REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

BANGKO SENTRAL NG PILIPINAS, Petitioner,	**CTA CASE NO. 8810**
	Members:
- versus -	**CASTAÑEDA, JR.**, *Chairperson*, **CASANOVA**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 08 2018 3:35 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution is respondent's **Motion for Reconsideration (Re: Decision Promulgated on 05 September 2017)**, filed on September 20, 2017, with petitioner's **Comment/Opposition (On Petitioner's Motion for Reconsideration dated 19 September 2017)**, filed on October 19, 2017.

Respondent moves for the reconsideration of the Decision dated September 5, 2017 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the deficiency final withholding of percentage tax assessment issued against petitioner in the amount of

₱2,371,745,209.10 for taxable year 2009 is **CANCELLED** and **WITHDRAWN**.

SO ORDERED.

Respondent raises the following allegations in his motion:

1. The Court erred in ruling that the period to assess petitioner of deficiency final withholding percentage tax for January to October 2009 has already prescribed; and

2. The Court erred in ruling that Revenue Regulations (RR) No. 2-98 was revoked so petitioner is not liable for deficiency final withholding percentage tax on its interest payments to banks for taxable year 2009.

Respondent claims that petitioner executed a Waiver of the Defense of Prescription on June 13, 2012 which extended the period to assess not later than April 30, 2013 when the Final Assessment Notice (FAN) was issued. Thus, respondent submits that his right to assess petitioner with deficiency Final Withholding Percentage Tax (FWPT) has not prescribed.

Respondent further alleges that the issue on prescription was never raised by petitioner during the administrative audit investigation of its deficiency taxes for 2009. Respondent cites the case of *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue*[1] where it was held by this Court's Third Division that a taxpayer is estopped from belatedly raising issues that repudiate the CIR's jurisdiction in the administrative level after extensive participation therein.

Respondent also argues that RR No. 2-98 was not expressly revoked and that the same is still a valid regulation. Respondent claims that petitioner is liable for the assessed deficiency FWPT as summarized in the following discussions: (1) the withholding of percentage tax is sanctioned by law, (2) interest income payments made by petitioner to banks and other financial intermediaries are subject to gross receipts tax, and consequently FWPT, (3) the

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[1] CTA Case No. 7948, June 5, 2014.

withholding tax regulation does not distinguish between the ultimate beneficial owner of the fund on which interest was paid, (4) and the Final Decision on Disputed Assessment is consistent with the results of reinvestigation as per the FAN.

Respondent explains that there is no conflict between the basic law under Title V – Other Percentage Tax of National Internal Revenue Code (NIRC) of 1997, as amended, and the implementing regulation embodied in RR No. 2-98, as amended.

Respondent claims that under Section 128(A)(3) of the NIRC of 1997, as amended, he is authorized to promulgate a scheme of pre-payment and that there is no vagueness or trace of ambiguity from a reading of the above-mentioned provision as contended by petitioner because it has granted respondent the authority to determine the manner and time of payment of percentage tax. Respondent insists that the withholding tax system in general is a scheme of tax prepayment.

Respondent further alleges that petitioner glossed over the fact that the activities undertaken by petitioner under the Demand Deposit Reserves, Special Deposit Account, SDA-Trust, GS Sold under Agreements to Repurchase, and the Reserve Deposit Liquidity Account are attributable to the business of banking, thus, they are subject to Gross Receipts Tax (GRT) from its income derived from its business or operations.

In addition, the interest allegedly paid from GS Sold Under Agreements to Repurchase is subject to FWPT because it arises from lending activity.

On the other hand, petitioner opposes the foregoing allegations based on the following grounds:

1. The Court correctly ruled that the period to assess petitioner for deficiency FWPT had already prescribed;

2. Respondent erroneously cited *Medicard Philippines, Inc. vs. Commissioner of Internal Revenue.* This Court *En Banc* already reversed said decision, and ruled that the taxpayer was not estopped from questioning the jurisdiction of respondent commissioner;

3. Respondent cannot rely on a document which was not properly identified, nor formally offered to this Court; and

4. The Court's ruling on the repeal of RR No. 2-98 is consistent with law and jurisprudence. Respondent's disagreement and mere submission that RR No. 2-98 is still valid cannot overturn the Court's decision.

A scrutiny of the foregoing allegations shows that they had been substantially considered and addressed in the assailed Decision. In fact, the arguments in respondent's motion are the same as the averments interposed in his Answer filed on July 24, 2014.[2]

The Court recognizes that Section 128 of the NIRC of 1997, as amended, authorizes respondent to prescribe the manner and time of payment of percentage taxes, such as GRT, including a "scheme of tax prepayment". In the assailed Decision, the Court further mentions that there is nothing in the provision which would show that the "scheme of prepayment" excludes the withholding of GRT.

However, the Court finds that the provision imposing final withholding percentage tax under RR No. 2-98 is already inconsistent with the applicable law in this case, Republic Act (RA) No. 9238, which re-imposed GRT on banks beginning January 1, 2004, and its implementing rules embodied in RR No. 9-04.

To further explain, RR No. 2-98 implements RA No. 8424, relative to the withholding of percentage tax or GRT on banks, among others. However, the provision on the imposition of GRT on banks, specifically Section 121 of RA No. 8424, underwent substantial amendments until its re-imposition under RA No. 9238, which ultimately made the withholding of GRT on banks under RR No. 2-98 inconsistent with RA No. 9238.

As previously observed by the Court in the assailed Decision, the two laws provide different GRT rates and different terms of maturity period to which the applicable rates of percentage taxes would be based. Also, RA No. 9238 imposes percentage tax on net

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[2] Docket, Vol. II pp. 529-539.

trading gains which is not included in the provision under RA No. 8424.

In addition, RR No. 9-04 which implements the provisions of RA No. 9238, provides as to how net trading gains together with other gross receipts are computed and reported.

Specifically, based on RR No. 9-04, the amount to be reported in the monthly percentage tax return (GRT) considers the deduction of net trading loss on net trading gain to arrive at the total monthly gross receipts tax due. The provisions in RR No. 9-04 also specify the composition of gross receipts in finance and operating lease. These items are not included and considered in the provision imposing final withholding of GRT on interest payments to banks under RR No. 2-98.

Moreover, the Court also held that the new rule implementing RA No. 9238 specified the time and venue for the filing and payment of GRT and **this does not include the withholding of the said GRT at source**. The pertinent portion of RR No. 09-04 reads:

> "SECTION 6. *Time and Venue for the Filing and Payment of GRT.* — The GRT due computed and determined in accordance with these Regulations shall be paid monthly within 20 days following the end of the taxable month using BIR Form 2551M to the concerned AAB of the RDO/LTDO/LTAID I where the taxpayer is registered or required to be registered. *Provided*, that, if the taxpayer is an EFPS taxpayer, the rules and regulations governing the filing of returns and payment of taxes under EFPS shall be observed."

Considering the changes in the imposition of GRT on banks, the withholding of GRT provided under RR No. 2-98 already became inconsistent with the re-imposition of GRT provided under RA No. 9238, and with the revenue regulation implementing the same, which is RR No. 9-04.

In view thereof, the provision under RR No. 2-98 on the withholding of percentage GRT on banks shall be considered as revoked or repealed for being inconsistent with the provision re-imposing GRT on banks under RA No. 9238, as amended, and with RR No. 9-04.

Hence, petitioner should not be held liable to pay final withholding of GRT on interest payments to banks.

Since the Court sustains its ruling that the law and revenue regulation applicable in this case is RA No. 9238 and RR No. 9-04, respectively, and not the provision imposing the final withholding percentage tax under RR No. 2-98, the allegations of respondent as to prescription and as to his authority to regulate a system or structure on the payment of percentage taxes are already irrelevant.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, respondent's **Motion for Reconsideration (Re: Decision Promulgated on 05 September 2017)** is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice