REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

CHINATRUST (PHILS.) COMMERCIAL BANK CORPORATION, *Petitioner,*	**E.B. No. 348** (C.T.A. Case No. 7050) **Present:**
-versus-	**ACOSTA,** ***P.J.*** **CASTAÑEDA, Jr.,** **BAUTISTA,** **UY,** **CASANOVA, and** **PALANCA-ENRIQUEZ,** ***JJ*:**
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 02 2008 GSApolinario 2:00 p.m.

x -- x

DECISION

***ACOSTA, P.J.*:**

Before this Court is a Petition for Review *En Banc* filed on December 20, 2007, assailing the Decision of this Court's Second Division (Second Division) dated August 1, 2007 and the subsequent Resolution dated November 28, 2007, affirming the assailed Decision. The dispositive portion of the assailed Decision reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DISMISSED.** The 'Final Decision on Disputed Assessment' of the BIR dated July 26, 2004, is hereby **AFFIRMED** insofar as the assessment on Gross Receipts Tax is concerned. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **SEVENTEEN MILLION NINE HUNDRED SEVENTY NINE THOUSAND TWO HUNDRED SIXTY EIGHT AND 52/100 PESOS** (P17,979,268.52), representing deficiency Gross Receipts Tax and interest, computed as follows:

366

Gross Onshore Income per FCDU FS		P363,527,924.00
Less: Offshore counterparts	99,564,635.00	
Exempt-Steel Corp. of the Phil.	14,983,264.00	
Total		114,547,899.00
Taxable onshore income		248,980,025.00
Add: Unearned Discounts 12/31/01	18,830.72	
Accrued Interest Receivable 12/31/00	94,109,286.00	
Total		94,128,116.72
Total		343,108,141.72
Less: Unearned Discounts 12/31/00	51,856.00	
Accrued Interest Receivable 12/31/01	107,759,297.22	
Total		107,811,153.22
Gross Receipts for the year on Onshore Income		235,296,988.50
GRT Rate		5%
Basic Tax Due		11,764,849.43
Add: 20% Interest up to 08/31/04		6,214,419.09
Total Tax Due		**P17,979,268.52**

In addition, petitioner is hereby **ORDERED TO PAY** 20% delinquency interest per annum on P17,979,268.52 computed from August 31, 2004 until full payment thereof, pursuant to *Section 249(C) of the NIRC of 1997, as amended.*

SO ORDERED."

We adopt the Second Division's finding of facts, to wit:

"In their 'Joint Stipulation of Facts and Statement of Issues (As Defined by the Court)', the parties stipulated as follows:

> '1. Petitioner is a commercial bank duly organized under Philippine laws with principal office at the 3rd floor, Tower One & Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City.
>
> 2. Respondent Commissioner is the head of the Bureau of Internal Revenue holding office at the BIR National Office, Diliman, Quezon City.

367

> 3. On 23 January 2004, Petitioner's FCDU received a BIR formal assessment notice (FAN) for alleged deficiency gross receipts tax (GRT) and documentary stamp tax (DST) for calendar year 2001.
>
> 4. On 20 February 2004 or within 30 days from 23 January 2004, Petitioner filed a protest that was received by BIR on the same day.
>
> 5. On 20 April 2004 or within 60 days from 20 February 2004, Petitioner sent a letter to the BIR informing it that Petitioner had found it unnecessary to submit supporting documents.
>
> 6. On 31 May 2004, Petitioner filed a Supplemental Protest.
>
> 7. On 06 August 2004, Petitioner received the BIR final decision on the Protest and Supplemental Protest denying them in part allegedly for lack of factual and legal bases.'
>
> xxx xxx xxx

Petitioner filed its 'Memorandum' on December 14, 2006, while respondent failed to comply despite notice. Hence, the case was deemed submitted for decision.

On July 19, 2007, petitioner filed a 'Manifestation' stating that the petition in this case has become moot and academic insofar as the assessment on alleged deficiency DST on Special Savings Account for taxable year 2001 (in the amount of P755,375.66) is concerned on the ground that on June 25, 2007, petitioner availed of the benefits of RR 15-2006 by filing with the BIR a duly accomplished BIR Form No. 2110 (Application for Abatement or Cancellation of Tax, Penalties and/or Interest Under Rev. Reg. No. 15-2006) and paid the amount of P755,375.66, representing the basic tax due on Special Savings Account.

Pursuant to the above 'Manifestation', the petition insofar as the assessment on deficiency DST on Special Savings Account for taxable year 2001 is concerned is hereby deemed withdrawn."

On August 1, 2007, the Second Division promulgated the assailed Decision. Upon receipt of the said Decision on August 14, 2007, petitioner filed a Motion for

Reconsideration. The Second Division, however, denied petitioner's Motion for Reconsideration in a Resolution issued on November 28, 2007.

On December 18, 2007, petitioner received a letter from the Bureau of Internal Revenue (BIR) requiring the payment of P24,843,779.00, representing the Total Deficiency Gross Receipts Tax (GRT) being assessed against petitioner and the subject matter of the case; in order to obviate the issuance of a Warrant of Distrant and Garnishment and/or Levy (Warrant)[1].

On December 20, 2007, petitioner filed the instant Petition (With Application for TRO and/or Writ of Preliminary Injunction) praying for the following, to quote:

> 1. Upon the filing of this Petition, this Honorable Court issue a Temporary Restraining Order (TRO) enjoining the respondent from issuing or enforcing, if one has been issued, a Warrant of Distraint and Garnishment and/or Levy, or implementing the assailed Decision and Resolution of the Second Division of this Honorable Court or the questioned assessment of the Respondent;
>
> 2. After notice and hearing, issue a writ of preliminary injunction enjoining the Respondent from issuing or enforcing, if one has been issued, a Warrant of distraint and Garnishment and/or Levy against Chinatrust, or implementing the assailed Decision of the Second Division of this Honorable Court or the questioned assessment of the Respondent while this Petition is pending;
>
> 3. It is further prayed that judgment be rendered in due course by the Honorable Court en Banc setting aside the Assailed decision and Resolution of the Second Division of the Honorable Court, and making permanent the TRO and/or writ of preliminary injunction that may have been issued.

During the hearing on petitioner's Application for TRO and/or Writ of Preliminary Injunction on January 18, 2008, petitioner orally manifested that after consultation with the BIR, it paid the basic tax due on its Gross Receipts Tax (GRT) amounting to P17,492,244.38 pursuant to Revenue Regulation 13-2001, and that the BIR has undertaken not to proceed with the issuance of the Warrant of Distraint and Levy. Consequently,

[1] *Rollo*, page 147.

petitioner moved for the withdrawal of the issuance of a Temporary Restraining Order (TRO) or preliminary injunction.

On June 25, 2008, the case is deemed submitted for Decision upon considering petitioner's Memorandum. Respondent, on the other hand, manifested that she is adopting her Comment dated April 25, 2008 as her Memorandum. Such Manifestation was noted by this Court.

The petitioner assigns the following errors:

I

WHETHER CHINATRUST'S ONSHORE INCOME ON FCDU TRANSACTIONS ARE NOW SUBJECT TO GROSS RECEIPTS TAX IN VIEW OF THE DELETION OF THE PHRASE "EXEMPT FROM ALL TAXES" FROM SECTION 27(D)(3) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997.

II

WHETHER IT IS THE DUTY OF THE CHINATRUST OR THE RESPONDENT TO PROVE THAT CORRESPONDING LOANS OF ITS ONSHORE INTEREST INCOME HAVE DIFFERENT MATURITIES.

Petitioner advances the argument that the removal of the phrase "shall be exempt from all taxes" from Section 24(e)(3) of the National Internal Revenue Code (NIRC) of 1977 discarded only the tax exemption of Foreign Currency Deposit Units (FCDUs) from income taxes. Petitioner, in support of its argument emphasized the following:

a. that the Executive Department did not propose the repeal of FCDU exemption from transaction taxes;

b. that the said proposal was not made in any bill considered by Congress;

c. that the repeal of FCDU exemption from transaction taxes was never mentioned or discussed during the Congressional deliberations or in any public hearing on the CTRP;

d. that the bills considered by Congress simply proposed to amend FCDU income taxation, as the proposal to amend FCDU non-income taxation was yet to be drafted by the Executive Department as the fourth package of the Government's tax reform program;

e. that the Department of finance official estimate of revenues to be generated by the CTRP did not include FCDU non-income taxes, because they were beyond the purview of the CTRP; and

f. that, for the same reason, the Revenue Regulations (no. 10-98) prepared by BIR and DOF to implement the CTRP did not contain any provision for the imposition of non-income taxes on FCDUs.

