REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

STANDARD CHARTERED BANK, Petitioner,	**CTA EB CASE NO. 731** (CTA Case No. 7253)
	Present:
-*versus*-	*Acosta, P.J.* *Castañeda, Jr.,* *Bautista,* *Uy,* *Casanova,* *Palanca-Enriquez,* *Fabon-Victorino,* *Mindaro-Grulla, and* *Cotangco-Manalastas, JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 13 2012 ArsApolinario 1:30 p.m.

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D E C I S I O N

BAUTISTA, J.:

The present case involves an assessment amounting to One Hundred Twenty One Million Thirty Five Thousand Eight Hundred Seventy Five and 29/100 Pesos (Php121,035,875.29), for deficiency Gross Receipts Tax (GRT), Documentary Stamp Tax (DST), and Branch Profit Remittance Tax (BPRT) for the taxable year 1998, inclusive of interest and penalties.[1]

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[1] *Rollo*, p. 202.

The Parties[2]

Petitioner Standard Chartered Bank is the Philippine Branch of Standard Chartered Bank, a corporation organized and existing under the laws of England. It is duly authorized to engage in business in the Philippines and authorized by the *Bangko Sentral ng Pilipinas* to operate a Foreign Currency Deposit Unit (FDCU).[3]

Respondent Commissioner of Internal Revenue is the official authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997 to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.[4]

The Facts

The facts as stated in the Decision[5] dated June 25, 2010:

> On August 10, 2004, petitioner received respondent's Formal Letter of Demand and Assessment Notices for alleged deficiencies in Gross Receipts Tax (GRT), Documentary Stamp Tax (DST), and Branch Profit Remittance P121,035,875.29, broken down as follows:

GROSS RECEIPTS TAX- FCDU Onshore Income	
Gross Receipts for the period	P 546,188,110.00
Tax Rate	0.05
Tax Due	27,309,405.50
Less: Payments	-
Basic Deficiency - FCDU GRT	27,309,405.50
Add: 25% Surcharge	6,827,351.38
Interest (Up to September 30, 2004)	31,026,406.75
Compromise Penalty	25,000.00
Total Deficiency GRT	**65,188,163.63**
DOCUMENTARY STAMP TAX- FCDU	
Loans	4,851,707,985.00
Time Deposit Liabilities	4,209,812,464 .00
Total Amount of FCDU Transaction subject to DST	9,061,520,449.00
Tax Rate	.30/200
Tax Due	13,592,280.67
Less: Payments	-

[2] *Id.*, p. 11.
[3] *Id.*, pp. 77-78.
[4] *Id.*
[5] *Id.*, pp. 78-83.

Basic Deficiency DST on FCDU	13,592,280.67
Add: 25% Surcharge	3,398,070.17
Interest (Up to September 30, 2004)	15,442,285.22
Compromise Penalty	25,000.00
Total Deficiency DST	**32,457,636.06**
BRANCH PROFIT REMITTANCE TAX	
Branch Profit Remittance during the year	65,281,074.00
Tax Rate	15%
Tax Due	9,792,161 .10
Less: Payments	-
Basic Deficiency BPR Tax	9,792,161.10
Add: 25% Surcharge	2,448,040.28
Interest (Up to September 30, 2004)	11,124,285.22
Compromise Penalty	25,000.00
Total Deficiency Branch Profit Remittance Tax	**23,390,075 .60**
TOTAL DEFICIENCY TAXES	**P 121,035,875.29**

Respondent explained the bases of the assessed deficiency taxes as follows:

"<u>GROSS RECEIPTS TAX (GRT) ON FCDU ONSHORE INCOME</u>

Sections 24(e)(3) and 25(a)(6)(B) of the old Tax Code provides for exemption from all taxes of income derived under the Expanded Foreign Currency Deposit System, viz;

> '*Income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, off-shore 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 deposit system* ***shall be exempt from all taxes,*** *except taxable income from such transactions as may be specified by the Secretary of Finance .... (underscoring supplied)*'

With the implementation of the CTRP, the phrase 'exempt from all taxes' was deleted. Please refer to Sections 27(D)(3) and 28(A)(7) of the new Tax Code. Accordingly, the taxpayer was assessed for deficiency gross receipts tax on onshore income from foreign currency transactions amounting to P65,188,163.63 inclusive of penalties pursuant to the provisions of Section 121 of the Tax Code.

DOCUMENTARY TAX (DST) ON FCDU TRANSACTIONS

With the same legal argument above, a deficiency documentary stamp tax on the amount of foreign currency transaction was assessed for P32,457,636.06 inclusive of penalties in accordance with Section 180 of the said Tax Code.

BRANCH PROFIT REMITTANCE TAX (BPRT)

Likewise pursuant to Section 28(A)(5) of the CTRP, the taxpayer was assessed for branch profit remittance tax on the amount remitted to its head office abroad in the amount of P23,390,075.60 inclusive of interest and penalties.'

Petitioner filed a letter-protest on October 21, 2004, addressed to respondent, through the Deputy Commissioner-Large Taxpayers Service, to question the Assessment Notices and Formal [L]etter of Demand.

Respondent did not render a decision on the protest of petitioner; thus, prompting petitioner to file the instant Petition for Review on May 19, 2005.

In the Answer filed on August 15, 2005, respondent alleged the following Special and Affirmative Defenses:

'4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and [A]ffirmative Defenses;

5. The assessments were issued in accordance with existing law and regulations. The legal and factual bases for the issuance of the assessments were embodied in the assessment notices;

6. The assessments were issued within the prescriptive period allowed by law. The legal provision governing the prescription of the Government's right to assess taxes in ordinary cases is Section 203 of the Tax Code, as amended, which reads as follows:

'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, xxx. 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.'

Section 222 of the Tax Code, as amended, on the other hand, provides the exceptions as to the period of limitation of assessment and collection, which reads as follows:

> 'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
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> (a) xxx
> (b) <u>If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon</u>. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
> (c) xxx
> (d) xxx
> (e) xxx'. (Emphasis supplied)

7. The series of waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code executed by the petitioner, which were accepted by the respondent, are all valid and enforceable. There was substantial compliance of the law in the execution of the same, hence, valid. It must be emphasized that it was the petitioner who executed the same requesting, and in substance, consenting to the extended audit of the BIR Revenue Officers beyond the normal period of three (3) years thru the execution of the waivers. It is a fact that it was the petitioner who initiated the execution of the same and requested the BIR for its acceptance and conformity. It is submitted that any subsequent action of the petitioner seeking the nullification or invalidality of the same to the disadvantage of the respondent, who merely acquiesced to the request of the petitioner in extending the audit period and consequently the prescriptive period to assess as provided in the Tax Code, is action in bad faith. Hence, petitioner was, is and will always be estopped from questioning the validity of the waivers.

8. It is evident that the waivers were signed by the duly authorized representatives of the Commissioner, hence, valid. It must be recalled that under Section 7 of the Tax Code, as amended, the power to delegate the signing of the waiver is not one of the enumerated non-delegable powers of the

Commissioner. Hence, the acceptance of the waivers by the duly authorized representatives of the Commissioner is valid.

9. Assuming *arguendo* that the series of waivers suffer from the alleged defect, by repeatedly requesting for extensions to substantiate its allegations and executing subsequent waivers extending the period of limitation, petitioner impliedly recognized the validity of the preceding waivers. Again, it should be emphasized that it was the petitioner who requested for the extension of the prescriptive periods. Thus, by its own conduct, petitioner led respondent, who acting in good faith, allowed the petitioner to continually substantiate its own contentions at the administrative level thru acceptance of the signed waivers. In effect, the petitioner cannot disown the validity of its actions by attacking the validity of the waivers it executed. It is submitted that the same should not be allowed for being contrary to the conclusive presumption provided under Section 2 (a) of Rule 131 of the Revised Rules of Court, viz:

> 'Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it.'

Thus, having by its own actions, agreed to the validity of the waivers executed, petitioner cannot be permitted to falsify it.

10. Claims for exemption from taxation shall be construed in *strictissimi juris* against the claimant-petitioner. Petitioner has the burden of proving entitlement to exemption from taxation.

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After trial on the merits, the case was submitted for decision on July 31, 2009, taking into consideration petitioner's Memorandum filed on July 20, 2009 and respondent's Memorandum filed on July 27, 2009.

On June 25, 2010, the CTA-Division rendered the subject Decision[6] denying the Petition for Review, with the dispositive portion stating that:

"**WHEREFORE,** the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED**

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[6] *Id.*, p. 15.

TO PAY respondent the amount of **SIXTY-THREE MILLION THREE HUNDRED SIXTY-SEVEN THOUSAND THREE HUNDRED NINE PESOS AND 10/100 (P63,367,309.10),** representing deficiency GRT, DST, and BPRT, pursuant to Sections 121, 180, and 28(A)(5) of the NIRC of 1997, including the twenty-five percent (25%) surcharge imposed thereto, detailed as follows:

GROSS RECEIPTS TAX- FCDU Onshore Income	
Gross Receipts for the period	P 546,188,110.00
Tax Rate	0.05
Tax Due	27,309,405.50
Less: Payments	-
Basic Deficiency - FCDU GRT	27,309,405.50
Add: 25% Surcharge	6,827,351.38
Total Deficiency GRT	**34,136,756.88**
DOCUMENTARY STAMP TAX- FCDU	
Loans	4,851,707,985.00
Time Deposit Liabilities	4,209,812,464.00
Total Amount of FCDU Transaction subject to DST	9,061,520,449.00
Tax Rate	.30/200
Tax Due	13,592,280.67
Less: Payments	-
Basic Deficiency DST on FCDU	13,592,280.67
Add: 25% Surcharge	3,398,070.17
Total Deficiency DST	**16,990,350.84**
BRANCH PROFIT REMITTANCE TAX	
Branch Profit Remittance during the year	65,281,074.00
Tax Rate	15%
Tax Due	9,792,161 .10
Less: Payments	-
Basic Deficiency BPR Tax	9,792,161.10
Add: 25% Surcharge	2,448,040.28
Total Deficiency Branch Profit Remittance Tax	**12,240,201 .38**
TOTAL DEFICIENCY TAXES	**P 63,367,309.10**

Likewise, petitioner is hereby **ORDERED TO PAY** (a) deficiency interests at the rate of twenty percent (20%) *per annum* on basic deficiency GRT, DST, and BPRT computed from January 25, 1999, January 10, 1999, and January 25, 1999, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interests at the rate of twenty percent (20%) *per annum* on the total deficiency taxes of P63,367,309.1 0 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 21, 2004 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.

On July 14, 2010, petitioner filed a Motion for Reconsideration (With Motion to Submit Supplemental Evidence), which was denied on February 14, 2011.[7]

Hence this petition.

On December 5, 2011, respondent filed its Memorandum, while petitioner filed its Reply Memorandum on February 10, 2012.

The Issues

In the Memorandum[8] filed by respondent on August 22, 2011, the following issues were raised:

1. Whether or not the assessment for deficiency Gross Receipt[s] Tax, Documentary Stamp Tax, and Branch Profit Remittance Tax for the taxable year were issued within the prescriptive period allowed by law.

2. Whether or not the assessments have become final and executor[y], corollary, whether the court has jurisdiction to entertain the case.

3. Whether or not the assessments were issued in accordance with existing laws and regulations.

4. Whether or not petitioner's FCDU is exempt from the payment of GRT, DST and BPRT. If in the negative, whether or not petitioner is liable to pay the aggregate amount of P121,035,875.29 representing GRT, DST and BPRT covering the taxable year 1998.

5. Whether or not petitioner is liable to pay 25% surcharge.

On the other hand, petitioner raised the following issues in the Memorandum[9] filed on September 7, 2011:

23.1 The CTA-Division erred in finding that Respondent's right to assess deficiency GRT, DST and BPRT has not prescribed. The

[7] *Id.*, pp. 15-16.
[8] *Id.*, pp. 173-174.
[9] *Id.*, pp. 210-211.

evidence on record clearly shows that Petitioner filed returns for GRT, DST and BPRT. Petitioner was under no legal duty to indicate in the returns such items which the law and the regulations do not require to be reported therein. Moreover, petitioner reported the income subject of these assessments in its Annual Income Tax Return for 1998 and Audited Financial Statements.

23.2 The CTA-Division erred in not finding that Respondent's right to collect deficiency GRT, DST and BPRT has prescribed. Considering that five years have lapsed from the date of the assessment, the CTA-Division should have found that Respondent's right to collect deficiency GRT, DST and BPRT has nevertheless prescribed.

23.3 The CTA-Division erred in not finding that the GRT, DST and BPRT assessments are null and void for having been issued in violation of Petitioner's right to due process. Specifically, the assessments failed to strictly comply with the procedure and the requirements laid by law and RR No. 12-99.

23.4 The CTA-Division erred in relying solely on and not going beyond the principles of statutory construction when it held that Petitioner is subject to tax, in the light of the clear legislative policy for and history of the exemption of Petitioner from GRT, DST and BPRT.

In summary, the issues tackled in the Decision promulgated by the Court in Division dated June 25, 2012, must now be resolved by the Court *En Banc*:

WHETHER OR NOT THE ASSESSMENTS FOR DEFICIENCY GROSS RECEIPTS TAX (GRT), DOCUMENTARY STAMP TAX (DST), AND BRANCH PROFIT REMITTANCE TAX (BPRT) FOR TAXABLE YEAR 1998 WERE ISSUED WITHIN THE PRESCRIPTIVE PERIOD ALLOWED BY LAW.

WHETHER OR NOT THE ASSESSMENTS WERE ISSUED IN ACCORDANCE WITH THE EXISTING LAWS AND REGULATIONS.

WHETHER OR NOT PETITIONER'S FCDU IS EXEMPT FROM THE PAYMENT OF GRT, DST AND BPRT. IF IN THE NEGATIVE,

WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AGGREGATE AMOUNT OF P121 ,035,875.29 REPRESENTING GRT, DST AND BPRT COVERING THE TAXABLE YEAR 1998.

WHETHER OR NOT THE RIGHT TO COLLECT FROM THE TAXPAYER HAS ALREADY PRESCRIBED.

WHETHER OR NOT PETITIONER IS LIABLE TO THE 25% SURCHARGE.

The Ruling of the Court En Banc

Petitioner's Arguments

Petitioner avers that the Court in Division erred in its findings that respondent's right to assess deficiency GRT, DST and BPRT has not prescribed, since it should not be subject to the ten (10)-year period to assess. Rather, petitioner's case should fall under the three (3)-year period, since it does not fall under any of the conditions to trigger ten (10)-year period.

Petitioner states that:

> "There is simply nothing in Butuan Sawmill, Inc. vs. Court of Tax Appeals ("Butuan Sawmill")[10] that intimates that omitting or failing to disclose certain matters or items in the return makes the return "insufficient" for purposes of applying the three-year prescriptive period."
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> xxx xxx xxx
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> "Section 203, Tax Code is plain and categorical when it states that the three-year prescriptive period is reckoned from the last day prescribed by law for the "filing of the return". If this phrase is understood as the CTA-Division did in its Decision and Resolution, any omission would be tantamount to failure to file the return. Every omission in the return would then be a ground for the application of the ten-year prescriptive period and will practically

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[10] G.R. No. L-20601, February 28, 1966, 16 SCRA 277.

render nugatory the three-year prescriptive period under Section 203, Tax Code."

Petitioner submits that it filed neither a false nor a fraudulent return, nor was this alleged or proved by the Respondent. Falsity and fraud must be alleged and proved and never lightly presumed.[11]

It was also alleged by petitioner that the evidence on record clearly shows that Petitioner filed returns for GRT, DST and BPRT, and that it was under no legal duty to indicate in the returns such items which the law and the regulations do not require to be reported therein. Thus, the alleged omissions in the GRT, DST and BPRT returns do not in themselves make the returns "false returns," as it must be proven to have been done "with intent to evade tax".

Also, petitioner brings up the basic rule in evidence wherein the defense of prescription is an affirmative allegation and thus the burden of proof is upon the party laying claim to it.[12] Petitioner presented the various tax returns it filed with respondent, showing that upon filing of such returns, the statute of limitations began to run, shifting the burden of showing that the case is subject to any exception contained in the statute shifts to respondent, which petitioner alleges that respondent failed to do so.[13]

In addition, petitioner points out that if respondent truly believed that this case falls under the application of the ten-year prescriptive period, she should

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[11] Commissioner of Internal Revenue v. Ayala Securities Corporation, G.R. No. L-29485, March 31, 1976, 70 SCRA 204.
[12] Alfredo Bollozos v. Court of Tax Appeals and Collector of Internal Revenue, G.R. No. L-16441, March 31, 1965 ("Bollozos").
[13] H.G. Stevens v. Commissioner of Internal Revenue, 14 B.T.A. 1120, January 9, 1929.

have prepared the so-called "substitute for return" required under Sections 5 and 6 of the 1997 NIRC, which respondent failed to do so.

As to the issue of the right to collect deficiency taxes, petitioner points out that considering that five years have lapsed from the date of the assessment, the Court in Division should have found that the right to collect has already prescribed.

As for the issue on GRT, DST and BPRT assessments being null and void for violating petitioner's due process, petitioner points out that the assessments failed to strictly comply with the procedure and the requirements laid by law and RR No. 12-99, in consonance with the provisions of Section 228 of the 1997 NIRC. Section 3 of RR No. 12-99 outline the notice requirements and the method which should be strictly observed, prior to the issuance of the deficiency assessments. Petitioner cites *LG Electronics Philippines vs. Commissioner of Internal Revenue*,[14] which discussed the proper procedure in assessments:

> "As outlined in the aforequoted pertinent provisions of Section 3 of Revenue Regulation No. 12-99, due process requires that prior to the issuance of the subject deficiency tax assessment against petitioner, the Revenue Officer who audited petitioner's tax records should state in his report whether or not petitioner agrees or disagrees with his findings of liability for deficiency tax or taxes, in order to afford herein petitioner-taxpayer the opportunity to present his side of the case during an 'Informal Conference' duly set for that purpose. It is only in case of petitioner's failure to respond within fifteen (15) days from receipt of the Notice of Informal Conference should its case be endorsed to the Assessment Division of the Revenue Regional Office to which it belongs, for appropriate review and issuance of a deficiency tax assessment, if

[14] CTA Case No. 5994, April 4, 2007.

> warranted.
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> Thereafter, in the event that, upon review and evaluation by the Assessment Division, it is determined that there exist sufficient basis to assess petitioner for any deficiency tax or taxes, the said Office should have issued to petitioner, at least by registered mail, a Preliminary Assessment Notice ("PAN") for the proposed tax assessment. In the instant case, respondent did not issue and/or send a Notice for Informal Conference and a PAN before it sent the disputed FAN and Demand Letter."

Petitioner submits that respondent miserably failed to show compliance with the mandated procedure, since the assessments were issued without a Notice for Informal Conference and the PAN. Also, it was alleged that respondent's examiners failed to conduct an audit done in the context of procedural due process requirement, since she merely relied on the amounts in the Audited Financial Statements to come up with the purported findings, which makes the assessments essentially "table assessments". Thus, according to the evidence on record, lead to the conclusion that respondent did not faithfully observe the procedures mandated, in violation of Petitioner's right to due process.

As to the issue of the FCDU's being exempt from said taxes, petitioner posits that the Tax Reform Act of 1997 in fact did not remove the FCDU's preferential tax status. Petitioner argues that the Court in Division's reliance on "amendment by deletion" is utterly misplaced, and that the rule that an amendment of a statute indicates a change in meaning from that which the statute originally had applies only when the intention is clear to change the previous meaning of the law.[15]

Thus, petitioner states that this can only apply when the legislative intent is clear. The deletion of the words or phrases in a statute raises only a presumption that Congress intended to change the meaning of the statute. Such presumption, however, is not conclusive especially when ample evidence to the contrary exists and more so on matters of taxation. Taxation by implication is simply not favored.

If the Court in Division's conclusion that the FCDUs are no longer exempt from GRT, DST and BPRT, then Congress could have so explicitly stated in the law, considering that such a change would have involved a drastic reversal of the government policy. Also, respondent would have issued a revenue regulation or circular, as she always does in similar situations, stating that FCDUs' profit remittances had become subject to GRT, DST and BPRT effective January 1, 1998. In this case, Respondent failed to do so. Petitioner also provided the parties relevant congressional deliberations and bill drafts confirming that there was no such intent to remove the tax exemption enjoyed by FCDUs.

Respondent's Arguments

Respondent agrees fully with the decision of the Former Second Division. Respondent alleges that the Motion for Reconsideration with Motion to Submit Supplemental Evidence filed by petitioner, as well as the Petition for Review

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[15] Ruben E. Agpalo, STATUTORY CONSTRUCTION, Third Edition 1995, p. 78.

dated March 18, 2011 to the Court *En Banc* raises the same issues and discussion with the initial Petition for Review to the Court in Division.[16]

As to the deficiency assessment for the GRT, DST and BPRT, respondent argues that these were issued within the prescriptive period allowed under the law, specifically, Section 222 of the NIRC, which provides for an exemption from Section 203 of the same code.[17] Respondent alleges that the three (3) year limit to making an assessment does not apply when it involves a false or fraudulent return or in cases where there is failure to file a return by the person obliged to file such. [18] Thus, the period to make an assessment is within ten (10) years after the discovery of the falsity, fraud or omission.[19] Respondent states that the case of petitioner falls squarely under the exemption, as it failed to file the GRT on its regular onshore income, DST on the loans made to residents and certificate of time deposits by resident depositors, nor the BPRT on the remittances petitioner made to its head office abroad for taxable year 1998.[20]

In addition, respondent insists that the assessments were issued in accordance with the existing laws and regulations, since the Tax Reform Act of 1997 deleted the phrase "exempt from all taxes" from Sections 24(c)(3) and 25(a)(6)(b) (now Section 27(D)(3) and Section 28(a)(7), respectively), thus petitioner is no longer exempt from the said taxes.[21] Respondent also refutes the

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[16] *Id.*, pp. 176 to 177.
[17] *Id.*, pp. 177.
[18] *Id.*, pp. 177-178.
[19] *Id.*, pp. 178.
[20] *Id.*.
[21] *Id.*, pp. 179-182, 189-196.

assertion of petitioner that the assessment was in violation of the due process requirements of Revenue Regulation No. 12-99, and that petitioner was given ample opportunity to rebut the findings of the revenue officers.[22] The allegation made by petitioner that the examiners failed to conduct any audit of the books of account, making the findings mere presumptions, is also being denied by respondent.[23] Citing the use of the income tax returns, as well as the audited financial statements, respondent argues that it is already sufficient to be considered a legal and actual basis of a valid assessment.[24]

As petitioner failed to file the required returns for the GRT, DST and BPRT, respondent states that it is only proper that petitioner be held liable to pay 25% surcharge and 20% deficiency and delinquency interest from the date of the Formal Letter of Demand.[25]

After studying the merits of each party's arguments, the Court *En Banc* finds no merit in the Petition for Review.

As the issues are related, the Court *En Banc* finds it better to discuss the allegation of petitioner that it was exempt from GRT, DST and BPRT during the taxable year 1998, first.

In this regard, the Court *En Banc* finds that petitioner's arguments are not tenable. As discussed in the Decision dated June 25, 2010, the Court in Division stated that:

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[22] *Id.*, pp. 185-186.
[23] *Id.*, pp. 186.
[24] *Id.*, pp. 188-189.
[25] *Id.*, pp. 196.

"Petitioner argues that it is exempt from Gross Receipts Tax on its regular onshore income, exempt from Documentary Stamp Tax on its loans made to residents and certificate of time deposits made by resident depositors, and exempt from Branch Profit Remittance Tax based on existing law and jurisprudence.

Petitioner is wrong.

This Court ruled in *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue* that in view of the deletion of the phrase "exempt from all taxes" from the applicable provision of the NIRC of 1997, onshore income on FDCU transaction is now subject to taxes under the NIRC of 1997; the pertinent portions of the said Decision read:

> '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 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 other taxes for that matter.'

Based on the foregoing, with the deletion of the phrase 'exempt from all taxes' from Section 27(D)(3) of the NIRC of 1997, petitioner's FCDUs are now subject to all taxes in addition to the ten percent (10%) final tax. Clearly, petitioner's FCDU transactions, which are the subject of the instant petition, are now subject to GRT, DST, and BPRT."[26]

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[26] *Id.*, pp. 84-85.

A study of the historical background of the provisions involving the taxation of FCDUs has proved to be enlightening. Prior to the amendments by the National Internal Revenue Code of 1997 ("1997 NIRC"), Section 25 (a)(6)(B) of the 1977 Tax Code states that:

> "(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."

Revenue Regulations ("RR") No. 10-76, as amended by RR No. 14-77, which implements this provision, provides in Section 3 that:

> "Sec. 3. Rates of Income Tax to be Imposed. — The rates of income tax to be imposed, which shall be in lieu of all other taxes such as, but not limited to privilege tax, gross receipts tax, documentary and science stamp tax and profit remittance tax".

Thus, it was clear that under the 1977 Tax Code, FCDUs were exempt from paying all other taxes including gross receipts tax. However, Republic Act

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No. 8424[27] deleted the phrase "in lieu of all taxes," in Section 28(7)(b), thereby amending Section 25 (a)(6)(B) of the 1977 Tax Code, which states:

> "SEC. 28. Rate of Income Tax on Foreign Corporations. —
>
> (A) Tax on Resident Corporations
> xxx xxx xxx
>
> (7) Tax on Certain Incomes Received by a Resident Foreign Corporation. —
>
> (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, 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."

Glaring is the fact that the phrase "exempt from all taxes" was deleted. By the clear import of the amendment, FCDUs no longer enjoyed the exemption under the 1977 Tax Code. The legislative intent was quite clear when it removed the exemption. Therefore, RR No. 10-76, which implemented the old law was no longer applicable and FCDUs became liable to pay gross receipts tax on its

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

interest income from foreign currency loans upon 1997 NIRC's effectivity date, which was on January 1, 1998.

Subsequently, RA No. 9294 otherwise known as "An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs)" 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 9294, on May 20, 2004, FCDUs were not exempt from the payment of all other taxes, as provided in *Section 27(D)(3) and Section 28(A)(7) of the NIRC of 1997.* Otherwise, common sense dictates that Congress will not restore an exemption that already exists.[28]

Thus it is clear that while FCDUs once again enjoy said exemption, the transactions during taxable year 1998 were not exempt from tax.

On the issue of whether or not the assessment for the deficiency gross receipts tax (GRT), documentary stamp tax (DST), and branch profit remittance tax (BPRT) for taxable year were issued within the prescriptive period allowed by law, the Court *En Banc* finds that respondent was correct in applying Section 222 of the 1997 NIRC, which provides for a ten (10)-year assessment period.

As explained by the Decision dated June 25, 2010:

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[28] Union Bank of the Philippines v. Commissioner of Internal Revenue, CTA Case No. 7874, March 29, 2011.

The period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, which reads:

> '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.'

From the foregoing , the three-year period to assess internal revenue taxes commences from the date of actual filing of the return; or from the last day prescribed by law for the filing of such return, whichever comes later. In other words, if the return was filed earlier than the last day allowed by law, the period to assess shall still be counted from the last day prescribed for filing of the return. However, if the return was filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed.

This Section of the NIRC of 1997 admits however of some exceptions, to wit:

> '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.' *(Emphasis supplied)*

Section 203 presupposes that a return is required to be filed by law because the three-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 when no return is filed.

As correctly pointed out by respondent, perusal of the records proves that petitioner's Quarterly Percentage Tax Returns do not show a GRT on its regular onshore income. Likewise, in petitioner's Documentary Stamp Tax Declaration (BIR Form No. 2000), there was no entry for the loans made to residents and certificate of time deposits made by resident depositors. In fact, petitioner failed to prove that it subjected its FDCU onshore income to GRT and its loans made to residents and certificate of time deposits made by resident depositors to DST for taxable year 1998. As regards petitioner's Branch Profit Remittance Tax, although petitioner filed Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W), no entry was made for Branch Profit Remittances.

In *Commissioner of Internal Revenue vs. Republic Cement Corporation (as surviving corporation in a merger involving Fortune Cement Corporation)*, this Court ruled that the absence of entries in the column for Final Withholding Tax in the monthly remittance returns of income tax withheld should be treated as omission to file returns within the purview of the ten-year assessment period under Section 222(a) of the NIRC of 1997.

Since there was an absence of FDCU onshore income declaration in petitioner's Quarterly Percentage Tax Returns and considering that the loans made to its depositors were not reflected on its Documentary Stamp Tax Declarations for taxable year 1998, then these are tantamount to omission to file the said returns. The said omissions warrant the application of the ten-year assessment period under the NIRC of 1997, within which respondent can assess petitioner for deficiency GRT and DST.

In the case of its Branch Profit Remittance Tax for the year 1998, since there was no entry pertaining to BPRT in the returns filed, then petitioner is considered not to have filed the corresponding BPRT Return for its FCDU in 1998. The same circumstance calls for the application of the ten-year prescriptive period.

Petitioner argues that it did not disclose the transactions subject to GRT, DST and BPRT on its belief that it was exempt from tax, and was not legally obligated to do so. It wants the Court to believe that it was a simple omission at worse, not meriting the imposition of the ten (10)-year prescriptive period. This line of argument cannot be accepted. It was clear from the legislative actions that the exemption was revoked upon the effectivity of RA 8424 on January 1, 1998. When the law is clear, as it was in this case where the exemption was deleted, there is no need to interpret.

The Courts have an obligation to apply the law. The mere fact that there was an explicit deletion of the exemption should have already warned respondent of the change in policy. Since these transactions were no longer exempt, petitioner should have known that these must be reported in their tax filings, and that it was subject to the corresponding tax rates. When it failed to report these transactions, the imposition of the ten (10)-year prescriptive period became proper.

In this case, petitioner's omission in its filing of the corresponding entries in the BIR forms cannot be deemed a "simple omission" as the transactions involved substantial sums. With such large sums, it is evident to the Court *En Banc* that the Court in Division was correct in stating that such omissions equal to the failure to file, as contemplated in Section 222 (a) of the 1997 NIRC. Thus while not all omissions warrant the ten (10)-year prescriptive period, this was not one of those situations.

As for the issue of the procedural due process, the Court *En Banc* agrees with the Court in Division in stating that there was no violation of procedural due process pertaining to the assessment, to wit:

> "Petitioner claims that respondent issued the Formal Assessment Notice in violation of the procedural due process requirements of Revenue Regulations No. 12-99.
>
> Respondent counter-argues that the Preliminary Assessment Notice, the Revised Preliminary Assessment Notice, the Formal Letter of Demand, and the respective assessment notices were all issued in accordance with Revenue Regulations No. 12-99.
>
> This Court agrees with respondent.
>
> Due process in this jurisdiction refers to the right of petitioner to be informed of the legal and factual findings of respondent as regards its deficiency taxes, and the opportunity to be heard through protest. Failure on the part of respondent to fully afford petitioner of the said right constitutes a violation of the procedural due process that would nullify the assessment issued against petitioner.
>
> It cannot be denied that petitioner was duly informed of the assessment issued against it through respondent's Preliminary Assessment Notice Revised Preliminary Assessment Notice, Formal Letter of Demand, and respective assessment notices, which were admittedly received by petitioner.
>
> Moreover, petitioner was given the opportunity to contest the said assessment *via* its Protest Letter and Protest Letter to the Revised Preliminary Assessment Notice.
>
> Undoubtedly, petitioner was afforded due process.

The Court *En Banc* must now tackle the prescriptive period involving the collection of assessed taxes. This particular issue has already been brought up in the "Motion for Reconsideration (with Motion to Submit Supplemental Evidence)"[29] filed on July 15, 2010 to the Court in Division, and has been resolved in the Resolution dated February 14, 2011.

Thus, the Court *En Banc* sees no justifiable reason to deviate from the decision of the Division.

WHEREFORE, the instant Petition for Review is hereby **DENIED.** Accordingly, both the Decision dated June 25, 2010 and the Resolution dated February 14, 2011 are hereby **AFFIRMED**.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

[29] *Records*, pp. 772-774.

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice