REPUBLIC OF THE PHILIPPINES
Court Of Tax Appeals
QUEZON CITY

SECOND DIVISION

CHINATRUST (PHILIPPINES) COMMERCIAL BANK CORPORATION, *Petitioner,*	**C.T.A. CASE NO. 7050**
	Members:
-versus-	CASTAÑEDA, JR., Chairperson UY, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** AUG 0 1 2007

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition For Review filed on September 6, 2004 by the Chinatrust (Philippines) Commercial Bank Corporation (hereafter "petitioner"), which seeks the reversal of the Final Decision On Disputed Assessment, dated July 26, 2004, rendered by the DCIR, Special Concerns Group, OIC, Large Taxpayer Service of the Bureau of Internal Revenue, finding petitioner liable for deficiency Gross Receipts Tax (GRT) on its Foreign Currency Deposit Unit (FCDU) onshore income and deficiency Documentary Stamp Tax (DST) on its Special Savings Account (SSA) for the calendar year 2001, in the amount of P17,979,268.52 and P1,154,379.57, respectively, totalling to P19,133,648.09, inclusive of interest computed up to August 31, 2004.

THE FACTS

In their "Joint Stipulation of Facts and Statement of Issues (As Defined by the Court)", the parties stipulated as follows:

> "1. Petitioner is a commercial bank duly organized under Philippine laws with principal office at the 3rd floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.
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> 2. Respondent Commissioner is the head of the Bureau of Internal Revenue holding office at the BIR National Office, Diliman, Quezon City.
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> 3. On 23 January 2004, Petitioner's FCDU received a BIR formal assessment notice (FAN) for alleged deficiency gross receipts tax (GRT) and documentary stamp tax (DST) for calendar year 2001.
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> 4. On 20 February 2004 or within 30 days from 23 January 2004, Petitioner filed a protest that was received by BIR on the same day.
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> 5. On 20 April 2004 or within 60 days from 20 February 2004, Petitioner sent a letter to the BIR informing it that Petitioner had found it unnecessary to submit supporting documents.

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6. On 31 May 2004, Petitioner filed a Supplemental Protest.

7. On 06 August 2004, Petitioner received the BIR final decision on the Protest and Supplemental Protest denying them in part allegedly for lack of factual and legal bases."

In his Answer filed on October 18, 2004, respondent by way of special and affirmative defenses, averred, among others, that onshore income on FCDU transactions are now subject to Gross Receipts Tax in view of the deletion of the phrase 'exempt from all taxes' from *Section 28(D)(3) of the National Internal Revenue Code of 1997*; the gross interest income from onshore transactions is subject to the 10% final tax; petitioner failed to submit documents to support its claim that the Bangko Sentral ng Pilipinas assumed the taxes due on the US$740 Million Term Laon Facility; and petitioner likewise failed to submit documents in support of its claim that the corresponding loans of its onshore interest income have different maturities.

On November 17, 2004, petitioner filed its Reply to respondent's Answer.

Petitioner presented Felix Rebancos, its Senior manager for Corporate Loan Operations, and Dr. Milwida M. Guevara, Chief

Executive Officer of Synergia Foundation, as witnesses, and documentary evidence marked as *Exhibits "A", "B", "C", "D", "K", "K-1", "G", "J", "J-1", "E", "F", "H", "H-1", and "H-2"*, which were admitted by the Court, except *Exhibits "A", "B", "C", and "D"* for failure to present their originals for comparison.

On the other hand, respondent presented his sole witness, Gloria Morales, Revenue Officer III, LTAID I of the Bureau of Internal Revenue (BIR).

Thereafter, both parties were ordered to file their simultaneous memoranda, within thirty (30) days from November 15, 2006, afterwhich the case shall be deemed submitted for decision.

Petitioner filed its "Memorandum" on December 14, 2006, while respondent failed to comply despite notice. Hence, the case was deemed submitted for decision.

On July 19, 2007, petitioner filed a "Manifestation" stating that the petition in this case has become moot and academic insofar as the assessment on alleged deficiency DST on Special Savings Account for taxable year 2001 (in the amount of P755,375.66) is concerned on the ground that on June 25, 2007, petitioner availed of the benefits of RR 15-

2006 by filing with the BIR a duly accomplished BIR Form No. 2110 (Application for Abatement or Cancellation of Tax, Penalties and/or Interest Under Rev. Reg. No. 15-2006) and paid the amount of P755,375.66, representing the basic tax due on Special Savings Account.

Pursuant to the above "Manifestation", the petition insofar as the assessment on deficiency DST on Special Savings Account for taxable year 2001 is concerned is hereby deemed withdrawn.

Accordingly, the remaining issues regarding the Gross Receipts Tax are the following:

ISSUES

I

WHETHER OR NOT PETITIONER'S ONSHORE INCOME ON FCDU TRANSACTIONS ARE NOW SUBJECT TO GROSS RECEIPTS TAX IN VIEW OF THE DELETION OF THE PHRASE "EXEMPT FROM ALL TAXES" FROM SECTION 27(D)(3) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

II

WHETHER OR NOT THE BANGKO SENTRAL NG PILIPINAS ASSUMED AND PAID THE TAXES DUE ON THE 740 MILLION US DOLLAR TERM LOAN FACILITY.

III

WHETHER IT IS THE DUTY OF THE PETITIONER OR THE RESPONDENT TO PROVE THAT CORRESPONDING LOANS OF ITS ONSHORE INTEREST INCOME HAVE DIFFERENT MATURITIES.

THE COURT'S RULING

The petition has no merit.

The NIRC of 1997, as Amended, Definitely Deleted the Phrase "Shall Be Exempt From All Taxes"

While we are of the same viewpoint with the petitioner that foreign currency transactions of foreign currency deposits (now FCDUs) are exempt from all taxes, the same no longer holds true with the enactment of the *NIRC of 1997, as amended.*

This is evident from the literal import of the laws on FCDUs. Tracing back to its organic law, *R.A. No. 6426*, otherwise known as the *"Foreign Currency Deposit Act of the Philippines"*, as amended by *P.D. No. 1035*, expanding the foreign currency lending authority of the depository banks, as further amended by *P.D. No. 1246*, all foreign currency deposits made under the foreign currency deposit system, including interest and all other income of such deposits, were exempt from all taxes, irrespective of whether or not these deposits were made by residents or non-residents *(Section 6 of R.A. No. 6426, as amended).*

With the enactment of the *NIRC of 1977, as amended*, the foregoing exemption from all taxes of FCDU's foreign currency transactions was incorporated, as follows:

> "SEC. 24. Rates of tax on domestic corporation. –
>
> xxx
>
> (3) Tax on income derived under the Expanded Foreign Currency Deposit System. – Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with non-residents, off-shore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, expect taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of the Monetary Board to be subject to the usual income tax payable by banks: Provided, That interest income from foreign currency loans granted by such depository banks under said expanded system to residents (other than off-shore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.
>
> Any income of nonresidents from transactions with depository banks under the expanded system shall be exempt from income tax."

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However, upon the effectivity of the *NIRC of 1997, as amended,* on January 1, 1998, the phrase "shall be exempt from all taxes" contained in *Section 24(e)(3) of the NIRC of 1977, as amended*, was deleted. *Section 27 (D) (3)* of the *NIRC of 1997, as amended,* reads as follows:

> "SEC. 27. – *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx
>
> (3) *Tax on Income Derived under the Expanded Foreign Currency Deposit System.* — Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with local commercial banks, including branches of foreign banks that may be authorized by the Bangko Sentral ng Pilipinas (BSP) to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under said expanded foreign currency deposit system to residents, shall be subject to a final income tax at the rate of ten percent (10%) of such income.
>
> Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

Pursuant to the aforequoted provision, tax exemption privileges previously granted to FCDUs of depository banks on their foreign currency transactions were definitely deleted by the legislature. In the

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case of *Gloria vs. Court of Appeals, 306 SCRA 287,* the Supreme Court has categorically ruled that "as a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment." By virtue of such deletion, the exemption from all taxes previously granted to FCDUs on their foreign currency transactions by *R.A. No. 6264, as amended*, and the *NIRC of 1977, as amended,* and the implementing *Revenue Regulations No. 10-76*, are no longer applicable. In other words, the payment of the 10% final tax on FCDU income does not exempt petitioner from the payment of gross receipts tax.

Basic is the rule that if a statute is clear, plain and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum.* From the words of a statute there should be no departure *(Del Mar vs. Philippine Amusement and Gaming Corp., 358 SCRA 781).*

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Furthermore, by express provision of *Section 27 (D) (3) of the NIRC of 1997, as amended*, the deletion of the phrase "shall be exempt from all taxes", removed FCDU's exemption from payment of all taxes whether income or non-income, save for the ten percent (10%) final tax. Settled is the rule that when the law does not distinguish, none must be made. *Ubi lex non distinguit, nec nos distinguere debem (Commissioner of Internal Revenue vs. Commission on Audit, 218 SCRA 214-215).* It is not within the auspices of this Court to construe that the deletion of the phrase "shall be exempt from all taxes" only means the lifting of tax exemption of FCDUs from income taxes, but not from non-income taxes. For the first duty of the court is to apply the law *(Villanueva, Jr. vs. Estoque, 346 SCRA 234)*.

Moreover, the *NIRC of 1997, as amended*, does not contain a provision granting petitioner exemption from payment of gross receipts tax. It is a fundamental rule in taxation that laws granting exemption from tax are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing power *(Lung Center of the Philippines vs. Quezon City, 433 SCRA 133)*.

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Clearly, petitioner is liable for the payment of the deficiency gross receipts tax on its onshore income for taxable year 2001.

Second Issue

Whether or not the Bangko Sentral ng Pilipinas assumed and paid the taxes due on the US$ 740 Million Term Loan Facility.

Petitioner claims that assuming *arguendo* that it is liable to pay the questioned gross receipts tax, the disputed assessment on gross receipts tax is erroneous for including in the tax base the interest income earned by petitioner in the 740 Million US Dollar Term Loan Facility (Facility), dated March 15, 2001, that it entered with Bangko Sentral Ng Pilipinas (*Exhibit "G"*).

Pursuant to the said Facility, petitioner extended a term loan to BSP in the amount of US$13,000,000.00 with the understanding that BSP will assume the taxes arising therefrom. Paragraph 12.1 of the Facility reads as follows:

> "12. TAXES
>
> 12.1 Gross-up
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> All payments by the Borrower under the Finance Documents shall be made free and clear of and without

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> deduction for or on account of any Taxes, all of which shall be for the account of the Borrower, except to the extent that the Borrower is required by law to make payment subject to any taxes. xxx"

In support of its claim, petitioner submitted to the Court a Certification from BSP that the latter had already remitted taxes amounting to P108,527,712.33 based on the interest schedule that included interest payments to petitioner in the amount of P25,745,625.42 (US$506,803.65 x P50.80) (*Annex "B" of Exhibit "J"*).

A perusal of said Certification shows that BSP paid petitioner the amount of P506,803.65 corresponding to the interest due on its loan from the petitioner. From said amount, BSP paid the taxes amounting to P50,680.36, which is ten percent (10%) of the interest payment.

Based on the said Certification, this Court finds that indeed BSP paid and remitted taxes to respondent. However, it is clear that the taxes paid by BSP did not include the gross receipts tax, for which the petitioner is now being assessed. Clearly, what BSP paid was the 10% final tax prescribed by *Section 27(D)(3) of the NIRC of 1997, as amended*, which is a different tax from the gross receipts tax imposed by *Section 121 of the same Code.* In other words, BSP failed to remit the

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gross receipts tax, subject of respondent's present assessment. Respondent, therefore, is correct in assessing petitioner for deficiency gross receipts tax.

Furthermore, although petitioner and BSP may have agreed in the Facility that BSP will shoulder the taxes arising therefrom, nevertheless, under the *NIRC of 1997, as amended*, it is petitioner who is considered the taxpayer, and thus, the one liable to pay the deficiency Gross Receipts Tax.

A taxpayer is defined in the *NIRC of 1997, as amended*, as "any person subject to tax imposed by this Title". *Section 121 of the same Code* imposes the tax on banks and non-banks financial intermediaries. Based on the foregoing, the banks and non-banks financial intermediaries are the intended taxpayers. Clearly, petitioner is the one liable to pay the Gross Receipts Tax.

Moreover, it was petitioner who received the interest income, which formed part of the gross receipts upon which the instant Gross Receipts Tax was based. Thus, it logically follows that petitioner is the one responsible to pay the deficiency Gross Receipts Tax.

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Third Issue

Whether it is the duty of petitioner or respondent to prove that corresponding loans of its onshore interest income have different maturities.

According to petitioner, included in the reported FCDU income were interests and charges from its various loan contracts which have different remaining maturities ranging from less than two (2) years to seven (7) years or more.

Petitioner contends that the assessment is erroneous because respondent applied indiscriminately the five percent (5%) tax rates without considering the remaining maturities of the FCDU loans and their corresponding tax rate, in accordance with *Section 121 of the NIRC of 1997, as amended.* As such, respondent failed to comply with the provision that an assessment should state the facts and the law upon which it is based, and likewise violated the rule that after investigation, the BIR has the burden of proving the amount of tax due.

Petitioner's contentions are devoid of merit.

It is a jurisprudential rule that all presumptions are in favor of the correctness of tax assessments. Thus:

> "It is presumed, however, that such assessment was based on sufficient evidence. Upon the introduction of the assessment in evidence, a prima facie case of liability on the part of the taxpayer is made. If a taxpayer files a petition for review in the CTA and assails the assessment, the prima facie presumption is that the assessment made by the BIR is correct, and that in preparing the same, the BIR personnel regularly performed their duties xxx."(*Commissioner of Internal Revenue vs. Hantex Trading Co., Inc. 454 SCRA 329*)

Tax assessments are presumed to be correct and the burden of proving otherwise rests upon the taxpayer, that is, petitioner. Petitioner must present proofs showing irregularities in the assessment or in the performance by tax authorities of their official duties. Failure to do so would result in the judicial approval of the assessment.

It is, therefore, the duty of petitioner and not of respondent to prove that its FCDU loans have different remaining maturities. An examination of the evidence adduced by petitioner shows that it failed to present concrete evidence to prove that indeed its FCDU loans have different maturities.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED.** The "Final Decision on Disputed Assessment" of the BIR dated July 26, 2004, is hereby **AFFIRMED** insofar as the assessment on Gross Receipts Tax is concerned.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of SEVENTEEN MILLION NINE HUNDRED SEVENTY NINE THOUSAND TWO HUNDRED SIXTY EIGHT AND 52/100 PESOS (P17,979,268.52), representing deficiency Gross Receipts Tax and interest, computed as follows:

Gross Onshore Income per FCDU FS		P363,527,924.00
Less: Offshore counterparts	99,564,635.00	
Exempt-Steel Corp. of the Phil.	14,983,264.00	
Total		114,547,899.00
Taxable onshore income		248,980,025.00
Add: Unearned Discounts 12/31/01	18,830.72	
Accrued Interest Receivable 12/31/00	94,109,286.00	
Total		94,128,116.72
Total		343,108,141.72
Less: Unearned Discounts 12/31/00	51,856.00	
Accrued Interest Receivable 12/31/01	107,759,297.22	
Total		107,811,153.22
Gross Receipts for the year on Onshore Income		235,296,988.50

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GRT Rate	5%
Basic Tax Due	11,764,849.43
Add: 20% Interest up to 08/31/04	6,214,419.09
Total Tax Due	**P 17,979,268.52**

In addition, petitioner is hereby **ORDERED TO PAY** 20% delinquency interest per annum on P17,979,268.52 computed from August 31, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

A T T E S T A T I O N

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

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

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice