Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

MANILA BANKER'S LIFE INSURANCE CORPORATION Petitioner,	**C.T.A. CASE Nos. 7266, 7378 and 7324**
	Members :
- versus -	**Castañeda, Jr.**, *Chairperson* **Uy**, and **Palanca-Enriquez**, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 06 2009 8:35 a.m.

x - x

DECISION

UY, J.:

These consolidated Petitions for Review, docketed as C.T.A. Case Nos. 7266, 7378, and 7324, entitled "Manila Banker's Life Insurance Corporation, petitioner, v. Commissioner of Internal Revenue, respondent", seek the following recourse:

1) In CTA Case No. 7266: for the cancellation of respondent's assessments for deficiency Minimum Corporate Income Tax (MCIT) in the

amount of ₱ 600,089.10, and for deficiency Documentary Stamp Tax (DST) in the amount of ₱ 7,351,373.18, and increments for both taxes, or in the aggregate amount of ₱ 7,951,462.28 for taxable year **2001**;

2) In CTA Case No. 7326: for the cancellation of respondent's assessment for deficiency DST and increments in the aggregate amount of ₱ 2,528,424.74 for taxable year **2002**; and

3) In CTA Case No. 7378: for the cancellation of respondent's assessment for deficiency DST and increments in the aggregate amount of ₱ 2,083,203.48 for taxable year **2003**.

Thus, the assessments sought to be cancelled in the above-captioned consolidated cases pertain to deficiency Minimum Corporate Income Tax (MCIT) and Documentary Stamp Tax (DST) and increments for taxable year 2001, and deficiency DST and increments for taxable years 2002, and 2003, in the amounts of **₱ 7,951,462.28, ₱ 2,528,424.74,** and **₱ 2,083,203.48,** respectively.

THE FACTS

Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines and duly registered with the Securities and Exchange Commission (SEC).[1] It is likewise registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 000-474-490-000.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement

[1] Exhibit "A".
[2] Exhibit "B", Docket, p. 42.

of all forfeitures, penalties, and fines connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

CTA Case No. 7266

On June 8, 2004, petitioner received a Preliminary Assessment Notice (PAN) dated June 2, 2004 from the BIR, assessing the following alleged deficiency taxes (inclusive of interest and penalties) for calendar year 2001:

Item No.	Tax Type	Amount
1	Minimum Corporate Income Tax	₱ 929,474.20
2	Expanded Withholding Tax (EWT)	167,871.77
3	Premium Tax	1,004,636.84
4	Percentage Tax – Rental Income	25,991.70
5	Documentary Stamp Tax on Loans	13,301.86
6	MCIT – Disallowed Direct Costs	586,788.11
7	DST – Increased Policies	7,189,683.70
Total Deficiency Taxes Assessed		₱ 9,917,748.18

On June 23, 2004, petitioner filed with the Large Taxpayers Service a Reply to the PAN (1) informing the BIR of its settlement through payment on June 14, 2004 of items 1 to 5 of the deficiency assessments under the PAN, and (2) requesting reconsideration of items 6 (MCIT – Disallowed Direct Costs) and 7 (DST – Increased Policies) deficiency assessments under the PAN, citing justification and support for its request for reconsideration.

On August 17, 2004, petitioner received respondent's Formal Letter of Demand with Formal Assessment Notices (FAN) dated August 4, 2004[3] for petitioner's alleged deficiency MCIT and DST for taxable year 2001, in the aggregate amount of ₱ 7,951,462.28, broken down as follows:

[3] Exhibit "N", Docket, pp. 43 to 47.

Assessment No.	Details	Amounts	Total
INC-MCIT-01-000001	Basic MCIT Due	**₱ 398,233.52**	
	Interest as of August 11, 2004	185,855.58	
	Compromise Penalty	16,000.00	P 600,089.10
DST-01-000102	Basic DST Due	**₱ 4,841,002.50**	
	Interest as of August 11, 2004	2,485,370.68	
	Compromise Penalty	25,000.00	7,351,373.18
Aggregate Total:			**₱ 7,951,462.28**

Respondent assessed petitioner for deficiency MCIT by disallowing Premium Tax and DST in the amounts of ₱ 18,403,548.01 and ₱ 1,508,128.17, respectively, factored-in to the premium charged to insurance customers, as direct costs[4] deductible from petitioner's gross receipts. The deficiency basic tax assessed was computed by the BIR as follows[5]:

Direct Cost per ITR		₱ 248,824,696.34
Less: Disallowed Direct Costs per investigation:		
DST	₱ 1,508,128.17	
Premium Tax	18,403,548.01	19,911,676.18
MCIT rate		2%
MCIT due		**₱ 398,233.52**

In the Details of Assessment, the BIR stated the following:

"Deficiency MCIT-Disallowed Direct Costs (P600,089.10) - Sec. 27(E)(1)(4) of NIRC

Inclusion of Documentary Stamp Tax and Premium Tax as Direct Costs were disallowed and resulted to a deficiency tax amounted to P600,089.10 inclusive of interest and penalty."[6]

---

[4] Par. 4, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 332.
[5] Exhibit "N", Docket, pp. 43 to 47.
[6] Exhibit "10-b", BIR Records, p. 458, CTA Case No. 7266.

The amount of deficiency assessment was computed on the basis of Section 27(E)(4) of the National Internal Revenue Code (NIRC) of 1997 and Revenue Memorandum Circular No. 4-2003.[7]

For the DST portion of the assessment, respondent assessed petitioner for deficiency DST on the increases in the coverage or the sum assured under existing insurance policies reported by petitioner in its Annual Report for the year 2001 to the Insurance Commission[8], the basic tax of which was computed by the BIR as follows:

Total sum assured	DST rate	Amount
P1,936,401,000.00	₱ 0.50 for every ₱ 200	₱ 4,841,002.50

In the Details of Assessment, the BIR stated the following:

> "Deficiency Documentary Stamp Tax on Policies - (P7,351,373.18) - Sec. 183 of NIRC
>
> In reference to IC Report, page 16, the total sum assured of increased policies were taxed at fifty centavos (0.50) on each Two hundred pesos or fractional thereof. It resulted to a deficiency documentary stamp tax assessment of 7,351,373.18 inclusive of interest and penalty."[9]

On September 15, 2004, petitioner filed its letter protest[10] before the Large Taxpayers Service (LTS) of the BIR, stating the factual and legal bases supporting its arguments against the subject deficiency. Petitioner did not raise the issue of prescription when it filed its protest before respondent.[11]

[7] Par. 5, JSFI, Docket, p. 332.
[8] Pars. 9 and 12, JSFI, Docket, pp. 332 and 333, respectively.
[9] Exhibit "10-B"
[10] Exhibit "Q", Docket, pp. 48 to 58.
[11] Par. 14, JSFI, Docket, p. 333.

On November 12, 2004, petitioner submitted before the Large Taxpayer Audit and Investigation Division all the documents requested by said office.

Thereafter on June 7, 2005, petitioner filed the Petition for Review in CTA Case No. 7266 to protect its right to refute or protest the aforementioned assessment. On August 30, 2005, respondent filed his Answer.[12]

Subsequently however, petitioner filed a "Motion For Leave To File A Supplemental Petition for Review and To Admit Attached Supplemental Petition" on October 12, 2005[13] alleging that the assessment for alleged deficiency DST on transactions made from January 2001 to June 2001 is clearly null and void for having been issued by the respondent beyond the three-year prescriptive period. An Opposition[14] thereto was filed by respondent on November 29, 2005 alleging that petitioner never questioned the government's right to assess DST at the administrative level when it filed its protest of the original Petition and that it is settled that issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. The Court granted petitioner's motion and its Supplemental Petition For Review was admitted in the Omnibus Resolution dated February 17, 2006.[15]

An Amended Answer[16] was filed by respondent on March 21, 2006, alleging the following Special and Affirmative Defenses:

> "5. He reiterates and pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;

---

[12] Docket, pp. 129 to140.
[13] Docket, pp. 152 to159.
[14] Docket, pp. 225 to 229.
[15] Docket, pp. 238 to 241.
[16] Docket, pp. 249 to 261.

6. 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;

7. The assessments were issued within the prescriptive period allowed by law.

8. Revenue Memorandum Circular No. 4-2003 merely clarifies the items that would constitute gross receipts and costs in determining 'gross income' on services for the purpose of computing the minimum corporate income tax (MCIT) pursuant to Sections 27 (E) and 28 (A) (2) of the Tax Code of 1997. It being a mere clarificatory circular, the effectivity of the same reckons from the effectivity of the Tax Code of 1997, or beginning January 1, 1998.

9. Petitioner failed to rebut the findings of the BIR that the percentage tax on life insurance premiums and documentary stamp tax (DST) on life insurance policies paid are not direct costs includible in the computation of cost of service. Petitioner alleged in its petition for review that the same expense or cost accounts are charged to its customers (page 11 of the Petition for Review).

10. It bears stressing that expenses which are allowed by law as deduction from gross income are those enumerated under Section 34 of the Tax Code, as amended, and only after complying with the substantiation requirements of the law.

Petitioner alleged that premium tax and DST factored-in the premiums are charged to its customers (*page 11, Petition for Review*). It must be stressed that those expenses, which have been paid by the petitioner's customers, have been claimed as deductions from petitioner's gross income. Respondent did not consider those items as properly part of the cost of service; hence, added back to the tax base in computing the deficiency MCIT liability of the petitioner. The same expense accounts which were paid by the petitioner's customers are not the deduction contemplated by law as deductible for income tax purposes, or from MCIT for that matter. When the petitioner's customers paid those expense accounts, the logical tax implication of the same is the non-allowance of the charged and paid expenses as expenses *per se* or as allowable deductions from gross income of the petitioner for tax purposes. Petitioner, therefore, never incurred those expenses at all, and thus, should not be allowed as tax shield in the form of deduction and tax credit, be it income, VAT or other internal revenue taxes. At most, it is an expense account or a form of disbursement that should be recognized by the customers and not by the petitioner. Thus, the MCIT assessment should be properly sustained.

11. The deficiency DST assessment was issued based on the increases on the sum assured as reported by the petitioner in its Annual Report to the Insurance Commission for the year 2001, or Section 183 of the Tax Code, as amended. Likewise, under Section 198 of the same Code, it is specifically provided that any alteration on any instrument or agreement, a policy insurance included, shall be subject to DST at the same rate as that imposed on the original instrument. It is settled that even the increases in capital stock is subject to the DST, and not only on the original capital stock subscribed under Section 175 of the Tax Code.

In the case of *COMMISSIONER OF INTERNAL REVENUE* vs. *LINCOLN PHILIPPINE LIFE INSURANCE COMPANY, INC.* (now *JARDINE-CMA LIFE INSURANCE COMPANY, INC.)* and *THE COURT OF APPEALS, G.R. No. 119176, March 19, 2002, 379 SCRA 423,* the Supreme Court ruled in this wise, viz:

> 'The petition is impressed with merit.
>
> Section 49, Title VI of the Insurance Code defines an insurance policy as the written instrument in which a contract of insurance is set forth. Section 50 of the same Code provides that the policy, which is required to be in printed form, may contain any word, phrase, clause, mark, sign, symbol, signature, number, or word necessary to complete the contract of insurance. It is thus clear that any rider, clause, warranty or endorsement pasted or attached to the policy is considered part of such policy or contract of insurance.
>
> The subject insurance policy at the time it was issued contained an 'automatic increase clause.' Although the clause was to take effect only in 1984, it was written into the policy at the time of its issuance. The distinctive feature of the 'junior estate builder policy' called the 'automatic increase clause' already formed part and parcel of the insurance contract, hence, there was no need for an execution of a separate agreement for the increase in the coverage that took effect in 1984 when the assured reached a certain age.
>
> It is clear from Section 173 that the payment of documentary stamp taxes is done at the time the act is done or transaction had and the tax base for the

NB

computation of documentary stamp taxes on life insurance policies under Section 183 is the amount fixed in policy, unless the interest of a person insured is susceptible of exact pecuniary measurement. What then is the amount fixed in the policy? Logically, we believe that the amount fixed in the policy is the figure written on its face and whatever increases will take effect in the future by reason of the 'automatic increase clause' embodied in the policy without the need of another contract.

