REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7478

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

SEP 1 1 2007

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DECISION

CASTAÑEDA, JR., *J*.:

Before Us is a Petition for Review seeking the reversal of respondent's Final Decision on Disputed Assessment dated February 10, 2006 denying petitioner's protest on Assessment No. LN # FCDU-116-PM-99-00004-GRT-05-00109, which demanded payment of Gross Receipts Tax on gross onshore income for taxable year 1999 in the amount of P64,203,781.88, inclusive of increments.

Allied Banking Corporation (Petitioner) is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine laws, with principal office address at Allied Bank Center, 6754 Ayala Avenue, Makati City, Metro Manila.[1]

Commissioner of Internal Revenue Jose Mario C. Buñag (Respondent), acting through Asst. Commissioner Merlinda C. Ordoyo of the Large Taxpayers Service of the Bureau of Internal Revenue (BIR), is herein impleaded in his official capacity for having rendered the appealed Decision.[2] Respondent holds office at the National Office Building of the BIR in Diliman, Quezon City.

On May 25, 2004, petitioner received an undated Letter Notice[3] (LN # FCDU-116-GRT-004-099) from the BIR informing petitioner that for taxable year 1999, it failed to file and pay Gross Receipts Tax (GRT) due on gross onshore income in the amount of P53,716,398.01. Petitioner was requested to pay the same within fifteen (15) days from notice.[4]

On October 6, 2004, petitioner received from respondent a Preliminary Assessment Notice[5] (PAN) dated September 9, 2004 informing the former that pursuant to Letter Notice # FCDU-116-PM-99-00004 formerly LN # FCDU-116-GRT-004-099, there has been found due from petitioner's FCDU deficiency GRT on gross onshore income at the rate of 5% or in the total amount of P56,885,110.41 on the basis of Section 121, in relation to Section 27(D)(3) and 28(A)(7)(b) of the National Internal Revenue Code (NIRC) of 1997.[6]

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[1] Paragraph 1, Petition for Review.
[2] Paragraph 2, Joint Stipulation of Facts and Issues, CTA Records, page 79.
[3] BIR Records, pages 9-10.
[4] Paragraph 4, Joint Stipulation of Facts and Issues, CTA Records, page 80.
[5] BIR Records, pages 28-30.
[6] Paragraph 5, Joint Stipulation of Facts and Issues, CTA Records, page 80.

After having been required to present its side of the case in writing within fifteen (15) days from receipt of the PAN, petitioner on October 21, 2004 filed with respondent its letter protest[7] dated October 19, 2004, saying that the assessment has already prescribed and insisting that under the similar provision in Section 27(D)(3) of the 1997 NIRC, its FCDU is not subject to GRT.

On March 8, 2005, petitioner received a Formal Letter of Demand[8], with Assessment Notice No. LTS-LN# FCDU-116-PM-99-00004-GRT-05-00109 and Details of Discrepancy from respondent dated January 5, 2005, demanding payment of deficiency gross receipts tax in the total amount of P59,047,700.04[9], the details of which are as follows:

I. **GROSS RECEIPTS TAX**				
Gross Onshore Income			P	15,608,184.00
Rate of Tax (Section 121, NIRC)				5%
Gross Receipt Tax due thereon			P	25,780,409.20
Add: 25% Surcharge (non-filing)		P 6,445,102.30		
20% Interest from 1/20/2000 to 3/31/2005	103.9440%	26,797,188.54		
Compromise		25,000.00		33,267,290.84
Total Tax & Penalties			**P**	**59,047,700.04**

Petitioner, on April 7, 2005, filed its administrative protest to the Formal Letter of Demand reiterating its position in its letter protest to the PAN.[10]

On May 10, 2005, petitioner received Tax Verification Notice No. 00201881[11] dated April 20, 2005 from respondent, informing the former that pursuant to its request for re-investigation, respondent has authorized Revenue Officer Adora Alberto to verify documents and other pertinent records in support of petitioner's allegations in its letter protest dated April 6,

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[7] Paragraph 7, Joint Stipulation of Facts and Issues, CTA Records, page 80; BIR Records, pages 31-32.
[8] BIR Records, pages 41-44.
[9] Paragraph 8, Joint Stipulation of Facts and Issues, CTA Records, page 80.
[10] Paragraph 9, Joint Stipulation of Facts and Issues, CTA Records, page 80.
[11] BIR Records, page 57.

