REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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UNITED COCONUT PLANTERS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7259

Members:

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

Promulgated:
AUG 06 2009; 9:20am

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DECISION

BAUTISTA, *J.*:

The Petition for Review seeks the cancellation and withdrawal of the assessment for alleged deficiency Gross Receipts Tax, inclusive of interest and penalties, in the amount of **ONE HUNDRED TWELVE MILLION TWO HUNDRED EIGHTY THOUSAND NINE HUNDRED FIFTY-FOUR AND 88/100 PESOS (P112,280,954.88)** for taxable year 2000.

United Coconut Planters Bank (Petitioner) is a local commercial banking corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the UCPB Building, Makati Avenue, Makati City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue empowered to perform the duties of said office including, among others, the power to issue deficiency tax

[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues, docket, p. 107.

assessments against taxpayers, and to decide assessment protests. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, Agham Road, Diliman, Quezon City.

On June 9, 2004, respondent issued a Formal Letter of Demand[2] and Assessment Notice[3], assessing petitioner for deficiency Gross Receipts Tax (GRT), inclusive of increments on its Foreign Currency Deposit Unit (FCDU) for taxable year 2000 in the amount of P112,280,954.88, the details of which are as follows:

Onshore Income - FCDU	P 1,157,032,786.00
Rate of Tax	5%
Deficiency GRT	P 57,851,639.30
Less: Tax Paid	-
Deficiency FCDU GRT	P 57,851,639.30
Add: 25% Surcharge	14,462,909.82
Interest (01/26/01 to 07/09/04)	39,941,405.76
Compromise Penalty	25,000.00
Total Deficiency GRT	**P 112,280,954.88**

Respondent explained his findings in the attached Details of Discrepancies[4] in the following manner:

> "Section 2.27 and 2.28 of Revenue Regulations No. 10-98 in implementing the provisions of Section 27(D)(3) of the Tax Code of 1977 states:
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> > '**(C) Taxation of Income of an FCDU or OBU from Foreign Currency Transactions.** In general, income derived by an FCDU or OBU from foreign currency transactions with residents of the Philippines, including local commercial banks, local branches of foreign banks, and other depository banks under the foreign currency deposit system shall be subject to a final withholding tax of ten per cent (10%) based on gross income pursuant to Section 27(D)(3) and Section 28 (A)(4) of the Code. Income from foreign currency transactions shall include interest income from lending operations, including bank charges, commissions, service fees, and net foreign exchange transactions gains.

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[2] Exhibit "A".
[3] BIR Records, pp. 30-35.
[4] Exhibit "A-1".

> Section 27(D)(3) amended the provision of Section 24(e)(3) and deleted the 'exempt from all taxes' phrase. An excerpt of the Final Decision dated March 2, 2004 of the Commissioner of Internal Revenue on disputed assessment of gross receipts tax in the matter of protest of the EXPORT AND INDUSTRY BANK is quoted hereunder:
>
> > 'The implication therefore of the amendment particularly the removal of the 'exempt from all taxes' phrase is that onshore income is now subject to two (2) distinct forms of taxes: one, on income derived therefrom which is subject to a final tax of 10% under Section 27 (D)(3) and two, on gross receipts on the privilege of banks to earn income in all its other activities mentioned herein.'
>
> Section 121 of the Tax Code provides for the liability of banks to gross receipts tax on income derived from all sources within the Philippines which include interest income from lending activities, including commissions, discounts, bank charges, and foreign exchange transactions gains and other items treated as gross income under Section 32 of the said code."

On September 1, 2004, petitioner protested the foregoing assessment by filing a protest letter[5] addressed to the Deputy Commissioner, Large Taxpayers Service. In the said protest, petitioner stated the factual and legal bases supporting its arguments against the subject assessment and prayed that the same be withdrawn and cancelled. On October 29, 2004, petitioner submitted documents in support of its protest letter.[6]

Respondent had one hundred eighty (180) days from October 29, 2004 or until April 29, 2005 within which to resolve the administrative protest as mandated by Section 228 of the NIRC. However, the 180-day prescriptive period lapsed without respondent's resolution of petitioner's protest. In order to protect its interest, petitioner elevated the matter via the instant Petition for Review before this Court on May 27, 2005.

On July 11, 2005, petitioner received a copy of respondent's Final Decision on Disputed Assessment[7] dated June 27, 2005, which denied petitioner's protest and adjusted the total assessed amount to P123,565,960.84, computed as follows:

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[5] Exhibit "B".
[6] Exhibit "C".
[7] BIR Records, pp. 87-89.

Onshore Income per ITR	P	1,157,032,786.00
Tax Rate		5%
Gross Receipts Tax Due	P	57,851,639.30
Gross Receipts Paid		-
Deficiency Gross Receipts Tax	P	57,851,639.30
Add: 25% Surcharge		14,462,909.82
20% Interest from 1/26/01 to 6/30/05		51,226,411.72
Compromise Penalty		25,000.00
Total Amount Due & Payable	**P**	**123,565,960.84**

In his Answer[8] filed on August 26, 2005, respondent interposed the following Special and Affirmative Defenses:

"6. Petitioner's FCDU onshore income is now subject to gross receipts tax in view of the deletion of the phrase 'exempt from all taxes' from Section 27(D)(3) of the NIRC of 1997 [ING Bank (Manila Branch) vs. Commissioner of Internal Revenue, C.T.A. Case No. 6017, March 11, 2002].

7. Petitioner was not denied due process of law. He was sufficiently informed of the factual and legal bases of the assessment as shown by the fact that it was able to discuss these lengthily in its protest to the assessments and in this Petition.

8. Petitioner conducted audit/investigation of the Petitioner's books. The assessment for deficiency GRT arose from the fact that Petitioner failed to quantify the actual interest income subject to GRT at rates lower than 5%, thus, the 5% rate was imposed on its interest income.

9. All presuppositions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671).* It is incumbent upon the taxpayer to prove the *contrary (Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments."

During trial, petitioner formally offered Exhibits "A" to "L", inclusive of submarkings; while respondent was declared to have waived his right to present evidence.[9]

The case was submitted for decision on August 8, 2008, taking into consideration the parties' Memoranda both filed on August 4, 2008.

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[8] Docket, pp. 60-61.
[9] Resolution dated June 4, 2008, docket, p. 281.

The parties stipulated the following factual and legal issues[10] for this Court's resolution:

"1. Whether or not Respondent's right to assess Petitioner for alleged deficiency Gross Receipts Tax for taxable year 2000 has prescribed;

2. Whether or not the Formal Letter of Demand and Assessment Notices dated 9 June 2004, were issued contrary to the procedural due process requirements under Revenue Regulations No. 12-99;

3. Whether or not Petitioner's FCDU onshore income for taxable year 2000 is subject to Gross Receipts Tax in view of the deletion of the phrase 'exempt from all taxes' from Section 27(D) of the National Internal Revenue Code of 1997;

4. Whether or not Petitioner's FCDU is exempt from Gross Receipts Tax;

5. Assuming *arguendo* that Petitioner's FCDU is not exempt from Gross Receipts Tax, whether or not it is liable for any deficiency Gross Receipts Tax;

6. Whether or not Respondent correctly imposed a 25% surcharge."

The foregoing issues can be summarized into three main issues, namely:

1. Whether or not petitioner's FCDU onshore income is exempt from payment of Gross Receipts Tax;
2. Whether or not respondent's right to assess petitioner for deficiency Gross Receipts Tax for taxable year 2000 has prescribed; and
3. Whether or not respondent correctly imposed a 25% surcharge.

The issues will be addressed in *seriatim*.

Petitioner argues that its FCDU transactions are exempt from Gross Receipts Tax based on existing law and jurisprudence.

Petitioner's argument is untenable.

As early as the case of **ING Bank (Manila Branch) vs. Commissioner of Internal Revenue**[11] promulgated on March 11, 2002, this Court already declared that in view of the deletion of the phrase "exempt from all taxes" from Section 27(D)(3) of the

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[10] Docket, p. 111.
[11] CTA Case No. 6017.

National Internal Revenue Code (NIRC) of 1997, onshore income on FDCU transactions is now subject to GRT. An excerpt of the said Decision states as follows:

> "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.
>
> xxx xxx xxx
>
> It cannot be overemphasized that under the 1997 Tax Code, 'tax exemption from all taxes' relative to FCDUs can no longer be found. Hence, there is no construction to speak of in the first place. Besides, even if there is such a tax exemption, the same should be strictly construed against the taxpayer. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law as implemented by Revenue Regulations No. 10-76 is quite absurd and contrary to sound reasoning."

Inasmuch as the liability for GRT of petitioner's FCDU transactions has been settled, this Court will now rule on the issue of prescription.

The period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, 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. Accordingly, 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 actually filed.

The period for the filing of the GRT Returns is provided by Section 128(A)(1) of the NIRC of 1997, to wit:

> **"SEC. 128. Returns and Payment of Percentage Taxes. —**
>
> **(A) Returns of Gross Sales, Receipts or Earnings and Payment of Tax. —**
>
> **(1) Persons Liable to Pay Percentage Taxes. —** Every person subject to the percentage taxes imposed under this Title shall file a quarterly return of the amount of his gross sales, receipts or earnings and pay the tax due thereon within twenty-five (25) days after the end of each taxable quarter. *Provided*, That in the case of a person whose VAT registration is cancelled and who becomes liable to the tax imposed in Section 116 of this Code, the tax shall accrue from the date of cancellation and shall be paid in accordance with the provisions of this Section."

Pursuant to the afore-quoted provision, petitioner should file its GRT Return on or before the 25th day after the end of each taxable quarter.

Records indicate that petitioner filed its GRT Returns for taxable year 2000 on the following dates:

Exhibit	Quarter	Date Filed
D	First	April 25, 2000
E	Second	July 25, 2000
F	Third	October 25, 2000
G	Fourth	January 25, 2001

Counting from the afore-mentioned dates, respondent had until April 25, 2003, July 25, 2003, October 25, 2003 and January 25, 2004, respectively, within which to assess petitioner for its alleged deficiency GRT. Respondent issued the assailed Formal Letter of Demand and Assessment Notice to petitioner only on June 9, 2004.

Respondent asserts however that petitioner's circumstances fall under the exception to the period of limitation to assess and collect taxes provided in Section 222 of the NIRC of 1997, which is quoted hereunder for easy reference:

> "**SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.** –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided*, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.
>
> xxx xxx xxx"

Petitioner allegedly filed false returns by subjecting portions of its gross onshore income to tax rates of one percent (1%) and three percent (3%), lower than the tax rate of five percent (5%).

Respondent's statement that petitioner filed false returns is wrong. A false return as defined in **Aznar vs. Court of Tax Appeals, *et al.***[12], implies a deviation from the truth, whether intentional or not. And respondent failed to establish the falsity of petitioner's Returns.

Perusal of petitioner's Returns reveals however that petitioner did not subject portions of its onshore income to tax rates of 1%, 3% or even 5%. In fact, based on the evidence presented, petitioner did not subject its FCDU onshore income for taxable year 2000 to Gross Receipts Tax, on the belief that it is exempt from it. Even though petitioner declared in the said Returns tax payments for its income attributable to its regular banking functions, it failed to indicate, much less pay, its GRT liabilities. Such omission in the said Returns is tantamount to non-filing. After all, FCDU and the bank's regular banking unit should be treated separate and that the income of one is not the income of the other. The

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[12] G.R. No. L-20569, August 23, 1974.

earlier cited case of **ING Bank (Manila Branch) vs. Commissioner of Internal Revenue**[13] corroborates this view in this wise:

> "Clearly, from the foregoing, a Foreign Currency Deposit Unit is a separate unit of a local bank or of a local branch of a foreign bank authorized to engage in foreign currency transactions. Also, FCDU funds are treated as separate and distinct from the regular assets and liabilities of the bank and that banks authorized to operate an FCDU are required to maintain separate accounting for its transactions and to prepare separate financial statements covering its funds. xxx the FCDU and the RBU should be treated as separate and that the income of one is not the income of the other."

In the analogous case of **Commissioner of Internal Revenue vs. Republic Cement Corporation (as surviving corporation in merger involving Fortune Cement Corporation)**[14], this Court *En Banc* 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. Quoted hereunder are the following significant parts of the said *En Banc* Decision:

> "An examination of the proffered monthly remittance returns of income taxes withheld covering January to December 1998 discloses that RCC reported compensation and expanded withholding taxes **excluding FWT on interest on foreign loans and fringe benefits.** As shown in the monthly remittance returns, no entries were indicated in the column corresponding to 'final tax' withheld which bolsters the fact that interest on foreign loans and fringe benefits were not subjected to FWT. **The absence of entries in the column for FWT embodied 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 1997 NIRC. If RCC is convinced that it is not liable for final taxes withheld on interest on foreign loans and fringe benefits, it should have at least noted in the returns that these taxes are not applicable.**" (*Emphasis supplied*)

Similarly, in the instant case, there is an absence of FDCU onshore income declaration in petitioner's Quarterly Percentage Tax Returns, tantamount to an omission to file returns; hence, the ten-year assessment period applies. Consequently, respondent's

[13] *Supra.*
[14] CTA EB No. 421, May 29, 2009.

right to assess GRT on petitioner's FCDU onshore income for taxable year 2000 has not prescribed.

This Court will now determine petitioner's liability for the twenty-five percent (25%) surcharge included in the assessment.

Relevant to the resolution of this issue is Section 248 of the NIRC of 1997, which provides:

> "**SEC. 248. Civil Penalties. –**
>
> (A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:
>
> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
>
> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment."

Clearly, petitioner's circumstances fall under Section 248(A)(1) since petitioner failed to file a return for its FCDU transactions. Accordingly, respondent's imposition of a surcharge of 25% is proper.

This Court however finds improper the imposition of a compromise penalty in the amount of P25,000.00 on the assessed deficiency tax.

It is a settled matter that compromise penalties are amounts collected by the Bureau of Internal Revenue in lieu of criminal prosecution for violations committed by taxpayers, the payment of which is based on a compromise agreement validly entered into between the taxpayer and the Commissioner of Internal Revenue.[15]

A compromise implies mutual agreement. Thus, absent any showing that petitioner consented to the compromise penalty, its imposition should not be allowed. As already established, the imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[16]

In the instant case, there is no evidence that petitioner consented to a compromise agreement. Such being the case, respondent cannot validly impose the compromise penalty against petitioner.

In summary, respondent's Formal Letter of Demand and Assessment Notice issued against petitioner are affirmed, save for the cancellation of the P25,000.00 compromise penalty.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **ONE HUNDRED TWENTY-THREE MILLION FIVE HUNDRED FORTY THOUSAND NINE HUNDRED SIXTY AND 84/100 PESOS (P123,540,960.84)**, representing its deficiency Gross Receipts Tax, inclusive of interest and penalties, for taxable year 2000, computed as follows:

Onshore Income-FCDU	P 1,157,032,786.00
Tax Rate	5%
Gross Receipts Tax Due	P 57,851,639.30
Less: Tax Paid	-
Deficiency Gross Receipts Tax	P 57,851,639.30
Add: 25% Surcharge	14,462,909.82
20% Interest from 1/26/01 to 6/30/05	51,226,411.72
Total Deficiency GRT	**P 123,540,960.84**

In addition, petitioner is hereby **ORDERED TO PAY** a delinquency interest equivalent to twenty percent (20%) per annum on the amount of P123,540,960.84 from

[15] Collector of Internal Revenue vs. UST, 104 Phil. 1062.
[16] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., *et al.*, G.R. No. L-35266, January 21, 1991.

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July 11, 2005 until such amount is paid in full, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division