REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED COCONUT PLANTERS BANK, Petitioner,	CTA EB No. 1790 (CTA CASE No. 8963)
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	
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COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB No. 1792 (CTA CASE No. 8963)
	Present:
- versus -	DEL ROSARIO, *P.J.*, CASTAÑEDA, JR. UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.*
UNITED COCONUT PLANTERS BANK, Respondent.	Promulgated: SEP 03 2019 3:22p.m.

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DECISION

***Fabon-Victorino, J.*:**

Before the Court are the Petition for Review dated March 8, 2018 filed by United Coconut Planters Bank (UCPB) docketed as CTA EB No. 1790, and the Petition for Review dated March 9, 2017[1] *(sic)*, filed by the Commissioner of Internal Revenue (CIR) and docketed as CTA EB No. 1792.

Both Petitions for Review assail the Decision dated August 31, 2017 promulgated by the Court in Division, which partially sustained the assessment for deficiency income tax (IT) and gross receipts tax (GRT) on UCPB's earnings of its Foreign Currency Deposit Unit (FCDU) for the year 2006 in the modified amount of ₱14,981,478.15.

Equally being assailed in both Petitions for Review is the Resolution dated February 5, 2018 which denied for lack of merit the respective motions for reconsideration of UCPB and the CIR.

The following facts as established during trial of the case and as determined by the Court in Division are undisputed.

UCPB is a domestic corporation, with principal office address at UCPB Building, Makati Avenue, 7907 Makati City. Its purpose is to operate under an expanded commercial banking authority, and by virtue thereof, to exercise the powers authorized for commercial banks, investment houses as provided in pertinent laws, as well the authority to invest in the equity of allied and non-allied undertakings in accordance with applicable laws, rules and regulations.

The CIR, on the other hand, is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR Building, Diliman, Quezon City.

On September 25, 2007, the BIR issued Letter of Authority (LOA) No. 00012336, authorizing the conduct of

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[1] Filed on March 12, 2018.

examination and audit of UCPB's books of accounts and accounting records for the year 2006.

On October 8, 2012, UCPB received a Notice for Informal Conference (NIC), inviting it for a meeting so it could go over the BIR's findings, register its objections thereto, if any, and submit evidence in its defense.

On October 22, 2012, UCPB contested the assessment for deficiency taxes contained in the NIC. Thereafter, the BIR revised the initial assessment and sent it to UCPB.

On January 30, 2013, UCPB received from the BIR the Preliminary Assessment Notice (PAN) with Details of Discrepancy, assessing it for deficiency IT-FCDU, GRT-FCDU, IT-Regular Banking Unit (RBU), GRT-RBU, Final Tax on Interest Expense-RBU, Expanded Withholding Tax (EWT), Withholding Tax on Compensation (WTC), Fringe Benefits Tax (FBT), and Documentary Stamp Tax (DST)-RBU and FCDU in the aggregate amount of ₱3,454,694,356.29, inclusive of interest and penalties.

On March 6, 2013, UCPB received the Final Assessment Notice (FAN) with Details of Discrepancy dated March 4, 2013 reiterating the deficiency taxes assessment as found in the PAN.

On March 26, 2013, UCPB filed a request with the BIR for reinvestigation of its case. It also filed a Position Paper on the revised assessment for the alleged deficiency Income Tax, Gross Receipts Tax, Final Tax, Expanded Withholding Tax and Documentary Stamp Tax for taxable year (TY) 2006 on September 2, 2014.

On December 2, 2014, UCPB received the Final Decision on Disputed Assessment (FDDA) with Details of Discrepancies dated December 1, 2014, assessing it for deficiency IT-FCDU, GRT-FCDU, Final Withholding Tax (FWT) on Interest Expense, EWT, FBT, and DST in the sum of ₱53,551,167.82.

On January 5, 2015, UCPB elevated the matter to the Court in Division via a Petition for Review.