2005. In compliance, however, to Section 228 of Republic Act 8424 and Revenue Regulation No. 12-99, petitioner on June 6, 2005, informed respondent that the primary issue raised in its administrative protest is legal in nature and does not involve factual issues for which supporting documents are necessary.[12]

Thus, through a Memorandum[13] dated February 10, 2006, Revenue Officer Alberto rendered her report and recommended that Final Decision on Disputed Assessment Notice be issued against petitioner. Consequently, on March 29, 2006, petitioner received respondent's Final Decision on Disputed Assessment[14] dated February 10, 2006, denying petitioner's protest for lack of factual and legal basis and further reiterating its decision that there is found due from petitioner deficiency GRT in the total amount of P64,203,781.88, inclusive of increments, computed as follows:

DEFICIENCY GROSS RECEIPTS TAX
Assessment No. LTS-LN# FCDU-116-PM-99-00004-GRT-05-00109

I. **GROSS RECEIPTS TAX**			
Gross Onshore Income			P 515,608,184.00
Rate of Tax (Section 121, NIRC)			5%
Gross Receipt Tax due thereon			P 25,780,409.20
Add: 25% Surcharge (non-filing)		P 6,445,102.30	
20% Interest from 1/20/2000 to 3/31/2006	123.9440%	31,953,270.38	
Compromise		25,000.00	38,423,372.68
Total Tax & Penalties			**P 64,203,781.88**

Hence, this Petition filed on April 28, 2006.

In his Answer filed on July 3, 2006, respondent interposed the following defenses, to wit: gr

[12] Paragraph 10, Joint Stipulation of Facts and Issues, CTA Records, page 80.
[13] BIR Records, pages 64-68.
[14] BIR Records, pages 74-75.

(134)

"4. He SPECIFICALLY DENIES the allegations in paragraphs 3, 16, 18, the allegations under the headings 'Assignment of Error' and 'Arguments' (paragraphs 19 to 29) of the petition for being as a whole, mere opinions, gratuitous assertions and erroneous conclusions or interpretations of fact and/or law, the truth of the matter being those stated in the succeeding paragraphs.

5. Verification by the BIR examiners disclosed that petitioner's onshore income amounting to P515,608,184.00 was not subjected to 5% gross receipts tax pursuant to Section 121 in relation to Section 27(D)(3) and 28(A)(7)(b) National Internal Revenue Code of 1997 (1997 NIRC), hence the deficiency GRT in the amount of P64,203,781.88, inclusive of surcharge, interest and compromise penalty.

6. Moreover, petitioner's Foreign Currency Deposit Unit (FCDU) is now subject to gross receipts tax (GRT) tax in view of the deletion of the phrase 'exempt from all taxes' from Section 27(D)(3) of the 1997 NIRC which provides, thus:

"Section 27. *Rates of Income Tax on Domestic Corporations.-*

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(D) *Rates of Tax on Certain Passive Income*

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(3) *Tax on Income Derived under the 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 deposit system units and other depository banks under the foreign currency deposit system, including interest income from foreign currency loans granted by such depository banks under the said expanded foreign currency deposit system to residents, shall be subject to final tax at the rate of ten percent 10% of such income."

7. In **ING Bank [Manila Branch] vs. Commissioner of Internal Revenue,** CTA Case No. 6017, March 11, 2002, the First Division of this Honorable Court held:

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

> *(B)* ***Income derived under the Expanded Foreign Currency System. –*** *Income derived by a depository bank under the expanded foreign currency deposit system from foreign 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 deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes except taxable income from such transactions as may be specified by the Secretary of Finance, upon recommendation of [t]he 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 expanded banking units in the Philippines or other depository banks under the expanded system shall be subject to a 10% tax.*
>
> xxx *(Underscoring supplied)*
>
> *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:*
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>> *(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 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*

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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.

xxx

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 deleted by the legislators. The amendment by deletion of certain words or phrases in a statute indicated that the legislative 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 10% final tax on FCDU income does not exempt Petitioner from the payment of branch profit remittance tax or other taxes for that matter.

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Taxes are the lifeblood of the nation; the Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim a 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 existence [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. xxx*

8. The deletion of the phrase '*exempt from all taxes*' under the 1997 NIRC can only mean that FCDUs are subject to all taxes in addition to the 10% final tax.

9. Although Section 27(D)(3) of the 1997 NIRC is silent as to the imposition of other taxes aside from the 10% final tax, the provisions such as the imposition of GRT and DST are now applicable to FCDU with the deletion of the phrase "*exempt from all taxes*". The deletion should not be considered as mere inadvertent omission. It must be noted that exemptions (or its equivalent provisions such as tax amnesties and tax condonations) are not presumed (*Floro Cement vs. Gorospe, 200 SCRA 480)* and when granted are strictly construed against the grantee (*Luzon Stevedoring vs. CTA G.R. 30232, 19 July 1998).* Said the Supreme Court: "The exception contained in the tax statutes must strictly be construed against the one claiming the exemption because the law does not look with favor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (*Commissioner of Internal Revenue vs. Kiener Company, Ltd., 65 SCRA 143)*." In the instant case, it can be concluded that the elimination of the phrases "exempt from all taxes from the 1997 NIRC is an explicit intention of the lawmakers to subject FCDUs to other taxes including GRT and DST to repeal the 'in lieu of all taxes' provisions under the Revenue Regulations No. 10-76.

10. Contrary to petitioner's assertion, the assessment for deficiency GRT for the year 1999 has not yet prescribed. The three-year prescriptive period of assessment contemplated under Section 203 of the 1997 NIRC refers to a case where a return has been filed. In the instant case no GRT returns were filed, hence, the applicable law is Section 222 of the 1997 NIRC which provides for a prescriptive period of ten (10) years.

> 11. Assuming for the sake of argument that GRT returns were filed for the year 1999, said returns are deficient and false as they did not contain the GRT due on petitioner's FCDU transactions, hence, Section 222 of the 1997 NIRC is still applicable.
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> 12. The assessment was issued in accordance with law and regulations;
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> 13. All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all facts to which their attention was called (**Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. 145 SCRA 671)**. It is incumbent upon the taxpayer to prove the contrary (**Mindanao Bus Company vs. CIR, 1 SCRA 538)** and failure to do so shall vest legality to respondent's actions and assessments."[15]

Both parties submitted the case for decision without presenting their respective evidence; thus, the Court directed the parties to file their respective Memorandum within 30 days from May 21, 2007. Upon receipt of the parties' Memoranda, the instant petition was submitted for decision on July 31, 2007.

The parties jointly stipulated on the following issues for resolution of this Court:

1. Whether or not petitioner's FCDU is liable for payment of deficiency GRT in the amount of P59,047,700.04 for the year 1999.

2. Whether or not the assessment embodied in the subject Final Decision has prescribed.

Issue of FCDUs liability for deficiency GRT

In its Memorandum filed on July 9, 2007, petitioner submits that while the Tax Reform Act of 1997 removed the blanket exemption enjoyed by FCDUs, Section 27(D)(3) of Republic Act 8424 otherwise known as "An Act

[15] CTA Records, pages 50-55.

Amending National Internal Revenue Code, as Amended and for other purposes" did not simply state that the tax exemption on FCDUs were being withdrawn or deleted. Instead, it specified what tax said entities are now subject to: 10% final income tax. Petitioner insists that the removal of the "exempt from all taxes" provision does not make FCDUs liable for any other tax since the statute removing the exemption specifically provided what kind of tax is being imposed: final income tax and no other. Thus, petitioner claims that there is no legal justification for respondent to extend the intent of said law beyond the final tax to include GRT and that therefore, the rule on strict interpretation of tax laws should first be applied before the respondent can invoke the rule on strict interpretation of tax exemptions.

On the other hand, respondent, in his Memorandum filed on July 20, 2007, avers that the deletion of the phrase "exempt from all taxes" under the 1997 Tax Code only means that the FCDUs have become subject to all taxes in addition to the 10% final tax. And that the elimination of such phrase from the 1997 Tax Code is an explicit intention of the lawmakers to subject FCDUs to other taxes including GRT and Documentary Stamp Tax (DST), to repeal the "in lieu of all taxes" provisions under the Revenue Regulations No. 10-76.

We agree with respondent.

Before the amendment introduced by the NIRC of 1997, Section 25(a)(6)(B) of the 1993 NIRC, as amended, reads as:

> "(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 units and other depository banks under the expanded foreign currency deposit system **shall be exempt from all taxes**, 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.
>
> Any income of non-residents from transactions with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

And with the amendments made to the said provision under the 1997 NIRC, the phrase "shall be exempt from all taxes" has been deleted in Section 27(D)(3). To quote:

> "(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."

As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislators intended to change the meaning of a statute, for the presumption is that the legislature would not have made the deletion had the intention been not to effect a change in its meaning. The amendment should accordingly be given a construction different from that previous to its amendment.[16]

The deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended and it calls for an application. An amended act is ordinarily to be construed as if the original statute has been repealed and a new and independent act in the amended form had been adopted in its stead. In other words, the amended act is regarded as if the statute has been originally enacted in its amended form and the amendment becomes a part of the original statute as if it had always been contained therein.[17]

Indeed by the language used, the clear intent on the part of legislature to abrogate the provision of the old law giving blanket exemption to FCDUs from all forms of tax is shown. A perusal of the Transcript of the Senate Session on the deliberations conducted on August 11, 1997 concerning the amendment on the taxability of FCDUs attests to such fact, thus:

> "Senator Angara: Yes, Mr. President. Let me move to my next point,and that is the lifting of the preferential tax treatment of FCDUs as well as OBUs.
>
> Mr. President, would this not cause some drastic consequences on offshore as well as foreign currency deposits which I understand today are the prime sources of our current account spending? Many of our exporters depend on this FCDUs and OBUs for their foreign exchange needs, and if we remove the preferential tax treatment that we (sic) have been enjoying all these years, are we not going to drive away the foreign currency deposits and OBUs from our shore?

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[16] Page 102, Ruben Agpalo, Statutory Construction, Fifth Edition 2003.
[17] *Estrada vs. Caseda, No. L-1560, October 25, 1949, 84 Phil 791.*

Sentor Enrile: Mr. President, money goes to a place where it can make money. Whether we have the tax on FCDUs or OBUs, if depositors can make a margin that is favorable to them, they will be here. Business makes profit because it assumes risk.

I do not subscribe to the theory that these people will run away. In fact, they were saying that because of the announcement we made, on this FCDUs, deposits are flying away from the country. But if we look at the figures, Mr. President, out of a total P17 billion or so, only a little over P200 million left the country. But, I think, this P200 million left the country to pay for obligations in order to shave off a potential increase in the peso equivalent of the foreign currency obligation, and not because of the effort to tax FCDUs. That is one.

Two, we are not discussing here a problem of competition between pesos and dollars or deutschmark or francs. We are talking here of equity in taxation, Mr. President. These are the more affluent members of the taxable community and yet, they get away with their tax burden. Another thing that I cannot take is, as member of this Senate and as member of the community, that we should tax depositors of our own currency in banks and we exclude from taxation depositors of foreign currencies. We are insulting our own currency.

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The legislature has the power to decide what the policy of the law shall be, and if it has intimated its will, however indirectly, that will should be recognized and obeyed. The legislative policy had been ascertained, thus, effect should be given by the judiciary. Section 27(D)(3) of the 1997 NIRC, speaks in clear and categorical language, hence, there is only room for application.[18] For nothing is better settled than that the first and fundamental duty of courts is to apply the law as they find it, not as they like it to be. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it.[19]

This Court, thus, in the case of *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue,* CTA Case No. 6504, October 25, 2006, pronounced that:

> "The phrase 'exempt from all taxes' has definitely been 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. Thus, by virtue of such deletion, Revenue Regulations No. 10-76 which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or **other taxes for that matter.** As correctly argued by the respondent, there being no effective exemption to speak [of] in this case, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax. Just as a documentary stamp tax is imposed upon the exercise of a privilege, in like manner, the gross receipts tax is imposable when a bank exercises the privilege of engaging in foreign currency transactions or business.
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> Petitioner would like this Court to consider that despite the plain provision of the present tax law, the phrase 'exempt from all taxes' still applies to its FCDU income. To reiterate, under the 1997 Tax Code, the phrase 'shall be exempt from all taxes' relative to FCDU can no longer be found. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law is quite absurd and contrary to sound reasoning. As this Court had already discussed, the NIRC of 1997

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[18] *Cebu Portland Cement Co., vs. Municipality of Naga, G.R. No. 24116, August 22, 1968, 24 SCRA 708, 712*

[19] *Resins, Inc. vs. Auditor General of the Philippines and the Central Bank of the Philippines, G.R. No. L-17888, October 29, 1968, 25 SCRA 754, 757*

> mandates payment of gross receipts taxes **aside from the 10% final tax on onshore income.**
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> xxx xxx xxx." (*Emphasis supplied*)

From the foregoing, it can be clearly deduced that the income derived by a depository bank under the foreign currency deposit system units from foreign currency transactions with local commercial banks shall be subject to a final tax of 10%. By the deletion of the phrase "exempt from all taxes", Revenue Regulations No. 10-76, which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or other taxes for that matter. Since there is no effective exemption to speak of, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax imposed upon the privilege of a bank to engage in foreign currency transaction or business.

Issue of Prescription

Petitioner also submits that even assuming that said taxes are due, the assessment has nonetheless prescribed since respondent sought to collect GRT for taxable year 1999 and that it was not until 2004 that petitioner received undated Letter Notice from respondent demanding payment of the subject taxes.

Respondent counters that since no GRT returns were filed by petitioner, the applicable law is Section 222 of the 1997 Tax Code which provides for a ten (10) year prescriptive period. And assuming *arguendo* that GRT returns were indeed filed for taxable year 1999, the said returns are nonetheless deficient and false since no reference on GRT due on FCDU transactions were made thereon. Thus, Section 203 of the 1997 Tax Code remains not applicable since Section 222 of the same Code governs the prescriptive period for deficiency assessments on false returns.

We agree again with respondent.

The assessment petitioner's deficiency GRT on its FCDU transactions has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, as amended, read as:

> "SEC. 203. Period of Limitation Upon Assessment and Collection. – Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
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> "SEC. 222. – Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
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> (a) In case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
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> xxx xxx xxx"

Section 203 presupposes that a Return is required to be filed by law because the three (3)-year prescriptive period to assess is reckoned after the last day prescribed by law for such filing. Section 222, on the other hand, applies when a false or fraudulent return is filed or no return is filed. Records show that though petitioner filed its Annual Income Tax Return (BIR Form No. 1702) [20], no reference were made pertaining to GRT due on FCDU transactions.

This Court has consistently ruled that claims for refund are construed strictly against the claimant for the same partake of the nature of an exemption from taxation[21] and he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[22]

WHEREFORE, the Petition for Review is **DISMISSED** for lack of merit and respondent's Final Decision on Disputed Assessment dated March 9, 2006 is hereby **AFFIRMED** with some modifications. The compromise penalties amounting to P25,000.00 is cancelled due to the absence of any mutual agreement arrived at by the parties[23].

Accordingly, petitioner is hereby **ORDERED TO PAY** the amount of **P64,178,781.88** representing deficiency Gross Receipts Tax on its gross onshore income for taxable year 1999.

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[20] BIR Records pages 04-07.
[21] *Philippine Geothermal, Inc. vs. The Commissioner of Internal Revenue, G.R. No. 154208, July 29, 2005, 465 SCRA 308.*
[22] *Western Minolco Corporation vs. Commissioner of Internal Revenue, G.R. No. L-61632, August 16, 1983, 124 SCRA 121.*
[23] *Commissioner of Internal Revenue vs. UST, 104 Phil. 1062.*

In addition, petitioner is also **ORDERED TO PAY** 20% delinquency interest on the total amount of P64,178,781.88 from April 28, 2006[24], until full payment thereof pursuant to Section 249 (C) of the National Internal Revenue Code of 1997.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

(Inhibited)
OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

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[24] 30 days from March 29, 2006, the time when petitioner received respondent's Final Decision on Disputed Assessment.

CERTIFICATION

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