

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

STANDARD CHARTERED BANK,
Petitioner,

C.T.A. CASE NO. 7253

Members:

- versus -

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

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUN 25 2010

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9:45 a.m.

DECISION

CASTAÑEDA, JR., J.:

The present case prays for a judgment finding Standard Chartered Bank not liable for its alleged deficiency Gross Receipts Tax, Documentary Stamp Tax, and Branch Profit Remittance Tax on its Foreign Currency Deposit Unit for taxable year 1998 in the amount of P121,035,875.29.

The facts as stipulated by the parties and as borne by the records are as follows:

Petitioner Standard Chartered Bank is the Philippine Branch of Standard Chartered Bank, a corporation organized and existing under the laws of England. It is duly authorized to engage in business in the *gc*

Philippines and authorized by the *Bangko Sentral ng Pilipinas* to operate a Foreign Currency Deposit Unit (FDCU).¹

Respondent Commissioner of Internal Revenue is the official authorized under Section 4 of the National Internal Revenue Code (NIRC) of 1997 to assess and collect internal revenue taxes, as well as to decide disputed assessments, subject to the exclusive appellate jurisdiction of this Court. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On August 10, 2004, petitioner received respondent's Formal Letter of Demand and Assessment Notices for alleged deficiencies in Gross Receipts Tax (GRT), Documentary Stamp Tax (DST), and Branch Profit Remittance Tax (BPRT) and increments for taxable year 1998, in the aggregate amount of P121,035,875.29, broken down as follows:²

GROSS RECEIPTS TAX - FCDU Onshore Income	
Gross Receipts for the period	P 546,188,110.00
Tax Rate	.05
Tax Due	27,309,405.50
Less: Payments	-
Basic Deficiency FCDU GRT	27,309,405.50
Add: Surcharge	6,827,351.38
Interest (Up to September 30, 2004)	31,026,406.75
Compromise Penalty	25,000.00
Total Deficiency GRT	65,188,163.63
DOCUMENTARY STAMP TAX - FCDU	
Loans	4,851,707,985.00
Time Deposit Liabilities	4,209,812,464.00
Total Amount of FCDU Transaction subject to DST	9,061,520,449.00
Tax Rate	.30/200.00
Tax Due	13,592,280.67
Less: Payments	-
Basic Deficiency DST on FCDU	13,592,280.67
Add: Surcharge	3,398,070.17

¹ Par. 1, Joint Stipulation of Facts and Issues, docket, p. 137

² Exhibit "A"

Interest (Up to September 30, 2004)	15,442,285.22
Compromise Penalty	25,000.00
Total Deficiency DST	32,457,636.06
BRANCH PROFIT REMITTANCE TAX	
Branch Profit Remittance during the year	65,281,074.00
Tax Rate	15.00%
Tax Due	9,792,161.10
Less: Payments	-
Basic Deficiency BPR Tax	9,792,161.10
Add: Surcharge	2,448,040.28
Interest (Up to September 30, 2004)	11,124,874.23
Compromise Penalty	25,000.00
Total Deficiency Branch Profit Remittance Tax	23,390,075.60
TOTAL DEFICIENCY TAXES	P 121,035,875.29

Respondent explained the bases of the assessed deficiency taxes as follows:³

"GROSS RECEIPTS TAX (GRT) ON FCDO ONSHORE INCOME

Sections 24(e)(3) and 25(a)(6)(B) of the old Tax Code provides for exemption from all taxes of income derived under the Expanded Foreign Currency Deposit System, viz;

*'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 deposit system **shall be exempt from all taxes**, except taxable income from such transactions as may be specified by the Secretary of Finance....(underscoring supplied)'*

With the implementation of the CTRP, the phrase 'exempt from all taxes' was deleted. Please refer to Sections 27(D) (3) and 28(A) (7) of the new Tax Code. Accordingly, the taxpayer was assessed for deficiency gross receipts tax on onshore income from foreign currency transactions amounting to P65,188,163.63 inclusive of penalties pursuant to the provisions of Section 121 of the Tax Code. *Je*

³ Exhibit "A-1"

DOCUMENTARY TAX (DST) ON FCDU TRANSACTIONS

With the same legal argument above, a deficiency documentary stamp tax on the amount of foreign currency transaction was assessed for P32,457,636.06 inclusive of penalties in accordance with Section 180 of the said Tax Code.

BRANCH PROFIT REMITTANCE TAX (BPRT)

Likewise pursuant to Section 28(A)(5) of the CTRP, the taxpayer was assessed for branch profit remittance tax on the amount remitted to its head office abroad in the amount of P23,390,075.60 inclusive of interest and penalties.”

Petitioner filed a letter-protest on October 21, 2004, addressed to respondent, through the Deputy Commissioner-Large Taxpayers Service, to question the Assessment Notices and Formal letter of Demand.⁴

Respondent did not render a decision on the protest of petitioner; thus, prompting petitioner to file the instant Petition for Review on May 19, 2005.

In the Answer⁵ filed on August 15, 2005, respondent alleged the following Special and Affirmative Defenses:

- “4. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and affirmative Defenses;
5. The assessments were issued in accordance with existing law and regulations. The legal and factual bases for the issuance of the assessments were embodied in the assessment notices;
6. The assessments were issued within the prescriptive period allowed by law. The legal provision governing the prescription of the Government’s right to assess taxes in ordinary cases is Section 203 of the Tax Code, as amended, which reads as follows:

‘Sec. 203. Period of Limitation Upon
Assessment and Collection. – Except as
provided in Section 222, internal revenue *jk*

⁴ Exhibit “B”

⁵ Docket, pp. 105-112

taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, xxx. 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.'

Section 222 of the Tax Code, as amended, on the other hand, provides the exceptions as to the period of limitation of assessment and collection, which reads as follows:

'Sec. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes. –

- (a) xxx
- (b) If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon. The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon.
- (c) xxx
- (d) xxx
- (e) xxx'. (Emphasis supplied)

7. The series of waiver of the defense of prescription under the statute of limitations of the National Internal Revenue Code executed by the petitioner, which were accepted by the respondent, are all valid and enforceable. There was substantial compliance of the law in the execution of the same, hence, valid. It must be emphasized that it was the petitioner who executed the same requesting, and in substance, consenting to the extended audit of the BIR Revenue Officers beyond the normal period of three (3) years thru the execution of the waivers. It is a fact that it was the petitioner who initiated the execution of the same and requested the BIR for its acceptance and conformity. It is submitted that any subsequent action of the petitioner seeking the nullification or invalidity of the same to the disadvantage of the respondent, who merely acquiesced to the request of the petitioner in extending the audit period 

and consequently the prescriptive period to assess as provided in the Tax Code, is action in bad faith. Hence, petitioner was, is and will always be estopped from questioning the validity of the waivers.

8. It is evident that the waivers were signed by the duly authorized representatives of the Commissioner, hence, valid. It must be recalled that under Section 7 of the Tax Code, as amended, the power to delegate the signing of the waiver is not one of the enumerated non-delegable powers of the Commissioner. Hence, the acceptance of the waivers by the duly authorized representatives of the Commissioner is valid.
9. Assuming *arguendo* that the series of waivers suffer from the alleged defect, by repeatedly requesting for extensions to substantiate its allegations and executing subsequent waivers extending the period of limitation, petitioner impliedly recognized the validity of the preceding waivers. Again, it should be emphasized that it was the petitioner who requested for the extension of the prescriptive periods. Thus, by its own conduct, petitioner led respondent, who acting in good faith, allowed the petitioner to continually substantiate its own contentions at the administrative level thru acceptance of the signed waivers. In effect, the petitioner cannot disown the validity of its actions by attacking the validity of the waivers it executed. It is submitted that the same should not be allowed for being contrary to the conclusive presumption provided under Section 2 (a) of Rule 131 of the Revised Rules of Court, viz:

‘Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing true and to act upon such belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it’.

Thus, having by its own actions, agreed to the validity of the waivers executed, petitioner cannot be permitted to falsify it.

10. Claims for exemption from taxation shall be construed in *strictissimi juris* against the claimant-petitioner. Petitioner has the burden of proving entitlement to exemption from taxation. *Je*

21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995)."

After trial on the merits, the case was submitted for decision on July 31, 2009, taking into consideration petitioner's Memorandum filed on July 20, 2009 and respondent's Memorandum filed on July 27, 2009.⁶

The issues, as jointly stipulated by the parties⁷, are the following:

- "1. WHETHER OR NOT THE ASSESSMENTS FOR DEFICIENCY GROSS RECEIPTS TAX (GRT), DOCUMENTARY STAMP TAX (DST), AND BRANCH PROFIT REMITTANCE TAX (BPRT) FOR TAXABLE YEAR WERE ISSUED WITHIN THE PRESCRIPTIVE PERIOD ALLOWED BY LAW.
2. WHETHER OR NOT THE ASSESSMENTS WERE ISSUED IN ACCORDANCE WITH THE EXISTING LAWS AND REGULATIONS.
3. WHETHER OR NOT PETITIONER'S FCDU IS EXEMPT FROM THE PAYMENT OF GRT, DST AND BPRT. IF IN THE NEGATIVE, WHETHER OR NOT PETITIONER IS LIABLE TO PAY THE AGGREGATE AMOUNT OF P121,035,875.29 REPRESENTING GRT, DST AND BPRT COVERING THE TAXABLE YEAR 1998.
4. WHETHER OR NOT PETITIONER IS LIABLE TO THE 25% SURCHARGE.
5. WHETHER OR NOT THE ASSESSMENTS HAVE BECOME FINAL AND EXECUTORY. COROLLARILY, WHETHER THE COURT HAS JURISDICTION TO ENTERTAIN THE CASE."

Petitioner argues that it is exempt from Gross Receipts Tax on its regular onshore income, exempt from Documentary Stamp Tax on its loans made to residents and certificate of time deposits made by resident 

⁶ Docket, p. 713

⁷ Stipulation of Issues, Joint Stipulation of Facts and Issues, docket, pp. 140-141

depositors, and exempt from Branch Profit Remittance Tax based on existing law and jurisprudence.

Petitioner is wrong.

This Court ruled in *ING Bank (Manila Branch) vs. Commissioner of Internal Revenue*⁸ that in view of the deletion of the phrase “exempt from all taxes” from the applicable provision of the NIRC of 1997, onshore income on FDCU transaction is now subject to taxes under the NIRC of 1997; the pertinent portions of the said Decision read:

“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.”

Based on the foregoing, with the deletion of the phrase “exempt from all taxes” from Section 27(D)(3) of the NIRC of 1997, petitioner’s FCDUs are now subject to all taxes in addition to the ten percent (10%) final tax. Clearly, petitioner’s FCDU transactions, which are the subject of the instant petition, are now subject to GRT, DST, and BPRT.

Since it is now established that petitioner is liable for GRT, DST, and BPRT, this Court will proceed to rule on the issue of prescription. *Jr*

⁸ C.T.A. Case No. 6017, March 11, 2002

Petitioner asserts that respondent's right to assess petitioner already prescribed.

Respondent, on the other hand, submits that the assessment of deficiency DST, GRT, and BPRT has not prescribed yet. He explains that the three-year prescriptive period to assess shall not apply in this case for the simple reason that petitioner failed to file the returns corresponding to GRT, DST, and BPRT relative to its FCDU account. The applicable provision shall be Section 222 of the NIRC of 1997, providing for a ten (10)-year assessment period.

The period within which to assess internal revenue taxes is governed by Section 203 of the NIRC of 1997, as amended, 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. In other words, 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 filed. *Je*

This Section of the NIRC of 1997 admits however of some exceptions,
to wit:

"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.*" (Emphasis supplied)**

Section 203 presupposes that a return is required to be filed by law because the three-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 when no return is filed.

As correctly pointed out by respondent, perusal of the records proves that petitioner's Quarterly Percentage Tax Returns⁹ do not show a GRT on its regular onshore income. Likewise, in petitioner's Documentary Stamp Tax Declaration (BIR Form No. 2000)¹⁰, there was no entry for the loans made to residents and certificate of time deposits made by resident depositors. In fact, petitioner failed to prove that it subjected its FDCU onshore income to GRT and its loans made to residents and certificate of time deposits made by resident depositors to DST for taxable year 1998. As regards petitioner's Branch Profit Remittance Tax, although petitioner filed Monthly Remittance Returns of Income Taxes Withheld (BIR Form No. 1743W), no entry was *je*

⁹ Exhibits "C" to "F"

¹⁰ Exhibits "Y" to "QQ"

made for Branch Profit Remittances.

In *Commissioner of Internal Revenue vs. Republic Cement Corporation (as surviving corporation in a merger involving Fortune Cement Corporation)*¹¹, this Court 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.

Since there was an absence of FDCU onshore income declaration in petitioner's Quarterly Percentage Tax Returns and considering that the loans made to residents and the certificate of time deposits made by resident depositors were not reflected on its Documentary Stamp Tax Declarations for taxable year 1998, then these are tantamount to omission to file the said returns. The said omissions warrant the application of the ten-year assessment period under the NIRC of 1997, within which respondent can assess petitioner for deficiency GRT and DST.

In the case of its Branch Profit Remittance Tax for the year 1998, since there was no entry pertaining to BPRT in the returns filed, then petitioner is considered not to have filed the corresponding BPRT Return for its FCDU in 1998. The same circumstance calls for the application of the ten-year prescriptive period.

Petitioner claims that respondent issued the Formal Assessment Notice in violation of the procedural due process requirements of Revenue Regulations No. 12-99. 

¹¹ C.T.A. EB No. 421, May 29, 2009

Respondent counter-argues that the Preliminary Assessment Notice, the Revised Preliminary Assessment Notice, the Formal Letter of Demand, and the respective assessment notices were all issued in accordance with Revenue Regulations No. 12-99.

This Court agrees with respondent.

Due process in this jurisdiction refers to the right of petitioner to be informed of the legal and factual findings of respondent as regards its deficiency taxes, and the opportunity to be heard through protest. Failure on the part of respondent to fully afford petitioner of the said right constitutes a violation of the procedural due process that would nullify the assessment issued against petitioner.

It cannot be denied that petitioner was duly informed of the assessment issued against it through respondent's Preliminary Assessment Notice¹², Revised Preliminary Assessment Notice¹³, Formal Letter of Demand¹⁴, and respective assessment notices, which were admittedly received by petitioner. Moreover, petitioner was given the opportunity to contest the said assessment via its Protest Letter¹⁵ and Protest Letter to the Revised Preliminary Assessment Notice¹⁶.

Undoubtedly, petitioner was afforded due process.

Having resolved that respondent's right to assess petitioner for GRT, DST, and BPRT on its FDCU income for taxable year 1998 has not prescribed and that the assessment was made in accordance with Revenue Regulations 

¹² Exhibit "S"

¹³ Exhibit "Q"

¹⁴ Exhibit "A"

¹⁵ Exhibit "B"

¹⁶ Exhibit "R"

No. 12-99, this Court will now determine whether or not petitioner is liable for respondent's imposition of a twenty-five percent (25%) surcharge.

"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.

xxx

xxx

xxx"

Clearly, petitioner's circumstances fall under Section 248(A)(1) of the NIRC of 1997, as petitioner failed to file a return for its FCDU transactions. Hence, respondent's imposition of a 25% surcharge was proper.

Anent the imposition of compromise penalty, 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.¹⁷

A compromise implies mutual agreement. Consequently, the imposition of a compromise penalty without the conformity of the taxpayer is illegal and unauthorized.¹⁸ In the present case, there is no proof that petitioner consented thereto. Accordingly, respondent cannot validly impose the compromise penalty against petitioner.

WHEREFORE, the instant Petition for Review is hereby **DENIED** for lack of merit. Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **SIXTY-THREE MILLION THREE HUNDRED SIXTY-SEVEN THOUSAND THREE HUNDRED NINE PESOS AND 10/100 (P63,367,309.10)**, representing deficiency GRT, DST, and BPRT, pursuant to Sections 121, 180, and 28(A)(5) of the NIRC of 1997, including the twenty-five percent (25%) surcharge imposed thereon, detailed as follows:

GROSS RECEIPTS TAX - FCDU Onshore Income	
Gross Receipts for the period	P 546,188,110.00
Tax Rate	0.05
Tax Due	27,309,405.50
Less: Payments	-
Basic Deficiency FCDU GRT	27,309,405.50
Add: 25% Surcharge	6,827,351.38
Total Deficiency GRT	34,136,756.88
DOCUMENTARY STAMP TAX - FCDU	
Loans	4,851,707,985.00
Time Deposit Liabilities	4,209,812,464.00
Total Amount of FCDU Transaction subject to DST	9,061,520,449.00
Tax Rate	.30/200
Tax Due	13,592,280.67
Less: Payments	-
Basic Deficiency DST on FCDU	13,592,280.67

je

¹⁷ Collector of Internal Revenue vs. UST, 104 Phil. 1062

¹⁸ Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., G.R. No. L-35266, January 21, 1991

Add: 25% Surcharge	3,398,070.17
Total Deficiency DST	16,990,350.84
BRANCH PROFIT REMITTANCE TAX	
Branch Profit Remittance during the year	65,281,074.00
Tax Rate	15%
Tax Due	9,792,161.10
Less: Payments	-
Basic Deficiency BPR Tax	9,792,161.10
Add: 25% Surcharge	2,448,040.28
Total Deficiency Branch Profit Remittance Tax	12,240,201.38
TOTAL DEFICIENCY TAXES	P 63,367,309.10

Likewise, petitioner is hereby **ORDERED TO PAY** (a) deficiency interests at the rate of twenty percent (20%) *per annum* on basic deficiency GRT, DST, and BPRT computed from January 25, 1999, January 10, 1999, and January 25, 1999, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997; and (b) delinquency interests at the rate of twenty percent (20%) *per annum* on the total deficiency taxes of P63,367,309.10 and on the 20% deficiency interest which have accrued as aforestated in (a), computed from September 21, 2004 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


ERLINDA P. UY
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

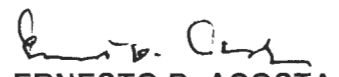
ATTESTATION

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.
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