**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

-*versus*-

**ASIA UNITED INSURANCE, INC.,**
*Respondent.*

**CTA *EB* NO. 1725**
(CTA Case No. 8916)

Present:

**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**FABON-VICTORINO,**
**MINDARO-GRULLA,**
**RINGPIS-LIBAN,** *and*
**MANAHAN,** *JJ.*

Promulgated:
MAR 27 2019 3:46 p.m.

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# D E C I S I O N

**MANAHAN, J.:**

Before the Court *En Banc* is a Petition for Review,[1] filed by the Commisisoner of Internal Revenue (CIR) pursuant to Rule 8, Section 3(b)[2] of the Revised Rules of the Court of Tax Appeals (RRCTA), seeking the reversal and setting aside of the Decision[3] and Resolution,[4] dated May 17, 2017 and September 20, 2017, respectively. The said Decision and Resolution ruled that the collection of the alleged deficiency documentary stamp tax (DST) assessment against Asia United Insurance, Inc. (AUII),

[1] *Rollo*, CTA EB No. 1725, pp. 5-14.
[2] Rule 8. Procedure in Civil Cases
Section 3. Who may appeal; period to file petition.
xxx xxx xxx
(b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review.
[3] *Rollo*, pp. 16-36.
[4] *Rollo*, pp. 38-42.

amounting to Php5,266,047.85, is already barred by prescription.

## The Facts

The facts, as summarized by the Division, are as follows:

> [Respondent] Asia United Insurance, Inc. is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office address at Room 777, 7th Floor BPI Condominium, Plaza Cervantes, Binondo, Manila City. It is engaged in the business of insurance and a registered taxpayer with Tax Identification Number 207-647-2006.
>
> [Petitioner] is the duly appointed head of the Bureau of Internal Revenue (BIR) that is in charge of the assessment and collection of all internal revenue taxes, fees and charges, granting of refunds, abatement of tax assessments, and examination of books of accounts and returns filed with the BIR to determine the correctness of taxes paid. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On November 9, 2004, [respondent] received a Letter Notice (LN) No. 032-34-2004 dated October 25, 2004, informing [respondent] that after a reconciliation of its due DST based on the third-party information from the Insurance Commission and actual payment sourced from [petitioner]'s records, there was underpayment of its documentary stamp tax in the amount of P20,783,192.67 for TY 2003. As such, [respondent] replied through a letter dated November 17, 2004, stating that the amount should be P20,651,949.82 instead of P20,783,192.67 and requested that the said amount be paid on installment basis. On December 8, 2004, [respondent] received [petitioner]'s letter dated November 23, 2004, denying the said request.
>
> Accordingly, [respondent] sent [petitioner] a letter dated December 21, 2004, together with BIR Form No. 0605 and Land Bank of the Philippines (LBP) Payment Slip, stating that an initial payment of P5,651,949.82 was made and reiterating its request to pay the deficiency in monthly installments. [Respondent] likewise sent letters on various dates to [petitioner], together with BIR

Form No. 0605 and LBP payment slip, evidencing the payment of the basic deficiency DST.

Despite the foregoing, [respondent] received a Preliminary Assessment Notice (PAN) dated January 24, 2005, assessing it for deficiency DST in the amount of P20,218,008.88, inclusive of interest and compromise penalty, to wit:

DEFICIENCY DOCUMENTARY STAMP TAX – Sec. 184 NIRC

| | | |
|---|---|---|
| Direct Premiums | | P121,309,894.36 |
| DST Due (at P0.50/4.00) | | 15,163,737.00 |
| Add: DST payable beg. per IC Report | | 12,019,455.67 |
| DST Due for Remittance | | P 27,183,192.67 |
| Less: Remittance/Payment | | |
| From Feb. 2003-Dec. 2003 | P5,900,000.00 | |
| BIR 0605-Dec. 2004 | 5,651,949.82 | 11,551,949.82 |
| Deficiency Documentary Stamp Tax | | 15,631,242.85 |
| Add: Increments | | |
| Interest: 01/06/04-02/20/05-Sec. 249 NIRC | P4,561,766.03 | |
| Compromise Penalty-RMO 1-90 | 25,000.00 | 4,586,766.03 |
| Total Amount Payable | | P20,218,008.88 |

On February 22, 2005, [petitioner] received [respondent]'s Reply to the PAN, alleging that the balance of the latter's deficiency tax liability was only P12,000,000.00 and not P15,631,242.85, as well as reiterating its request to pay such deficiency in installment and to waive the payment of interest and compromise penalty due to [respondent]'s negative financial condition.

