REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PRUDENTIAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7372

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

AUG 07 2007

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DECISION

CASTAÑEDA, JR., *J*.:

The instant Petition for Review seeks the withdrawal and cancellation of the Formal Letter of Demand and Assessment Notice dated March 18, 2005, issued by respondent against petitioner for alleged deficiency documentary stamp taxes and gross receipts tax for taxable year 2000, in the amounts of P18,535,368.58 and P2,748,096.58, respectively.

Prudential Bank (Petitioner) is a banking corporation organized and existing under the laws of the Philippines. Its office address is at Prudential Bank Building, Ayala Avenue, Makati City.[1]

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[1] Par. 1, Joint Stipulation of Facts and Issues, Records, page 99

Bureau of Internal Revenue, through the Commissioner of Internal Revenue (Respondent), is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Its office address is at the BIR National Office Building, Diliman, Quezon City.[2]

On October 13, 2004, petitioner received from respondent a Preliminary Assessment Notice (PAN) dated September 17, 2004 demanding payment of the alleged deficiency Documentary Stamp Tax (DST) and Gross Receipts Tax (GRT) on petitioner's Foreign Currency Deposit Unit (FCDU) transactions in the amounts of P17,843,698.89 and P2,646,189.61, respectively, inclusive of interest, surcharge and compromise penalty covering taxable year 2000.[3]

On October 26, 2004, petitioner filed its position paper requesting the cancellation of the PAN for lack of legal and factual bases.[4]

On March 21, 2005, petitioner received from respondent a Formal Letter of Demand/Assessment Notice dated March 18, 2005 demanding payment of petitioner's alleged deficiency DST and GRT on its FCDU transactions for taxable year 2000 in the amounts of P18,535,368.58 and P2,748,096.58, respectively.[5]

On April 19, 2005, petitioner administratively protested the Formal Letter of Demand alleging, among others, that petitioner's FCDU transactions

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[2] Par. 2, Joint Stipulation of Facts and Issues, Records, page 99
[3] Annex "A" of the Petition for Review; par. 3, Joint Stipulation of Facts and Issues, Records, page 99
[4] Annex "B" of the Petition for Review; par. 4, Joint Stipulation of Facts and Issues, Records, page 100
[5] Exhibit "A", "A-1", "A-2", "A-3", "A-4", "A-5"

are not subject to any kind of tax, save for the 10% final tax under the pertinent provisions of the National Internal Revenue Code (1997 Tax Code).[6]

Unable to secure an affirmative relief from respondent within the 180-day period, petitioner was constrained to file its Petition for Review on November 15, 2005 pursuant to Section 228 of the 1997 Tax Code.

In his Answer, filed on January 4, 2006, respondent counters that in view of the deletion of the phrase "exempt from all taxes" from Section 28(D)(3) of the National Internal Revenue Code of 1997, petitioner's Foreign Currency Deposit Unit (FCDU) is now subject to GRT and DST under Section 121 and 180 of the 1997 Tax Code.

After trial on the merits, the case was submitted for decision on October 13, 2006.

The issues[7], jointly stipulated by the parties for this Court's resolution, are the following:

> "1. Whether or not petitioner's Foreign Currency Deposit Unit transactions are, save for the 10% final tax, exempt from GRT, DST, and all other kinds of taxes.
>
> 2. Whether or not the respondent's assessment for year 2000 had already prescribed.
>
> 3. Whether or not respondent's assessment notice is arbitrary and without factual basis."

[6] Exhibit "B", "B-1"
[7] Joint Stipulation of Facts and Issues, Records, pages 100-101

First Issue

Petitioner argues that FCDU transactions are exempt from GRT, DST, and all other kinds of taxes on the following grounds:

a) Absent any express repeal by the 1997 Tax Code, the provisions of the Foreign Currency Deposit Act (Republic Act No. 6426) subjecting income from FCDU transactions to 10% final tax and exempting the same from all other taxes remain effective; and

b) Republic Act (R.A.) No. 9294 restoring the tax exemption of OBUs and FCDUs is a curative statute which should be applied retroactively upon the enactment of the 1997 Tax Code.

Prior to the enactment of the disputed provisions of the 1997 Tax Code, Sections 24(e)(3) and 25(a)(6)(B) of the 1977 Tax Code provided:

> "**SECTION 24.** *Rates of tax on domestic corporations.* —
>
> x x x
>
> (e) *Tax on certain incomes derived by domestic corporations.* — x x x
>
> (3) *Tax on income derived under the Expanded Foreign Currency Deposits 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 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." (*Emphasis supplied*)

"**SECTION 25.** *Rates of tax on foreign corporation.* —

(a) *Tax on resident foreign corporations. -*

x x x

(6) *Tax on certain incomes received by resident foreign corporations.* x x x

(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 transactions with depository banks under the expanded system shall be exempt from income tax." (*Emphasis supplied*)

Despite the several amendments undergone by the 1977 Tax Code, the tax exemption privileges of income from FCDU transactions (except for the 10% final tax) remained intact. However, these privileges were removed in the 1997 Tax Code[8], as follows:

> "**SECTION 27.** *Rates of Income Tax on Domestic Corporations.* —
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> x x x
>
> (D) *Rates of Tax on Certain Passive Incomes.* —
>
> x x x
>
> (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."
>
> "**SECTION 28.** *Rates of Income Tax on Foreign Corporations.* —
>
> (A) *Tax on Resident Foreign Corporations.* -
>
> x x x
>
> (7) *Tax on Certain Incomes Received by a Resident Foreign Corporation.* —
>
> x x x
>
> (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

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[8] Effective January 1, 1998

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> 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, 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 of the exemption of FCDU's income from all taxes other than the ten percent (10%) final tax, petitioner still maintains that income from FCDUs are not subject to other taxes imposed under the 1997 Tax Code.

The Court finds petitioner's contention unmeritorious.

As a rule, an 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.[9]

Here, income derived by depository banks from FCDU transactions was formerly "exempt from all taxes." Thus, when the legislature deleted the phrase "exempt from all taxes", it intended to subject such income not only to the ten percent (10%) final tax imposed under Sections 27(D)(3) and 28(7)(b), but to all other taxes as well.

[9] *Gloria vs. Court of Appeals* (306 SCRA 287)

Tax exemptions cannot be created by mere implication, but must be clearly provided by law. In case of doubt, non-exemption is favored.[10] 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.[11] Thus, the imposition of the ten percent (10%) final tax under Section 27(D)(3) and 28(7)(b) of the 1997 Tax Code cannot be construed to mean that income derived by depository banks from FCDU transactions is exempt from all other taxes (including GRT[12] and DST[13]). The exemption of such income from other

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[10] Agpalo, Ruben, Statutory Construction, 4th Edition, 1998

[11] *Ibid.*

[12] **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%
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.

taxes must be clearly and categorically expressed in the law in order to avail of the same.

Lastly, R.A. No. 9294 is not a curative statute. Curative statutes are enacted to cure defects in a prior law or to validate legal proceedings which would otherwise be void for want of conformity with certain legal requirements. They are intended to supply defects, abridge superfluities and curb certain evils. They are intended to enable persons to carry into effect that which they have designed or intended, but has failed of expected legal consequence by reason of some statutory disability or irregularity in their own action. They make valid that which, before the enactment of the statute was invalid. Their purpose is to give validity to acts done that would have been invalid under existing laws, as if existing laws have been complied with. Curative statutes, therefore, by their very essence, are retroactive.[14]

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[13] **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.

[14] *Narzoles, et al. vs. NLRC* (G.R. No. 141959. September 29, 2000)

Under R.A. No. 9294,[15] Sections 27(D)(3) and 28(A)(7)(b) of the 1997 NIRC were amended to restore the tax exemptions of FCDU transactions as follows:

> "**SECTION 27.** *Rates of Income Tax on Domestic Corporations. —*
>
> (D) *Rates of Tax on Certain Passive Incomes. —*
>
> x x x
>
> (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." *(Emphasis supplied)*
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> "**SECTION 28.** *Rates of Income Tax on Foreign Corporations. —*
>
> (A) *Tax on Resident Foreign Corporations. -*
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[15] Dated April 28, 2004 entitled "*An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs), Amending for the Purpose Section 27 (D) and Section 28, Paragraphs (A) (4) and (A) (7) (b) of the National Internal Revenue Code as Amended*" which became effective May 21, 2004.

> (7) *Tax on Certain Incomes Received by a Resident Foreign Corporation.* —
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> x x x
>
> (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 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 depositors 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." (*Emphasis supplied*)

A reading of Sections 27(D)(3) and 28(7)(b) of the 1997 NIRC prior to the amendment shows that no defect existed, as the intention of the legislature to impose a ten percent (10%) final tax on income from FCDU transactions is clear. If a statute is clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation. *Verba legis non est recedendum*. From the words of a statute there should be no departure.[16] Furthermore, there was no indication in R.A. No. 9294 that it was enacted to cure any defect that may have been present in the 1997 Tax

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[16] Agpalo, Ruben, Statutory Construction, 4th Edition, 1998, page 120

Code. Thus, R.A. No. 9294 restoring the tax exemption of income from FCDU transactions cannot be given retroactive effect.

Besides, the rule favoring a prospective construction of statutes is 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.[17] Since Sections 27(D)(3) and 28(A)(7)(b) the 1997 Tax Code expressly subjects income from FCDU transactions to the 10% final tax, and R.A. No. 9294 which repealed the same became effective on May 21, 2004, respondent may still collect the deficiency GRT and DST from petitioner because the taxable year involved (2000) is within the coverage of the 1997 Tax Code.

Second Issue

Petitioner argues that respondent's assessment of GRT and DST had already prescribed under Section 203 of the 1997 Tax Code which reads:

> "**Section 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."

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[17] Cooley, Thomas M., The Law on Taxation (Vol. II), § 538 cited in *Co vs. Collector of Internal Revenue* (100 Phil. 464)

The Court disagrees. Section 222 (a) of the 1997 Tax Code provides the exception to the three (3) year period to assess as follows:

> "**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 failure to file a return, the tax may be assessed, or a preceding 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.
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> x x x"

Since petitioner's omission to file returns for GRT and DST for its FCDU transactions had been established and such omission was discovered during respondent's investigation, the assessments were clearly issued by respondent within the applicable ten (10)-year period to assess. Hence, respondent's assessment against petitioner for deficiency GRT and DST for taxable year ending March 2000 has not yet prescribed.

Third Issue

Petitioner argues that the assessment notices were arbitrary and without factual basis because no actual audit of petitioner's FCDU transactions were conducted. According to petitioner's witness, Edwin Marasigan, the bases of the assessment were insufficient because these were merely taken from the figures indicated in petitioner's audited financial statements.[18]

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[18] Exhibit "D"; *Records*, page 193

The power of respondent to make assessments based on the "best evidence obtainable" is provided in Section 6(B) of the 1997 Tax Code which reads:

> "**Section 6.** *Power of the Commissioner to Make assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.* –
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> x x x
>
> (B) *Failure to Submit Required Returns, Statements, Reports and other Documents.* - When a report required by law as a basis for the assessment of any national internal revenue tax shall not be forthcoming within the time fixed by laws or rules and regulations or when there is reason to believe that any such report is false, incomplete or erroneous, the Commissioner shall assess the proper tax on the best evidence obtainable.
>
> In case a person fails to file a required return or other document at the time prescribed by law, or willfully or otherwise files a false or fraudulent return or other document, the Commissioner shall make or amend the return from his own knowledge and from such information as he can obtain through testimony or otherwise, which shall be *prima facie* correct and sufficient for all legal purposes."

To give effect to the Commissioner's power to make assessments, Section 5 of the 1997 Tax Code empowers the Commissioner to obtain information to be used as basis for his assessments as follows:

> "**Section 5.** *Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:
>
> (A) **To examine any book, paper, record, or other data which may be relevant or material to such inquiry**;
>
> (B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and

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instrumentalities, including the *Bangko Sentral ng Pilipinas* and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code." (*Emphasis supplied*)

Respondent was clearly within his power to use petitioner's audited financial statements as basis in making his assessments inasmuch as petitioner's audited financial statements constitute data which may be relevant or material to respondent's inquiry. In *Commissioner of Internal Revenue vs. Hantex Trading Co., Inc.*[19], the Supreme Court ruled:

[19] G.R. No. 136975. March 31, 2005

"The "best evidence" envisaged in Section 16 of the 1977 NIRC, as amended, [now Section 6 (B) of the 1997 Tax Code] includes the corporate and accounting records of the taxpayer who is the subject of the assessment process, the accounting records of other taxpayers engaged in the same line of business, including their gross profit and net profit sales. Such evidence also includes data, record, paper, document or any evidence gathered by internal revenue officers from other taxpayers who had personal transactions or from whom the subject taxpayer received any income; and record, data, document and information secured from government offices or agencies, such as the SEC, the Central Bank of the Philippines, the Bureau of Customs, and the Tariff and Customs Commission.

The law allows the BIR access to all relevant or material records and data in the person of the taxpayer. It places no limit or condition on the type or form of the medium by which the record subject to the order of the BIR is kept. The purpose of the law is to enable the BIR to get at the taxpayer's records in whatever form they may be kept. Such records include computer tapes of the said records prepared by the taxpayer in the course of business. In this era of developing information-storage technology, there is no valid reason to immunize companies with computer-based, record-keeping capabilities from BIR scrutiny. *The standard is not the form of the record but where it might shed light on the accuracy of the taxpayer's return.*"

Thus, the assessment notices issued by respondent had legal and factual basis as required in Section 228 of the 1997 Tax Code which pertinently reads:

"**Section 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void."

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.[20] 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.[21] Considering that 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:

GROSS RECEIPTS TAX		
Gross Onshore Income per return	P	24,320,311.00
Rate of tax		5%
Tax due	P	1,216,015.55
Add: 25% Surcharge (non-filing)		304,003.89
20% interest from 4-20-2000 to 3-31-2005		1,203,077.14
TOTAL TAX & PENALTIES DUE	**P**	**2,723,096.58**

DOCUMENTARY STAMP TAX		
Loans	P	1,869,268,584.00
Time Deposits		3,621,837,100.00
Bills Payable		5,665,464.00
Total	P	5,496,771,148.00
DST Rate		.03/200
DST due thereon	P	8,245,156.72
Add: 25% surcharge (non-filing)		2,061,289.18
20% interest from 4-10-2000 to 3-31-2005		8,203,922.69
TOTAL TAX DUE	**P**	**18,510,368.59**

WHEREFORE, the Petition for Review is hereby **DENIED** for lack of merit. Petitioner is hereby **ORDERED TO PAY** respondent the deficiency

[20] *Philippine Internal Fair, Inc. v Collector of Internal Revenue,* G.R. Nos. L-12928 and L-12932, March 31, 1962 (4 SCRA 774)

[21] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.,* G.R. No. 35266, January 21, 1999 (193 SCRA 86)

documentary stamp taxes and gross receipts tax for the taxable year 2000 in the amounts of P18,510,368.59 and P2,723,096.58, respectively, plus 20% delinquency interest per annum pursuant to Section 249(C)(3) of the NIRC from April 1, 2005 until the amount is fully paid.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest 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.

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Justice