Petitioner further posits that the assailed Decision and Resolution failed to consider the testimony of Former Department of Finance (DOF) Undersecretary Milwida Guevarra which clearly explained the history and legislative intent behind the deletion of the exemption clause in the Comprehensive Tax Reform Program[2] (CTRP). According to Dr. Guevarra's testimony, the CTRP pertains to income tax provision of the NIRC. All deliberations were really about income taxation. If there was deletion of the exemption of FCDUs, the deletion was really pertaining to the exemption of FCDUs from the income tax prior to the CTRP.

We are not persuaded.

To recall, Section 24(e)(3) of the NIRC of 1977, reads that:

> "(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 non-residents, offshore banking units in the Philippines, local commercial banks including branches of foreign banks that may be authorized by the Central Bank 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.

[2] Comprehensive Tax Reform Program, referring to Republic Act No. 8424, "Act Amending the National Internal Revenue Code, As Amended, and For Other Purposes".

37

> Any income of nonresidents from transaction with depository banks under the expanded system shall be exempt from income tax." *(Emphasis supplied)*

It is clearly laid down in the afore-quoted provision that income of a depository bank under the expanded foreign currency deposit system from foreign currency transactions are exempt from all taxes.

The NIRC was amended by Republic Act (RA) No. 8424 on January 1, 1998, the above provision was renumbered as Section 27 (D)(3), and the phrase "shall be exempt from all taxes" was removed and substituted with the phrase "shall be subject to a final income tax at the rate of ten percent (10%) of such income". Section 27(D)(3) states:

> "(b) *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." *(Emphasis supplied)*

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; or so far as regards any action after the adoption of the amendment, as if the statute has been originally enacted in its amended form. The amendment becomes a part of the original statute as if it had always been contained therein.[3] *The deliberate selection of language other than that used in an earlier act is indicative that a change in the law was*

[3] Estrada vs. Caseda, No. L-1560, October 25, 1949, 84 Phil. 791.

392

intended and it calls for an application. Any other view would be to betray lack of fidelity to the purpose so manifest in the controlling legal provision.[4]

Section 27(D)(3) of the NIRC of 1997, as amended by RA No. 8424, as herein-above quoted is specific, explicit and clear. The eradication of the phrase "shall be exempt from all taxes" previously found in Section 24 of the NIRC of 1977 only entails a simple construction. By such deletion, the obvious aim of the Legislature is to introduce a different meaning to the law, that is, the taking away of the tax exemption previously enjoyed by FCDUs.

It is a cardinal rule in statutory construction that where the words and phrases of a statute are not obscure or ambiguous, its meaning and the intention of the legislature must be determined from the language employed.[5] To read into the law the supposed intention of the legislators, where there is no ambiguity in it, would be to supply something that does not appear in the act.[6]

If the lawmakers intended to subject FCDUs to income tax only but maintains their exemptions from other taxes like Gross Receipts Tax (GRT), then, they could have easily demonstrated such intention. However, our lawmakers did not. They simply removed the said phrase, an indication of their intent to remove the tax exemption privilege of FCDUs. The deletion should not be considered as mere inadvertent omission.

An omission at the time of enactment, whether careless or calculated, cannot be judicially supplied however later wisdom may recommend the inclusion.[7] For as explained by the Supreme Court, in the interpretation of a legal document, especially a statute, it is not enough to obtain information or meaning of the author or authors, but also to see whether the intention or meaning has been expressed in such a way as to give it legal effect and validity. In short, the purpose of the inquiry, is not only to know what the author meant by the language used, but also to see that the language used sufficiently

[4] Sarcos vs. Castillo, G.R. No. L-29755, January 31, 1969, 26 SCRA 853.
[5] Ruben Agpalo, Statutory Construction Fifth Edition, 2003, page 56.
[6] *Supra*, page 97.
[7] *Supra*, page 74.

373

expresses their meaning. The legal act so to speak is made up of two elements – an internal and external one; it originates in intention and is perfected by expression. Failure of the latter may defeat the former.[8]

The supposed intention of the Legislature, as reiterated by petitioner, of maintaining the tax exemption of FCDUs from non-income taxes is not manifested. The rational presumption is that if there had been such an intention, the Legislature should say so expressly. On the contrary, the absence of the phrase "exempt from all taxes" in Section 27(D)(3) of the NIRC of 1997 shows the expressed objective of the Legislature to remove the all encompassing tax exemption of FCDUs.

Petitioner's assertion that the fact that Revenue Regulations No. 10-98[9], was confined to income taxes arising from FCDU/OBUs' foreign transaction and did not include non-income taxes, is beside the point. Revenue Regulations No. 10-98 would consequently deal with income taxes for it was issued specifically to govern the imposition of income taxes on income derived under the Foreign Currency Deposit and Offshore Banking Systems. Nonetheless, it does not show the intent of the Legislature in removing the phrase "shall be exempt from taxes". What is vital here is the import of such deletion. And to restate, the removal of the phrase only means the expressed intent of our lawmakers to remove the tax exemption of FCDUs. Without the exemption, then all applicable taxes, like GRT became due.

On the second issue, petitioner claims that the assailed Decision presumed correct the BIR's findings that petitioner's loans had remaining short-term maturities on the presumption that official duties have been regularly performed and on the basis of this two presumptions, the resulting BIR assessment must also be presumed correct. Petitioner maintains that such reasoning is flawed for being contrary to law and jurisprudence. A presumption cannot be planted on another presumption which itself is based on a third presumption.

---

[8] Manila Jockey Club, Inc. vs. Games and Amusements Board; 107 Phil. 151 (1960).
[9] Implementing the Provisions of the National Internal Revenue Code, As Amended By Republic Act No.8424, Relative to the Imposition of Income Taxes on Income Derived Under the Foreign Currency Deposit and Offshore Banking Systems.

Petitioner further posits that respondent's assessment has no factual support. It claimed that there was no BIR investigation of its books of accounts, there was no "regular" performance of BIR duties; BIR merely assumed that all its loans had less than two years of remaining maturities because this conclusion was based on petitioner's financial statements which merely contained general statement that it had so much "accrued interest receivables"; and there was nothing in the said financial statements or related documents indicating remaining loan maturities or even just loan maturities. Hence, the assessment was arbitrary/capricious and cannot stand.

While We agree that a presumption cannot be based on another presumption, yet a review of the assailed Decision reveals that the Second Division sustained as correct the findings of the BIR because of petitioner's failure to prove its assertion that the loans have different maturities. Hence, the consequent application of the rule that "all presumptions are in favor of the correctness of assessment".

As mentioned above, the general rule stands that all presumptions are in favor of the correctness of tax assessments and 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 called. As a logical outgrowth of the presumption in favor of the validity of assessments, when such assessments are assailed, the burden of proof is upon the taxpayer clearly to show that the assessment was erroneous, in order to relieve itself from it.[10]

Moreover, in the case of *Collector of Internal Revenue vs. Reyes* [11], the Supreme Court ruled:

> "Where the taxpayer is appealing to the tax court on the ground that the Collector's assessment is erroneous, it is incumbent upon him to prove there what is the correct and just liability by a full and fair disclosure of all pertinent data in his possession. Otherwise, if the taxpayer confines himself to proving that the tax assessment is wrong, the tax court proceedings

---

[10] Collector of Internal Revenue vs. Bohol Land Transportation Co., L-13099 and L-13462, April 29,1960, 58 O.G. 2407.
[11] 104 Phil. 1061 (1958) Unrep., Nos. L-11534 and L-11558, November 25, 1958.

374

> would settle nothing, and the way would be left open for subsequent assessments and appeals in interminable succession."

Herein, the best that petitioner could have done was to present evidence that its FCDU loans have different maturities and in the process refute respondent's findings. However, a careful review of the pieces of evidence submitted by petitioner show that petitioner failed to prove its allegations. In other words, petitioner failed to effectively discharge its *onus probandi*.

For all the foregoing, applying the above principles and jurisprudence, the Second Division was correct in applying the presumption. The taxpayer has the duty to overrule the same. In the absence of proof of any irregularities in the performance of duties or that the assessment is erroneous, an assessment duly made by a BIR examiner and approved by his superior officers will not be disturbed.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on May 17, 2006 and Resolution dated February 22, 2007, the instant Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

We Concur:

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

378

CERTIFICATION

Pursuant to Section 13, Article VIII 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 *En Banc*.

ERNESTO D. ACOSTA
Presiding Justice

376