After trial on the merits, the Court in Division rendered the assailed Decision dated August 31, 2017, the dispositive portion of which reads, as follows:

> WHEREFORE, premises considered, the Petition for Review is PARTIALLY GRANTED. Accordingly, the assessment covering deficiency income tax-FCDU and GRT-FCDU for taxable year 2006 is upheld but in the modified amount of ₱14,981,478.15, inclusive of 25% surcharge imposed under Section 248(A) of the NIRC of 1997, as amended, computed as follows:

Tax Type	Basic	Surcharge	Total
Income tax-FCDU	₱ 8,898,592.63	₱2,224,648.16	₱11,123,240.79
GRT-FCDU	3,086,589.89	771,647.47	3,858,237.36
Taxes still due	₱11,985,182.52	₱2,996,295.63	₱14,981,478.15

> In addition, petitioner (UCPB) is liable to pay:
>
> (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency income tax-FCDU of ₱8,898,592.63 and GRT-FCDU of ₱3,086,589.89, computed from April 15, 2007 to January 25, 2007, respectively, until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and
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> (b) delinquency interest at the rate of 20% per annum on the total amount of ₱14,981,478.15 representing the total deficiency income tax-FCDU and GRT-FCDU and on the deficiency interest which have accrued as afore-stated in (a) computed from December 15, 2014 until full payment

> thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.
>
> SO ORDERED.

The Court in Division effectively affirmed its ruling when it denied the respective motions for reconsideration of UCPB and the CIR in the equally assailed Resolution dated February 5, 2018, the dispositive portion of which states, as follows:

> WHEREFORE, premises considered, petitioner's (UCPB) Motion for Reconsideration (Re: Decision promulgated 31 August 2017) and respondent's (CIR) Motion for Reconsideration Re: Decision promulgated on August 31, 2017 are DENIED, for lack of merit.
>
> SO ORDERED.

Aggrieved, UCPB filed its Petition for Review with the Court *En Banc* on March 9, 2018, docketed as CTA EB No. 1790, while the CIR filed his Petition for Review before the *En Banc* on March 12, 2018, docketed as CTA EB No. 1792.

The two cases were consolidated by virtue of a Minute Resolution dated March 14, 2018.

In its Petition for Review, UCPB argues that contrary to the ruling of the Court in Division, its forex gains and miscellaneous income amounting to ₱160,450.13 and ₱23,710,017.10, respectively, are exempt from all taxes.

Per the provisions of the 1977 Tax Code, which have been adopted in the 1997 NIRC, as amended by Republic Act (R.A.) No. 9294, and as implemented by the pertinent regulations and administrative rulings, all UCPB's income derived as a depositary bank under the expanded foreign currency deposit system shall be exempt from all taxes. The only exceptions are interest income from foreign currency loans granted to residents, which is subject to a 10% final tax, and taxable income from transactions specified by the

Secretary of Finance, which shall be subject to regular income tax payable by banks.

UCPB also submits that with respect to gross onshore income, other than interest income from foreign currency loan transactions of FCDUs with residents, the exemption from all taxes cover not only service fees and commissions but also any and all other charges imposed on foreign currency loan transactions of FCDUs. Thus, all of UCPB's other income as an FCDU not expressly subject to tax, are exempt from tax and from the 35% regular corporate income tax (RCIT).

UCPB further complains the ruling of the Court that it failed to prove that the service charges, fees and commissions of ₱37,796,950.56 were integral parts of the gross interest income derived from foreign currency loan transactions with depositary banks under the expanded system for which reason, the said amount was not exempt from tax.

UCPB as well points out that the nature of its service fees, commissions, forex gain and other income in relation to its foreign currency loan transactions has never been an issue. The CIR's Answer, the testimony of the Revenue Officer who audited UCPB, as well as the FDDA indicate that such service fees, commissions, forex gain and other income in relation to UCPB's foreign currency loan transactions, has been treated as integral parts of the gross interest income derived from foreign currency loan transactions under the expanded system. In view thereof, UCPB concludes that the CIR is deemed to have admitted that the subject transactions are integral parts of the gross interest income derived from foreign currency loan transactions with depositary banks under the expanded system. Such admission is conclusive and requires no proof. Thus, the Court in Division erred when it ruled that UCPB has to present evidence to prove the same.

Assuming that UCPB's FCDU Onshore-Other Income is not exempt from RCIT, the Court in Division should not have disallowed as deduction the allocated general and administrative expenses of UCPB's RBU to its FCDU onshore-other income in the amount of ₱36,576,314.27, on the ground of its alleged failure to claim the same as deduction for the allocated expense from its RBU in its income tax return (ITR) for its FCDU. For UCPB, the allocated expenses were correctly excluded from the deductible expenses of UCPB's RBU, entitling the FCDU to claim these expenses for purposes of computing any RCIT due therefrom. The fact that the said expenses were not reflected in UCPB's returns should not be a ground to disallow the same. Based on Section 34(A)(1)(b) of the NIRC, as amended, what has to be established for the deductibility of expenses is that the expense must be ordinary and necessary, paid or incurred during the TY in carrying the trade or business, and supported by proper documentation such as receipts. UCPB was able to satisfy these requirements entitling it to the deduction of the allocated general and administrative expenses of UCPB's RBU to its FCDU onshore-other income, even if this was not claimed as deduction in its ITR.

UCPB also perceives as erroneous the ruling that other income, not classified as offshore income or onshore interest income are subject to the usual corporate taxes payable by banks save for the service fees, commissions, and other charges integral to the gross interest income derived from foreign currency loan transactions with residents, which are exempt from all taxes. The Court in Division also erroneously ruled that since UCPB's trading gain and miscellaneous income earned by its FCDUs were not classified as offshore income or onshore interest income, such should be subject to GRT. Further, the subject income was also not established to be integral parts of the gross interest income derived from foreign currency loan transactions with residents, which is exempt from taxes, hence subject to GRT as well.

To counter the foregoing, UCPB reiterates that the tax exemption of FCDUs is all encompassing, and covers fees, commissions and charges, including interest income, integral to foreign loan transactions of FDCUs with residents. For UCPB, the imposition of GRT on its FCDU onshore-other income is erroneous and not in accord with the provisions of RA No. 9294, as implemented by RR No. 10-76, RR No. 14-77, RAMO No. 1-84, and interpreted by BIR Ruling 051-10 dated September 7, 2010, all of which categorically hold that except for onshore interest income that is subject to 10% final tax on income, FCDUs are exempt from all taxes, without exceptions, including GRT.

And contrary to the finding of the Court in Division, UCPB was able to establish that its onshore-other income consisting of service fees, commissions, forex gain and miscellaneous income are integral charges imposed on its foreign currency loan transactions with residents, hence, exempt from GRT. UCPB reiterates that it need not prove a fact already admitted by the CIR in his pleadings and by his witness and documentary evidence.

The CIR failed to file comment or opposition to UCPB's Petition for Review, despite notice.[2]

In his own Petition for Review, the CIR contends that the Court in Division erred when, without any document to support its classification, reduced the tax rate for GRT on the assessment for the item "Miscellaneous" from 7% to 5%, based on Section 121 of the NIRC of 1997, as amended. Allegedly, the Court in Division merely classified the item "Miscellaneous" as "all other items treated as gross income" and used the 5% rate based on Section 121(c) which provides a tax "On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code.

The CIR insists that the correct tax rate is 7% since the item "Miscellaneous" falls under "all other items treated as gross income under Section 32," based on Section 121 of the NIRC, as amended, which rate shall be used on royalties, rentals of property, real or personal, profits, from exchange and all other items treated as gross income under Section 32.

Finally, the CIR contends that the Court in Division erred in cancelling the compromise penalty imposed on UCPB, without the latter's conformity thereto. Per Revenue Memorandum Order (RMO) No. 7-2015, in relation to RMO No. 1-90, compromise penalty should be imposed for UCPB's

[2] Records Verification dated May 21, 2018, docket p. 159.

failure to file return and pay tax due. The cited RMOs, being valid administrative issuances, not revoked, cancelled or abandoned, have the force and effect of law and should be applied.

On the matter, UCPB replied[3] that both the 5% and 7% tax rate for GRT imposed on the item "Miscellaneous" are misplaced. It claims that all fees, commissions and other charges which are integral components of the interest income derived by its FCDU from its foreign currency loan transactions with residents, are exempt from all taxes, GRT included. The history of the NIRC on the matter which led to its latest amendment through RA 9294, and the provisions of RR 10-76, RR 14-77, RMO 01-84, and even BIR Ruling 051-10 dated September 7, 2010, are deemed to have reinstated the exemption of FCDUs from all taxes. Allegedly, the exemption from taxes enjoyed by depository banks on all income derived under the expanded foreign currency deposit system was never removed or withdrawn by the NIRC of 1997, per the deliberations on the matter in Congress.

UCPB claims that it was able to prove that the "Miscellaneous" items are part of its onshore-other income consisting of service fees, commissions, forex gain and miscellaneous income, and that they are integral parts of its gross onshore income from foreign currency loan transactions with residents.

UCPB sides with the Court in Division in cancelling the compromise penalty imposed since UCPB never assented to such imposition. A compromise is consensual in character and without UCPB's conformity, may not be unilaterally imposed. Even the invoked RMOs No. 1-90 and 05-2015 clearly state that compromise penalties are only amounts suggested in settlement of violations of the Tax Code, but may not be collected if the taxpayer refuses to pay the same.

The consolidated Petitions for Review were submitted for decision on September 5, 2018.[4]

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[3] Comment (On the Petition for Review dated 09 March 2018), docket pp. 132-156.
[4] Resolution dated September 5, 2018, docket pp. 240-241.

THE RULING OF THE COURT

UCPB's Petition for Review dated March 8, 2018

R.A. No. 9294, otherwise known as "An Act Restoring the Tax Exemption of Offshore Banking Units (OBUs) and Foreign Currency Deposit Units (FCDUs)," enacted on April 28, 2004 amending Section 27 of the NIRC of 1997 pertinently provides, as follows:

> Sec. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> (D) *Rates of Tax on Certain Passive Incomes.*–
>
> (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 nonresidents, offshore banking units in the Philippines, 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 deposit system shall be exempt from all taxes, except net income from such transactions as may be specified by the Secretary of Finance, upon recommendation by the Monetary Board to be subject to the regular income tax payable by banks: *Provided, however,* That interest income from foreign currency loans granted by such depositary 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 final tax at the rate of ten percent (10%).

The amendment to Section 27 introduced by R.A. No. 9294 was adopted in the NIRC of 1997, when the latter was further amended by R.A. No. 9337, which took effect on July 1, 2005. Thus, the tax exemption enjoyed by FCDUs under the 1977 Tax Code was reinstated.

Per the present Section 27 of the NIRC, as amended, income derived by a depository bank under the expanded foreign currency deposit system from foreign currency transactions with nonresidents, offshore banking units in the Philippines, 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 deposit system, shall be exempt from all taxes.

However, it is paramount to point out that while the legal issue of whether Section 27 of the NIRC provides a tax exemption for income derived by a depositary bank for the specific variety of income referred to therein has been settled, it is still incumbent upon UCPB to prove that the income for which it seeks exemption falls under this category. Note that as a derogation of the sovereign authority, a statute granting tax exemption is strictly construed against the person or entity claiming the exemption.[5]

With the exemption under the 1977 Tax Code restored in Section 27 of the 1997 NIRC, as amended, recourse to Revenue Regulations (R.R.) No. 10-76,[6] as amended by R.R. 14-77, can be sought for enlightenment on the matter. It provides, thus:

> SECTION. 2(h). Gross onshore income shall mean gross interest income arising from foreign currency loans and advances to and/or investments with residents made by offshore banking units or expanded foreign currency deposit units. In case of foreign currency loan transactions, such **gross interest income shall refer only to the stipulated interest and shall not include any and all fees, commissions and other charges which are integral parts of the income from the above transactions**.

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[5] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.

[6] Regulations governing taxation of Offshore Banks and Foreign Currency Deposit Units of depository banks established under P.D. 1031 and 1035, respectively.

> SECTION 3. Rate of income tax to be imposed.-
>
> The rates of income tax to be imposed, which shall be in lieu of all other taxes such as, but not limited to privilege tax, gross receipt tax, documentary and science stamp tax and profit remittance tax, are as follows:
>
> (a) On offshore income, xxx.
>
> (b) In the case of gross onshore income as defined in Section 2(h) above, the tax shall be ten percent (10%) thereof and shall be a final tax. Any and all fees, commissions and other charges which are integral parts of the charges imposed on foreign currency loan transactions are exempt from the tax herein imposed.
>
> (c) Income not covered by paragraphs (a) and (b) above shall be subject to the usual corporate taxes imposed by National Internal Revenue Code, as amended.

Pursuant to the foregoing, income earned by an FCDU except offshore income and gross onshore interest income (excluding fees, commissions and other charges integral thereto) shall be subject to the RCIT imposed under the NIRC, as amended.

UCPB's assertion that based on the exemption under existing law, all the income under its FCDU, without qualification, is exempt from all taxes is certainly misplaced. The cited law and regulations clearly provide that only offshore income and gross onshore interest income, as well as fees, commissions and other charges integral thereto, are exempt from taxes, the rest are subject to RCIT.

Verily, UCPB's foreign gain of ₱160,450.13 and miscellaneous income of ₱23,710,017.10 earned by UCPB's FCDUs, which UCPB did not classify as offshore income or onshore interest income are not tax exempt and deemed as other income subject to RCIT.

Since UCPB itself did not classify the said items in the category of offshore income and gross onshore interest income which are tax exempt, there is no basis for the Court to rule the same as tax exempt. The Court *En Banc* is one with the Court in Division that these are other income subject to RCIT of 35%.

Anent the disallowed service charges, fees and commissions in the amount of ₱37,796,950.56 for failure of UCPB to prove them as integral parts of the gross interest income derived from foreign currency loan transactions with depositary banks under the expanded system, suffice it to say that a statute granting tax exemption is strictly construed against the person or entity claiming the exemption.[7] Thus, the alleged admission by the CIR is not sufficient to prove that the specific items of UCPB's income fall under the exemption provided by law.

Established is the rule that for tax refunds, like tax exemptions, are construed strictly against the taxpayer.[8] It is therefore incumbent upon UCPB to prove its entitlement to tax exemption to the detail, and any doubt on the matter will result in denial of the claim, as in this instance.

Besides, such alleged admission must be appreciated together with the rest of the evidence presented by the parties. It must be stressed that admissions against interest as in this case fall under the rules of admissibility. Admissions against interest pass the test of relevance and competence. They, however, do not guarantee their own probative value and conclusiveness. Like all evidence, they must be weighed and calibrated by the court against all other pieces at hand. x x x In other words, while the admission is admissible in evidence, its probative value is to be determined from the whole statement and others intimately related or connected therewith as an integrated unit.[9]

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[7] Western Mindanao Power Corporation vs. Commissioner of Internal Revenue, G.R. No. 181136, June 13, 2012.
[8] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Paseo Realty & Development Corporation v. Court of Tax Appeals, et al., 483 Phil. 254 (2004).
[9] Mary Grace Natividad S. Poe-Llamanzares vs. Commission on Elections and Estrella C. Elamparo, G.R. No. 221697, March 08, 2016; Mary Grace Natividad S. Poe-Llamanzares

Taken with the totality of the evidence presented by UCPB, who has the burden of proving its claim, and with the absence of any evidence to prove that the service charges, fees and commissions in the amount of ₱37,796,950.56 are integral parts of the gross interest income derived from foreign currency loan transactions with depositary banks under the expanded system, this Court joins the Court in Division in ruling that the same are not tax exempt.

Further, there is no indication that such admission was made by the CIR.

It must be remembered that to be admissible, the admission must (1) involve matters of fact, and not of law; (2) be categorical and definite; (3) be knowingly and voluntarily made; and (4) be adverse to the admitter's interests, otherwise it would be self-serving and inadmissible. An admission against interest must consist of a categorical statement or document pertaining to a matter of fact. If the statement or document pertains to a conclusion of law or necessitates prior settlement of questions of law, it cannot be regarded as an admission against interest.[10]

Note that the main issue in this case is whether UCPB is entitled to tax exemption under the pertinent law and regulations, which is a question of law. Per the above jurisprudence, if the alleged admission pertains or necessitates a prior ruling on questions of law, there can be no admission, as in this case. Given that the Court in Division ruled on the question of law, i.e., whether UCPB is entitled to tax exemption, and since the alleged admission was made in the FDDA, in the CIR's Answer, and by its witness during trial, or before the Court in Division ruled on the main issue which is a question of law, there can be no admission on such matter by the CIR.

As regards the amount of ₱36,576,314.27 which UCPB claims should be allowed as a deduction in computing its

vs. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras and Amado D. Valdez, G.R. Nos. 221698-700.

[10] Mary Grace Natividad S. Poe-Llamanzares vs. Commission on Elections and Estrella C. Elamparo, G.R. No. 221697, March 08, 2016; Mary Grace Natividad S. Poe-Llamanzares vs. Commission on Elections, Francisco S. Tatad, Antonio P. Contreras and Amado D. Valdez, G.R. Nos. 221698-700.

RCIT, the same cannot be allowed. UCPB never claimed the said amount as a deduction in its Annual Income Tax Return-FCDU for the year 2006. To claim it now, after the lapse of thirteen (13) long years, requires the amendment of UCPB's Annual ITR-FCDU, which is prohibited under Section 6(A) of the NIRC of 1997 which provides that any return, statement or declaration filed may be modified, changed, or amended within three (3) years from the date of such filing, provided, that no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer.

Besides the legal prohibition, an assessment had already been issued and served to UCPB with notice for audit and investigation for TY 2006. Verily, it can longer amend its Annual ITR for said year, for to allow the same, any taxpayer held civilly or criminally liable for misdeclaration or failure to declare/pay tax will simply amend its tax return to escape culpability. And since, UCPB may no longer amend its Annual ITR for 2006, it may not modify it to include any new deductions not previously included therein.

Finally, on UCPB's claim that the FCDU Onshore-Other Income consisting of service fees, commissions, forex gain, and other income is exempt from all taxes, let it be repeated that only certain items of the income of FCDUs are exempt from tax, and not the entire income of such FCDU. As provided in Section 27 of the 1997 NIRC, as amended, as elaborated in R.R. No. 10-76, as amended by R.R. 14-77, only offshore income and gross onshore interest income, as well as fees, commissions and other charges integral thereto, are exempt from taxes. Since, the income referred to by UCPB, including the trading gain of ₱160,450.13 and miscellaneous income of ₱23,710,017.10 earned by its FCDUs were not classified by it as offshore income or onshore interest income, they are not tax exempt under the law.

Thus, pursuant to Section 121 of the NIRC of 1997, as amended, the trading gain shall be subject to 7% GRT as correctly assessed by the CIR, and sustained by the Court in Division. On the other hand, the miscellaneous income shall be subject to GRT rate of only 5%, it being other items treated as gross income under the same provision.

<u>The Petition for Review dated March 9, 2017 filed by the Commissioner of Internal Revenue (CIR)</u>

The CIR faults the Court in Division in reducing the tax rate for GRT on the assessment for the item "Miscellaneous" from 7% to 5%, based on Section 121 of the NIRC of 1997, as amended, allegedly without citing any basis therefor.

As already discussed, the miscellaneous income of ₱23,710,017.10 earned by UCPB's FCDUs were not classified as offshore income or onshore interest income and therefore, not tax exempt. Not being tax exempt, Section 121 of the NIRC of 1997, as amended, applies to the miscellaneous income which shall be subject to GRT pursuant to Section 121 of the NIRC of 1997, as amended, to wit:

> SEC. 121. *Tax on Banks and Nonbank Financial Intermediaries.* – There shall be a collected tax on gross receipts derived from sources within the Philippines by all banks and nonbank financial intermediaries in accordance with the following schedule:
>
> (a) On interest, commissions and discounts from lending activities as well as income from financial leasing, on the basis of remaining maturities of instruments from which such receipts are derived;
>
> Maturity period is five years or less......5%
> Maturity period is more than five years....1%
>
> (b) x x x
>
> (c) On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code............5%
>
> (d) On net trading gains within the taxable year on foreign currency, debt, securities,

> derivatives, and other similar financial instruments.................7%.

The miscellaneous income shall be subject to GRT at the rate of 5%, it being other items treated as gross income under the NIRC of 1997, as amended.

The CIR insists that it should be 7%, since "[T]he "Miscellaneous" item falls under "all other items treated as gross income under Section 32," thus subject to 7% GRT."[11] However such conclusion is erroneous as the imposition of 7% under Section 121 of the NIRC of 1997, as amended, refers to "net trading gains within the taxable year on foreign currency, debt, securities, derivatives, and other similar financial instruments."

The CIR maintains that the item Miscellaneous falls under "all other items treated as gross income under Section 32 based on Section 121 of the NIRC of 1997, as amended. But note that Section 121(c) of the NIRC, as amended, explicitly imposes only a 5% tax rate "On royalties, rentals of property, real or personal, profits from exchange and all other items treated as gross income under Section 32 of this Code.

In fine, the imposition of only 5% tax rate on the Miscellaneous items is correct.

Finally, the CIR also finds erroneous the cancellation of the compromise penalty imposed on UCPB, without the latter's conformity thereto since such imposition was for UCPB's alleged failure to file return and pay tax which is allowed under RMO No. 7-2015, in relation to RMO No. 1-90.

It has been held that compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[12] Also, this Court was

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[11] See Petition for Review dated March 9, 2017, EB No. 1792 docket p. 9, first paragraph.
[12] Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. et al., G.R. No. L-35266, January 21, 1991.

sustained by no less than the Supreme Court when it ruled that the compromise penalty could not be imposed on the taxpayer, a compromise being, by its nature, mutual in essence. The payment made under protest by the taxpayer could only signify that there was no agreement that had effectively been reached between the parties.[13] There being no consent of the part of UCPB, it cannot be held liable to pay the compromise penalty imposed by the CIR.

As a final note, the principle of *stare decisis et non quieta movere*, as embodied in Article 8 of the Civil Code of the Philippines, enjoins adherence to judicial precedents. It requires our courts to follow a rule already established in a final decision of the Supreme Court. That decision becomes a judicial precedent to be followed in subsequent cases by all courts in the land.[14] Since the Supreme Court already ruled that compromise penalty may not be imposed without the agreement of the taxpayer, this Court must likewise rule similarly.

WHEREFORE, the Petition for Review dated March 8, 2018 filed by United Coconut Planters Bank in CTA EB No. 1790, and the Petition for Review dated March 9, 2017 (sic) filed by the Commissioner of Internal Revenue in CTA EB No. 1792, are both **DENIED**, for lack of merit.

Nonetheless, the ruling of the Court in Division must be modified as pertains to the imposition of deficiency and delinquency interests in view of the effectivity of Republic Act (R.A.) No. 10963 (TRAIN Law) on January 1, 2018.

Accordingly, the assessment covering deficiency income tax-FCDU and GRT-FCDU for taxable year 2006 is upheld but in the modified amount of **₱61,233,432.00 (SIXTY-ONE MILLION TWO HUNDRED THIRTY-THREE THOUSAND FOUR HUNDRED THIRTY-TWO PESOS)** , inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended,

[13] See Dr. Felisa L. Vda. De San Agustin, In Substitution of Jose Y. Feria, In His Capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue, G.R. No. 138485, September 10, 2001.
[14] Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 146941, August 09, 2007.

respectively, computed until December 31, 2017, as summarized below:

	Income Tax	GRT - FCDU	Total
Basic Tax	₱8,898,592.63	₱3,086,589.89	₱11,985,182.52
Add: 25% Surcharge	2,224,648.16	771,647.47	2,996,295.63
20% Deficiency Interest from April 16, 2007 to December 15, 2014 *[₱8,898,592.63 x 20% x 2801/365 days]*	13,657,511.21		13,657,511.21
[₱3,086,589.89 x 20% x 2881/365 days]		4,872,583.82	4,872,583.82
Total Amount Due, 12/15 /2014	**₱24,780,752.00**	**₱8,730,821.18**	**₱33,511,573.18**
20% Deficiency Interest from December 16, 2014 to December 31, 2017 *[₱8,898,592.63 x 20% 1112/365 days]*	5,422,046.58		5,422,046.58
[₱3,086,589.89 x 20% x 1112/365 days]		1,880,705.73	1,880,705.73
20% Delinquency Interest from December 16, 2014 to December 31, 2017 *[₱24,780,752.00 x 20% x 1112/365 days]*	15,099,285.60		15,099,285.60
[₱8,730,821.18 x 20% x 1112/365 days]		5,319,820.91	5,319,820.91
Total Amount Due, 12/31/2017	**₱45,302,084.18**	**₱15,931,347.82**	**₱61,233,432.00**

In addition, petitioner is **ORDERED TO PAY** respondent delinquency interest at the rate of twelve percent (12%) on the total amount due of **₱33,511,573.18** as of December 15, 2014, as determined above, computed from January 1, 2018 until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963, also known as Tax Reform for Acceleration and Inclusion (TRAIN), as implemented by Revenue Regulations (RR) No. 21-2018.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
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 cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UNITED COCONUT PLANTERS BANK, *Petitioner,*	**CTA EB NO. 1790** (CTA Case No. 8963)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

x - x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1792** (CTA Case No. 8963)
	Present:
-versus-	Del Rosario, P.J., Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, Manahan, Bacorro-Villena, and Modesto-San Pedro, JJ.
UNITED COCONUT PLANTERS BANK, *Respondent.*	**Promulgated:** SEP 03 2019 3:22p.m.

x- -x

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit. With due respect, however, I am constrained to withhold my assent to the denial of the Petition for Review filed by United Coconut Planters Bank (UCPB).

Records disclose the following:

- September 25, 2007 - **Letter of Authority (LOA) No. 200700012336**[1] was issued by the Head Revenue Executive Assistant, Large Taxpayers Service, authorizing **Revenue Officers (ROs) M. Rugayan,** T. **Monge, F. Soriano**, to be supervised by **Group Supervisor (GS) E. Espiritu** to examine the books of accounts and other accounting records of UCPB for the year 2006.

- June 23, 2009 - **LOA 200800033582**[2] was issued by the OIC-Assistant Commissioner (ACIR), Large Tax Payers Service, authorizing **ROs Christina Lati, Merly Santiago, Hercules Catapia, and Joseph Santos,** to be supervised by **GS Fe F. Caling** of the Large Taxpayers Audit and Investigation Division I to examine the books of accounts and other accounting records of UCPB for income tax (Claim for TCC/Refund) for the year 2006.

- May 26, 2008 - **Referral No. D-57-05-08**[3] was issued by the OIC-Chief, LT Audit & Investigation Division I, referring to **RO Alpha Betty L. Tanguilig and GS Adora M. Alberto** the documents/entire dockets of UCPB relative to the investigation of all internal revenue taxes for taxable year 2006.

- **July 3, 2009 - Referral No. D-LOA-55-07-09**[4] was issued by the Chief, LT Audit & Investigation Division I, referring to **RO Alpha Betty L. Tanguilig and GS Joriz U. Saldajeno** the documents/entire dockets of UCPB relative to the investigation on income tax case (claim for TCC/refund) for calendar year 2006 as well as the request for consolidation with LOA No. 12336 dated September 25, 2007 covering all internal revenue taxes together with Referral No. D-57-05-08.

Considering that the authority of **RO Alpha Betty L. Tanguilig**, the RO who conducted the audit of UCPB and recommended the issuance of an assessment against it emanated from Referral No. D-57-05-08 and Referral No. D-LOA-55-07-09, which were signed by the OIC-Chief and Chief of the LT Audit & Investigation Division I, respectively, it is my view that the Final Assessment Notice (FAN) dated March 4, 2013 issued against United Coconut Planters Bank (UCPB) is void *ab initio*.

Section 6 of the National Internal Revenue Code (NIRC) of 1997, as amended, is clear and categorical in requiring an authority from the **CIR or from his duly authorized representatives** before an examination of a taxpayer may be made. The *"authorized*

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[1] Exhibit "R-2", BIR Records, p. 932.
[2] BIR Records, p. 1532.
[3] Exhibit "R-1", BIR Records, p. 1839.
[4] BIR Records, pp. 1533-1535.

representative" contemplated by law who may issue an LOA is no other than a **Revenue Regional Director** pursuant to Section 13 of the NIRC of 1997, as amended. The power to issue an LOA may not be delegated by the CIR or the Revenue Regional Director to any other officer.[5]

For taxpayers under the Large Taxpayers Service, Revenue Memorandum Order (RMO) No. 29-07 enumerates the BIR Officials who have the authority to issue and approve LOAs for the conduct of the audit, *viz.*:

> "II. AUDIT POLICIES AND GUIDELINES
>
> 1. The Chief, Large Taxpayers Audit & Investigation Divisions/LTDOs shall draw a list of taxpayers selected for audit under its current selection criteria. The list shall state the name of taxpayer selected for audit, the nature of business, the amount of gross sales/receipts, the selection code, the PSIC code, and the corresponding amount of tax paid for the period. The said list shall be submitted to the Assistant Commissioner/Head Revenue Executive Assistant, Large Taxpayers Service for approval, copy furnished the Commissioner of Internal Revenue.
>
> 2. **All Letters of Authority (LOAs) shall be issued and approved by the Assistant Commissioner/Head Revenue Executive Assistants**." (Emphasis supplied)

In the present case, while Referral No. D-57-05-08 and Referral No. D-LOA-55-07-09 cannot be treated as an LOA as precisely, any re-assignment of cases requires the issuance of a new LOA, their fatal infirmity is further highlighted by the fact that they were **signed and issued by the OIC-Chief and Chief of LT Audit & Investigation Division I and not by the Assistant Commissioner/Head Revenue Executive Assistant of the Large Taxpayer Service**.

Inevitably, the assessment issued pursuant to Referral No. D-57-05-08 and Referral No. D-LOA-55-07-09 is void. Being a void assessment, the same bears no valid fruit[6] and must be slain at sight.

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[5] The pronouncement in *NPC Drivers and Mechanics Association, (NPC DAMA) vs. The National Power Corporation, G.R. No.* 156208, September 26, 2006, is analogously applied in this case.
[6] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

All told, I VOTE to: (1) DENY the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit; (2) GRANT the Petition for Review filed by United Coconut Planters Bank; (3) REVERSE and SET ASIDE the assailed Decision dated August 31, 2017 and Resolution dated February 5, 2018 of the Court in Division; (3) CANCEL the Final Assessment Notice dated March 4, 2013 and Final Decision on Disputed Assessment dated December 1, 2014.

ROMAN G. DEL ROSARIO
Presiding Justice