Here, although the automatic increase in the amount of life insurance coverage was to take effect later on, the date of its effectivity, as well as the amount of the increase, was already definite at the time of the issuance of the policy. Thus, the amount insured by the policy at the time of its issuance necessarily included the additional sum covered by the automatic increase clause because it was already determinable at the time the transaction was entered into and formed part of the policy.

The 'automatic increase clause' in the policy is in the nature of a conditional obligation under Article 1181, by which the increase of the insurance coverage shall depend upon the happening of the event which constitutes the obligation. In the instant case, the additional insurance that took effect in 1984 was an obligation subject to a suspensive obligation, but still a part of the insurance sold to which private respondent was liable for the payment of the documentary stamp tax.

The deficiency of documentary stamp tax imposed on private respondent is definitely not on the amount of the original insurance coverage, but on the increase of the amount insured upon the effectivity of the 'Junior Estate Builder Policy.'

Finally, it should be emphasized that while tax avoidance schemes and arrangements are not prohibited, tax laws cannot be circumvented in order to evade the payment of just taxes. In the case at bar, to claim that the increase in the amount insured (by virtue of the automatic increase clause incorporated into the policy at the time of the computation of the issuance) should not be included documentary stamp taxes due on the policy would be a clear evasion of the law requiring that the tax be computed on the basis of the amount insured by the policy.

WHEREFORE, the petition is hereby given **DUE COURSE**. The decision of the Court of Appeals is **SET ASIDE** insofar as it affirmed the decision of the Court of Tax Appeals nullifying the deficiency stamp tax assessment petitioner imposed on private respondent in the amount of P464,898.75 corresponding to the increase in 1984 of the sum under the policy issued by respondent.' (Underscoring/Emphasis supplied)

From the foregoing, the documentary stamp tax on life insurance policies is based on the amount of the policy *including* the increase in the sum initially insured *even though no new policy is issued since the increase already formed part of the policy.* Thus, the assessment for deficiency documentary stamp tax on the increase in the sum insured was upheld.

The instant case is on all fours with the aforesaid case. Hence, under the doctrine of *stare decisis* the aforesaid ruling should be followed in this case. And, thus, petitioner should be made liable to the deficiency DST.

12. 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 or exemption from the payment of DST for that matter.

13. Issues and defenses not raised in the administrative level cannot be raised for the first time on appeal. As held in the case of *Aguinaldo Industries Corp. Fishing Nets Division v. Commissioner of Internal Revenue, et al., L-29790, Feb. 25, 1982:*

'To allow a litigant to assume a different posture when he comes before the Court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court – which is supposed to *review* administrative determinations – would not review, but determine and decide for the first time, a question not raised at the administrative forum. This cannot be permitted for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal.'

Likewise, in the case of *Commissioner of Internal Revenue v. Guerrero, et al., L-19074, Jan. 31, 1967*, it was held that:

'Inasmuch as the tax court's jurisdiction is appellate in nature, it is essential that matters taken up in the appeal should be included in the contested assessment.'

14. The supplemental Petition for Review was filed by petitioner for the purpose of supplementing the arguments against the assessment for DST set forth in the original Petition for Review (*page 1, Supplemental Petition for Review*). Petitioner, however, *belatedly* questioned respondent's right to assess DST on transactions from January to June, sans the particular year involved, but presumably the year was 2001.

15. It must be emphasized that petitioner never questioned the government's right to assess DST at the administrative level when it filed its protest, Annex 'D' of the original Petition.

16. The Tax Court has exclusive *appellate* jurisdiction to review by appeal, among others, the *decisions* of the Commissioner of Internal revenue in cases involving disputed assessments, or the *inaction* by the Commissioner in cases involving disputed assessment where the Tax Code provides for a specific period for action (*Section 7, RA No. 1125, as amended by Section 7, RA No. 9282*). Suffice it to say, the Tax Court *cannot* take cognizance of matters raised for the first time before it, for its jurisdiction is merely *appellate* in nature; hence, the new arguments sought to be admitted in its supplemental Petition is unwarranted and, therefore, should be denied.

17. The issue of respondent's right to assess DST on transactions from January to June 2001 was not raised in the administrative level; hence, cannot be raised for the first time on appeal.

18. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. (*Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290; Sy Po v. CTA, et al., G.R. No. 81446, August 18, 1988; Dayrit, et al. v. Cruz, et al, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et al., G.R. No. 122451, October 12, 2000*).

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

CTA Case No. 7324

On January 25, 2005, petitioner received respondent's Formal Letter of Demand dated January 5, 2005 with FAN No. LN#026-03-I DST-05-00076 issued on January 18, 2005[17] for petitioner's alleged deficiency DST for taxable year 2002 in the aggregate amount of ₱ 2,528,424.74, broken down as follows:

Basic DST due	₱ 1,764,579.41
Interest: 1/01/03 to 3/5/2005	763,848.53
Total Deficiency DST	₱ 2,528,424.74

Respondent assessed petitioner for deficiency DST based on the increases in the sum assured under existing insurance policies as reported by petitioner in its 2002 Annual Report to the Insurance Commission[18] (referred to in the FAN as "IC Report"), notwithstanding that no new insurance policies were issued and that the existing insurance policies were already subjected to DST upon issuance.

As shown in the IC Report, the increased coverage in 2002 amounted to ₱ 1,345,215,000.00, broken down as follows:

Total increase in sum assured for Group Insurance	₱ 1,169,854,000.00
Total increase in sum assured for Ordinary Insurance	175,361,000.00
	₱ 1,345,215,000.00

The basic tax of the alleged deficiency DST assessment was computed, per respondent's Formal Letter of Demand, as follows:

[17] Exhibit "O".
[18] Pars. 9 and 12, JSFI, Docket, pp. 332 and 333, respectively.

Assessment No. DST-05-00076

Details	Amount
Total Issued Policies[19]	₱ 825,958,000.00
Total Increase in policies[20]	1,345,215,000.00
Total policies sum assured	₱ 2,171,173,000.00
Tax Rate	P0.50/P200
Tax Due per recomputation and per LN	5,427,932.50
DST Payments per DPQAD/TAS/ISOS DC	3,663,353.09
Discrepancy in DST due	₱ 1,764,579.41

In the Details of Discrepancy annexed to the Formal Letter of Demand, respondent cited the 2002 case of *Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc.*[21] decided by the First Division of the Supreme Court as its basis for assessing the DST on the increases.

On February 24, 2005, petitioner filed its letter protest before the LTS of the BIR[22], stating the factual and legal bases supporting its arguments against the subject deficiency assessment. The figures that formed the factual bases for the deficiency assessment were allegedly derived by respondent from petitioner's Annual Report to the Insurance Commission, and are not disputed. The issues involving the assessment are purely questions of law, thus, petitioner did not file any supporting document.

On September 21, 2005, petitioner filed the Petition for Review in CTA Case No. 7324 to protect its right to refute or protest the aforementioned assessment.

nb

[19] Line 2 of Column 29 of Exhibit "15" of ICPA Report.
[20] Line 4 of Column 29 of Exhibit "15" of ICPA Report.
[21] G.R. No. 119176, March 19, 2002.
[22] Exhibit "R".

On October 25, 2005, respondent filed his Answer[23] submitting the following arguments:

> "In the case of ***Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc. (now Jardine-CM No. 119176, promulgated 19 March 2002, A Life Insurance Company, Inc.) and the Court of Appeals, G.R.*** the Supreme Court ruled thus:[24]
>
> xxx xxx xxx
>
> The contention of petitioner that the above-quoted case cannot justify the imposition of Documentary Stamp Tax (DST) on the subsequent increase in coverage or sum assured of the life insurance policies issued by petitioner is utterly misplaced. It is understood that the 2002 decision on the Lincoln Case covers only the automatic increases on individual life insurance policy because this is determinable at the time the policy as taken out and does not cover all kinds of riders/increases attached to other insurance product, such as group and industrial. However, respondent is of the position that since riders, clauses and warranties, which increases the sum assured, to be binding between the insured and the insurer should not only be pasted or attached to the said policy but should be mentioned and written on the blank spaces provided in the policy, describing therein the title or name of riders, thus making the said riders, therefore, part and parcel of the policy.
>
> If an automatic increase which is only determinable at the time the policy was taken out is taxable, how much more the increase and/or riders which have been actually determined at the end of the taxable year.
>
> 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 *(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., 21 May 1986;*

[23] Docket (CTA Case No. 7324), pp. 111 to 117.
[24] Same as the portion quoted in respondent's Answer to the Petition for Review in CTA Case No. 7266.

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

CTA Case No. 7378

On March 11, 2005, petitioner received respondent's Formal Letter of Demand dated February 7, 2005 with FAN No. LTS-LN#116-03-00044 DST-05-00105 issued on March 4, 2005[25] for petitioner's alleged deficiency DST for taxable year 2002 in the aggregate amount of ₱ 2,083,203.48, broken down as follows:

Basic DST due	₱ 1,689,709.49
Interest: 1/05/04 to 2/5/2005	393,493.99
Total Deficiency DST	₱ 2,083,203.48

Respondent again assessed petitioner for deficiency DST based on the increases in the sum assured under existing insurance policies as reported by petitioner to the Insurance Commission in its Annual Report for 2003[26] (referred to in the FAN as "IC Report"), despite the fact that no new insurance policies were issued and that the existing insurance policies were already subjected to DST upon issuance. As shown in the IC Report, the increased coverage in 2003 amounted to ₱ 1,227,566,000.00, broken down as follows:

Total increase in sum assured for Group Insurance	₱ 1,142,428,000.00
Total increase in sum assured for Ordinary Insurance	85,137,000.00
	₱ 1,227,566,000.00

The basic tax of the alleged deficiency DST assessment was computed, per respondent's Formal Letter of Demand, as follows:

Assessment No. LTS-LN#116-03-00044-DST-05-00105

[25] Exhibit "P".
[26] Pars. 9 and 12, JSFI, Docket, pp. 332 and 333, respectively.

Details	Amount
Total Issued Policies per IC Report	₱ 801,548,000.00
Total Increase in policies per IC Report	1,227,566,000.00
Total policies sum assured	₱ 2,029,114,000.00
Tax Rate	P0.50/P200
Tax Due per recomputation and per LN	5,072,785.00
DST Payments per DPQAD	3,383,075.51
Discrepancy in DST due	₱ 1,689,709.49

In the Details of Discrepancy attached to the Formal Letter of Demand, respondent also cited the 2002 case of *Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc.*[27] as its basis for assessing the DST on the increases.

On April 7, 2005, petitioner filed its letter protest[28] before the LTS of the BIR[29], stating the factual and legal bases supporting its arguments against the subject deficiency DST assessment. On June 6, 2005, petitioner submitted before the Large Taxpayer Audit and Investigation Division the following supporting documents: (1) a copy of the Court of Appeals' Decision in the case entitled *Commissioner of Internal Revenue vs. Manila Bankers Life Insurance Corporation*[30] dated April 29, 2005 on the DST assessment for taxable year 1997 concerning the same issue; (2) a copy of the Money Plus Plan; and (3) a copy of the Master Policy Data. On October 26, 2005, petitioner received the Final Decision on Disputed Assessment dated October 7, 2005, signed by Deputy Commissioner Kim S. Jacinto-Henares as Officer-in-Charge of the LTS, denying petitioner's protest.[31]

[27] *supra.*
[28] Exhibit "S".
[29] Par. 2, JSFI, Docket, p. 331.
[30] CA-G.R. SP No. 70600.
[31] Par. 10, JSFI, *rollo,* p. 332.

On November 24, 2005, petitioner filed its Petition for Review in CTA Case No. 7378 to protect its rights and to contest the foregoing assessment. On February 13, 2006, respondent filed his Answer[32] alleging the above-quoted contentions stated in his Answer to the Petition for Review in CTA Case No. 7324.

Consolidation of CTA Cases Nos. 7266, 7324 and 7378

Upon motion of petitioner, CTA Case Nos. 7324 and 7378, both pending with the First Division of this Court, were consolidated with CTA Case No. 7266 pending before this Division as the case bearing the lowest case number, pursuant to the Resolution dated April 3, 2006[33] of the First Division of this Court.

On August 22, 2007, the parties filed their Joint Stipulation of Facts and Issues[34] in these consolidated cases and was approved by this Court on September 4, 2006.[35] Thereafter, both parties presented their respective evidence. Upon termination thereof, the parties were granted thirty (30) days from receipt thereof to file their respective memorandum in the Resolution dated September 2, 2008[36]. Correspondingly, within separate extension periods granted to the parties, they filed their respective Memorandum on November 10, 2008.[37] And in the Resolution dated November 13, 2008, these consolidated case were submitted for decision.[38]

Hence, this Decision.

---

[32] Docket (CTA Case No. 7378), pp. 166 to 173.
[33] Docket (CTA Case No. 7324), pp. 148 to 149.
[34] Docket, pp. 331 to 335.
[35] *Id.*, p. 337
[36] *Id.*, pp. 556 to 557.
[37] Respondent's Memorandum, Docket, pp. 572-588; Petitioner's Memorandum, Docket, pp. 589-623
[38] Docket, p. 624

THE ISSUES

The issues[39] as stipulated by the parties are as follows:

"On the MCIT Assessment

17. Whether the Premium Tax and Documentary Stamp Tax, factored-in the premium charged to insurance customers, are direct costs includible in the cost of service deductible from the gross receipts, for purposes of determining gross income subject to MCIT.

18. Whether RMC No. 4-2003 dated 31 December 2002 may be applied retroactively in determining Petitioner's MCIT for taxable year 2001.

On the DST Assessments

19. Whether an increase in the coverage or the sum assured by an insurance policy is subject to DST, although no new life insurance policy covering such increase is issued.

20. Whether DST assessment for the period January to June 2001 has prescribed.

21. Whether or not petitioner can raise the issue of prescription for the first time before the Court of Tax Appeals.

22. Whether the decision of the First Division of the Supreme Court in the case of *CIR vs. Lincoln Philippines Life Insurance Company, Inc.*, G.R. No. 119176 promulgated on March 19, 2002, can be used to justify the imposition of DST on subsequent increases in coverage or sum assured on the life insurance policies in the instant case."

THE COURT'S RULING

Premium Tax deemed part of the cost of service for purposes of MCIT but not the DST.

Section 27(E) of the NIRC of 1997 provides as follows:

"**SEC. 27.** *Rates of Income Tax on Domestic Corporations. -*

---

[39] Pars. 17 to 22, JSFI, Docket, pp. 333 to 334.

xxx xxx xxx

(E) *Minimum Corporate Income Tax on Domestic Corporations.* -

(1) *Imposition of Tax.*- A minimum corporate income tax of two percent (2%) of the gross income as of the end of the taxable year, as defined herein, is hereby imposed on a corporation taxable under this Title, beginning on the fourth taxable year immediately following the year in which such corporation commenced its business operations, when the minimum income tax is greater than the tax computed under Subsection (A) of this Section for the taxable year.

xxx xxx xxx

(4) *Gross Income Defined.* - For purposes of applying the minimum corporate income tax provided under Subsection (E) hereof, the term *'gross income'* shall mean gross sales less sales returns, discounts and allowances and cost of goods sold. *'Cost of goods sold'* shall include all business expenses directly incurred to produce the merchandise to bring them to their present location and use.

For a trading or merchandising concern, *'cost of goods sold'* shall include the invoice cost of the goods sold, plus import duties, freight in transporting the goods to the place where the goods are actually sold including insurance while the goods are in transit.

For a manufacturing concern, *'cost of goods manufactured and sold'* shall include all costs of production of finished goods, such as raw materials used, direct labor and manufacturing overhead, freight cost, insurance premiums and other costs incurred to bring the raw materials to the factory or warehouse.

In the case of taxpayers engaged in the sale of service, *'gross income'* means gross receipts less sales returns, allowances, discounts and cost of services. *'Cost of services'* shall mean all direct costs and expenses necessarily incurred to provide the services required by the customers and clients including (A) salaries and employee benefits of personnel, consultants and specialists directly rendering the service and (B) cost of facilities directly utilized in providing the service such as depreciation or rental of equipment used and cost of supplies: *Provided, however*, That in the case of banks, *'cost of services'* shall include interest expense."

In the case of sales of services, the term "gross income" means gross receipts less sales returns, allowances, discounts and cost of services.[40]

It is clear from the foregoing provision that, for the purpose of imposing MCIT, cost of services means *"all direct costs and expenses necessarily* ***incurred****"* by the taxpayer *"to provide the services required by the customers and clients"*. The word **"incur"** is defined as follows:

> "To have liabilities cast upon one by act or operation of law, as distinguished from contract, where the party acts affirmatively. To become liable or subject to."[41]

In light of the foregoing, premium tax may be considered as a direct cost and/or expense necessary to provide the service of insurance considering that insurance companies, such as petitioner, cannot effectively issue insurance policies without incurring the said tax. It must be pointed out that in the issuance of a policy or contract of insurance, its validity and binding effect depends upon the payment of the premium,[42] which is closely intertwined with the payment of the premium tax that is accruing thereto.

In this connection, Section 123 of the NIRC of 1997 provides:

> "SEC. 123. *Tax on Life Insurance Premium.*— There shall be collected from every person, company or corporation (except purely

---

[40] Sec. 2.27(E)(4)(a), Revenue Regulations No. 9-98 (SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as Amended" Relative to the Imposition of the Minimum Corporate Income Tax (MCIT) on Domestic Corporations and Resident Foreign Corporations).

[41] Black's Law Dictionary, Fifth Edition, p. 691

[42] Section 77 of The Insurance Code of the Philippines of 1978 (Presidential Decree No. 1460, as amended) provides: "Sec. 77. An insurer is entitled to payment of the premium as soon as the thing insured is exposed to the peril insured against. Notwithstanding any agreement to the contrary, **no policy or contract of insurance issued by an insurance company is valid and binding unless and until the premium thereof has been paid**, except in the case of a life or an industrial life policy whenever the grace period provisions applies." *(Emphasis supplied)*

> cooperative companies or associations) doing life insurance business of any sort in the Philippines as tax of **five percent (5%) of the total premium collected**, whether such premiums are paid in money, notes, credits or any substitute for money; xxx." *(Emphasis supplied)*

However, We can not say the same as regards the DST.

Unlike the premium tax, which is the direct liability of the insurance company, the DST, is imposed upon "*the person making, signing, issuing, accepting or transferring*"[43] the document or facility evidencing the transaction. Thus, DST may be imposed upon either of the parties to the transaction in a contract of insurance, or upon either the insurance company or the insured.[44]

It is not disputed herein that the corresponding DST (like the consequent premium tax) was included in the premiums charged to petitioner's clients.[45] Thus, the latter are the ones who were made liable to pay the DST, and not the petitioner. This being the case, DST cannot be deemed as a direct cost or expense of petitioner necessary to provide the insurance service. Consequently, the same DST cannot form part of petitioner's costs of service for purposes of computing its MCIT for taxable year 2001.

---

[43] Section 173 of the NIRC of 1997 provides as follows:

> "SEC. 173. *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.*— Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, **by the person making, signing, issuing, accepting, or transferring** the same whenever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax." *(Emphasis supplied)*

[44] The National Internal Revenue Code Annotated (Volume 2) by Hector S. De Leon and Hector M. De Leon, Jr., © 2003, p. 290.

[45] Par. 4, JSFI, Docket, p. 332; Exhibit "Q", Docket, p. 52; and Petitioner's Memorandum, Pars. 46-47, Docket, pp. 602-603.

We thus compute the MCIT assessment (basic tax only) as follows:

DST	₱ 1,508,128.17
MCIT rate	2%
MCIT still due	**₱ 30,162.56**

RMC No. 4-2003 may not be applied retroactively in determining petitioner's MCIT for the year 2001.

Petitioner strongly argues that RMC 4-2003 cannot be used as basis for computing petitioner's MCIT for taxable year 2001 because it would violate the rule on non-retroactivity of rulings and circulars[46] under Section 246 of the NIRC of 1997, to wit:

> "**SEC. 246.** *Non-Retroactivity of Rulings.* — **Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner** shall not be given retroactive application **if the revocation, modification or reversal** will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith." *(Emphasis supplied)*

It also relies on the ruling of the Supreme Court in *ABS-CBN Broadcasting Corporation vs. Court of Tax Appeals, et al.*[47], and on the ruling of the Court of

[46] Petitioner's *Memorandum*, par. 55, p. 18, Docket, p. 606.
[47] G.R. No. L-52306, October 12, 1981.

Appeals (CA) in *Manila Mining Corporation vs. Commissioner of Internal Revenue*[48], as well as in BIR Ruling Nos. 003-93 and DA-031-04.[49]

Although We agree with petitioner that RMC No. 4-2003 may not be applied retroactively in determining petitioner's MCIT for the year 2001, it is not for the reasons invoked by petitioner.

A cursory reading of the above-quoted Section 246 would reveal that for the prohibition on non-retroactivity of any of the rulings or circulars promulgated by the Commissioner to be operative, it must first and foremost be shown that there exists a *prior* or *previous* ruling or circular, *inter alia*, that is being the subject of "revocation, modification or reversal" of a *subsequent* ruling or circular. In the instant cases, petitioner failed to present evidence that there exists a prior or previous ruling or circular that is being revoked, modified or reversed by RMC 4-2003. Consequently, petitioner cannot validly invoke the rule on non-retroactivity of rulings under the said Section 246 of the NIRC of 1997.

Petitioner cannot also find shelter in the cases cited in arguing that RMC 4-2003 should not be given a retroactive application. The common factual milieu in all of the cited cases is the existence of a prior ruling or circular that was revoked, modified or reversed by a subsequent ruling. The said common factual milieu, however, is **not** present in the case at bar.

In the ABS-CBN case, RMC 4-71 revoked General Circular No. V-334; *in the Manila Mining case*, VAT Ruling No. 008-92 and Revenue Memorandum Order No. 22-92 revoked or superseded RMC 59-88, BIR Ruling No. 036-90, and

---

48 CA-G.R. SP No. 38287, June 5, 1997.

49 Pars. 58 to 61, Petitioner's *Memorandum*, Docket, pp. 607 to 609.

the earlier favorable response of the BIR in the application for value-added tax zero-rating by the concerned taxpayer; *in the case of BIR Ruling No. 003-93*, RMC 39-92 revoked BIR Ruling No. 359-87; and *in the case of BIR Ruling No. DA-031-04*, RMC 42-2003 impliedly revoked the prior approval of tax credit/refund on the concerned taxpayer which was relied upon by the latter for claims for refund or credit filed before the issuance of said RMC 42-2003.

Parenthetically, it must be emphasized that as regards the *Manila Mining* case decided by the Court of Appeals, even assuming *arguendo* that said court rendered a contrary ruling, such ruling is not binding upon this Court being a co-equal court whose decisions are no longer reversive of those of this Court.[50]

As stated earlier though, We agree with petitioner that RMC 4-2003 should be given a prospective application in this case, not on the basis of Section 246 of the NIRC of 1997 as there is indeed no prior or previous ruling that is being revoked, modified or reversed, but according to the doctrinal pronouncements of the High Court regarding the prospective and retroactive application of administrative rulings.

While, according to prevailing jurisprudence, the opinions and rulings of officials of the government called upon to execute or implement laws, command respect and weight,[51] We cannot ignore equally persuasive jurisprudence to the effect that such opinions and rulings are generally prospective in nature.[52]

---

[50] *Systra Phils., Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[51] For example, *Molina vs. Rafferty*, G.R. No. L-11988, February 1, 1918; and *Protector's Services, Inc. vs. Court of Appeals, et al.*, G.R. No. 118176, April 12, 2000.
[52] *Harrison Motors Corporation vs. Navarro*, G.R. No. 132269, April 27, 2000.

Thus, as a rule, administrative rulings should be applied prospectively. We note that it is only on the following instances where such rulings are to be applied retroactively, to wit:

1. the obligation to pay the tax does not arise from the administrative regulations (or rulings), but from the tax laws existing at the time of the taxable transaction;[53] or
2. when the administrative ruling is not declarative of certain rights and corresponding obligations.[54]

The instant case does not fall under any of the foregoing instances to warrant the retroactive application of RMC 4-2003. In fact, petitioner's obligation to pay the deficiency income tax even arose from the application of said RMC, and not merely from the provision of Section 27(E)(4) the NIRC of 1997. Moreover, it may even be said that RMC 4-2003 is declarative of the right of the government to collect the amount of MCIT using merely the expenses covered by the term "cost of services" for insurance businesses, and of the corresponding obligation on the part of the petitioner to apply only the said expenses, both for the determination of MCIT due.

Consequently, RMC 4-2003 dated December 31, 2002 should only be applied prospectively.

An increase in the coverage or the sum assured by an insurance policy is subject to DST, although no new policy for such an increase is issued.

---

[53] *Id.*
[54] *Commissioner of Internal Revenue vs. Reyes*, G.R. Nos. 159694 and 163581, January 27, 2006.

Sections 173 and 183 of the NIRC of 1997 provide as follows:

> "**SEC. 173.** *Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers.* — Upon documents, instruments, loan agreements and papers, and upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, **and in respect of the transaction so had or accomplished**, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, **and at the same time such act is done or transaction had**: xxx." *(Emphasis supplied)*
>
> "**SEC. 183.** *Stamp Tax on Life Insurance Policies.* — On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Two hundred pesos (P200), or fractional part thereof, **of the amount insured by any such policy**." *(Emphasis supplied)*

Based on the foregoing, it is clear from Section 173 that the payment of DST is done at the "time the act is done or transaction had" and the tax base for the computation of documentary stamp taxes on life insurance policies under Section 183 is "the amount insured" by such policies.

Considering that the law does not make any distinction, "the amount insured" should not be limited to the amount of the coverage as written on the face of the policy but should also include increases thereon that will take effect after the issuance thereof, regardless of the reason for the said increases, be it the "fluctuation in the number of covered employees in the case of group insurance, and the availment by the insured of the 'guaranteed continuity' clause in the individual life insurance policies"[55] or otherwise. To claim that the increase in "the amount insured" should not be included in the computation of the DST due on the policy would be a clear evasion of the law requiring that the said tax be computed on the basis of "the amount insured" by the policy. This interpretation is consistent with the case of *Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Co., Inc., et al.*[56] (*Lincoln* case).

Petitioner however opines that the *Lincoln* case cannot be used to justify the imposition of DST on subsequent increase in coverage or sum assured on the life insurance policies in the instant case.[57] It argues that "the *Lincoln case* modifies the rule laid down in the *Heald case*[58] and applied to in subsequent cases decided by the Supreme Court as it allows the imposition of DST on the increase in insurance coverage which depends on the happening of a conditional obligation and not on the DST at the time of issuance of the policy."[59]

Petitioner contends that "(b)eing a decision of the Supreme Court sitting *en banc*, the principle of law laid down in the *Heald case* and subsequently applied by the Court in numerous other cases only be overturned by the Supreme Court sitting *en banc* as provided under the Constitution. Thus, any modification or reversal of the principle established in the *Heald case* relating to

---

[55] Par. 96, Petitioner's *Memorandum*, Docket, p. 620.
[56] G.R. No. 119176, March 19, 2002.
[57] Petitioner's *Memorandum*, Docket, p. 618.
[58] Referring to the case of *Commissioner of Internal Revenue vs. Heald Lumber Co.,* G.R. No. L-16340, February 29, 1964.
[59] Par. 93, Petitioner's *Memorandum*, Docket, p. 619.

the nature of DST other than by the Supreme Court *en banc* violates Article VIII, Section 4(3)[60] of the Constitution and is therefore invalid and unconstitutional."[61]

We are not persuaded.

A careful reading of the *Heald* case and the *Lincoln* case would easily reveal that their respective factual circumstances are totally different. In the *Heald* case, the transaction involved a mere transfer of surplus to capital and an increase in the stated value of the outstanding no par value shares, and the provision of the law applied in imposing the DST was Section 212 of the then Tax Code[62]; while in the *Lincoln* case, the transaction is the "automatic increase" on the amount fixed in the life insurance policy, and the provision of law applied was Section 183 of the NIRC of 1997. On this score alone, petitioner could have intelligently surmised that the latter case did not modify nor reverse the former.

The Court shall identify forthwith the unmistakable and important distinction the *Heald* case had vis-à-vis the *Lincoln* case.

In the *Heald* case[63], the *ratio decidendi* is very clear:

> "In the instant case we may well consider what the resolution of the directors with reference to the transfer of surplus funds to the capital stock account did not do. **It did not increase the number of shares;** it did not provide for the issuance of additional shares of certificates; or **did not alter, change or affect the then outstanding certificates and it did not purport to create or grant to stockholder any new or additional rights**. Not only did the resolution of the directors make no such provision but **the transfer as provided created no new or additional shares** or certificates of stock, nor did there result from such transfer any

[60] "...no doctrine or principle of law laid down by the court in a decision en banc or in division may be modified or reversed except by the court sitting en banc."
[61] Par. 94, Petitioner's *Memorandum*, Docket, p. 620.
[62] Now Section 175, NIRC of 1997.
[63] *Supra*, note 51.

> change or modification whatsoever in the number or form of certificates evidencing shares of taxpayer's common stock. This was a mere bookkeeping transaction and no one was enriched or impoverished by this transfer of funds. . . ."[64] *(Emphases supplied)*

In the *Lincoln* case, there were increases in the amount fixed in the policy by virtue of the "automatic increase clause". Such increases necessarily altered, changed or affected the subject policies, and therefore, created or granted existing policyholders new and additional rights, as in the instant case. Moreover, the two cases were decided by the same Supreme Court. If the High Court wanted to modify, reverse or abandon the *Heald* case via the *Lincoln* case, it could have easily done so by doing the appropriate action in accordance with law.

Petitioner cannot raise the issue of prescription for the first time on appeal.

While petitioner admits that the defense of prescription cannot be raised for the first time on appeal, it argues that the instant case falls under the exception cited in the Supreme Court case of *Dino, et al. vs. Court of Appeals, et al.*[65] (*Dino* case) which states:

> ". . .(T)rial courts have authority and discretion to dismiss an action on the ground of prescription when the parties' pleadings or other facts on record show it to be indeed time-barred; and it may do so on the basis of a motion to dismiss, or an answer which sets up such ground as an affirmative defense, or even if the ground is alleged after judgment on the merits, as in a motion for reconsideration; or even if the defense has not been asserted at all, as where no statement thereof is found in the pleadings. What is essential only, to repeat, is that the facts demonstrating the lapse of

[64] Citing *U.S. v. Archer-Daniels-Midland Co.*, 243 F. 2d 132.
[65] G.R. No. 113564, June 20, 2001.

the prescriptive period be otherwise sufficiently and satisfactorily apparent on the record; either in the averments of the plaintiff's complaint, or otherwise established by the evidence."

In *Aldovino, et al. v. Alunan, et al.*, the Court *en banc* reiterated the *Garcia v. Mathis* doctrine cited in the *Gicano case* that when the plaintiff's own complaint shows clearly that the action has prescribed, the action may be dismissed even if the defense of prescription was not invoked by the defendant." (*Citations and emphases omitted*)

Petitioner is mistaken.

Suffice it to state that the *Dino* case is not in all-fours with the instant case and thus, should not be applied herein.

As correctly indicated by respondent, the case in point is *Aguinaldo Industries Corporation (Fishing Nets Division) vs. Commissioner of Internal Revenue, et al.*[66], wherein it was held:

"To allow a litigant to assume a different posture when he comes before the court and **challenge the position he had accepted at the administrative level**, would be to sanction a procedure whereby the court — which is supposed to *review* administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. **This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal**.

In the instant case, up to the time the questioned decision of the respondent Court was rendered, the petitioner had always implicitly admitted that the disputed capital gain was taxable, although subject to the deduction of the bonus paid to its corporate officers. It was only after the said decision had been rendered and on a motion for reconsideration thereof, that the issue of tax exemption was raised by the petitioner for the first time. It was thus

[66] G.R. No. L-29790, February 25, 1982.

not one of the issues raised by petitioner in his petition and supporting memorandum in the Court of Tax Appeals." (*Emphasis supplied*)

In all of petitioner's protest letters[67], there is no indication that it is questioning the authority of respondent in assessing the subject DST on the ground of prescription. Hence, it can be said that petitioner "implicitly admitted" that the subject assessments are not barred by prescription. Such being the case, by virtue of the ruling in the above-quoted *Aguinaldo* case, petitioner cannot now "challenge the position he had accepted at the administrative level".

Finding that petitioner cannot raise the issue of prescription for the first time on appeal, the Court will no longer address the fourth issue as to whether or not the DST assessment for the period from January to June 2001 has prescribed.

Lastly, the compromise penalties imposed by respondent are cancelled there being no mutual agreement between the parties.[68] However, a twenty-five percent (25%) surcharge should be imposed, pursuant to Section 248(A) of the NIRC of 1997.

WHEREFORE, in view of the foregoing considerations, the consolidated Petitions for Review seeking the cancellation of respondent's assessments for: deficiency Minimum Corporate Income Tax (MCIT) and deficiency Documentary Stamp Tax (DST) and increments for taxable year 2001 in **CTA Case No. 7266**; deficiency DST and increments for taxable year 2002 in **CTA Case No. 7324**;

---

[67] Exhibits "Q", "R", and "S".

[68] *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.

and deficiency DST and increments for taxable year 2003 in **CTA Case No. 7378** are **DENIED.** The Formal Assessment Notices issued by respondent against petitioner covering deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002 and 2003 are hereby **AFFIRMED WITH MODIFICATIONS**. The compromise penalties are **CANCELLED.** However, a twenty-five percent (25%) surcharge is imposed, pursuant to Section 248(A) of the NIRC of 1997.

Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **FOURTEEN MILLION SIXTY-THREE THOUSAND SIX HUNDRED SEVEN PESOS AND 51/100 (₱ 14,063,607.51)**, representing its deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002, and 2003, inclusive of increments, computed as follows:

	2001	**2002**	**2003**	**Grand Total**
MCIT				
Basic MCIT Due	₱ 30,162.56			
25% Surcharge-	7,540.64			
20% Interest	14,076.86			
	₱ 51,780.06			**₱ 51,780.06**
DST				
Basic DST Due	₱ 4,841,002.50	₱ 1,764,579.41	₱ 1,689,709.49	
25% Surcharge	1,210,250.63	441,144.85	422,427.37	
20% Interest	2,485,370.68	763,848.53	393,493.99	
	₱ 8,536,623.81	**₱ 2,969,572.79**	**₱ 2,505,630.85**	**14,011,827.45**
Total Amount Due	**₱ 8,588,403.87**	**₱ 2,969,572.79**	**₱ 2,505,630.85**	**₱ 14,063,607.51**

In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) delinquency interest on ₱ 8,588,403.87, representing the total amount due for taxable year 2001, computed from August 11, 2004; as well as on the ₱ 2,969,572.79 and ₱ 2,505,630.85 total amounts due for taxable years 2002 and 2003, respectively, computed from March 5, 2005 until full payment thereof, pursuant to Section 249(C)(3) of the NIRC of 1997.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I hereby attest that this decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

JUANITO C. CASTAÑEDA, JR.
Chairman
Associate Justice

CERTIFICATION

I hereby certify that the decision was reached after due consultation with the members of the division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Justice