Republic of the Philippines
Supreme Court
Manila

FIRST DIVISION

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* -

TRADERS ROYAL BANK,
Respondent.

G.R. No. 167134

Present:

LEONARDO-DE CASTRO,* *J.*,
Acting Chairperson,
BERSAMIN,
PEREZ,
PERLAS-BERNABE, and
JARDELEZA,** *JJ.*

Promulgated:

MAR 18 2015

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DECISION

LEONARDO-DE CASTRO, *J.*:

Before this Court is a Petition for Review on *Certiorari* filed by petitioner Commissioner of Internal Revenue (CIR) assailing the Decision[1] dated February 14, 2005 of the Court of Tax Appeals (CTA) *en banc* in C.T.A. EB No. 32, which denied the CIR's appeal of the Decision[2] dated April 28, 2004 and Resolution[3] dated September 10, 2004 of the CTA Division in C.T.A. Case No. 6392. The CTA Division cancelled the assessments issued by the CIR against respondent Traders Royal Bank (TRB) for deficiency documentary stamp taxes (DST) on the latter's Trust Indenture Agreements for taxable years 1996 and 1997, in the amounts of ₱10,517,740.57 and ₱18,349,556.33, respectively.[4]

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* Per Special Order No. 1946 dated March 12, 2015.

** Per Special Order No. 1952 dated March 18, 2015.

1 *Rollo*, pp. 28-33; penned by Presiding Justice Ernesto D. Acosta with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, and Olga Palanca-Enriquez, concurring.

2 Id. at 34-45; penned by Presiding Justice Ernesto D. Acosta with Associate Justices Juanito C. Castañeda, Jr., and Lovell R. Bautista, concurring.

3 Id. at 46-54.

4 Id. at 34.

TRB is a domestic corporation duly registered with the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas (BSP) to engage in commercial banking.[5]

On the strength of the Letter of Authority (L.A.) No. 000018565 dated July 27, 1998, the Bureau of Internal Revenue (BIR) conducted an investigation concerning all national internal revenue tax liabilities of TRB for taxable years 1996-1997. Following the investigation, the BIR issued a Pre-Assessment Notice dated November 10, 1999 against TRB. Subsequently, the BIR issued a Formal Letter of Demand and Assessment Notice Nos. ST-DST-96-0234-99[6] and ST-DST-97-0233-99,[7] all dated December 27, 1999, against TRB for deficiency DST for 1996 and 1997, in the total amount of ₱28,867,296.90, broken down as follows:

DEFICIENCY DOCUMENTARY STAMP TAX

Industry Issues on:	1996	1997
Special Savings Deposit	₱5,041,882,798.03	₱9,579,733,184.65
Trust Fund	**567,500,927.00**	**55,783,860.92**
Mega Savings Deposit	77,911.32	150,872,997.87
Total	5,609,461,636.35	9,786,390,043.44
Tax Rate	.30/200	.30/200
Basic	8,414,192.45	14,679,645.07
Add: Surcharge	2,103,548.11	3,669,911.27
TOTAL	₱ 10,517,740.57	₱ 18,349,556.33[8]

TRB Vice President Bayani R. Navarro (Navarro) wrote a letter dated January 7, 2000[9] protesting the foregoing assessments of the BIR on the following grounds:

> In response, we would like to point out that Special Savings Deposits being savings deposit accounts are not subject to the documentary stamp tax. Likewise, Trust Indenture Agreement[s] are not subject to documentary stamp tax for the reason that relationship established between parties is that of the trustor and trustee, wherein the funds and/or properties of the trustor are given to the Trustee Bank not as a deposit but under a Common Trust Fund maintained and to be managed by the Trustee.
>
> The same arguments are being invoked by other banks using similar instruments and the imposition of the DST is considered as an industry problem and is being contested by the entire banking community.

In his Decision dated December 20, 2001,[10] the CIR denied the protest of TRB. The CIR adopted the position of the BIR examiners that the Special

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5 Id.
6 Records, p. 1641.
7 Id. at 1640.
8 Id. at 60.
9 Id. at 1643.
10 Id. at 1648-1656.

Savings Deposit should be deemed a time deposit account subject to DST under Section 180 of the Tax Code of 1977. The CIR reasoned:

> [T]his Office believes and so holds that the Special Savings Deposit and Time Deposit are just one and the same banking transaction. To evade payment of the DST, efforts were made by banks to place a superficial distinction between the two (2) deposit accounts by introducing an innovation using a regular passbook to document the Special Savings Deposit and by claiming that the said special deposit has no specific maturity date. At first glance, the innovative scheme may have accomplished in putting a semblance of difference between the aforesaid two (2) 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 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 in itself a "certificate of deposit."[11]

As for the Trust Indenture Agreements, the CIR opined that they were but a form of deposit, likewise subject to DST. According to the CIR:

> In an earlier case involving the same industry issue, We ruled that the essential features/characteristics of a Trust Agreement are as follows:
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> A) The required minimum deposit is ₱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.
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> x x x x
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> 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

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[11] Id. at 1650.

> 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 contract 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 agreements."[12]

The CIR ruled in the end:

> **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 ₱10,517,740.57 and ₱18,349,556.33 as documentary stamp taxes for the 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.[13]

TRB filed a Petition for Review[14] with the CTA, which was docketed as **C.T.A. Case No. 6392**. The parties stipulated the following issues to be resolved by the CTA Division:

> A. Whether or not Special Saving 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 saving account passbook issued by [TRB] x x x can be considered a certificate of deposit subject to documentary stamp tax (DST).
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> C. Whether or not the Trust Indenture Agreements are subject to documentary stamp tax (DST) under Section 180 of the Tax Code.[15]

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12 Id. at 1648-1649.
13 Id. at 1648.
14 Id. at 1-6.
15 Id. at 60.

On April 28, 2004, the CTA Division rendered a Decision, resolving the first two issues in favor of the CIR and the last one in favor of TRB.

The CTA Division agreed with the CIR that the Special Savings Deposits and Time Deposits were akin to each other in that the bank would acknowledge the receipt of money on deposit which the bank promised to pay to the depositor, bearer, or to the order of the bearer after a specified period of time. In both cases, the deposits could be withdrawn anytime but the depositor would earn a lower rate of interest. The only difference was the evidence of the deposits: a passbook for Special Savings Deposits and a certificate of deposit for Time Deposits. Considering that the passbook and the certificate of time deposit were evidence of transactions, then both should be subject to DST, an excise tax on transactions.

The CTA Division, however, concurred with TRB that the Trust Indenture Agreements were different from the certificate of deposit, thus:

> 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."[16]

The CTA Division ultimately decreed:

> **WHEREFORE**, the assessments for deficiency documentary stamp taxes on trust fund against [TRB] 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**.
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> **ACCORDINGLY**, [TRB] is **ORDERED TO PAY** the [CIR] the deficiency documentary stamp taxes for the years 1996 and 1997 in the respective amounts of ₱9,453,676.33 and ₱18,244,886.69 (all inclusive of 25% surcharge) totaling ₱27,698,562.92 x x x.
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> x x x x

[16] *Rollo*, p. 44.

> In addition, [TRB] is **ORDERED TO PAY** the [CIR] 20% delinquency interest on ₱27,698,562.92 computed from February 14, 2002 until fully paid pursuant to Section 249 of the Tax Code, as amended.[17]

The parties each filed motions relative to the aforementioned judgment of the CTA Division, to wit:

> 1. **"Omnibus Motion for Substitution of Parties and Motion for Reconsideration (Re: Decision dated April 28, 2004)"** filed on May 28, 2004 by [TRB] seeking for the:
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> a. Substitution of parties from Traders Royal Bank to Bank of Commerce;
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> b. Reconsideration and reversal of this court's Decision promulgated on April 28, 2004 finding [TRB] liable for deficiency documentary stamp taxes for the taxable years 1996 and 1997 in the amounts of ₱9,453,676.33 and ₱18,244,886.69, respectively (all inclusive of the 25% surcharge), plus 20% delinquency interest computed from February 14, 2002 until fully paid; and
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> c. Cancellation of the subject deficiency tax assessments.
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> 2. "**Motion for Partial Reconsideration**" filed on May 24, 2004 by [CIR] seeking for a partial reversal of this court's Decision promulgated on April 28, 2004 with regard to the cancellation by this court of [CIR's] assessment for deficiency documentary stamp taxes on the trust fund against [TRB] for the taxable years 1996 and 1997.[18]

The CTA Division issued a Resolution dated September 10, 2004 denying the motions of the parties:

> Based on the allegations of [TRB], the Purchase and Sale Agreement [between TRB and the Bank of Commerce (BOC)] was executed on November 9, 2001. Upon the execution of the said agreement, the BOC assumed the deposit liabilities of [TRB] for the taxable years covering 1996 and 1997. However, it is noteworthy to emphasize that the Petition for Review was filed by [TRB] only on February 15, 2002 after the alleged transfer of right happened. To adopt the view of [TRB] and pursuant to the quoted Section 19, Rule 3 of the 1997 Rules of Court, it should have been the BOC that should have filed the Petition for Review instead of [TRB]. Yet, this was not the case. The petition was filed by petitioner Traders Royal Bank, notwithstanding the alleged transfer of rights to Bank of Commerce prior to the commencement of the action. Failure of [TRB] to show justifiable reasons for such negligence and blunder, this court cannot then allow the substitution of parties.
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17 Id. at 44-45.

18 Id. at 46-47.

> There being no other new issues raised by [TRB] which this court has not yet passed upon in its Decision of April 28, 2004, this court hereby **RESOLVES to DENY** [TRB's] motion.
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> Finding that the issue raised by the [CIR] had been thoroughly discussed in the Decision of April 28, 2004, this court finds no compelling reason to modify or alter the same and thereby **RESOLVES to DENY** [CIR's] Motion for Partial Reconsideration.
>
> **WHEREFORE**, both motions are hereby **DENIED** for lack of merit. **Accordingly**, this court's Decision promulgated on April 28, 2004 is **AFFIRMED** in all respects.[19]

The CIR and TRB filed with the CTA *en banc* separate Petitions for Review, docketed as C.T.A. EB Nos. 32 and 34, respectively, partially appealing the Decision dated April 28, 2004 and Resolution dated September 10, 2004 of the CTA Division.

The CTA *en banc* promulgated its Decision in **C.T.A. EB No. 32** on February 14, 2005, dismissing the Petition of the CIR and affirming the cancellation by the CTA Division of the assessments against TRB for DST on its Trust Indenture Agreements for 1996 to 1997. According to the CTA *en banc*:

> [A]n examination of the Petition for Review revealed that the issues raised therein by the [CIR] have been discussed at length and directly ruled upon in the assailed Decision and in the subsequent Resolution. The Court is not convinced by [CIR's] arguments on the assigned errors to justify a reversal of the questioned Decision.
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> The Manual for Regulations of Banks issued by the Central Bank of the Philippines has defined the trust business as "x x x any activity resulting from a trustor-trustee relationship (trusteeship) involving the appointment of a trustee by a trustor 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".
>
> [CIR'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 runs counter to [CIR's] allegation in the Petition that "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

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[19] Id. at 48-54.

> equitable ownership of the former entitling him to the performance of duties and the exercise of certain powers by the latter." (citing **Commentaries and Jurisprudence on the Civil Code of the Philippines**, *Arturo Tolentino, Volume 4, p. 669*). The [CIR], 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).
>
> [TRB] likewise correctly pointed out that the trust funds managed by its Trust Department cannot be appropriately alleged as time deposits, because the acceptance of deposits is beyond the realm of the business of the trust department of banks as implied under Section X407 of the Manual of Regulations for Banks inasmuch as no debtor-creditor relationship exists between the parties in the trust agreement.
>
> The trust placement not being a time deposit, it cannot therefore be subject to documentary stamp tax as a certificate of deposit.[20]

Hence, the dispositive portion of the Decision dated February 14, 2005 of the CTA *en banc* in C.T.A. EB No. 32 reads:

> **WHEREFORE**, finding that the Petition for Review is patently without merit, the same is denied due course. Accordingly, the same is **DISMISSED**.[21]

The CTA *en banc*, in a Decision dated April 26, 2005 in **C.T.A. EB No. 34**,[22] similarly dismissed the Petition of TRB and upheld the ruling of the CTA Division that TRB was liable for DST on its Special Savings Deposits for 1996 to 1997, plus surcharge and delinquency interest. The CTA *en banc* concluded:

> For all intents and purposes, [TRB's] Special Savings and Mega Savings Deposit are deemed to be of the same nature and substance as a certificate of deposit bearing interest. Therefore, We hold that said Special Savings and Mega Savings passbooks are in themselves certificates of deposit, subject to documentary stamp tax in accordance with *Section 180, National Internal Revenue Code of 1993, as amended*. While the DST is levied on the document itself, it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents (*Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 435*).
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> Lastly, there is likewise no merit to [TRB's] contention that the Division erred in denying the "Motion for Substitution of Parties".
>
> Generally, there is no need of a substitution or joinder of the transferee as a party-litigant for after all even if the action is continued by or against the original party, the judgment is binding on all the parties (original party, adverse party and transferee) (*Oria Hnos. v. Gutierrez*

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20 Id. at 31-32.

