REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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ALLIED BANKING CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7481

Members:

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
SEP 20 2007, 1:05 PM

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DECISION

BAUTISTA, J.:

This is a Petition for Review seeking the review and reversal of respondent's Final Decision on Disputed Assessment, dated March 9, 2006, denying petitioner's protest against:

a. Assessment No. LTS-LN # FCDU-116-PM-DS-02-00040-GRT-05-00230, which demanded payment of deficiency Documentary Stamp Tax for the taxable year 2002 in the total amount of P64,182,400.29; and

b. Assessment No. LTS-LN # FCDU-116-PM-DS-02-00040-GRT-05-00231, which demanded payment of deficiency Gross Receipts Tax in the total amount of P183,916,105.04.

Petitioner is a duly licensed commercial banking institution organized and existing under and by virtue of Philippine laws.[1]

[1] Paragraph 1 of the Joint Stipulation of Facts and Issues, Docket, page 97.

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]

On July 7, 2005, petitioner received a letter (LN # FCDU-116-PM-DS-02-00040) from the BIR informing petitioner that for taxable year 2002, it failed to file and pay Gross Receipts Tax (GRT) due on gross onshore income in the amount of P169,440,134.16 and Documentary Stamp Tax (DST) in the amount of P59,052,200.55 based on Section 121, in relation to Sections 27(D)(3) and 28(A)(7)(b), and Section 180 of the National Internal Revenue Code of 1997 (Tax Code).[3] Further, petitioner was requested to pay the said taxes within fifteen (15) days from notice.

Within the period given or on July 20, 2005, petitioner filed a letter dated July 19, 2005 explaining why it cannot pay the taxes required.[4]

On November 30, 2005, petitioner received a Preliminary Assessment Notice (PAN) dated November 7, 2005 and was informed of its liability to pay deficiency GRT in the total amount of P177,535,212.89 and DST in the total amount of P61,859,530.66 for the year 2002.[5]

On December 15, 2005, petitioner presented its side through a letter dated December 12, 2005.[6]

On December 28, 2005, petitioner received a Formal Letter of Demand dated November 16, 2005, with Details of Discrepancy and Assessment Notice Nos. LTS-LN # 116-PM-DS-02-00040-GRT-05-00231 and LTS-LN # 116-PM-DS-02-00040-DS-05-00230,

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[2] Paragraph 2 of the Joint Stipulation of Facts and Issues, page 97.
[3] Paragraph 5 of the Joint Stipulation of Facts and Issues, Docket, page 98; BIR Records, pages. 5-6.
[4] Paragraph 6 of the Joint Stipulation of Facts and Issues, *Ibid.*
[5] Paragraph 7 of the Joint Stipulation of Facts and Issues, *Ibid.*; BIR Records, pages 35-36.
[6] Paragraph 9 of the Joint Stipulation of Facts and Issues, *Ibid.*

demanding payment of deficiency GRT in the amount of P177,535,212.89 and DST in the amount of P61,859,530.68.[7]

On January 12, 2006, petitioner filed its protest.[8]

On February 27, 2006, petitioner, in compliance with Section 228 of Republic Act (RA) 8424 and Revenue Regulations (RR) 12-99, informed the BIR that the primary issue in the protest is legal in nature and does not involve factual issues for which supporting documents are necessary.[9]

On March 31, 2006, petitioner received the Final Decision on its protest.[10] The pertinent portions read:

> "I. Implication of the deletion of the phrase 'exempt from all taxes'
>
> The deletion of the phrase *'exempt from all taxes'* under the Tax Reform Act of 1997 can only be mean that FCDUs are now subject to all taxes in addition to the 10% final tax. In the case *'ING Bank (Manila Branch) vs. CIR, CTA Case No. 6017 dated March 11, 2002'*, the tax court have already ruled that FCDUs are now subject to all taxes in addition to the 10% final tax as a result to the deletion of the phrase *'exempt from all taxes'*. The pertinent portion of the decision is as follow:
>
>> 'xxx 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 <u>other taxes for the matter</u>.' (Underscoring supplied)
>
> Although Section 27 (D) (3) of the Tax Reform Act of 1997 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 a mere inadvertent omission. It must be noted that exemption (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.*

[7] Paragraph 10 of the Joint Stipulation of Facts and Issues, *Ibid.;* BIR Records, pages 45-51.
[8] Paragraph 11 of the Joint Stipulation of Facts and Issues, Docket, page 99; BIR Records, pages 54-58.
[9] Paragraph 12 of the Joint Stipulation of Facts and Issues.,*Ibid.*; BIR Records, page 81.
[10] Paragraph 13 of the Joint Stipulation of Facts and Issues, *Ibid.*; BIR Records, pages 82-84.

