REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

ALLIED BANKING CORPORATION,
Petitioner,

- versus -

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7480

Members:

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

Promulgated:
AUG 0 9 2007 · 10:15Am

x -x

DECISION

CASANOVA, J.:

The instant Petition for Review seeks for the reversal of respondent's decision which denied petitioner's protest against the documentary stamp tax (DST) assessment of P52,920,660.18 on its Foreign Currency Deposit Unit (FCDU) for taxable year 2000.

The pertinent facts, as stipulated by the parties, are summarized as follows:

Allied Banking Corporation (Petitioner) is a duly licensed banking institution organized and existing under the laws of the Philippines. Its principal office address is at Allied Bank Center, 6754 Ayala Avenue, Makati City.

Commissioner of Internal Revenue (Respondent) is the government official in charge of the administration and enforcement of the internal revenue laws of the Philippines. Its office address is at the Bureau of Internal Revenue (BIR) National Office Building, Diliman, Quezon City.

148

On July 7, 2005, petitioner received a letter (ref. LN#FCDU-116-DS-00-00034) from respondent informing it that, it failed to file and pay DST in the amount of P49,487,300.13 for the taxable year 2000. Petitioner was requested to pay the deficiency DST within fifteen (15) days from notice. On July 20, 2005, or within the period given, petitioner filed a letter dated July 19, 2005 explaining why it cannot pay the taxes required.

On November 30, 2005, petitioner received a Preliminary Assessment Notice (PAN) dated November 07, 2005 from respondent wherein petitioner's FCDU was assessed for deficiency DST based on Section 180 of the National Internal Revenue Code of 1997 (NIRC). Under the PAN, petitioner was required to present in writing its side of the case within fifteen (15) days from receipt thereof; otherwise, it shall be considered in default. On December 15, 2005, petitioner presented its side through the letter dated December 12, 2005.

On December 28, 2005, petitioner received a Formal Letter of Demand dated November 16, 2005 demanding payment of deficiency DST in the total amount of P51,407,263.55. On January 12, 2006, petitioner filed its protest. On February 27, 2006, petitioner, in compliance with Section 228 of the NIRC and Revenue Regulations No. 12-99, informed the BIR that the primary issue raised in the protest is legal in nature and does not involve factual issues for which supporting documents are necessary.

On March 31, 2006, petitioner received the Final Decision on Disputed Assessment (Decision) denying its protest and upholding the assessment, computed as follows:

Time Deposit (Per Third Party Information)		$	293,132,000.00		
Bills Payable			52,151,000.00	$	345,283,000.00
PDS Weighted Average Rate				P	44.1938
Total					15,259,367,845.40
DST Rate (Section 180, NIRC)				P	0.30/200
DST Due Thereon				P	22,889,051.77
Add: 25% Surcharge (non-filing)		P	5,722,262.94		
20% Interest from 1/10/2001 to 4/30/2006	106.09590%		24,284,345.47		
Compromise			25,000.00		30,031,608.42
Total Tax & Penalties				**P**	**52,920,660.18**

(149)

Thus, respondent demanded payment of the same as follows:

> "It is requested that your aforesaid deficiency documentary stamp tax liabilities be paid immediately upon receipt hereof, inclusive of penalties incident to delinquency. This is our final decision. If you disagree, you may appeal this final decision with the Court of Tax Appeals within thirty (30) days from date of receipt hereof, otherwise our said deficiency documentary stamp tax assessment shall become final, executory and demandable."

Hence, petitioner filed the instant Petition for Review on May 2, 2006[1].

Considering that the main issue presented before this Court is purely legal, both parties did not present any witness and submitted the case for decision upon submission of their respective memoranda.

The following issues are submitted to this Court for resolution, *viz*:

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

B. Whether or not the assessment has prescribed.

Before deciding on the first issue, we must look at the provision prior to the amendment introduced by the Tax Reform Act of 1997. Section 24(e)(3) of the NIRC of 1977[2] provided that income from FCDU transactions was "exempt from all taxes," to wit:

> "**Section 24.** *Rates of Tax on Domestic Corporations.* –
>
> (e) *Tax on certain incomes derived by domestic corporations.* —
>
> (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, 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 depository system units and other depository bank 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 used income tax payable by banks: *Provided*, That interest income from foreign currency loans granted by such

---

[1] April 30, 2006, the last day for filing the Petition for Review, falls on a Sunday while May 01, 2006 is Labor Day, a regular holiday.

[2] Presidential Decree No. 1158 dated June 03, 1977

> depository banks under said expanded system to residents (other than off-shore 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 transactions with depository banks under the expanded system shall be exempt from income tax." [Underscoring supplied]

With the advent of the Tax Reform Act of 1997[3] (NIRC), the phrase "exempt from taxes" has been deleted in Section 27(D)(3), to wit:

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

Notwithstanding the deletion, petitioner argues that income from FCDU transactions are still exempt from all other taxes since the statute removing the exemption specifically provided the kind of tax being imposed – the 10% final tax. In other words, the 10% final tax is imposed in lieu of all other taxes on the FCDU. Thus, petitioner concludes that the DST being assessed against it does not have basis under Section 27(D)(3).

We find petitioner's argument unmeritorious.

Income derived by depository banks from FCDU transactions was formerly "exempt from all taxes." When the legislature deleted the phrase "exempt from all taxes", it intended to subject such income not only to the 10% final tax, but to all other taxes as well. This conclusion is in accord with the rule of statutory construction that –

[3] Republic Act No. 8424

> "As a rule, the amendment by deletion of certain words or phrases in a statute indicates that the legislature intended to change the meaning of the statute, for the presumption is that the legislature would not have made the deletion had the intention been not in effect a change in its meaning. The amended statute should accordingly be given a construction different from that previous to its amendment."[4]

Moreover, tax exemptions cannot be created by mere implication, but must be clearly provided by law. In case of doubt, non-exemption is favored.[5] Accordingly, he who claims an exemption from his share of the common burden of taxation must justify his claim by showing that the legislature intended to exempt him by words too plain to be mistaken.[6] Thus, the imposition of the 10% final tax under Section 27(D)(3) cannot be construed to mean that income derived by depository banks from FCDU transactions is exempt from all other taxes (including DST). The exemption of such income from all other taxes must be clearly and categorically expressed in the law in order to avail of the same.

For failing to prove that it is exempt from all taxes (except the 10% final tax), respondent was correct in assessing petitioner of the applicable DST pursuant to Section 180, to wit:

> "**Section 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

---

[4] *Gloria vs. Court of Appeals* (306 SCRA 287)
[5] Agpalo, Ruben, Statutory Construction, 4h Edition, 1998
[6] *ibid*

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."

Noteworthy is that Section 27(D)(3) was further amended by Republic Act (R.A.) No. 9242[7] restoring the exemption clause, to wit:

"**Section 27.** *Rates of Income Tax on Domestic Corporations.* —

(D) *Rates of Tax on Certain Passive Incomes.* —

(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 nonresidents, offshore banking units in the Philippines, 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 deposit system units and other depository banks under the expanded foreign currency deposit system shall be exempt from all taxes, except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks: *Provided, however*, 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 final tax at the rate of ten percent (10%).

Any income of nonresidents, whether individuals or corporations, from transactions with depository banks under the expanded system shall be exempt from income tax."

However, the rule favoring a prospective construction of statutes is also applicable to statutes which repeal tax laws. Accordingly, where such a statute is not made retroactive, a tax assessed before the repeal is collectible afterwards. And where taxes are levied under a law which is repealed by a subsequent act, unless it appears clearly that the legislature intended the repeal to work retrospectively, it will be assumed that it intended the taxes to be collected according to the law in force when they were levied.[8] Thus, the provisions of R.A. No. 9242 cannot be applied retroactively to taxable year 2000 considering that it took

[7] Date of Effectivity: May 21, 2004
[8] Cooley, Thomas M., The Law on Taxation (Vol. II), § 538 cited in *Co vs. Collector of Internal Revenue* (100 Phil. 464)

effect on May 21, 2004. Taxes imposed under the NIRC can still be collected notwithstanding the passage of R.A. No. 9242.

With respect to the second issue, petitioner argues that the DST assessment for taxable year 2000 against it had already prescribed in accordance with Section 203 since it received the assessment only on July 07, 2005. Section 203 provides:

> "**Section 203.** *Period of Limitation Upon Assessment.* – 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 after the last day prescribed by law for the filing thereof shall be considered as filed on such last day."

We rule in the negative.

The provision cited by petitioner contains an exception, *viz,* Section 222(a), to wit:

> "**Section 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 <u>failure to file a return</u>, 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." [Underscoring supplied]

Considering that petitioner is adjudged liable for the DST and that it did not file DST returns, the prescriptive period of ten (10) years applies in this case. Thus, respondent was well within the ten (10) year period within which to assess the petitioner of deficiency DST.

The Court notes, however, that the compromise penalty of P25,000.00 should not have been imposed by respondent. The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying it or not paying it distinctly belongs to the taxpayer.[9] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[10] Considering that the respondent had not shown that petitioner conformed to the imposition of the compromise penalty, the compromise penalty is deleted. Thus, the amount of alleged deficiency DST is recomputed as follows:

Documentary stamps tax due	P 22,889,051.77
Add: 25% surcharge for late payment	5,722,262.94
20% interest (up to 3/31/04)	24,284,345.47
Total amount due	**P 52,895,660.18**

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. The assessment against petitioner for compromise penalty in the amount of P25,000.00 is hereby **CANCELLED** and **SET ASIDE**. However, petitioner is hereby **ORDERED TO PAY** respondent the amount of P52,895,660.18 representing deficiency documentary stamp tax for the taxable year 2000, plus 20% deficiency interest accruing thereon until April 30, 2006,[11] and 20% delinquency interest per annum pursuant to Section 249 (C)(3) of the NIRC from May 1, 2006 until the amount is fully paid.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

---

[9] *Philippine Internal Fair, Inc. v Collector of Internal Revenue,* G.R. Nos. L-12928 and L-12932, March 31, 1962 (4 SCRA 774)
[10] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.,* G.R. No. 35266, January 21, 1999 (193 SCRA 86)
[11] Petitioner was given 30 days from receipt of the Decision to pay the deficiency DST

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
Chairman, First Division