REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

ING BANK (MANILA BRANCH),
Petitioner,

- versus -

C.T.A. CASE NO. 6017

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAR 1 1 2002

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DECISION

This case involves a claim for refund or issuance of a tax credit certificate in the amount of P26,916,720.70 representing alleged erroneously paid branch profits remittance tax for taxable year 1998.

The facts as shown from the records are as follows:

1. Petitioner is a foreign corporation duly licensed by the Securities and Exchange Commission and authorized by the Bangko Sentral ng Pilipinas to engage in commercial banking operations and operate a Foreign Currency Deposit Unit, with office address at 21/F Tower One, Ayala Triangle, Ayala Avenue, Makati City and the Respondent is the duly appointed Commissioner of Internal Revenue with office address at BIR National Office Building, Diliman, Quezon City;

2. The FCDU of Petitioner earned net income in the amounts of P316,308,263.00 and P393,413,688.00 for taxable years 1996 and 1997, respectively;

3. In September 1998, Petitioner remitted to its Head Office abroad, branch profits from its FCDU operation, in the amount of P269,167,207.00 out of the said net income for 1996 and 1997;

4. For the above remittance, Petitioner paid to the BIR 10% branch profit remittance tax in the amount of P26,916,720.70 ;

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5. On July 12, 1999, Petitioner filed with the BIR a claim for refund of the alleged erroneously paid branch profit remittance tax in the amount of P26,916,720.70;

6. On January 24, 2000, Petitioner received a letter from the Respondent denying the request for refund/tax credit certificate of erroneously paid branch profit remittance tax in the amount of P26,916,720.70;

7. On February 17, 2000, Petitioner filed the present Petition for Review pursuant to Section 7 of Republic Act No. 1125 and Section 229 of the National Internal Revenue Code;

Petitioner alleged that the 10% final tax imposed on income derived by FCDUs under Section 28(A)(7)(b) of the Tax Code is in lieu of all other taxes such as but not limited to privilege tax, gross receipts tax, documentary and science stamp tax and branch profit remittance tax as provided under Section 3 of Revenue Regulations No. 10-76. Thus, According to Petitioner, the subsequent remittance of profits by branches of foreign commercial banks operating a Foreign Currency Deposit Unit (FCDU) to their head offices, taken-out of the onshore and offshore income of the FCDU, is not subject to the branch profit remittance tax.

Respondent, in his Answer filed through registered mail on March 23, 2000, raised the following Special and Affirmative Defenses:

5. Investigation disclosed that Petitioner's Foreign Currency Deposit Unit and Regular Banking Unit are one and the same entity. Hence the income of one unit is the income of the whole bank. In fact, income and expenses are consolidated during the whole year. Petitioner is, therefore, subject to branch profits remittance tax;

6. The amount sought to be refunded was already credited to the deficiency branch profits remittance tax assessment for 1997 issued against Petitioner;

7. Petitioner has the burden of proving that it is indeed entitled to the credit sought as it is a well-settled rule that claims for tax refund/tax credit are construed in "*strictissimi juris*" against the taxpayer (*Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, 30 January 1979, 31*

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SCRA 95). This is due to the fact that claims for refund/credit partake the nature of an exemption from tax. Thus, it is incumbent upon the Petitioner to prove that it is indeed entitled to the refund/credit sought. Failure on the part of the Petitioner to prove the same is fatal to its claim for tax credit. He who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. (Asiatic Petroleum Co. vs. Llamas, 49 Phil. 466);

8. Further, Petitioner must disprove the Respondent's factual finding that FCDU and the Regular Banking Unit are one and the same entity and that the income of one is the income of the whole bank;

9. Moreover, Petitioner must prove that it is not subject to the branch profit remittance tax, pursuant to Section 25(a)(5) now Section 28(A)(5) of the Tax Code.

To support its case, Petitioner presented documents which were identified by its Assistant Vice-President for Finance , Mr. Domingo Gavino, Jr., to wit:

Description	Exhibit
1.) Monthly Remittance Return of Income Taxes Withheld for the month of September, 1998	A
2.) Tax Debit Memo dated October 26, 1998	B
3.) 1996 Audited Financial Statements of the Foreign Currency Deposit Unit (FCDU)	C
4.) 1997 Audited Financial Statements of the FCDU	D
5.) Comparative Audited Financial Statements of the Regular Banking Unit (RBU) for 1995 and 1996	E
6.) Combined Audited Financial Statements of the RBU and FCDU for 1997 and 1996	F

Respondent, on the other hand, presented the following documentary evidence without presenting any witnesses:

Description	Exhibit
a.) BIR Memo Report dated 01/12/00	1
b.) Page 4, Notes to Financial Statements marked As Exhibit D for the Petitioner	2

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As jointly stipulated by the parties, the pertinent issues confronting this Court are:

1.) Whether or not the Petitioner remitted profits from its FCDU operations to its Head Office which were taken from profits earned by the FCDU in 1996 and 1997;

2.) Whether or not the Petitioner paid the 10% branch profit remittance tax in the amount of P26,916,720.70 for the said remittance;

3.) Whether or not the FCDU and the RBU of the Petitioner, for purposes of the branch profits remittance tax, should be treated as one and the same and that the income of one is the income of the whole bank;

4.) Whether or not the branch profits remitted by the Petitioner to its Head Office which were taken from profits earned by the FCDU should be subject to the branch profits remittance tax;

5.) Whether or not the Petitioner has complied with Section 204(c) and Section 229 of the Tax Code;

6.) Whether or not Section 3 of the Revenue Regulations No. 10-76 is applicable to the Petitioner's claim for refund;

7.) Whether or not the Petitioner's claim for refund of alleged erroneously paid branch profit remittance tax is substantiated by documentary evidence.

First of all, the facts as cited above show compliance with the two-year period for filing an administrative claim for refund and the Petition for Review with this Court under Sections 204(C) and 229 of the Tax Code. In fact, the parties had stipulated that "Petitioner has complied with all the necessary substantial procedural requirements for the filing of a claim for refund and Respondent's denial of the subject claim, gives the Honorable Court jurisdiction to hear, decide and adjudicate this Petition and enter judgment thereon".

However, after considering the attending facts, evidence, jurisprudence and laws applicable in this case, We resolve against the Petitioner.

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Anent the first and second issues, it was admitted by the Respondent that in September 1998, Petitioner remitted to its Head Office, branch profits from its FCDU operations in the amount of P269,167,207.00 and paid the corresponding 10% branch profit remittance tax of P26,916,720.70 on October 26, 1998 (CTA records, page 207). Records show that the said remittance was taken from profits earned by the FCDU in 1996 and 1997 (Exhibits C-1 & D-1; TSN, dated June 27, 2000)

With regard to the third issue, We answer in the negative. Section X501.1, of the Manual of Regulation for Banks (MORB) issued by the Bangko Sentral ng Pilipinas (BSP) defines FCDU, as follows:

> "a. *Foreign Currency Deposit Unit (FCDU) and Expanded Foreign Currency Deposit Unit (EFCDU)* shall refer to a unit of a local bank or of a local branch of a foreign bank authorized by the BSP to engage in foreign currency-denominated transactions, pursuant to the provisions of R.A. No. 6426."

Likewise, Section X501.16 of the MORB provides:

> "X501.16. *Accounting.* The foreign currency deposits and their corresponding cover shall be considered as funds separate and distinct from the regular assets and liabilities of the authorized banks. Authorized banks shall maintain a separate accounting for transactions covered by these rules that will enable preparation of the Balance Sheet and Profit and Loss Statement covering said funds.

Clearly, from the foregoing, a Foreign Currency Deposit Unit is a separate unit of a local bank or of a local branch of a foreign bank authorized to engage in foreign currency transactions. Also, FCDU funds are treated as separate and distinct from the regular assets and liabilities of the bank and that banks authorized to operate an FCDU are required to maintain separate accounting for its transactions and to prepare separate financial statements covering its funds. In the case at bar, while it may be true that Exhibit F as Respondent observed shows the consolidated income and expenses of Petitioner's RBU and FCDU for 1996 and 1997, nevertheless,

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Petitioner presented the separate statements of income and expenses of its FCDU for 1996 and 1997 (Exhibits C and D). Hence, for purposes of branch profit remittance tax, the FCDU and the RBU should be treated as separate and that the income of one is not the income of the other.

Inasmuch as the remaining issues are interrelated, the same shall be discussed jointly.

It is the position of the Petitioner that the branch profits it remitted to the Head Office which were taken from profits earned by the FCDU is not subject to the branch profit remittance tax. Respondent, on the other hand, argues that Petitioner can no longer claim exemption from the payment of branch profit remittance tax in October 1998 considering that the instant claim is covered by the Tax Reform Act of 1997 which deleted the "exempt from all taxes" provision.

Prior to the amendment introduced by the Tax Reform Act of 1997, Section 25(a)(6)(B) of the 1977 Tax Code provides:

> "(B) *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, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank of the Philippines to transact business with foreign currency depository system units and other depository banks under the expanded foreign currency deposit system <u>shall be exempt from all taxes</u>, except 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 offshore banking units in the Philippines or other depository banks under the expanded system) shall be subject to a 10% tax.
>
> x x x　　　　x x x　　　　xxx." (Underlining supplied)

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The above exemption, as implemented by Revenue Regulations No. 10-76, includes exemption from documentary and science stamp tax, gross receipts tax and branch profit remittance tax.

With the advent of the Tax Reform Act of 1997, the phrase "exempt from taxes" has been deleted in Section 28(A)(7)(b), to wit:

> "(b) *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.
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> "Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

However, notwithstanding said amendment, Petitioner still submits that FCDUs are still exempt from all taxes, including branch profit remittance tax. Petitioner suggests that the 1997 amendment merely expanded the scope of the 10% tax to cover also income from transactions previously considered as offshore. Petitioner further argues that the present Tax Code does not explicitly provide that FCDUs are now subject to all other taxes aside from the 10% income tax.

We are not swayed by Petitioner's ratiocination.

By the clear import of the present law, income derived by a branch of a foreign bank that may be authorized by the Bangko Sentral ng Pilipinas to transact business with foreign currency deposit system units, like herein Petitioner, shall be subject to a final tax of 10%. The phrase "exempt from all taxes" has been definitely deleted by the legislators. The amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute (*Gloria vs. Court of Appeals 306 SCRA 287*). By virtue of such deletion, Revenue Regulations No. 10-76, which implemented the old law is no longer applicable. In other words, the payment of the 10% final tax on FCDU income does not exempt Petitioner from the payment of branch profit remittance tax or other taxes for that matter.

We however agree with Petitioner's contention that a mere reading of Section 28(A)(7)(b) of the 1997 Tax Code discloses that there are no words therein clearly imposing other taxes aside from the 10% final tax. Nonetheless, the provision on the payment of the branch profit remittance tax is found under Section 28(A)(5) of the Tax Reform Act of 1997, which We quote below:

> "(5) Tax on Branch Profits Remittances. — Any profit remitted by a branch to its head office shall be subject to a tax of fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic or casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines."

Prescinding from the above law, a branch profit remittance tax is a tax on any profit remitted by a branch to its head office. Provided it is effectively connected with the conduct of its trade or business in the Philippines. Thus, everytime a branch (like Petitioner) remits profits to its head office abroad, a 15% tax is due and demandable based on the total profits applied or earmarked for remittance without

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any deduction for the tax component thereof. However, pursuant to the RP-Netherlands Tax Treaty, Petitioner is subject to a lower rate of 10%.

The law cannot be made any clearer. It bears stressing that the tax on branch profit remittance has not been imposed by mere implication.

Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should be manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption "must expressly be granted in a statute stated in a language too clear to be mistaken (*Commissioner of Internal Revenue vs. Court of Appeals 298 SCRA 83*).

Petitioner would like Us to consider that despite the plain provision of the present tax law the phrase "exempt from all taxes" still applies to its FCDU income.

It cannot be overemphasized that under the 1997 Tax Code, "tax exemption from all taxes" relative to FCDUs can no longer be found. Hence, there is no construction to speak of in the first place. Besides, even if there is such a tax exemption, the same should be strictly construed against the taxpayer. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law as implemented by Revenue Regulations No. 10-76 is quite absurd and contrary to sound reasoning. As We already discussed, the Tax Code mandates payment of tax on branch profit remittance and Petitioner must prove that it is exempt from the payment thereof and not the other way around. As admitted by Petitioner it is decretal that tax exemptions are construed strictly against the taxpayer.

It addition, it must be stressed that the cases relied upon by the Petitioner as well as BIR ruling No. 553-88 are unavailing in the case at bar because of the changes made by the new Tax Code.

As to the issue of whether or not Petitioner has substantiated by documentary evidence its claim for refund, We no longer find it necessary to discuss the same in view of Our denial of the instant claim for refund based on legal grounds.

Even assuming, for purposes of academic discussion, that the tax exempt provision still stands, Petitioner failed to prove that it paid the 10% final tax on FCDU. After all, the payment of the 10% final tax on income derived from FCDU transactions shall be in lieu of all other taxes, including branch profit remittance tax.

In fine, We hold that Petitioner's Foreign Currency Deposit Unit (FCDU) is subject to the branch profit remittance tax provided under Section 28(A)(5) of the 1997 Tax Code and therefore not entitled to the refund sought for.

WHEREFORE, the Petition for Review is hereby ***DENIED*** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

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CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge

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