REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED COCONUT PLANTERS BANK, Petitioner, -versus- COMMISSIONER OF INTERNAL REVENUE, Respondent.	CTA EB No. 1790 (CTA Case No. 8963)
x - - - - - - - - - - - - - - - x COMMISSIONER OF INTERNAL REVENUE, Petitioner, -versus- UNITED COCONUT PLANTERS BANK, Respondent.	CTA EB No. 1792 (CTA Case No. 8963) Present: DEL ROSARIO, *PJ*, CASTAÑEDA, JR., UY, FABON-VICTORINO, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ*. Promulgated: JUL 14 2020 1:55 p.m.

x- x

AMENDED DECISION

Fabon-Victorino, J.:

On September 3, 2019, the Court promulgated a Decision,[1] the dispositive portion of which reads:

> **WHEREFORE,** the Petition for Review dated March 8, 2018 filed by United Coconut Planters Bank in CTA EB No. 1790, and the Petition for Review dated March 9, 2017 (sic) filed by the Commissioner of Internal Revenue in CTA EB No. 1792, are both **DENIED**, for lack of merit.
>
> Nonetheless, the ruling of the Court in Division must be modified as pertains to the imposition of deficiency and delinquency interests in view of the effectivity of Republic Act (R.A.) No. 10963 (TRAIN Law) on January 1, 2018.
>
> Accordingly, the assessment covering deficiency income tax–FCDU and GRT-FCDU for taxable year 2006 is upheld but in the modified amount of **₱61,233,432.00 (SIXTY-ONE MILLION TWO HUNDRED THIRTY-THREE THOUSAND FOUR HUNDRED THIRTY-TWO PESOS)** , inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until December 31, 2017, as summarized below:

	Income Tax	**GRT - FCDU**	**Total**
Basic Tax	₱8,898,592.63	₱3,086,589.89	₱11,985,182.52
Add: 25% Surcharge	2,224,648.16	771,647.47	2,996,295.63
20% Deficiency Interest from April 16, 2007 to December 15, 2014 *[₱8,898,592.63 x 20% x 2801/365 days]*	13,657,511.21		13,657,511.21
[₱3,086,589.89 x 20% x 2881/365 days]		4,872,583.82	4,872,583.82
Total Amount Due, 12/15 /2014	**₱24,780,752.00**	**₱8,730,821.18**	**₱33,511,573.18**
20% Deficiency Interest from December 16, 2014 to December 31, 2017 *[₱8,898,592.63 x 20% 1112/365 days]*	5,422,046.58		5,422,046.58
[₱3,086,589.89 x 20% x 1112/365 days]		1,880,705.73	1,880,705.73
20% Delinquency Interest from December 16, 2014 to December 31, 2017 *[₱24,780,752.00 x 20% x 1112/365 days]*	15,099,285.60		15,099,285.60
[₱8,730,821.18 x 20% x 1112/365 days]		5,319,820.91	5,319,820.91
Total Amount Due, 12/31/2017	**₱45,302,084.18**	**₱15,931,347.82**	**₱61,233,432.00**

> In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due of **₱33,511,573.18** as of December 15, 2014, as determined above, computed from January 1, 2018 until full payment

[1] *Rollo* (CTA EB No. 1790), pp. 243-262.

> thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018.
>
> **SO ORDERED.**

The Court observed that United Coconut Planters Bank (UCPB)'s foreign exchange gains and miscellaneous income in the respective amount of ₱160,450.13 and ₱23,710,017.10 do not fall under the category of income exempted from taxes under Section 27(D)(3) of the National Internal Revenue Code (NIRC), as amended, as implemented by Revenue Regulations (RR) No. 10-76, i.e., offshore income and onshore interest income. That being the case, they must be treated as other income subject to regular corporate income tax (RCIT) at the then rate of 35% pursuant to Section 27(A) of the same Code.

With the finding that the above items of income are not absolved from internal revenue taxes, UCPB's foreign exchange gains of ₱160,450.13, being trading gain, is likewise subject to gross receipts tax (GRT) at the rate of seven percent (7%) under Section 121(d) of the NIRC, as amended. And since its miscellaneous income is properly categorized under "other income treated as gross income xxx" under Section 121(c) of the same Code, the imposition of GRT at the rate of five (5%) is in order.

UCPB also failed to establish by compelling proof that its service charges, fees, and commissions in the sum of ₱37,796,950.56 were components of its gross interest income derived from foreign currency loan transactions with depository banks under the expanded system. Hence, these items of income are not excused from imposition of internal revenue taxes.

Neither may UCPB be permitted to deduct its alleged expenses of ₱36,576,314.27 from its gross income for TY 2006 since it failed to claim the said sum as deduction in its 2006 Annual Income Tax Return (AITR), or seasonably amend its 2006 AITR to reflect it as deduction pursuant to Section 6(A) of the NIRC, as amended.

Finally, the compromise penalty amounting to ₱25,000.00 imposed by the Commissioner of Internal Revenue (CIR) against UCPB was cancelled as the latter never acceded to its imposition.

Both unconvinced, the CIR and UCPB filed separate Motions for Reconsideration dated September 23 and 30, 2019, respectively.

The CIR's Motion for Reconsideration:[2]

The CIR imputes error on ruling that UCPB's miscellaneous income in the sum ₱23,710,017.10 is only subject to a GRT under Section 121 of the NIRC, as amended, at the rate of five percent (5%). He insists that such item of income falls under royalties, rentals of property, real or personal, profits, from exchange and all other items treated as gross income under Section 32 of Tax Code. Allegedly, by the express provision of paragraph (c), Section 121 of the same Code, the imposition of a seven percent (7%) GRT rate is in order.

For him, UCPB is likewise liable for compromise penalties as the latter failed to accurately file its tax returns and pay the corresponding taxes due thereon, citing Revenue Memorandum Order (RMO) Nos. 1-90 and 7-2015, as authorities.

In refutation, UCPB argues that since it was able to demonstrate by convincing proof that its Foreign Currency Deposit Unit (FCDU) - miscellaneous income are integral components of onshore income derived from foreign currency loan transactions, the said item of income should not be subject to GRT as provided in Section 121 of the NIRC, as amended.

Adopts the conclusion reached by the Court, UCPB claims that the compromise penalty imposed by the CIR against it is unwarranted for it never agreed to pay such penalty.

[2] Ibid. at pp. 267-275.

UCPB's Motion for Reconsideration:[3]

UCPB states that since the revenue officer who audited its books of account for the year 2006 had no authority to conduct tax audit against issued by the CIR, or his duly authorized representative, the subject assessment is a patent nullity, warranting the its cancellation and withdrawal.

Anent its Foreign Currency Deposit Unit (FCDU) onshore-other income, including foreign exchange (FOREX) gain and other charges imposed on foreign currency loan transactions with residents, suffice it to say that they are income exempt from taxes, thus, they may not be imposed RCIT under Section 27(A) of the NIRC, as amended.

UCPB further contents that the service fees, commissions, FOREX gain and other income it realized in the amount of ₱61,667,417.79 were duly substantiated, apart from the fact that the CIR admitted that they were integral components of its gross onshore income derived from foreign currency loan transactions. Hence, these items of income are absolved both from RCIT under Section 27(A) of the NIRC, as amended, and GRT under Section 121 of the same Code.

UCPB finally argues that its general and administrative expenses in the sum of ₱36,576,314.27 allocated to its FCDU onshore income must be treated as deduction to arrive at the proper taxable income subject to RCIT pursuant to Section 27(A) of the NIRC, as amended.

Despite directive, the CIR failed to file his comment/opposition to UCPB's Motion for Partial Reconsideration.

THE RULING OF THE COURT

Save for the legality of the CIR's agents to conduct tax audit and examination against UCPB for TY 2006, the latter

3 Ibid. at pp. 358-411.

presents no fresh arguments or new matter to convince the Court that it has a meritorious case. The arguments of both the CIR and UCPB in their respective Motions for Reconsideration were meticulously addressed and passed upon by the Court in the assailed Decision of September 3, 2019. To delve on them anew is certainly a waste of time and resources of the Court.

Anent the propriety of the examination conducted by the CIR's agents, Section 6(A) of the NIRC, as amended generally confines the authority to examine any taxpayer to the CIR or his authorized representative. By way of exception, the same provision allows BIR personnel to audit the taxpayer on condition that they are armed with written authority issued by the CIR or his duly authorized representative for that purpose, thus:

> SEC. 6. **Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.**
>
> (A) Examination of Returns and Determination of tax Due. After a return has been filed as required under the provisions of this Code, the Commissioner or his duly authorized representative may authorize the examination of any taxpayer and the assessment of the correct amount of tax: xxx.

Relevantly, Section 13 of the NIRC, as amended, mandates that a valid LOA must be issued by the CIR or his authorized representative, i.e., Revenue Regional Director in favor of a revenue officer performing assessment functions, to clothe them with legal competence to audit or examine any taxpayer, *viz.*:

> SEC. 13. **Authority of a Revenue Officer**.- Subject to the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner, a Revenue Officer assigned to perform assessment functions in any district may, pursuant to a Letter of Authority issued by the Revenue Regional Director, examine taxpayers within the jurisdiction of the district in order to collect the correct amount of tax, or to recommend the assessment of any deficiency tax due in the same manner that the said acts could have been performed by the Revenue Regional Director himself.

A LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment; at the same time it authorizes or empowers a designated revenue officer to examine, verify, and scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a *particular period,*[4] the absence of which will render the assessment or examination a patent nullity.[5]

A revisit of the record shows that on September 25, 2007, the Head Revenue Executive Assistant, Large Taxpayer's Service (LTS) issued LOA No. 200700012336, authorizing Revenue Officers (ROs) M. Rugayan, T. Monge, F. Soriano and Group Supervisor (GS) E. Espiritu to examine UCPB's books of account and other accounting records for TY 2006.[6]

On May 26, 2008, the OIC-Chief, LT Audit & Investigation I, issued Referral No. D-57-05-08, endorsing the subject audit against UCPB to RO Alpha Betty L. Tanguilig and GS Adora M. Alberto.[7]

On June 23, 2009, the OIC Assistant Commissioner LTS issued LOA 200800033582, authorizing ROs Christina Lati, Merly Santiago, Hercules Catapia, Joseph Santos, and GS Fe. F. Caling to examine UCPB's books of account and other accounting records for TY 2006.[8]

On July 3, 2009, the OIC-Chief, LT Audit & Investigation I, issued Referral No. D-LOA-55-07-09, endorsing the subject audit against UCPB for TY 2006 to RO Alpha Betty L. Tanguilig and GS Adora M. Alberto.[9]

Evidently, RO Alpha Betty L. Tanguilig, the individual who actually conducted the validation of UCPB's books of account and accounting records for TY 2006, as well as the

---

4 *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,* G.R. No. 183408, July 12, 2017. Italics in the original.

5 See *Commissioner of Internal Revenue vs. Sony Philippines, Inc.,* G.R. No. 178697, November 17, 2010.

6 Exhibit R-2, BIR Record, p. 932.

7 Exhibit R-1, BIR Record, p. 1839.

8 BIR Record, p. 1532.

9 BIR Record, pp. 1533-1535.

person who recommended[10] the issuance of the Formal Assessment Notice (FAN) with Details of Discrepancy dated March 4, 2013 against UCPB anchored her authority to conduct tax examine from Referral Nos. D-57-05-08[11] and D-LOA-55-07-09[12] both issued by OIC-Chief, LT Audit & Investigation I. That simply means that the examination steered by RO Tanguilig, leading to the issuance of the assessment in question, had no prior legal authority either from the CIR or his authorized representative, i.e., Revenue Regional Director, thus, the said audit was illegal. Being the fruit of the illegal tax examination, the subject assessment is a patent nullity and without legal consequence, justifying its cancellation and withdrawal.

In conclusion, the *raison d' etre* of a valid LOA as a condition *sine qua non* to the efficacy of an assessment cannot simply be ignored: "xxx to prevent undue harassment of a taxpayer and level the playing field between the government's vast resources for tax assessment, collection and enforcement, on one hand, and the solitary taxpayer's dual need to prosecute its business while at the same time responding to the BIR's exercise of its statutory powers. The balance between these is achieved by ensuring that any examination of the taxpayer by the BIR' s revenue officers is properly authorized in the first place by those to whom the discretion to exercise the power of examination is given by the statute."[13]

WHEREFORE, the Motion for Reconsideration dated September 23, 2019 filed by the Commissioner of Internal Revenue is **DENIED**, for lack of merit.

On the other hand, the Motion for Reconsideration dated September 30, 2019 filed by United Coconut Planters Bank is **GRANTED**. The assailed Decision dated September 3, 2019 is **REVERSED** and **SET ASIDE**. Accordingly, the Final Assessment Notice (FAN) dated March 4, 2013 and the

---

10 Answer to Question Nos. 26 & 27, Judicial Affidavit of RO Alpha Betty L. Tanguilig. Docket (CTA Case No. 8963), p. 477; and Exhibit R-14, Folder 6, BIR Record, pp. 1685-1696.

11 See Note 7.

12 See Note 9.

13 See *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 222743, April 5, 2017.

Final Decision on Disputed Assessment (FDDA) dated December 1, 2014 are **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Amended Decision were reached in consultation before the consolidated cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice