REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ESTATE OF MR. CHARLES MARVIN ROMIG REPRESENTED BY ITS SOLE HEIR MRS. MARICEL NARCISO ROMIG, Petitioner,	**CTA CASE NO. 9626**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **MINDARO-GRULLA,** and **BACORRO-VILLENA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: DEC 27 2019 3:52 pm

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RESOLUTION

MINDARO-GRULLA, J.:

Before this Court is respondent's **Motion for Reconsideration [Decision dated September 2, 2019]**, filed on September 17, 2019, with petitioner's **Comment (Re: Motion for Reconsideration dated September 17, 2019)**, filed through registered mail on October 28, 2019.

In his Motion, respondent moves for the reconsideration of the Decision promulgated on September 2, 2019, the dispositive portion of which reads as follows:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱4,565,349.07, representing erroneously paid estate tax, including interest

and penalties, on petitioner's foreign currency deposit with HSBC.

SO ORDERED."

Respondent primarily argues that petitioner is not entitled to refund the payment of estate tax for the transfer of the decedent's foreign currency deposits to its sole heir, Mrs. Maricel Narciso Romig. Respondent asserts that even though the decedent is an American citizen, he was a resident of the Philippines at the time of his death thereby subjecting all of his properties, wherever situated, to estate tax. Nonetheless, considering that a foreign currency deposit is not among those enumerated as allowable deductions under Section 86(A) of the National Internal Revenue Code (NIRC) of 1997, as amended, the same should be included in the decedent's gross estate.

Furthermore, respondent cited the Court of Tax Appeals (CTA) case, *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*[1] (hereinafter, "*BPI case*"), wherein the CTA recognized the legislature's intention to remove the exemption of foreign currency deposit units (FCDUs) from all taxes when the NIRC of 1997 took effect on January 1, 1998, by removing the phrase "are hereby exempted from any and all taxes whatsoever" which was previously stated in Republic Act (RA) No. 6426[2], otherwise known as the *Foreign Currency Deposit Act of the Philippines*. Respondent also claims that while he is well-aware of the existence of its amendatory act, RA No. 9294[3], which restored the tax exemptions of offshore banking units (OBUs) and FCDUs, such amending law however was enacted only for the purpose of Section 27(D) and Section 28(A)(4) and (A)(7)(b) of the NIRC of 1997, as amended, which pertains to tax on income derived under the Expanded Foreign Currency Deposit System. However, as to the other kinds of taxes under the NIRC of 1997, as amended, *i.e.*, estate tax, the exemption of FCDUs thereon has not been restored.

Moreover, assuming without conceding that Section 6 of RA No. 6426 exempts foreign currency deposits from estate tax, respondent

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[1] CTA Case No. 7484, June 25, 2007.
[2] "An Act Instituting a Foreign Currency Deposit System in the Philippines, and for other purposes", approved on April 4, 1974.
[3] "An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs), amending for the purpose Section 27(D) and Section 28, paragraphs (A)(4) and (A)(7)(B) of the National Internal Revenue Code as amended", approved on April 28, 2004.

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avers that there is no proof that petitioner's United States dollar (USD) deposit with the HongKong and Shanghai Banking Corporation (HSBC) is covered by the said law. The Bangko Sentral ng Pilipinas (BSP) list of banks with Foreign Currency Deposit Unit (FCDU)/Expanded Foreign Currency Deposit (EFCDU) Authority as of March 31, 2019 does not prove that HSBC is authorized to operate an FCDU/EFCDU at the time of death of Mr. Charles Marvin Romig. Again, respondent insists that it is incumbent upon the taxpayer-claimant to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

Lastly, respondent reiterates that petitioner filed its administrative claim on June 28, 2017 and on the same day, the present Petition for Review was simultaneously filed with this Court. By doing so, petitioner denied respondent the opportunity to review the veracity of its claim for refund. Thus, petitioner's judicial claim for refund should be dismissed for failure to state a cause of action.

On the other hand, in its comment, petitioner argues that RA No. 6426, a special law, could not have been impliedly revoked by the general repealing provision of Section 291[4] of the NIRC of 1997, as amended, which is a general law. As to the *BPI case* cited by respondent, the same is not applicable herein because the deficiency assessment in that case involves calendar year 1998, which at the that time, the tax code removed the FCDUs exemption from any and all taxes whatsoever". However, when RA No. 9294 took effect and amended the *Foreign Currency Deposit Act of the Philippines* on May 21, 2004 the exemption from taxes of FCDUs was restored.

Also, the rule invoked by respondent that "claims for refund of overpaid taxes are construed *strictissimi juris* against the taxpayer" does not apply to claims for illegally paid taxes, such as the present case. To finish, petitioner cites the case of *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue,*[5] wherein the Supreme Court held that the taxpayer may not await the final resolution of its administrative claim for refund, if in doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed.

[4] "**SEC. 291.** *In General.* – All laws, decrees, executive orders, rules and regulations or parts thereof which are contrary to or inconsistent with this Code are hereby repealed, amended or modified accordingly."
[5] G.R. No. 182582, April 17, 2017.

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After due consideration, the instant Motion for Reconsideration is bereft of merit.

Notably, the issues and arguments presented by respondent in his motion are essentially rehashes of what has been said and reiterated in his previous pleadings, and which has already been thoroughly considered, weighed and resolved by this Court in the Decision being assailed.

Yet, as for respondent's claim that the *BPI case* is applicable in the present case, the same is misplaced for the following reasons:

1. The *BPI case* deals with the liability of the depository (BPI) bank for documentary stamp tax (DST) on its FCDU transactions and does not discuss the depositor's liability for income tax (or estate tax) on the income earnings derived by such depositor from his foreign currency deposit;

2. As correctly pointed out by petitioner, though it explicitly stated in the *BPI case* that the phrase "exempt from all taxes" was deleted by RA No. 8424[6], by the clear import of the amendment, FCDUs no longer enjoyed the exemption under the 1977 Tax Code. However, on May 20, 2004, when RA No. 9294 further amended Section 28(A)(7)(b) of the NIRC of 1997, by returning the exemption previously enjoyed under the 1977 Tax Code, the act of Congress in restoring the tax exemption of FCDUs clearly shows that prior to the effectivity of RA No. 9294, FCDUs were not exempt from the payment of all other taxes. Otherwise, common sense dictates that Congress will not restore an exemption that already exists; and,

3. It has been held numerous times that decisions of this Court do not constitute precedents because only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[7]

With regard to respondent's argument that the BSP list of banks with FCDU/EFCDU Authority as of March 31, 2019 does not prove that HSBC is authorized to operate an FCDU/EFCDU at the time

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[6] "An Act Amending the National Internal Revenue Code, as amended, and for other purposes," December 11, 1997.

[7] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

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of the decedent's passing, this Court finds the definition below from Merriam-Webster[8] of the preposition "as of" instructive, *viz.*:

> "**Definition of *as of***
> **:** ON, AT, FROM — used to indicate a time or date at which something begins or ends"

Remarkably, the BSP list can be interpreted to mean that the authority to operate an FCDU/EFCDU of the banks listed therein, either starts or ends on March 31, 2019. Simply put, if the BSP intended that the authority of the banks to operate FCDU/EFCDU commences only on March 31, 2019, then petitioner's foreign currency deposit with HSBC might not be eligible or allowed under RA No. 6246, as amended. However, if the BSP meant otherwise, that the authority to operate an FCDU/EFCDU of the included banks shall end on March 31, 2019, then petitioner's foreign currency deposit with HSBC is eligible or allowed under RA No. 6246, as amended.

In any case, the list of FCDUs as of June 13, 1980, which is attached to Central Bank of the Philippines (CBP) Circular No. 2780 to all Offshore Banking Units (OBUs) issued by then CBP Deputy Governor Cesar J. Lomotan, also includes HSBC. Consequently, absent proof that HSBC's authority to operate an FCDU/EFCDU was revoked during the period between June 13, 1980 and November 20, 2011 (the decedent's date of death), then petitioner's foreign currency deposit with HSBC is eligible or allowed under RA No. 6246, as amended. Accordingly, petitioner's foreign currency deposit with HSBC is exempt from estate tax.

Considering the foregoing, this Court finds no compelling reason to justify the reversal of the assailed Decision.

WHEREFORE, premises considered, respondent's Motion for Reconsideration [Decision dated September 2 2019] is **DENIED** for lack of merit.

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[8] Merriam-Webster, https://www.merriam-webster.com/dictionary/as%20of. (Last visited December 10, 2019).

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SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

We Concur:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice