REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

UNITED COCONUT PLANTERS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8963

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:

FEB 05 2018 3:20 pm

x - x

RESOLUTION

CASANOVA, *J*.:

For the Court's resolution are the following:

1. petitioner's **Motion for Reconsideration (Re: Decision promulgated 31 August 2017)**[1], filed through registered mail on September 20, 2017 without respondent's comment as per Records Verification dated November 7, 2017; and

2. respondent's **Motion for Reconsideration Re: Decision promulgated on August 31, 2017**[2], filed through registered mail on September 20, 2017 with petitioner's **Comment To Respondent's Motion for Reconsideration (Re: Decision Promulgated 31 August 2017)**, filed through registered mail on November 6, 2017.

[1] Docket, Vol IV, pp. 1789-1843
[2] Ibid, Vol III, pp. 1696-1700

Both parties move for the reconsideration of the Decision promulgated on August 31, 2017, the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the Petition for Review is **PARTIALLY GRANTED**. Accordingly, the assessment covering deficiency income tax-FCDU and GRT-FCDU for taxable year 2006 is upheld but in the modified amount of **₱14,981,478.15**, inclusive of 25% surcharge imposed under Section 248(A) of the NIRC of 1997, as amended, computed as follows:

Tax Type	**Basic**	**Surcharge**	**Total**
Income tax-FCDU	₱ 8,898,592.63	₱ 2,224,648.16	₱ 11,123,240.79
GRT-FCDU	3,086,589.89	771,647.47	3,858,237.36
Taxes still due	**₱11,985,182.52**	**₱2,996,295.63**	**₱14,981,478.15**

> In addition, petitioner is liable to pay:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax-FCDU of ₱8,898,592.63 and GRT-FCDU of ₱3,086,589.89, computed from April 15, 2007 and January 25, 2007, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
>
> (b) delinquency interest at the rate of 20% per annum on the total amount of ₱14,981,478.15 representing the total deficiency income tax-FCDU and GRT-FCDU and on the deficiency interest which have accrued as afore-stated in (a) computed from December 15, 2014 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> **SO ORDERED.**"

Petitioner raised the following grounds in its Motion for Reconsideration:

1. Based on existing law and regulations governing the taxation of earnings of an FCDU, petitioner's FCDU onshore-other income, which includes forex gain and other charges imposed on foreign currency loan transactions with residents, is exempt from tax and, thus, not subject to RCIT.

2. UCPB's FCDU onshore-other income consisting of service fees, commissions, forex gain and other income amounting to ₱61,667,417.79 have been established to be integral parts of its gross onshore income on foreign currency loan transactions.

    A. Respondent confused "foreign loan transactions" with "foreign currency loan transactions", which is the proper subject of the expanded foreign currency deposit system subject to tax under Sections 27(D)(3) and 28(A)(7)(B) of the Tax Code.

    B. Contrary to the conclusion of Respondent, gross onshore income other than interest income expressly excluded for purposes of the 10% final tax, which form integral parts of said onshore income, are exempt from all taxes, including the 35% RCIT.

    C. The Respondent has consistently treated the other onshore income of Petitioner in the aggregate amount of ₱61,667,417.79 as fees, commissions and other charges that are integral parts of foreign currency loan transactions with residents.

3. Granting, without admitting that Petitioner's FCDU onshore-other income is not exempts from RCIT, the amount of ₱36,576,314.27 out of the ₱724,543,990.29 allocated general and administrative expenses by petitioner's RBU to its FCDU onshore-other income pursuant to Section 50 of the Tax Code and Section 4 of RR No. 10-76, should be allowed as a deduction from the FCDU Gross Onshore-Other Income to determine the taxable income subject to RCIT; and

4. UCPB's FCDU Onshore-Other Income consisting of service fees, commissions, forex gain and other income is exempt from tax and are proven to be integral parts of its gross onshore income on foreign currency loan transactions, thus, not subject to GRT.

Respondent, likewise, moves for reconsideration of the Court's Decision, but only in so far as it reduced the rate of GRT of the item "Miscellaneous" from 7% to 5%. He argues that onshore receipts of the bank's FCDU not covered by 10% Final Withholding Tax under Section 27 (D) (3) of the NIRC of 1997, as amended, is subject to GRT provided for under Section 121 of the NIRC of 1997, as amended.

Petitioner in its Comment to Respondent's Motion for Reconsideration (Re: Decision Promulgated 31 August 2017), opposes respondent's motion and alleges that its FDCU onshore-other income consisting of service fees, commissions, forex gain and miscellaneous income, have been established to be integral parts of its gross onshore income on foreign currency loan transactions, and are thus not subject to GRT. Petitioner further claims that its FCDU Onshore-Other Income, which includes miscellaneous income, from foreign currency loan transactions with residents, is expressly exempt from tax, including GRT, under pertinent tax laws and regulations.

Both parties' motions lack merit.

It is apparent that the issues and arguments presented are essentially a mere rehash of what had been said and reiterated in the parties' previous pleadings which have been considered, weighed and resolved in the assailed Decision. Nevertheless, the Court will discuss the same for emphasis.

