REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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PRUDENTIAL BANK, Petitioner,	**C.T.A. CASE NO. 7371**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 11 2007, 2:00PM

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AMENDED DECISION

CASANOVA, J.:

Before Us is an Amended Petition for Review praying that judgment be rendered ordering the cancellation of respondent's Revised Formal Letter of Demand/ Assessment Notice dated December 12, 2005 demanding payment of P29,134,098.56 and P14,326,180.65 representing alleged deficiency documentary stamp tax (DST) and gross receipts tax (GRT) on its Foreign Currency Deposit Unit (FCDU) transactions for taxable year 2002.

Petitioner, Prudential Bank, is a banking corporation organized and existing under and by virtue of the laws of the Republic of the Philippines with principal office at the Bank of the Philippine Islands Building, Ayala Avenue, Makati City. Petitoner (as absorbed corporation) merged with Bank of the Philippine Islands (as surviving corporation) on December 29, 2005, whereby the entire assets and liabilities of petitioner were transferred and absorbed by the Bank of the Philippine Islands.[1]

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

The facts as culled from the records are as follows:

On June 1, 2004, petitioner received from respondent Letter Notice No. FCDU-116-GRT-DST-001-002[3] informing the former that upon verification, petitioner failed to file and pay the gross receipts tax (GRT) due on its gross onshore income and documentary stamp tax (DST) on loan transactions and deposit substitutes in the respective amounts of P28,885,626.51 and P56,442,841.63. Respondent explained that the above liabilities are based on Section 121 in relation to Sections 27(D)(3) and 28(A)(7)(b), Section 180 of the National Internal Revenue Code of 1997. On June 30, 2004, petitioner filed its answer to respondent's Letter Notice saying, among others, that the assessments for GRT and DST lacks both factual and legal basis; that the transactions and income of the bank's Foreign Currency Deposit Unit (FCDU) transactions, save for the final tax of 10%, are exempt from all taxes on the grounds that: (a) Absent any express repeal by the 1997 Tax Code, the provisions of the Foreign Currency Deposit Act, as amended, still stand; and (b) Republic Act No. 9294, restoring the tax exemption of offshore banking units (OBUs) and FCDUs is a curative statute which should be applied retroactively to the enactment of the 1997 Tax Code.[4]

On October 13, 2004, petitioner received from respondent a Preliminary Assessment Notice[5] dated September 17, 2004, demanding payment of alleged deficiency Documentary Stamp Tax (DST) and Gross Receipts Tax (GRT) on petitioner's Foreign Currency Deposit Unit (FCDU) transactions in the amounts of P59,519,308.97

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[1] Par. 1, Petitioner's Memorandum, CTA Records pp. 339-360
[2] Par. 2, Joint Stipulation of Facts and Issues, CTA Records p. 183
[3] BIR Records pp. 30-31
[4] BIR Records pp. 34-40
[5] Exhibit "A", Rollo 210-212 and BIR Records pp. 60-62

and P30,466,021.68, respectively, inclusive of interest, surcharge and compromise penalty covering taxable year 2002.

On October 26, 2004, petitioner filed its position paper, requesting for the cancellation of the aforesaid Preliminary Assessment Notice for lack of legal and factual bases.[6]

On March 21, 2005, petitioner received from the respondent a Formal Letter of Demand/Assessment Notice dated March 18, 2005 demanding for the payment of petitioner's alleged deficiency DST and GRT on its FCDU transactions for taxable year 2002 in the amounts of P62,719,668.09 and P32,056,541.38, respectively.[7]

On April 19, 2005, petitioner administratively protested the said Formal Letter of Demand alleging, among others, that petitioner's FCDU transactions are not subject to any kind of tax save for the 10% final tax under pertinent provision of the National Internal Revenue Code.[8]

On May 5, 2005, petitioner received from respondent Tax Verification Notice dated April 22, 2005, informing the former that pursuant to petitioner's request for reinvestigation, it has authorized Revenue Officer Myrna Ramirez to verify petitioner's documents it has submitted in support of its allegations stated in its protest letter dated April 15, 2005.[9]

On November 15, 2005, petitioner filed its Petition for Review pursuant to Section 228 of the NIRC 1997.

As a result of respondent's reinvestigation,[10] respondent sent on January 10, 2006, a Revised Preliminary Assessment Notice[11] and a Revised Formal Letter of Demand[12] dated December 8, 2005 and December 12, 2005, respectively, reducing the previously assessed amounts from P62,719,668.09 (DST) to P29,134,098.56 and P32,056,541.38 (GRT) to P14,326,180.65, the details of computation[13] are as follows:

Assessment Notice No. LTS-LN # FCDU-116-PM-GRT-02-00001-05-00239

GROSS RECEIPTS TAX

[6] Exhibit "B", Rollo 213-220 and BIR Records pp. 66-73
[7] Exhibit "C", Rollo 221-225 and BIR Records pp. 74-79
[8] Exhibit "D", Rollo 226-233 and BIR Records pp. 96-103
[9] BIR Records p. 104
[10] BIR Records, pp. 144-145
[11] Exhibit "E", Rollo 234-236 and BIR Records pp. 177-180
[12] Exhibit "F", Rollo 237-241 and BIR Records pp. 168-172
[13] BIR Records, p. 172

Gross Onshore Income [per ITR-FCDU Statement of Income]			P 154,098,325.00
Rate of tax (Section 121, NIRC)			5%
Gross Receipts Tax due thereon			7,704,916.25
Add: 25% Surcharge (non-filing)	P 1,926,229.06		
20% Interest from 1-20-2003 to 1-31-2006 [.60611111]	4,670,035.34		
Compromise Penalty	25,000.00		
		6,621,264.40	
Total Tax & Penalties			**P 14,326,180.65**

Assessment Notice No. LTS-LN # FCDU-116-PM-DS02-00001-05-00238

DOCUMENTARY STAMP TAX			
Time Deposits [per Third Party Information]	$171,702,000.00		
Bills payable [per Third Party Information]	$29,999,000.00	$	201,701,000.00
PDS weighted average rate			51.6036
Total		P	10,408,497,723.60
DST Rate [Section 180, NIRC]			.30/200
Add: 25% Surcharge (non-filing)	P 3,903,186.65		
20% Interest from 1-05-2003 to 1-31-2006 [.61444444]	9,593,165.33		
Compromise Penalty	25,000.00		13,521,351.98
Total Tax & Penalties		**P**	**29,134,098.56**

Accordingly, on March 23, 2006, petitioner filed its Amended Petition for Review[14] alleging that: (1) absent any express repeal by the 1997 NIRC, as amended, the provisions of the Foreign Currency Deposit Act subjecting FCDU transactions to 10% final tax and exempting the same from all other taxes remain effective; (2) Republic Act 9294, restoring the tax exemption of Offshore Banking Units (OBUs) and FCDUs is a curative statute which should be applied retroactively effective upon the enactment of the 1997 Tax Code, and (3) the amount indicated in respondent's Formal Letter of Demand/Assessment Notice is arbitrary and lacks factual basis.

For his part, respondent, in his Amended Answer filed on March 27, 2006, interposed the following defenses:

> "2. He SPECIFICALLY DENIES the allegations contained under the headings "Grounds for Petition" and "Discussion" of the Petition for being, as a whole, mere opinions, arguments, gratuitous assertions and erroneous conclusions or interpretations of fact and/or law, the truth of the matter being that with the advent of the

[14] CTA Records pp. 94-151

Tax Reform Act of 1997, the phrase "exempt from taxes" has been deleted in Section 28(A)(7)(b), to wit:

> "(b) Income Derived under the Expanded Foreign [C]urrency 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 depositor 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."

In the case of *ING BANK (Manila Branch) vs. Commissioner of Internal Revenue, CTA Case No. 6017,* promulgated on 11 March 2002, this Honorable Court ruled:

> "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 the 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 of deletion of certain words of 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 said 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.
>
> We however agree with Petitioner's contention that a mere reading of Section 28(A)(7)(b) of the 1997 Tax Code discloses that there are no words therein clearly imposing other taxes aside from the 10% final tax. Nonetheless, the provision on the payment of the branch profit remittance tax is found under Section 28(A)(5) of the Tax Reform Act of 1997, which we quote below:

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> "(5) Tax on Branch Profit Remittances. – Any profit remitted by a branch to its head office shall be subject to a fifteen percent (15%) which shall be based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof (except those activities which are registered with the Philippine Economic Zone Authority). The tax shall be collected and paid in the same manner as provided in Sections 57 and 58 of this Code: Provided, That interests, dividends, rents, royalties, including remuneration for technical services, salaries, wages, premiums, annuities, emoluments or other fixed or determinable annual, periodic of casual gains, profits, income and capital gains received by a foreign corporation during each taxable year from all sources within the Philippines shall not be treated as branch profits unless the same are effectively connected with the conduct of its trade or business in the Philippines."
>
> Prescinding from the above law, a branch profit remittance tax is a tax on any profit remitted by a branch to its head office. Provided it is effectively connected with the conduct of its trade or business in the Philippines. Thus, every time a branch (like Petitioner) remits profits to its head office abroad, a 15% tax is due and demandable based on the total profits applied or earmarked for remittance without any deduction for the tax component thereof. However, pursuant to the RP-Netherlands Tax Treaty, Petitioner is subject to a lower rate of 10%.

The law cannot be made any clearer. It bears stressing that the tax on branch profit remittance has not been imposed by mere implication.

Taxes are the lifeblood of the nation, the Court has always applied the doctrine of strict interpretation in construing tax exemptions. Furthermore, a claim of statutory exemption from taxation should [be] manifest and unmistakable from the language of the law on which it is based. Thus, the claimed exemption "must expressly be granted in a statute in a language too clear to be mistaken (*Commissioner of Internal Revenue vs. Court of Appeals, 298 SCRA 83).*

Petitioner would like Us to consider that despite the plain provision of the present law the "exempt from all taxes" still applies to its FCDU income.

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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 Regulation No. 10-76 is quite absurd and contrary to sound reasoning. As We already discussed, the Tax Code mandates payment of tax on branch profit remittance and Petitioner must prove that it is exempt from the payment thereof and not the other way around. As admitted by Petitioner it is decretal that tax exemptions are construed strictly against the taxpayer.

In addition, it must be stressed that the cases relied upon by the Petitioner as well as BIR ruling No. 553-88 are unavailing in the case at bar because of the changes made by the new Tax Code.

Justices Jose C. Vitug and Ernesto D. Acosta, in their book **Tax Law Jurisprudence**, Second Edition [2000], page 86 thereof, simplified the rules on foreign currency transactions, thus:

"<u>Special Rules on Foreign Currency Transactions</u>

i. Income derived by offshore banking units authorized by the Bangko Sentral ng Pilipinas from foreign currency transactions with: (a) Local commercial banks and (b) Branches of foreign banks duly authorized by the Bangko Sentral ng Pilipinas to transact business with offshore banking units are subject to 10% final tax.

ii. Income derived by depository banks under the expanded foreign currency deposit system from foreign currency transactions with: (a) Local commercial banks, (b) branches of foreign banks, and (c) Other depository banks under the expanded foreign currency deposit system are subject to 10% final income tax.

iii. Interest from foreign currency loans granted to residents (by offshore banking units or depository banks under the expanded foreign currency deposit) shall be subject to 10% final tax.

iv. Income of non-residents whether individual or corporation from a depository bank under the expanded currency deposit system shall be subject to a final tax of 7.5%.

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Thus, Petitioner's Foreign Currency Deposit Unit (FCDU) is now subject to Gross Receipts Tax (GRT) and documentary stamp tax (DST) under Section 121 and 180 of the National Internal Revenue Code of 1997 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.

The deletion of the phrase "*exempt from all taxes*" under the National Internal Revenue Code of 1997 can [be] only mean that FCDUs are now subject to all taxes in addition to the 10% final tax.

Although Section 27(D)(3) of the National Internal Revenue Code of 1997 is silent as to the imposition of other taxes aside from the 10% final tax, the provisions such as the imposition of GRT and DST are now applicable to FCDU with the deletion of the phrase "*exempt from all taxes*". The deletion should not be considered as mere inadvertent omission. It must be noted that exemption (or its equivalent provisions such as tax amnesties and tax condonations) are not presumed (*Floro Cement vs. Gorospe, 200 SCRA 480)* and when granted are strictly construed against the grantee (*Luzon Stevedoring vs. CTA G.R. 30232, 19 July 1998).* Said the Supreme Court: The exception contained in the tax statutes must strictly be construed against the one claiming the exemption because the law does not look with disfavor on tax exemption and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted. *(Commissioner of Internal Revenue vs. Kiener Company, Ltd. 65 SCRA 143).* In the instant case, it can be concluded that the elimination of the phrases "exempt for all taxes" from the National Internal Revenue Code of 1997 is an explicit intention of the lawmakers to subject FCDUs to other taxes including GRT and DST to repeal the "in lieu of all taxes" provisions under the Revenue Regulations No. 10-76.

The computation of deficiency taxes was based on copies of FCDU income tax returns and audited financial statements filed by petitioner with the BIR.

Contrary to petitioner's assertion, the assessment for deficiency Documentary Stamp Tax (DST) and Gross Receipts Tax (GRT) for the year 2002 has not yet prescribed. The three-year prescriptive period of assessment under Section 203 of the Tax Code of 1997 refers to a case where a return has been filed. In this case, no DST and GRT Returns were filed by petitioner covering its Foreign Currency Deposit Unit (FCDU) transactions. The assessment on petitioner for DST and GRT on FCDU transactions is not covered by said provision but rather under Section 222 of the Tax Code because

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> of petitioner's failure to file a return. Thus, the prescriptive period for the assessment is ten (10) years.
>
> Assuming for the sake of argument that DST and GRT returns were filed for taxable year 2002, the said returns are evidently returns which are deficient and false, as it did not contain DST and GRT due to petitioner's FCDU transactions. Thus, Section 203 is still inapplicable, as Section 222 governs the prescriptive period for deficiency assessment on false returns.
>
> All presumptions are in favor of the correctness of tax assessments. The good faith of the 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.
>
> Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (*Delta Motors Co., vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995).*[15]

During trial, petitioner presented testimonial and documentary evidence in support of its claim while respondent submitted the case for decision based on the pleadings. Thus, the Court directed the parties to file their respective Memoranda within thirty (30) days from February 6, 2007. Upon receipt of the parties' Memoranda, the instant Petition was submitted for decision on April 4, 2007.

Hence, this Decision.

The jointly stipulated issues for resolution of this Court are as follows:

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 of year 2002 had already prescribed.
3. Whether or not respondent's assessment notice is arbitrary and without factual basis.

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[15] CTA Records, pp. 152-159

First Issue

In its Memorandum filed on March 26, 2007, petitioner submits that there being no express repeal by the 1997 Tax Code, the provisions of the Foreign Currency Deposit Act subjecting FCDU transactions to 10% final tax and exempting the same from all other taxes remains effective. Petitioner is of the belief that the deletion of the exemption of FCDUs income from all taxes other than the 10% final tax under the 1997 Tax Code does not subject FCDUs to other taxes imposed under the Tax Code.

Prior to the amendment introduced by the NIRC of 1997, Section 25(a)(6)(B) of the 1993 NIRC, as amended, provides:

> "(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 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)

With the amendments made to the said provision under the NIRC of 1997, the phrase "exempt from taxes" has been deleted in Section 27(D)(3). To quote:

> "(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

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> 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."

A statute and its amendment should be read together as a whole. An amended act is ordinarily to be construed as if the original statute has been repealed and a new and independent act in the amended form had been adopted in its stead. In other words, the amended act is regarded as if the statute has been originally enacted in its amended form. The amendment becomes a part of the original statute as if it had always been contained therein.[16] The deliberate selection of language other than that used in an earlier act is indicative that a change in the law was intended and it calls for an application. Any other view would be to betray lack of fidelity to the purpose to manifest in the controlling legal provision.[17]

In the case of *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue,* CTA Case No. 6504, October 25, 2006, this Court pronounced that:

> "The phrase "exempt from all taxes" has definitely been 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. Thus, by virtue of such deletion, Revenue Regulations No. 10-76 which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or **other taxes for that matter.** As correctly argued by the respondent, there being no effective exemption to speak [of] in this case, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depository bank under the expanded foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax. Just as a documentary stamp tax is imposed upon the exercise of a privilege, in like manner, the gross receipts tax is imposable when a bank exercises the privilege of engaging in foreign currency transactions or business.
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> Petitioner would like this Court to consider that despite the plain provision of the present tax law, the phrase "exempt from all taxes" still applies to its FCDU income. To reiterate, under the 1997 Tax Code, the

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[16] Estrada vs. Caseda, No. L-1560, October 25, 1949, 84 Phil 791
[17] Sarcos vs. Castillo G.R. No.L- 29755, January 31, 1969, 26 SCRA 853

> phrase "shall be exempt from all taxes" relative to FCDU can no longer be found. Petitioner's insistence that it is still covered by the tax-exempt provision of the old law is quite absurd and contrary to sound reasoning. As this Court had already discussed, the NIRC of 1997 mandates payment of gross receipts taxes **aside from** the 10% final tax on onshore income.
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> xxx xxx xxx." (Emphasis Ours)

The legislative intent to remove the all encompassing exemption of FCDUs income from taxation is made manifest and ought to be enforced so as to give life to the spirit of the law. This intent is shown from a review of the Transcript of the Senate Session on the deliberations conducted on August 11, 1997 concerning the amendment on the taxability of FCDUs. The pertinent portion of which is hereunder quoted:

> "Senator Angara: Yes, Mr. President. Let me move to my next point,and that is the lifting of the preferential tax treatment of FCDUs as well as OBUs.
>
> Mr. President, would this not cause some drastic consequences on offshore as well as foreign currency deposits which I understand today are the prime sources of our current account spending? Many of our exporters depend on this FCDUs and OBUs for their foreign exchange needs, and if we remove the preferential tax treatment that we (sic) have been enjoying all these years, are we not going to drive away the foreign currency deposits and OBUs from our shore?
>
> Senator Enrile: Mr. President, money goes to a place where it can make money. Whether we have the tax on FCDUs or OBUs, if depositors can make a margin that is favorable to them, they will be here. Business makes profit because it assumes risk.
>
> I do not subscribe to the theory that these people will run away. In fact, they were saying that because of the announcement we made, on this FCDUs, deposits are flying away from the country. But if we look at the figures, Mr. President, out of a total P17 billion or so, only a little over P200 million left the country. But, I think, this P200 million left the country to pay for obligations in order to shave off a potential increase in the peso equivalent of the

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> foreign currency obligation, and not because of the effort to tax FCDUs. That is one.
>
> Two, we are not discussing here a problem of competition between pesos and dollars or deutschmark or francs. We are talking here of equity in taxation, Mr. President. These are the more affluent members of the taxable community and yet, they get away with their tax burden. Another thing that I cannot take is, as member of this Senate and as member of the community, that we should tax depositors of our own currency in banks and we exclude from taxation depositors of foreign currencies. We are insulting our own currency.
>
> xxx xxx xxx"

Section 27(D)(3) of the 1997 NIRC, as amended is clear and free from doubt and there is thus, no room for construction. It has been repeatedly declared that where the law speaks in clear and categorical language, there is only room for application.[18] For nothing is better settled than that the first and fundamental duty of courts is to apply the law as they find it, not as they like it to be. Fidelity to such a task precludes construction or interpretation, unless application is impossible or inadequate without it.[19] No process of interpretation or construction need be resorted to where a provision of law peremptorily calls for application. It must see to it that its mandate is obeyed.[20]

Evidently, income derived by a depository bank under the foreign currency deposit system units from foreign currency transactions with local commercial banks shall be subject to a final tax of 10%. By the deletion of the phrase "exempt from all taxes", Revenue Regulations No. 10-76, which implemented the old law is no longer applicable and the payment by petitioner of the 10% final tax on FCDU income does not exempt it from gross receipts tax or other taxes for that matter. Since there is no effective exemption to speak of, then all applicable taxes became due. It must be noted that the ten percent (10%) final tax levied on onshore income under Section 27(D)(3) of the 1997 NIRC pertains to income derived by a depository bank under the expanded

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[18] Cebu Portland Cement Co., vs. Municipality of Naga, G.R. No. 24116, August 22, 1968, 24 SCRA 708, 712
[19] Resins, Inc. vs. Auditor General of the Philippines and the Central Bank of the Philippines, G.R. No. L-17888, October 29, 1968, 25 SCRA 754, 757
[20] Luzon Surety Co., Inc. vs. De Gracia, G.R. No. 25659, October 31, 1969, 30 SCRA 111

foreign currency deposit system. It does not include the gross receipts tax which is a form of excise tax imposed upon the privilege of a bank to engage in foreign currency transaction or business. The same is true with DST, which is in the nature of an excise tax upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[21] The DST is levied on the document itself but it is not intended to be a tax on the document alone. Rather, the DST is levied on the exercise of a privilege of conducting a particular business or transaction through the execution of specific instruments or documents evidencing petitioner's loan transactions or deposit substitutes.[22]

Second Issue

Petitioner averred that respondent made no actual audit of its FCDU transactions and that the preliminary assessment notice and formal letter of demand issued against petitioner were void for failure to state the laws and facts upon which they were based. A perusal of the records showed the contrary. Petitioner was fully apprised of the legal and factual bases of the assessments issued against it and was able to make an intelligent protest against such assessments. It is a well established doctrine that all presumptions 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. No presumption can be indulged that all of the public officials of the state in the various countries who have to do with the assessment of property for taxation will knowingly violate the duties imposed upon them by law.[23]

Third and Last Issue

Petitioner avers that the Formal Letter of Demand/Assessment Notices were issued out of time since pursuant to Section 203 of the 1997 NIRC, as amended, respondent only has three (3) years to assess petitioner for deficiency taxes commencing on the last day prescribed by law for the filing of the return. Respondent, on the other hand, submits that the assessment of deficiency DST and GRT has not prescribed yet. He explains that the three-year prescriptive period of assessment under

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[21] Ibid.
[22] Phil. Home Assurance Corp. vs. Court of Appeals, 301 SCRA 447
[23] Commissioner of Internal Revenue vs. Construction Resources of Asia, Inc. and the Court of Tax Appeals, G.R. No. L-68230, November 25, 1986, 145 SCRA 671

(394)

Section 203 of the 1997 NIRC, as amended refers to a case where a return has been filed. Respondent avers that no DST and GRT returns were filed by petitioner covering its FCDU transactions and that since no such returns were filed, Section 222 of the 1997 NIRC is the operative law that could determine the issue of prescription.

We agree with respondent. The assessment for petitioner's DST and GRT on its FCDU transactions has not yet prescribed. Sections 203 and 222 of the 1997 NIRC, as amended, read as:

> "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."
>
> "SEC. 222. – Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –
>
> (a) In 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"

Section 203 presupposes that a Return is required to be filed by law because the three (3) 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 no return is filed**. Verification of the records clearly showed that petitioner has indeed failed to file the corresponding returns for the DST and GRT on its FCDU transactions. This was further bolstered by the testimony in open court of petitioner's witness, Ms. Priscilla Marasigan, on July 20, 2006. On cross examination, Ms. Marasigan, in her capacity as Assistant Vice-President of the Accounting Division of the

Bank of the Philippine Islands,[24] admitted that no DST or GRT returns on its FCDU transactions were filed by petitioner.

"ATTY. VIRTRUDES:

Q. Ms. Witness, did you file DST Returns for bills payable on time deposit of your FCDU transactions:

MS. MARASIGAN:

A. For FCDU, no.

ATTY. VIRTRUDES:

Q. What about for GRT, Ms. Witness, did you file a Return?

MS. MARASIGAN:

A. Actually, we filed the Return for the regular.

ATTY. VIRTRUDES:

Q. Not for the FCDU transactions?

MS. MARASIGAN:

A. Not for the FCDU.

ATTY. VIRTUDES:

I have no further questions, your Honors."

We have ruled time and again that the law looks with disfavor on tax exemptions and he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted.[25]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DISMISSED** for lack of merit. The compromise penalty amounting to P50,000.00 is hereby cancelled due to the absence of any mutual agreement arrived at by the parties.[26]

ACCORDINGLY, petitioner-Prudential Bank is hereby ordered to pay the reduced amount of P43,410,279.21 representing deficiency Gross Receipts Tax and Documentary Stamp Tax on its Foreign Currency Deposit Unit for taxable year 2002 plus

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[24] the surviving corporation after its merger with Prudential Bank

[25] Wester n Minolco Corporation vs. Commissioner of Internal Revenue, G.R. No. L-61632, August 16, 1983, 124 SCRA 121

[26] Commissioner of Internal Revenue vs. UST, 104 Phil. 1062

20% delinquency interest from February 9, 2006[27] until full payment thereof pursuant to Section 249 (C) of the Tax Code.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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
Chairman, First Division

[27] 30 days from January 10, 2006, the time when petitioner received respondent's Revised Formal Letter of Demand dated December 12, 2005, Exhibit "F", CTA Records p. 237

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