30232, 19 July 1998). Said the Supreme Court: 'The exception contained in the tax statutes must be strictly 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 this instant case, it can be concluded that the elimination of the phrases 'exempt from all taxes' from the Tax Reform Act of 1997 is an explicit intention of the lawmakers to subject FCDUs to other taxes including GRT and DST and to repeal the 'in lieu of all other taxes' provision under Revenue Regulations No. 10-76."

Hence, on May 2, 2006, petitioner filed the present Petition praying for the reversal of respondent's Final Decision.

In his Answer filed on June 28, 2006, respondent raised the following arguments:

"5. The deletion of the phrase 'exempt from all taxes' under the Tax Reform Act of 1997 only means that Foreign Currency Deposit Units (FCDU) have become subject to all taxes in addition to the 10% final tax. In the case of *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue, CTA Case No. 6017*, promulgated 11 March 2002, this Honorable Court ruled:

xxx xxx xxx

7. Thus, Petitioner's Foreign Currency Deposit Unit (FCDU) is subject to Gross Receipts Tax (GRT) and documentary stamp tax (DST) under Sections 121 and 180, respectively, of the Tax Reform Act of 1997 in view of the deletion of the phrase 'exempt from all taxes' from Section 28(D)(3) of the same Act of 1997.

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

9. Although Section 27(D)(3) of the Tax Reform Act of 1997 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 applicable to FCDU with the deletion of the phrase *'exempt from all taxes'*. The deletion should not be considered as merely 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 Tax Reform Act of 1997 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 Gross Receipts Tax (GRT) and DST for the year 2002 has not yet prescribed. The three-year prescriptive period of assessment under Section 203 of the Tax Reform Act of 1997 refers to a case where a return has been filed. In this case, no GRT and DST Returns were filed by petitioner covering its FCDU transactions. The assessment on petitioner for GRT and DST on FCDU transactions is not covered by said provision but rather under Section 222 of the Tax Reform Act of 1997 because of petitioner's failure to file a return. Thus, the prescriptive period for the assessment is ten (10) years.

11. Assuming for the sake of argument that GRT and DST returns were filed for taxable year 2002, the said returns are evidently returns which are deficient and false, as it did not contain GRT and DST due for petitioner's FCDU transactions. Thus, Section 203 is still inapplicable, as Section 222 governs the prescriptive period for deficiency assessments on false returns.

12. 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 the facts to which their attention was also called *(CIR 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; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments.

13. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995)."*

In a hearing held on October 10, 2006, the parties agreed that the issues involved are purely legal and the case shall be submitted for decision after they file their respective Memorandum within the prescribed period. Thus, on December 11, 2006, the case was submitted for decision after the Court received respondent's Memorandum on November 7, 2006 and petitioner's Memorandum on November 22, 2006.[11]

[11] Docket, page 140.

Submitted for the Court's resolution are the parties' stipulated issues[12]:

"A. Whether or not petitioner's FCDU transactions are exempt from DST, GRT and other kinds of taxes except the 10% final tax imposed under Section 27(D)(3) of the NIRC of 1997;

B. Whether or not petitioner filed GRT Returns on Gross Onshore Income for its FCDU transactions;

C. Whether or not petitioner filed DST Returns on Time Deposits and Bills Payable for its FCDU transactions, and;

D. Whether or not the assessment has prescribed."

Prior to the amendments introduced by RA 8424, Section 25(a)(6)(B) of the 1993 NIRC, as amended, provides:

> "SEC. 25. *Rates of tax on foreign corporation.-*
>
> (a) *Tax on resident foreign corporations. –*
>
> xxx
>
> (6) *Tax on certain incomes received by resident foreign corporations.* xxx
>
> (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 **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 transaction with depositary banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

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[12] *Ibid.*, page 100.

With the enactment of RA 8424,[13] the above-quoted section was amended to read as follows:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* —
>
> xxx
>
> (D) *Rates of Tax on Certain Passive Incomes.* — 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."

Recently, this Court ruled in **Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue**[14] that FCDU income is now subject to all other applicable taxes such as gross receipts tax. We quote:

> "By the clear import of the above law, 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%. 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 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 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 depositary bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a

[13] Cited as the "Tax Reform Act of 1997."
[14] C.T.A. Case No. 6504, October 25, 2006.

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.

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 FCDUs 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 mandates payment of gross receipts taxes aside from the 10% final tax on onshore income.

Since taxes are the lifeblood of the nation, this Court has always applied the doctrine 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. Hence, the claimed exemption 'must expressly be granted in a statute stated in a language too clear to be mistaken.[']"

In other cases involving FCDU income, this Court has similarly ruled that the payment of 10% final tax on FCDU income does not exempt a bank from the payment of other taxes.[15]

Proceeding from the foregoing, petitioner's liability to pay GRT and DST on its FCDU income is based on Sections 121 and 180 of the Tax Code, respectively. Said sections read:

"SEC. 121. *Tax on Banks and Non-bank Financial Intermediaries.* — There shall be collected a tax on gross receipts derived from sources within the Philippines by all banks and non-bank financial intermediaries in accordance with the following schedule:

(a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived:

Short-term maturity (not in excess of two (2) years)	5%
Medium-term maturity (over two (2) years but not exceeding four (4) years)	3%

[15] *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6017, March 11, 2002; and *Ing Bank N.V. Manila Branch vs. Commissioner of Internal Revenue*, C.T.A. Case No. 6187, August 9, 2004.

Long-term maturity —		
(1)	Over four (4) years but not exceeding seven (7) years	1%
(2)	Over seven (7) years	0%
(b) On dividends		0%
(c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code		5%

Provided, however, That in case the maturity period referred to in paragraph (a) is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction as short, medium or long-term and the correct rate of tax shall be applied accordingly.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar banking activities."

"SEC. 180. *Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* — On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos (P200), or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this Section."

Petitioner admitted that it did not file returns for DST and GRT.[16] Hence, respondent's right to assess and collect DST and GRT has not prescribed. Section 222 of the Tax Code states:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-*
>
> a) In the 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. xxx"

The taxpayer has the duty of proving the assessment to be erroneous. In the absence of proof of any irregularities in the performance of official duties or error in the assessment, an assessment will not be disturbed.[17]

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. Respondent's March 9, 2006 Decision is **AFFIRMED** with some modifications. Petitioner is hereby **ORDERED to PAY** respondent the deficiency DST and GRT, plus surcharges and interests, computed as follows:

Gross Receipts Tax Due	96,506,472.54
Add: 25% Surcharge (non-filing)	24,126,618.14
20% Interest from 1/20/2003 to 4/30/2006	63,258,014.37
Total GRT & Penalties	**183,891,105.05**
Documentary Stamp Tax	33,467,850.20
Add: 25% Surcharge (non-filing)	8,366,962.55
20% Interest from 1/05/2003 to 4/30/2006	22,322,587.54
Total GRT & Penalties	**64,157,400.29**

[16] Minutes of Hearing, October 10, 2006.
[17] *Cagayan Robina Sugar Milling Co. vs. Court of Appeals, et al.*, G.R. No. 122451, October 12, 2000.

The compromise penalty, in the amounts of P25,000 for DST and P25,000 for GRT, is cancelled in the absence of a mutual agreement by the parties.[18] However, petitioner is also **ORDERED to PAY** 20% delinquency interest from March 31, 2006, until fully paid pursuant to Section 249 of the Tax Code.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division

[18] *Rightfield Property Ventures, Inc. (now known as Universal Rightfield Property Holdings, Inc.) vs. Commisioner of Internal Revenue*, CTA Case No. 5972, October 16, 2003.