Lit.

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

5

REPUBLIC BANK,
Petitioner,

- versus - C.T.A. CASES NOS. 2506 & 2618

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.
x - - - - - - - - - - - - x

9/30/82

D E C I S I O N

These appeals come on similar issues questioning the legal sufficiency of the statutory authority for the assessments for 1% monthly bank reserve deficiency tax under the second paragraph of Section 249 of the Tax Code, as amended.

There are no issues of facts beyond stating that the petitioner Republic Bank is a commercial banking institution organized and existing under the laws of the Philippines; that it was assessed for a 1% monthly bank reserve deficiencies tax inclusive of the 25% surcharge for the taxable years 1969 on September 14, 1971 (subject of CTA Case No. 2506) and 1970 on April 5, 1973 (CTA Case No. 2618) in the amounts ₱1,325,768.82 and ₱1,953,132.67, respectively, by the respondent Commissioner of Internal Revenue; that the corresponding reconsiderations thereof were filed by the petitioner on October 6, 1971 and May 16, 1973;

and, that the respondent denied both requests in letters-decision dated February 26, 1973 and May 6, 1974, respectively. Hence the recourse.

In assailing the validity of the assessments, petitioner contends that the 2nd paragraph of Section 249 of the Tax Code was rendered inoperative by the repeal of Section 126 of Act No. 1459 (The Corporation Law) wrapped up in this wise: That in place of Section 126 as contained in the second paragraph of Section 249 of the Tax Code, a new set of special laws were promulgated, namely, R.A. 265, otherwise known as the Central Bank Law and R.A. 337, commonly known as the General Banking Act. These special laws taken together, provide for entirely new rules on what are to be bank deposit reserves, the method of determining and computing such reserves which are completely different from that previously provided in Section 126 of Act 1459. These new laws impose a payment of 1/10 of 1% per day on the amount of deficiency in such reserves intended to substitute for the imposition in the second paragraph of Section 249 of the National Internal Revenue Code. To give effect at this time to the second paragraph of Section 249 would lead to an absurdity if the nature and method of computing bank reserves as provided for in Section

126 of Act 1459 were followed. On the other hand, should the computation of the reserve deficiency tax be based on the pertinent provisions of R.A. 337 and R.A. 265, the scope of the provision in question would be unduly stretched to govern a situation which could not have been foreseen at the time that Section 249 of the National Internal Revenue Code was passed. And of direct application is the decision of the Court of First Instance in Civil Case No. 68685 declaring improper the imposition of reserve deficiency penalties on the Republic Bank.

By and large, respondent Commissioner of Internal Revenue maintains that the assessments against the petitioner were not based on the repealed Section 126 of Act 1459 but on the pertinent provisions of the General Banking Act (RA 337) and the Central Bank Law (RA 265), both of which provide for the reserve requirements on banking operations; that Section 249 of the Tax Code is deemed to have ipso facto incorporated by reference the new rules on bank reserves embodied in Republic Act Nos. 265 and 337; that the intention of Congress is not to abolish the tax on reserve deficiencies but merely to up-date reserve requirements to improve banking operations; that Section 249 of the Tax Code must remain in force with the modified statutes (RA 337 and RA 265) as basis for the tax; that the penalty of 1/10 of 1% in Section 106 of RA 265 is only a penalty for the violation of the banking law and not a tax like the 1% monthly reserve deficiency tax in Section 249; and that the cited ruling in the Civil Case is not in point since the amenability to the 1% reserve deficiency tax under the Tax Code was not at issue in the case and that the Court of First Instance is not the proper forum to decide the merits on tax cases but the Court of Tax Appeals.

The record raises the basic question as to whether the repeal of Section 126 of Act 1459 invalidated the tax imposed in the second paragraph of Section 249 of the Tax Code, quoted as follows:

> "There shall be collected upon the amount of reserve deficiencies incurred by the bank, and for the period of their duration, as provided in Section one hundred twenty-six of Act Numbered one thousand four hundred and fifty-nine, as amended by Act Numbered three thousand six hundred and ten, one per centum per month."

The underscored Section 126 provides:

> "Sec. 126. Whenever the reserve as defined in the last preceding section of any commercial banking corporation shall be below the amount required in that section such commercial banking corporation shall not diminish the amount of such reserve by making any new loans or discounts, or declare any dividend

> out of the profits until the required proportion between the aggregate amount of its deposits and its reserve has been restored. Reserve deficiencies shall be penalized at the rate of one per centum per month upon the amount of the deficiencies and for the periods of their duration in accordance with the regulations to be issued by the Bank Commissioner. The penalty assessed shall be collected by the Collector of Internal Revenue in accordance with the rules, regulations and procedure to be determined by him. In the case of any commercial banking corporation whose reserve is continuously deficient for a period of thirty days, the business of such corporation may be wound up by the Bank Commissioner in accordance with Section sixteen hundred and thirty-nine of Act Numbered twenty-seven hundred and eleven, as amended, known as the Administrative Code."

The aforesaid preceding Section 125 requires that "Every such bank shall at all times have on hand in lawful money of the Philippine Islands or of the United States an amount equal to at least twenty per centum of the aggregate deposits in all respects."

The enactment of the General Banking Act on July 24, 1948, brought the repeal of the aforementioned sections, thus;

> "Sec. 90. Sections one hundred seventy-five to one hundred eighty-three and one hundred ninety-nine to two hundred seventeen of the Code of Commerce, as amended; section one hundred three to one hundred forty-six

> and one hundred seventy-one to one hundred ninety of Act Numbered fourteen hundred and fifty-nine, as amended; Acts Numbered Thirty-one hundred and fifty-four and Thirty-five hundred and twenty, and all laws or parts thereof, including those parts of special charters of the Philippine National Bank and other banking institutions in the Philippines which are inconsistent herewith, are hereby repealed." (Underscoring supplied)

It seems to be in place to state that to a certain extent the contending views are less different than they might seem, the divergence being more of method and emphasis than in substance. As it appears the sweeping repeal in Section 90 of R.A. No. 337, supra, of the earlier Public Acts could but be the prologue to the parturition of the General Banking Act (RA 337) and the Central Bank Law (RA 265). The repeal drew not the curtain of conclusion over the scene by rendering obsolete the various provisions affecting the banking system, but the same in essence and to a large extent as the need evoked, were carried over or re-enacted in the latter statutes. The caveat on the maintainance of "bank reserves" then obtaining in Section 126 of Act 1459 (The Corporation Law), supra, remained prescribed and continued in force, inter alia, viz.: Deposit liabilities of commercial banks shall be subject to the reserve requirements (Sec. 26, RA 337); Banks operating in the Philippines shall be required to maintain reserves against their deposit liabilities and shall be proportional to the volume of its deposit liabilities (Sec. 100, RA 265); the Monetary Board is authorized to prescribe and modify the minimum reserve ratios applicable to each class of peso deposits (Sec. 101, ibid); and, Whenever the reserve position of any bank computed in the manner specified in the preceding section of this Act is below the required minimum, the bank shall pay the Central Bank one-tenth of one percent (1/10 of 1%) per day on the amount of deficiency (Sec. 106, ibid); Provisions, similar in many or so in tenor and identical in terms with the repealed Sections 125 and 126 of Act 1459 by which a deficiency may be measured or determined for purposes of the tax imposed in Section 249 of the Tax Code, supra. "Every statute should receive such construction as will make it harmonize with the pre-existing body of laws". (Commissioner of Customs v. ESSO Standard Eastern, Inc., L-28329, August 7, 1975). We do not think that the repeal of Section 126 of Act 1459, was intended to discombobulate the effective tolling of the tax prescribed in the second paragraph of Section 249 of the Tax Code.

Be that as it may, it is hardly necessary to observe that if we take the terms of the aforementioned Section 249 to mean what it says, the tax imposition is essentially addressed and directly brought to bear upon the "amount of deficiency reserve incurred by the bank". To be more circumspect, it is a compelling indication that Section 126 of Act 1459 is not necessarily decisive but the minimum reserve requirement upon which the imposition in Section 249 can be tacked in case of deficiency. As earlier pointed out, there was no attempt as a consequence of the repeal of Section 126, supra, to undo with the bank reserves now positively constituted in the amendatory statutes of R.A. Nos. 265 and 337. No matter how the petitioner harps and tinkers with the idea of having Séction 249 of the Tax Code rendered inutile, the basic fact subsists that the import and force of the requirement has been left precisely as was then contemplated to the extent that the tax imposed in Section 249 can validly be located. It does not matter in this respect what type of section it is faced. "What's in a name? that which we call a rose, by any other name would smell as sweet." The rule seems well settled that a statutory power is not taken away by such repeal and re-enactment of the law upon which it depends. (Dennison v. Allen, 106 Mich. 295, 64 N.W. 38).

If in so holding we have misread the statute and misconceived its intendment there would utterly be no reason and justification for the subsequent amendment under P.D. No. 69 which expunged the questioned second paragraph of Section 249 of the Tax Code only on January 1, 1973. Until such a time we must hold it as the law. This Court has no power to arrest nor dilute enforcement however unwise or unjust the law may be. (Kimball v. Grantsville City, 109 Utah 368, 383, 57 Pac. 1). Perhaps it may not be inappropriate to quote Justice Cardozo that, "The law must be obeyed. It is not enough that it may seem to us to be impolitic or even oppressive. It is not enough that in its making, great and historical traditions of generosity have been ignored. Our duty is done when we ascertain that it has kept within its power." (People v. Crane, 214 N.Y. 154). Ludicrous and expedient piffle indeed to have the efficacy of the second paragraph of Section 249 of the Tax Code be simply defused in a cul de sac of impotency. <u>Natura vacuum abhoret</u>.

Although the reach of the issue on which we rest our decision renders the consideration of the subsidiary questions unnecessary, suffice it to state that the sanction in Section 106 of R.A. 265 imposing a penalty for violation of the banking law erects no shield against the imposition under the Tax Code. Laws relating to taxes are not penal statutes. (Cornwall Ex'r v. Todd, 88 Conn. 443). A penal law is punitive in nature, while revenue law defines the extent of the citizen's pecuniary obligation to the state and provides remedy for its collection. (State ex rel. Oklahoma Tax Commission v. Rodgers, 238 Mo. App. 1115, 193 S.W. 2d 919, 165 A.L.R. 785). The decision in Civil Case No. 68685, February 27, 1970, declaring as improper the imposition of reserve deficiency penalty against petitioner is neither controlling nor an illuminating precedent. The suit dealt with a penalty governed separately by the Central Bank Law and cannot preclude the enforcement of a taxing statute "so unlimited in force and so searching in extent." We do not in the case at bar reach the same situation. Moreover, the adjudication of tax cases comes within the exclusive jurisdiction of the Court of Tax Appeals. (Sec. 7, RA 1125).

So it appears and we so hold that the respondent Commissioner of Internal Revenue fared consistent with the mandate of the law in assessing petitioner for the 1% monthly bank reserve deficiencies tax inclusive of the corresponding surcharges for the taxable years 1969 and 1970.

WHEREFORE, the petitions are hereby dismissed with costs against the petitioner.

SO ORDERED.

Quezon City, Metro Manila, September 30, 1982.

Alex Z. Reyes
ALEX Z. REYES
Associate Judge

I CONCUR:

Amante Filler
AMANTE FILLER
Presiding Judge

Did not take part
CONSTANTE C. ROAQUIN
Associate Judge