21 Id. at 32.

22 *Rollo* (CTA *En Banc*), pp. 78-93.

> *Hnos., 52 Phil. 156; Correa v. Pascual, 99 Phil. 696; Bustamante v. Azarcon, L-8939, May 28, 1957*). This is a settled rule in this jurisdiction. Indeed, We may say that the transferee is a proper (or necessary) party, but not an indispensable party to the original case (*Fetalino v. Sanz, 44 Phil. 69*).
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>
> Accordingly, no error was committed by the Division when it denied the "Motion for Substitution of Parties."[23]

Consequently, in its Decision dated April 26, 2005 in C.T.A. EB No. 34, the CTA *en banc* adjudged:

> All the foregoing considered, We see no reason to reverse the assailed Decision and Resolution of the Division of this Court.
>
> **WHEREFORE**, premises considered, the instant petition is hereby **DENIED DUE COURSE**, and accordingly, **DISMISSED** for lack of merit.[24]

TRB filed a Motion for Reconsideration of the foregoing Decision, but said Motion was denied by the CTA *en banc* in a Resolution dated June 10, 2005.

The CIR filed a Petition for Review before the Court, docketed as **G.R. No. 167134**, assailing the Decision dated February 14, 2005 of the CTA *en banc* in C.T.A. EB No. 32.

TRB initially filed a Motion for Extension of Time to File Petition for Review, requesting an extension of 30 days (*i.e.*, until August 1, 2005) within which to appeal the Decision dated April 26, 2005 and Resolution dated June 10, 2005 of the CTA *en banc* in C.T.A. EB No. 34. The Motion of TRB was docketed as **G.R. No. 168491**.

In a Resolution dated August 3, 2005, the Court consolidated the Petitions in G.R. Nos. 167134 and 168491 considering that they "assail the same decision of the Court of Tax Appeals, involve the same parties, and raise interrelated issues."

Eventually, the Court issued a Resolution dated June 26, 2006, in which it resolved as follows:

> It appearing that [TRB] in G.R. No. 168491 failed to file a petition for review on *certiorari* within the extended period which expired on August 1, 2005, the Court further resolves to ***CONSIDER*** G.R. No. 168491 ***CLOSED*** and ***TERMINATED***.[25]

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23 Id. at 90-91.
24 Id. at 92.
25 *Rollo*, p. 118.

The Resolution dated June 26, 2006 of the Court in G.R. No. 168491 became final and executory and Entry of Judgment was made in said case on August 24, 2006.

Presently pending resolution by the Court is the Petition for Review of the CIR in G.R. No. 167134 which appealed the Decision dated February 14, 2005 of the CTA *en banc* in C.T.A. EB No. 32 based on the lone assignment of error, *viz*:

> THE COURT OF TAX APPEALS EN BANC ERRED IN HOLDING THAT A TRUST INDENTURE AGREEMENT IS NOT A CERTIFICATE OF DEPOSIT, HENCE, NOT SUBJECT TO DOCUMENTARY STAMP TAX UNDER SECTION 180 OF THE TAX CODE.[26]

Section 180 of the National Internal Revenue Code (NIRC) of 1977, as amended by Republic Act No. 7660 – in force in 1996 and 1997 – imposed DST on the following documents:

> Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or 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 **certificates of deposits drawing interest**, 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 of Thirty centavos (₱0.30) on each two hundred pesos, 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 notes 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 (₱250,000) 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.

The CIR maintains that the relationship between TRB and its clients under the Trust Indenture Agreements was debtor-creditors and the said Agreements were actually certificates of deposit drawing/bearing interest subject to DST under Section 180 of the NIRC of 1977, as amended. The CIR points out that the only basis of the CTA *en banc* in ruling that the relationship between TRB and its clients under the Trust Indenture Agreements was that of trustee-trustors was Section X407 of the 1993

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[26] Id. at 17.

Manual of Regulations for Banks (MORB) issued by the BSP, which identified the basic characteristics of a trust. The CIR argues, however, that the very same provision, Section X407 of the 1993 MORB, identified exceptions, that is, instances when the agreement or contract would not constitute a trust. A trust as defined in Section X407 of the 1993 MORB would be in the nature of an exemption from the payment of DST. Accordingly, TRB had the burden of proving the legal and factual bases of its claim that its Trust Indenture Agreements fell under the definition of "trust" and not among the exceptions in Section X407 of the 1993 MORB. TRB, though, was unable to discharge such burden, failing to present evidence, whether testimonial or documentary, to prove its entitlement to DST exemption. The CIR, for its part, claims that the Trust Indenture Agreements were akin to certificates of deposit because said Agreements also stated expected rates of return of the investment or for the use of the amounts of deposits/trust funds for a certain period, clearly falling under the exception to what constituted a "trust" in Section X407, paragraph (d) of the 1993 MORB. The CIR also asserts that TRB should not be permitted to escape/evade the payment of DST by simply labeling its certificates of deposit drawing/bearing interests as "trust funds." In determining whether a certain contract/agreement/document/instrument is subject to DST, substance should control over form and labels.

In addition, the CIR insists that the Trust Indenture Agreements between TRB and its clients were simple loans governed by Article 1980 of the Civil Code.[27] The trust funds, being generic, could not be segregated from the other funds/deposits held by TRB. While TRB had the obligation to return the equivalent amount deposited, it had no obligation to return or deliver the same money deposited. Legal title to the trust funds was vested/transmitted to TRB upon perfection of the trust agreement. It then followed that TRB could make use of the funds/deposits for its banking operations, such as to pay interest on deposits, to pay withdrawals and dispose of the amount borrowed for any purpose such as investing the funds/deposits into a profitable venture. Currently, the CIR avers, the Trust Indenture Agreements may be considered as "loan agreements" or "debt instruments" subject to DST under Sections 173[28] and 179[29] of the NIRC of 1997, as amended.

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27 ART. 1980. Fixed, savings, and current deposits of money in banks and similar institutions shall be governed by the provisions concerning simple loan.

28 SEC. 173. *Stamp Taxes Upon Documents, Instruments, Loan Agreements, and Papers*. – Upon documents, instruments, loan agreements, and papers, and upon acceptances, assignments, sales and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

29 SEC. 179. *Stamp Tax on All Debt Instruments*. – On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (₱1.00) on each Two hundred pesos (₱200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be

The Petition is meritorious.

Generally, the factual findings of the CTA, a special court exercising expertise on the subject of tax, are regarded as final, binding and conclusive upon this Court.[30] However, there are well-recognized exceptions to this rule,[31] such as when the conclusion is grounded entirely on speculations, surmises, or conjectures, as well as when the findings are conclusions without citation of specific evidence on which they are based.

At the crux of the instant controversy are the Trust Indenture Agreements of TRB. At issue is whether the said Trust Indenture Agreements constituted deposits or trusts. The BIR posits that the Agreements were deposits subject to DST, while TRB proffers that the Agreements were trusts exempt from DST.

Surprisingly, not a single copy of a Trust Indenture Agreement and/or the Certificate of Participation (issued to the client as evidence of the trust) could be found in the records of the case.

The conduct by banks, such as TRB, of trusts and other fiduciary business (in 1996 and 1997) was governed by the 1993 MORB, which enumerated the minimum documentary requirements for trusts, including a written agreement or indenture and a plan (*i.e.*, written declaration of trust) for common trust funds (CTF). Relevant provisions of the 1993 MORB are quoted in full below:

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collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

30 *Miguel J. Ossorio Pension Foundation, Inc. v. Court of Appeals and Commissioner of Internal Revenue*, 635 Phil. 573, 585 (2010).

31 The following are considered exceptions to the general rule and although they refer to the findings of fact of the Court of Appeals, they may also be applied by analogy to findings of fact of the CTA: (1) when the conclusion is grounded entirely on speculations, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) where there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) when the findings of the Court of Appeals are contrary to those of the trial courts; (8) when the findings of fact are conclusions without citation of specific evidence on which they are based; (9) when the Court of Appeals overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion; and (10) when the findings of fact of the Court of Appeals are premised on the absence of evidence and are contradicted by the evidence on record. (*Commissioner of Internal Revenue vs. Embroidery and Garments Industries [Phil.], Inc.*, 364 Phil. 541, 546-547 [1999].)

Sec. X409 Trust and Other Fiduciary Business. The conduct of trust and other fiduciary business shall be subject to the following regulations.

§ X409.1 ***Minimum documentary requirements.*** Each trust or fiduciary account shall be covered by a written document establishing such account, as follows:

a. In the case of accounts created by an order of the court or other competent authority, the written order of said court or authority.

b. In the case of accounts created by corporations, business firms, organizations or institutions, the **voluntary written agreement or indenture entered into by the parties**, accompanied by a copy of the board resolution or other evidence authorizing the establishment of, and designating the signatories to, the trust or other fiduciary account.

c. In the case of accounts created by individuals, the **voluntary written agreement or indenture entered into by the parties**.

The voluntary written agreement or indenture shall include the following minimum provisions:

(1) Title or nature of contractual agreement in noticeable print;

(2) Legal capacities, in noticeable print, of parties sought to be covered;

(3) Purposes and objectives;

(4) Funds and/or properties subject of the arrangement;

(5) Distribution of the funds and/or properties;

(6) Duties and powers of trustee or fiduciary;

(7) Liabilities of the trustee or fiduciary;

(8) Reports to the client;

(9) Termination of contractual arrangement and, in appropriate cases, provision for successor-trustee or fiduciary;

(10) The amount or rate of the compensation of trustee or fiduciary;

(11) A statement in noticeable print to the effect that trust and other fiduciary business are not covered by the PDIC and that losses, if any, shall be for the account of the client; and

(12) Disclosure requirements for transactions requiring prior authority and/or specific written investment directive from the client, court of competent jurisdiction or other competent authority.

x x x x

Sec. X410 Common Trust Funds. (1) The **administration of CTFs shall be subject to the provisions of Subsecs. X409.1 up to X409.6** and to the following regulations.

As an alternative compliance with the required prior authority and disclosure under Subsecs. X409.2 and X409.3, a list which shall be updated quarterly of prospective and/or outstanding investment outlets may be made available by the trustee for the review of all CTF clients.

x x x x

(3) ***Minimum documentary requirements for common trust funds.*** In addition to the trust agreement or indenture required under Subsec. X409.1, each CTF shall be established, administered and maintained in accordance with a **written declaration of trust referred to as the plan**, which shall be approved by the board of directors of the trustee and a copy submitted to the appropriate supervising and examining department of the BSP within thirty (30) banking days prior to its implementation.

The plan shall make provisions on the following matters:

a. Title of the plan;

b. Manner in which the plan is to be operated;

c. Investment powers of the trustee with respect to the plan, including the character and kind of investments which may be purchased;

d. Allocation, apportionment, distribution dates of income, profit and losses;

e. Terms and conditions governing the admission or withdrawal as well as expansion or contraction of participation in the plan including the minimum initial placement and account balance to be maintained by the trustor;

f. Auditing and settlement of accounts of the trustee with respect to the plan;

g. Detailed information on the basis, frequency, and method of valuing and accounting of CTF assets and each participation in the fund;

h. Basis upon which the plan may be terminated;

i. Liability clause of the trustee;

j. Schedule of fees and commissions which shall be uniformly applied to all participants in a fund and which shall not be changed between valuation dates; and

k. Such other matters as may be necessary or proper to define clearly the rights of participants under the plan.

> The legal capacity of the bank administering a CTF shall be indicated in the plan and other related agreements or contracts as trustee of the fund and not in any other capacity such as fund manager, financial manager, or like terms.
>
> The provisions of the plan shall control all participations in the fund and the rights and benefits of all parties in interest.
>
> The plan may be amended by resolution of the board of directors of the trustee: Provided, however, That participants in the fund shall be immediately notified of such amendments and shall be allowed to withdraw their participation if they are not in conformity with the amendments made: Provided, further, That amendments to the plan shall be submitted to the appropriate supervising and examining department of the BSP within ten (10) banking days from approval of the amendments by the board of directors.
>
> **A copy of the plan shall be available at the principal office of the trustee during regular office hours for inspection by any person having an interest in a trust whose funds are invested in the plan or by his authorized representative. Upon request, a copy of the plan shall be furnished such person.** (Emphases supplied.)

The importance of the actual Trust Indenture Agreements cannot be gainsaid. The only way the Court can determine the actual relationship between TRB and its clients is through a scrutiny of the terms and conditions embodied in the said Agreements.

Article 1370 of the Civil Code provides:

> Art. 1370. If the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.
>
> If the words appear to be contrary to the evident intention of the parties, the latter shall prevail over the former.

In the interpretation of contracts, the ascertainment of the intention of the contracting parties is to be discharged by looking to the words they used to project that intention in their contract, all the words, not just a particular word or two, and words in context, not words standing alone.[32] In *Bautista v. Court of Appeals*,[33] this Court said:

> The rule is that where the language of a contract is plain and unambiguous, its meaning should be determined without reference to extrinsic facts or aids. The intention of the parties must be gathered from that language, and from that language alone. x x x.

Following the rules on interpretation of contracts, Rule 130, Section 9 of the Revised Rules of Court lays down the parol evidence rule:

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32 *Limson v. Court of Appeals*, 409 Phil. 221, 232 (2001).

33 379 Phil. 386, 399 (2000).

> Sec. 9. *Evidence of written agreements.* – When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.
>
> The term "agreement" includes wills.

The burden fell upon TRB to produce the Trust Indenture Agreements, not only because the said Agreements were in its possession, but more importantly, because its protest against the DST assessments was entirely grounded on the allegation that said Agreements were trusts. TRB was the petitioner before the CTA in C.T.A. Case No. 6392 and it was among its affirmative allegations that the said Trust Indenture Agreements were trusts, thus, TRB had the obligation of proving this fact. It is a basic rule of evidence that each party must prove its affirmative allegation.[34] As Rule 131, Section 1 of the Revised Rules of Court states:

> Section 1. *Burden of proof.* — Burden of proof is the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law.

TRB, in its Formal Offer of Evidence,[35] submitted only one document, Exhibit "A," which was page 10 of the 1993 MORB containing Section X407 on Non-Trust, Non-Fiduciary and/or Non-Investment Management Activities.

Section X407 of the 1993 MORB is reproduced hereunder:

> 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. The trustee, fiduciary or investment manager is entitled to fees/commissions which

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34 *Lopez v. Bodega City (Video-disco Kitchen of the Philippines)*, 558 Phil. 666, 673 (2007).

35 Records, pp. 72-73.

shall be stipulated and fixed in the contract or indenture and the trustor or principal is entitled to all the funds or properties less fees/commissions, losses and other charges. Any agreement/arrangement that does not conform to these shall not be considered as trust, other fiduciary and/or investment management relationship.

The following shall not constitute a trust, other fiduciary and/or investment management relationship:

a. When there is a preponderance of purpose or of intent that the arrangement creates or establishes a relationship other than a trust, fiduciary and/or investment management;

b. When the agreement or contract is itself used as a certificate of indebtedness in exchange for money placement from clients and/or as the medium for confirming placements and investment thereof;

c. When the agreement or contract of an account is accepted under the signature(s) of those other than the trust officer or subordinate officer of the trust department or those authorized by the board of directors to represent the trust officer;

d. Where there is a fixed rate or guaranty of interest, income or return in favor of its client or beneficiary: Provided, however, That where funds are placed in fixed income-generating investments, a quotation of income expectation or like terms, shall neither be considered as arrangements with a fixed rate nor a guaranty of interest, income or return when the agreement or indenture categorically states in bold letters that the quoted income expectation or like terms is neither assured nor guaranteed by the trustee or fiduciary and it does not, therefore, entitle the client to a fixed interest or return on his investments: Provided, further, that any of the following practices or practices similar and/or tantamount thereto shall be construed as fixing or guaranteeing the rate of interest, income or return:

(1) Issuance of certificates, side agreements, letters of undertaking, or other similar documents providing for fixed rates or guaranteeing interest, income or return;

(2) Paying trust earnings based on indicated or expected yield regardless of the actual investment results;

(3) Increasing or reducing fees in order to meet a quoted or expected yield;

(4) Entering into any arrangement, scheme or practice which results in the payment of fixed rates or yield on trust investments or in the payment of the indicated or expected yield regardless of the actual investment results; and

e. Where the risk or responsibility is exclusively with the trustee, fiduciary or investment manager in case of loss in the investment of trust, fiduciary or investment management funds, when such loss is not due to the failure of the trustee or fiduciary to exercise the skill, care, prudence and diligence required by law.

> Trust, other fiduciary and investment management activities involving any of the foregoing which are accepted, renewed or extended after 16 October 1990 shall be reported as deposit substitutes and shall be subject to the reserve requirement for deposit substitutes from the time of inception, without prejudice to the imposition of the applicable sanctions provided for in Sections 36 and 37 of R.A. No. 7653.

A reading of Section X407 of the 1993 MORB reveals that it merely explained the basic characteristics of a trust or other fiduciary and investment management relationship, and expressly identified the instances which would not constitute a trust, fiduciary and/or investment management relationship. Simply put, Section X407 of the MORB set the standards in determining whether a contract was one of trust or some other agreement.

Therefore, it was still necessary for TRB to present the Trust Indenture Agreements to test the terms and conditions thereof against the standards set by Section X407 of the 1993 MORB. Without the actual Trust Indenture Agreements, there would be no factual basis for concluding that the same were trusts under Section X407 of the 1993 MORB.

TRB called Mr. Navarro, its Vice President, to the witness stand to testify on the terms and conditions of the Trust Indenture Agreements. Mr. Navarro's testimony, though, cannot be accorded much weight and credence as it is in violation of the parol evidence rule. TRB made no attempt to explain why it did not present the Trust Indenture Agreements, and it also did not take the effort to establish that any of the exceptional circumstances under Rule 130, Section 9 of the Revised Rules of Court, allowing "a party to modify, explain or add to the terms of written agreement," was extant in this case. Moreover, Mr. Navarro's testimony consisted essentially of conclusions of law and general descriptions of trusts using the very same words and terms under Section X407 of the 1993 MORB.

In contrast, records show that the BIR examiners conducted a thorough audit and investigation of the books of account of TRB. Mr. Alexander D. Martinez, a BIR Revenue Officer, testified that it took the BIR team of examiners more than one year to conduct and complete the audit and examination of the documents of TRB, which consisted of approximately 20,000 pages.[36] The audit and investigation resulted in the issuance of Assessment Notices against TRB for DST tax liabilities for 1996 and 1997, which were duly received by TRB. The tax assessments against TRB are presumed valid. In *Sy Po v. Court of Tax Appeals*,[37] the Court pronounced:

> Tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his

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36 TSN, March 12, 2003, pp. 12-13.

37 247 Phil. 487 (1988).

> superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments. (Citations omitted.)

In *Marcos II v. Court of Appeals*,[38] the Court again had the occasion to rule:

> It is not the Department of Justice which is the government agency tasked to determine the amount of taxes due upon the subject estate, but the Bureau of Internal Revenue, whose determinations and assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is *prima facie* valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. The burden of proof is upon the complaining party to show clearly that the assessment is erroneous. Failure to present proof of error in the assessment will justify the judicial affirmance of said assessment. x x x. (Citations omitted.)

Given the failure of TRB to present proof of error in the tax assessments of the BIR, the Court affirms the same.

The liabilities of TRB for deficiency DST on its Trust Indenture Agreements for 1996 and 1997 are computed as follows:

	1996	1997
Trust Fund	₱ 567,500,927.000	₱ 55,783,860.92
Tax Rate	.30/200	.30/200
Basic Tax	851,251.50	83,676.00
Add: Surcharge	212,812.88	20,919.00
Total	₱ 1,064,064.38	₱ 104,595.00[39]

In addition, TRB is liable for 20% delinquency interest under Section 249 of the NIRC of 1993[40] from February 14, 2002[41] until full payment of its foregoing tax liabilities.

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38 339 Phil. 253, 271-273 (1997).

39 *Rollo*, p. 23.

40 SEC. 249. **Interest. (a) In general.** -- There shall be assessed and collected of any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid.

x x x x

(c) **Delinquency interest.** – In case of failure to pay:

x x x x

(3) a deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid, which interest shall form part of the tax.

41 TRB received on January 15, 2002 the Decision dated December 20, 2001 of the CIR denying its protest. In said Decision, the CIR required TRB to pay the assessed deficiency taxes within 30 days from receipt of the Decision.

WHEREFORE, premises considered, the instant Petition for Review on *Certiorari* is **GRANTED**. The assailed Decision dated February 14, 2005 of the CTA *en banc* in C.T.A. EB No. 32, affirming the Decision dated April 28, 2004 and Resolution dated September 10, 2004 of the CTA Division in C.T.A. Case No. 6392, is **REVERSED** and **SET ASIDE**. Respondent Traders Royal Bank is **ORDERED** to pay the deficiency Documentary Stamp Taxes on its Trust Indenture Agreements for the taxable years 1996 and 1997, in the amounts of ₱1,064,064.38 and ₱104, 595.00, respectively, plus 20% delinquency interest from February 14, 2002 until full payment thereof.

SO ORDERED.

TERESITA J. LEONARDO-DE CASTRO
Associate Justice
Acting Chairperson

WE CONCUR:

LUCAS P. BERSAMIN
Associate Justice

JOSE PORTUGAL PEREZ
Associate Justice

ESTELA M. PERLAS-BERNABE
Associate Justice

FRANCIS H. JARDELEZA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

TERESITA J. LEONARDO DE-CASTRO
Associate Justice
Acting Chairperson, First Division

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above Decision had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ANTONIO T. CARPIO
Acting Chief Justice