to be correct. This Court likewise finds the foregoing ruling to be correct. The CTA 1st Division was spot on when it interpreted the Purchase and Sale Agreement to be just that and not a merger. The Purchase and Sale Agreement, the document that is supposed to have tied BOC and TRB together, was replete with provisions that clearly stated the intent of the parties and the purpose of its execution, *viz*: 1. Article I of the Purchase and Sale Agreement set the terms of the assets sold to BOC, while Article II was about the consideration for those assets. Moreover, it was explicitly stated that liabilities not included in the Consolidated Statement of Condition were excluded from the liabilities BOC was to assume. x x x 2. Article III of the Purchase and Sale Agreement enumerated in no uncertain terms the effects and consequences of such agreement. x x x Moreover, the second whereas clause, which served as the premise for the subsequent terms in the agreement, stated that the sale of TRB's assets to

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BOC were in consideration of BOC's assumption of some of TRB's liabilities. x x x The clear terms of the above agreement did not escape the CIR itself when it issued BIR Ruling No. 10-2006, wherein it was concluded that the Purchase and Sale Agreement did not result in a merger between BOC and TRB.

2. TAXATION; BIR RULING NO. 10-2006; THE COMMISSIONER OF INTERNAL REVENUE RULED ON THE ISSUE OF MERGER WITHOUT ANY REFERENCE TO TRADERS ROYAL BANK'S SUBJECT TAX LIABILITY; EXPLAINED.— A perusal of BIR Ruling No. 10-2006 will show that the CIR ruled on the issue of merger without any reference to TRB's subject tax liabilities. x x x Clearly, the CIR, in BIR Ruling No. 10-2006, ruled on the issue of merger without taking into consideration TRB's pending tax deficiencies. The ruling was based on the Purchase and Sale Agreement, factual evidence on the status of both companies, and the Tax Code provision on merger. The CIR's knowledge then of TRB's tax deficiencies would not be material as to affect the CIR's ruling. The resolution of the issue on merger depended on the agreement between TRB and BOC, as detailed in the Purchase and Sale Agreement, and not contingent on TRB's tax liabilities. It is worthy to note that in the Joint Stipulation of Facts and Issues submitted by the parties, it was explicitly stated that both BOC and TRB continued to exist as separate corporations with distinct corporate personalities, despite the effectivity of the Purchase and Sale Agreement.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.

Rodrigo Berenguer & Guno for respondent.

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D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

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

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[5] 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.

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo*, pp. 56-63; penned by Associate Justice Lovell R. Bautista with Presiding Justice Ernesto D. Acosta and Associate Justices Juanito C. Castañeda, Jr., Erlinda P. Uy, Caesar A. Casanova and Olga Palanca-Enriquez, concurring.

[3] *Id*. at 64-70.

[4] *Id*. at 13-14.

[5] Records, pp. 11-29.

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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 ₱41,467,887.51, 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 ₱41,467,887.51, as deficiency stamp tax for the taxable year 1999 is hereby **MODIFIED AND/OR REDUCED** to ₱41,442,887.51. 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.
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> This constitutes the **Final Decision** of this Office on the matter."[6]

On April 30, 2004, the Bank of Commerce (BOC) filed a Petition for Review,[7] assigned to the CTA 2nd Division, praying

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[6] *Rollo*, pp. 135-137.

[7] *Id*. at 108-116.

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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 ₱41,442,887.51, inclusive of penalties.
2. Whether TRB's [SSD] Account[s] for taxable year 1999 is subject to [DST].[8]

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.[9]

Ruling of the CTA 2nd Division

In a Decision[10] dated August 31, 2006, the CTA 2nd 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 2nd 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 2nd Division also noted how BOC "actively participated in the proceedings before the administrative body without questioning the legitimacy of the proper party [in] interest."[11]

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[8] *Id*. at 137.

[9] Records, pp. 4-5.

[10] *Rollo*, pp. 84-99.

[11] *Id*. at 97.

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When its Motion for Reconsideration[12] was denied[13] on January 8, 2007, BOC filed a Petition for Review[14] 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.[15]

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

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

Citing this Court's decision in *International Exchange Bank v. Commissioner of Internal Revenue*,[17] the CTA *En Banc* said that the CTA 2nd 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.[18]

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[12] *Id*. at 174-185.

[13] *Id*. at 100-101.

[14] *Id*. at 186-203.

[15] *Id*. at 190.

[16] *Id*. at 82.

[17] 549 Phil. 456 (2007).

[18] *Rollo*, p. 78.

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Proceeding then to what it considered to be the pivotal issue, the CTA *En Banc*, agreeing with the decision of the CTA 2nd 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 2nd 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 (₱50,000,000.00) to answer for all claims against TRB, which are excluded from the Agreement.[19]

Undaunted, BOC filed before the CTA *En Banc* a Motion for Reconsideration[20] 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].[21]

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[19] *Id*. at 80-81.

[20] *Id*. at 204-221.

[21] *Id*. at 209-210.

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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 ₱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.[22]

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 1st Division **did** in its June 18, 2007 Resolution[23] 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 1st Division,[24] which the CTA 1st Division granted in a Resolution on June 18, 2007, primarily on the ground that there was no merger between BOC and TRB.

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[22] *Id*. at 62.

[23] *Id*. at 225-227.

[24] *Id*. at 58.

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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.[25]

The CTA *En Banc* also gave weight to BIR Ruling No. 10-2006[26] 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.[27] 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.[28] (Citation omitted.)

With the reversal of the CTA *En Banc*'s June 27, 2007 Decision, the CIR filed a Motion for Reconsideration[29] praying that BOC be held liable for the deficiency DST of TRB on its

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[25] *Id*. at 58-59.

[26] *Id*. at 228-232.

[27] *Id*. at 59.

[28] *Id*. at 61.

[29] *Id*. at 233-247.

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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).[30]

Issues not raised in the administrative level cannot be raised for the first time on appeal.[31]

The deficiency Assessment of TRB can be enforced and collected against [BOC].[32]

The Honorable Court *En Banc* erred in considering BIR Ruling No. 10-2006 as basis to justify its conclusion.[33]

The Honorable Court *En Banc* has no sufficient justification for not considering the Escrow fund in its Amended Decision.[34]

On November 15, 2007, the CTA *En Banc* denied the motion for lack of merit.

The CTA *En Banc* said that the rule that no issue may be raised for the first time on appeal is not a hard and fast rule as "jurisprudence declares that the appellate court is clothed with ample authority to review matters, even if they are not assigned as errors in their appeal, if it finds that their consideration is necessary in arriving at a just decision of the case." Thus, in the interest of justice, the CTA *En Banc* found it necessary to consider and resolve issues, even though not previously raised in the administrative level, if it is necessary for the complete adjudication of the rights and obligations of the parties and it falls within the issues they already identified.[35]

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[30] *Id*. at 234.

[31] *Id*. at 235.

[32] *Id*. at 236.

[33] *Id*. at 239.

[34] *Id*. at 243.

[35] *Id*. at 66-68.

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The CTA *En Banc* also reiterated its ruling in its Amended Decision, that BOC could not be held liable for the deficiency DST on the SSD accounts of TRB, in consonance with the Resolution of the CTA 1st Division in the *Traders Royal Bank* case; and BIR Ruling No. 10-2006, which has not been shown to have been revoked or nullified by the CIR.[36]

With the foregoing disquisition rendering the issue on the Escrow Fund moot, the CTA *En Banc* found no more reason to discuss it.[37]

Unsuccessful in its Motion for Reconsideration, the CIR is now before this Court, praying for the reinstatement of the CTA 2nd Division's August 31, 2006 Decision, which found BOC liable for the subject DST. The CIR posits the following grounds in its Petition for Review:

I.

THE DEFICIENCY ASSESSMENT OF TRADERS ROYAL BANK (TRB) CAN BE ENFORCED AND COLLECTED AGAINST RESPONDENT BANK OF COMMERCE (BOC) BECAUSE THE LATTER ASSUMED THE OBLIGATIONS AND LIABILITIES OF TRB PURSUANT TO THE PURCHASE AND SALE AGREEMENT EXECUTED BETWEEN THEM AND THE APPLICABLE LAW ON MERGER OF CORPORATIONS (SECTION 80 OF THE CORPORATION CODE).

II.

THE COURT OF TAX APPEALS *EN BANC* GRAVELY ERRED IN REVERSING ITS PREVIOUS DECISION WHICH AFFIRMED THE ASSESSMENT AND ENFORCEMENT OF DEFICIENCY TAXES BY PETITIONER AGAINST RESPONDENT, CONTRARY TO LAW AND JURISPRUDENCE.[38]

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[36] *Id*. at 68-69.

[37] *Id*. at 69.

[38] *Id*. at 25.

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In response, BOC presented in its Comment,[39] the following grounds in support of its prayer that the CIR's petition be denied:

I. THE PETITION FOR REVIEW DID NOT RAISE QUESTIONS OF LAW.

II. THE COURT OF TAX APPEALS *EN BANC* WAS CORRECT AND DID NOT COMMIT GRAVE ABUSE OF DISCRETION WHEN IT FOUND RESPONDENT NOT LIABLE FOR THE SUBJECT TAX BECAUSE:

A. THERE WAS NO MERGER CREATED BETWEEN THE RESPONDENT BANK OF COMMERCE AND TRADERS ROYAL BANK (TRB).

B. THE PETITIONER ITSELF RULED AND RENDERED AN OPINION UNDER BIR REVENUE RULING NO. 10-2006 THAT THERE WAS NO MERGER BETWEEN THE RESPONDENT AND TRB.