Revenue Regulations (RR) No. 10-76, as amended by RR No. 14-77, and Revenue Audit Memorandum Order (RAMO) No. 1-84 provide that other income, not classified as offshore income or onshore interest income are subject to the usual corporate taxes payable by banks save for the service fees, commissions, and other charges integral to the gross interest income derived from foreign currency loan transaction with residents, which are exempt from all taxes.

It must be stressed that the Court had already ruled that petitioner's FCDU onshore-other income, shall be subject to RCIT. It stated that petitioner's FCDU onshore-other income, which includes the forex gain of ₱160,450.13 and miscellaneous income of ₱23,710,017.10 earned by petitioner's FCDUs which were not classified as offshore income or onshore interest income based on the definition under RR No. 10-76 and were not expressly exempt by any law from tax, shall be considered as other income subject to the RCIT of 35% pursuant to Section 27(A) of the National Internal Revenue Code (NIRC) of 1997, as amended.

The Court also found that petitioner was not able to prove that the service fees and commissions of ₱37,796,950.56 were, indeed, integral parts of the gross interest income derived from its foreign currency loan transactions with residents. Since petitioner failed to clearly establish its claim, the service fees and commissions shall likewise be considered as Other Income subject to RCIT of 35% under Section 27(A) of the NIRC of 1997, as amended.

Petitioner's contention that the amount of ₱36,576,314.27 should be allowed as deduction from the Gross Onshore-Other Income to determine the taxable income subject to RCIT had already been settled by the Court. The amount of ₱36,576,314.27 is part of the ₱724,543,990.29 allocated from the total expenses of petitioner's Regular Banking Unit (RBU) as general and administrative expense for the operation of its FCDU pursuant to Section 50 of the NIRC of 1997 and Section 4 of RR No. 10-76.

It had been ruled that the general and administrative expenses allocated by petitioner's RBU to its FCDU operation cannot be considered in computing the taxable income subject to 35% RCIT since it did not claim any deduction for the allocated expense from RBU in its Annual Income Tax Return-FCDU. Section 6(A) of the NIRC of 1997 provides that any return, statement or declaration filed may be modified, changed, or amended within three (3) years from the date of such filing, provided, that no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer. Accordingly, petitioner is already precluded to amend its tax returns. Thus, the alleged allocated expense cannot be considered in computing the taxable income subject to 35% RCIT.

As for GRT, the Court ruled that since the trading gain of ₱160,450.13 and miscellaneous income of ₱23,710,017.10 earned by petitioner's FCDUs, were not classified as offshore income or onshore interest income and were not expressly exempt by any law from tax, said income shall be subject to the usual corporate taxes, including GRT imposed on banks under Section 121 of the NIRC of 1997, as amended. It further held that the trading gain shall be subject to 7% GRT; while the miscellaneous income shall be subject to GRT rate of only 5%, it being other items treated as gross income under the same Code.

The Court also noted that petitioner failed to prove that its service fees and commissions are integral parts of the gross interest income derived from foreign currency loan transaction with residents which are exempt from all taxes. Hence, the said income of petitioner's FCDU shall be subject to the imposed GRT on banks. Petitioner also did not provide proof as basis to determine the maturities of the instruments related to the assessed service fees and commissions. Thus, respondent's imposition of 5% GRT shall not be disturbed in line with the rule that tax assessments by tax examiners are presumed correct and made in good faith, unless proven otherwise.

In the case *of Social Justice Society (SJS) Officers, et al. vs. Alfredo S. Lim*[3], the Supreme Court held that:

> "As succinctly put by then Chief Justice Andres R. Narvasa in *Ortigas and Co. Ltd. Partnership v. Judge Velasco* on the effect and disposition of a motion for reconsideration:
>
>> The filing of a motion for reconsideration, authorized by Rule 52 of the Rules of Court, does not impose on the Court the obligation to deal individually and specifically with the grounds relied upon therefor, in much the same way that the Court does in its judgment or final order as regards the issues raised and submitted for decision. This would be a useless formality or ritual invariably involving merely a reiteration of the reasons already set forth in the judgment or final order for rejecting the arguments advanced by the movant; and it would be a needless act, too, with respect to issues raised for the first time, these being, as above stated, deemed waived because not asserted at the first opportunity. It suffices for the Court to deal generally and summarily with the motion for reconsideration, and merely state a legal ground for its denial (Sec. 14, Art. VIII, Constitution); i.e., the motion contains

---
[3] G.R. No. 187836, March 10, 2015.

> merely a reiteration or rehash of arguments already submitted to and pronounced without merit by the Court in its judgment, or the basic issues have already been passed upon, or the motion discloses no substantial argument or cogent reason to warrant reconsideration or modification of the judgment or final order; or the arguments in the motion are too unsubstantial to require consideration, etc."

Considering that the grounds interposed by the parties are mere reiterations of the issues already passed upon by the Court, there is no cogent reason to warrant a reconsideration of the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision promulgated 31 August 2017)** and respondent's **Motion for Reconsideration Re: Decision promulgated on August 31, 2017**, are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

CATHERINE T. MANAHAN
Associate Justice