III. RESPONDENT IS NOT ESTOPPED FROM RAISING THE ISSUE OF NON-MERGER BETWEEN RESPONDENT AND TRB BECAUSE IT WAS NOT A PARTY TO THE PROCEEDINGS BEFORE THE PETITIONER.

IV. THE PETITIONER'S DECISION HOLDING RESPONDENT LIABLE FOR TRB'S TAX LIABILITY IS VOID SINCE RESPONDENT WAS NOT A PARTY TO [THE] PROCEEDINGS BEFORE THE PETITIONER.[40]

This Court's Ruling

The petition is denied for lack of merit.

As the CTA *En Banc* stated in its Amended Decision, the issue boils down to whether or not BOC is liable for the deficiency DST of TRB for taxable year 1999.

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[39] *Id.* at 265-283.

[40] *Id.* at 269-271.

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In resolving this issue, the CTA *En Banc* relied on 1) the Resolution in the *Traders Royal Bank* case, wherein the CTA 1st Division made a categorical pronouncement on the issue of merger based on the evidence at its disposal, which included the Purchase and Sale Agreement; and 2) the CIR's own administrative ruling on the issue of merger in BIR Ruling No. 10-2006 dated October 6, 2006.

Unlike the Decision of the CTA 2nd Division in this case, which focused on the taxability of the SSD accounts, the CTA 1st Division's Resolution in *Traders Royal Bank*, explicitly addressed the issue of merger between BOC and TRB. The CTA 1st Division, relying on the provisions in both the Purchase and Sale Agreement and the Tax Code, determined that the agreement did not result in a merger, to wit:

> In the Motion, [BOC] moves to have the Writ of Execution dated March 09, 2007 issued against it quashed on the ground that it is a separate entity from [TRB]; that there was no merger or consolidation between the two entities. Further, [BOC] claims that the deficiency [DST] amounting to ₱27,698,562.92 for the taxable years 1996 and 1997 of [TRB] was not one of the liabilities assumed by [BOC] in the *Purchase and Sale Agreement.*
>
> After carefully evaluating the records, the [CTA 1st Division] agrees with [BOC] for the following reasons:
>
> *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 [TRB] are excluded from the liabilities to be assumed by the Bank of Commerce (Article II, paragraph 2); and
>
> 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 [BOC] acquired the identified assets of [TRB] solely in exchange for the latter's stocks. Merger is defined under Section 40 (C)(6)(b) of the Tax Code as follows:

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> "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*, [t]hat 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: x x x."

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.[41] (Citation omitted.)

Thus, when the CTA *En Banc* took into consideration the above ruling in its Amended Decision, it necessarily affirmed the findings of the CTA 1st Division and found them to be correct. This Court likewise finds the foregoing ruling to be correct. The CTA 1st Division was spot on when it interpreted the Purchase and Sale Agreement to be just that and not a merger.

The Purchase and Sale Agreement, the document that is supposed to have tied BOC and TRB together, was replete with provisions that clearly stated the intent of the parties and the purpose of its execution, *viz*:

1. Article I of the Purchase and Sale Agreement set the terms of the assets sold to BOC, while Article II was about the consideration for those assets. Moreover, it was explicitly stated that liabilities not included in the Consolidated Statement of Condition were excluded from the liabilities BOC was to assume, to wit:

> ARTICLE II
>
> CONSIDERATION: ASSUMPTION OF LIABILITIES
>
> In consideration of the sale of identified recorded assets and properties covered by this Agreement, [BOC] shall assume identified

[41] *Id.* at 225-226.

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recorded TRB's liabilities including booked contingent liabilities as listed and referred to in its Consolidated Statement of Condition as of August 31, 2001, in the total amount of PESOS: TEN BILLION FOUR HUNDRED ONE MILLION FOUR HUNDRED THIRTY[-]SIX THOUSAND (₱10,401,436,000.00), provided that **the liabilities so assumed shall not include:**

xxx xxx xxx

2. Items **in litigation, both actual and prospective, against TRB** which include but are not limited to the following:

xxx xxx xxx

2.3 Other liabilities not included in said Consolidated Statement of Condition[.][42] (Emphases supplied.)

2. Article III of the Purchase and Sale Agreement enumerated in no uncertain terms the effects and consequences of such agreement as follows:

ARTICLE III

EFFECTS AND CONSEQUENCES

The effectivity of this Agreement shall have the following effects and consequences:

1. [BOC] and TRB shall **continue to exist as separate corporations with distinct corporate personalities**;

2. With the transfer of its branching licenses to [BOC] and upon surrender of its commercial banking license to BSP, **TRB shall exist as an ordinary corporation** placed outside the supervisory jurisdiction of BSP. To this end, TRB shall cause the amendment of its articles and by-laws to delete the terms "bank" and "banking" from its corporate name and purpose.

3. There shall be no employer-employee relationship between [BOC] and the personnel and officers of TRB.[43] (Emphases supplied.)

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[42] Records, pp. 12-13.

[43] *Id*. at 13.

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Moreover, the second whereas clause, which served as the premise for the subsequent terms in the agreement, stated that the sale of TRB's assets to BOC were in consideration of BOC's assumption of some of TRB's liabilities, *viz*:

> **WHEREAS**, TRB desires to sell and [BOC] desires to purchase identified recorded assets of TRB in consideration of [BOC] assuming identified recorded liabilities of TRB x x x.[44]

The clear terms of the above agreement did not escape the CIR itself when it issued BIR Ruling No. 10-2006, wherein it was concluded that the Purchase and Sale Agreement did not result in a merger between BOC and TRB.

In this petition however, the CIR insists that BIR Ruling No. 10-2006 cannot be used as a basis for the CTA *En Banc's* Amended Decision, due to BOC's failure, at the time it requested for such ruling, to inform the CIR of TRB's deficiency DST assessments for taxable years 1996, 1997, and 1999.[45]

The CIR's contention is untenable.

A perusal of BIR Ruling No. 10-2006 will show that the CIR ruled on the issue of merger without any reference to TRB's subject tax liabilities. The relevant portions of such ruling are quoted below:

> One distinctive characteristic for a merger to exist under the second part of [Section 40(C)(b) of the 1997 NIRC] is that, it is not enough for a corporation to acquire all or substantially all the properties of another corporation but it is also necessary that such acquisition is solely for stock of the absorbing corporation. Stated differently, the acquiring corporation will issue a block of shares equal to the net asset value transferred, which stocks are in turn distributed to the stockholders of the absorbed corporation in proportion to the respective share.
>
> 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

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[44] *Id*. at 11.

[45] *Rollo*, pp. 45-49.

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was purely concerning acquisition and assumption by [BOC] of the recorded liabilities of TRB. The [Purchase and Sale] Agreement did not mention with respect to the issuance of shares of stock of [BOC] 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 [BOC] and TRB as one of "a sale of assets with an assumption of liabilities rather than 'merger'."

xxx xxx xxx

In the case at bar, [BOC] purchased identified recorded assets and properties of TRB. In consideration thereof, [BOC] assumed certain liabilities of TRB which were identified in the Consolidated Statement of Condition as of August 31, 2001. In this wise, the liabilities of TRB assumed by [BOC] were limited only to those already identified as of August 31, 2001 amounting in all to Ten Billion Four Hundred One Million Four Hundred Thirty[-]Six Thousand Pesos (₱10,401, 436,000.00) x x x. More so, **liabilities that were not assumed by [BOC] should not be enforced against it.** x x x. (Emphasis supplied.)

xxx xxx xxx

2. Much have been said that the transaction between TRB and [BOC] is not a merger within the contemplation of Section 40(C)(b) of the Tax Code of 1997. 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 [BOC] amounted only to ₱10,401,436,000.00 with some enumerated exclusion in the Agreeement. x x x.[46]

Clearly, the CIR, in BIR Ruling No. 10-2006, ruled on the issue of merger without taking into consideration TRB's pending tax deficiencies. The ruling was based on the Purchase and Sale Agreement, factual evidence on the status of both companies, and the Tax Code provision on merger. The CIR's knowledge then of TRB's tax deficiencies would not be material as to affect the CIR's ruling. The resolution of the issue on merger depended on the agreement between TRB and BOC, as detailed in the

[46] *Id*. at 230-232.

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Purchase and Sale Agreement, and not contingent on TRB's tax liabilities.

It is worthy to note that in the Joint Stipulation of Facts and Issues submitted by the parties, it was explicitly stated that both BOC and TRB continued to exist as separate corporations with distinct corporate personalities, despite the effectivity of the Purchase and Sale Agreement.[47]

Considering the foregoing, this Court finds no reason to reverse the CTA *En Banc's* Amended Decision. In reconsidering its June 27, 2007 Decision, the CTA *En Banc* not only took into account the CTA 1st Division's ruling in *Traders Royal Bank*, which, save for the facts that BOC was not made a party to the case, and the deficiency DST assessed were for taxable years 1996 and 1997, is almost identical to the case herein; but more importantly, the CIR's very own ruling on the issue of merger between BOC and TRB, in BIR Ruling No. 10-2006, was dated well after the case at bar had been filed with the CTA in 2004.

WHEREFORE, the petition is hereby **DENIED.**

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Villarama, Jr., and *Reyes, JJ.,* concur.

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[47] *Id.* at 136.