On May 23, 2005, [petitioner] issued an Amended PAN which [respondent] received on even date, still assessing the latter for a DST deficiency in the amount of P13,308,257.42 for TY 2003, inclusive of interest and compromise penalty, *viz*:

DEFICIENCY DOCUMENTARY STAMP TAX – SEC. 184 NIRC

| | | | |
|---|---|---|---|
| Deficiency Basic DST Due per PAN dated Jan. 24, 2005 | | | P15,631,242.85 |
| Less: Adjustments/Payments | | | |
| Discrepancy on DST payable as of December 31, 2002 | | | |
| DST payable as of Dec. 31, 2002 per IC Report | | P12,019,455.67 | |
| Less: Per Computations | | | |
| DST Payable as of Dec. 31, 2001 per IC Report | P10,757,829.98 | | |
| Add: DST payable for 2002 | 14,648,623.93 | | |
| Total | P25,406,453.93 | | |
| Less: Payments in 2002 | 13,494,421.83 | 11,912,032.08 | |
| Discrepancy | | 107,423.59 | |
| Payment on January 23, 2003 | | 500,000.00 | |
| Payments from January 2005 to April 2005 | | 6,700,000.00 | 7,307,423.59 |
| Net Basic Deficiency DST Due | | | P8,323,819.26 |
| Add: Increments | | | |
| Interest: 01/06/04-05/27/05-Sec. 249 NIRC | | P4,959,438.16 | |

| | | |
|---|---|---|
| Compromise Penalty – RMO 1-90 | 25,000.00 | 4,984,438.16 |
| Total Amount Payable | | P13,308,257.42 |

On January 31, 2006, [respondent] received a Final Assessment Notice (FAN) (Demand No. 34-2003) dated January 27, 2006, assessing it for alleged deficiency DST in the amount of P5,289,866.91, inclusive of interest, and compromise penalty in the amount of P25,000.00 for TY 2003, as follows:

| | | | | |
|---|---|---|---|---|
| Basic DST due per amended PAN dated May 23, 2005 | | | | P 8,323,819.06 |
| Less: payments from August 31, 2005-October 28-2005 | | | | 8,300,000.00 |
| Deficiency DST Due | | | | P 23,819.06 |
| Add: 25% Surcharge | | | | |
| Interest (sec. 249) | | | | |
| BALANCE | | INTEREST | | |
| AS OF | AMOUNT | PERIOD COVERED | DUE | |
| 1/5/2004 | P 20,675,769.08 | 01/06/04-12/20/04 | P3,951,201.50 | |
| 12/22/2004 | 15,023,819.06 | 12/22/04-01/25/05 | 283,769.90 | |
| 1/26/2005 | 13,523,819.26 | 01/27/05-02/15/05 | 142,737.15 | |
| 2/16/2005 | 12,023,819.26 | 02/17/05-03/29/05 | 287,218.98 | |
| 3/30/2005 | 9,823,819.06 | 04/01/05-05/31/05 | 152,799.68 | |
| 4/29/2005 | 8,323,816.06 | 04/30/05-05/31/05 | 143,348.65 | |
| 6/1/2005 | 6,823,819.06 | 06/02/05-06/29/05 | 106,137.68 | |
| 6/30/2005 | 5,323,819.06 | 07/01/05-07/28/05 | 82,806.88 | |
| 7/20/2005 | 3,823,819.06 | 07/30/05-08/29/05 | 63,727.77 | |
| 8/3/2005 | 2,232,819.06 | 08/31/05-09/29/05 | 38,726.44 | |
| 9/30/2005 | 823,819.06 | 10/01/05-10/27/05 | 12,356.05 | |
| 10/28/2005 | 23,819.06 | 10/29/05-01/30/06 | 1,217.37 | 5,266,047.85 |
| Compromise Penalty | | | | - |
| TOTAL AMOUNT DUE & COLLECTIBLE | | | | P 5,289,866.91 |

[Respondent] subsequently asked [petitioner] to compute the interest on deficiency DST from the amount of P23,819.06, which was the balance of the former's DST liability and not from the amount of P8,323,819.06, which was the original deficiency DST. However, [petitioner] denied the said request on March 30, 2006.

[Respondent] through a letter dated April 25, 2006, requested the reduction or waiver of interest in the amount of P5,266,047.85, and [petitioner] received the said letter on April 27 2006. Nonetheless, [respondent] fully paid the basic deficiency DST for TY 2003 amounting to P23,819.06 on May 3, 2006.

[Petitioner] acknowledged receipt of [respondent]'s payment of the DST amounting to P23,819.06 via letter dated June 13, 2006. However, [petitioner] still denied [respondent]'s request for a reduction of interest and asked [respondent] to settle the increments of P5,291,047.85.

[Respondent] sent again a letter dated June 26, 2006 to [petitioner], which the latter received on July 13, 2006, reiterating the former's request for the abatement

> of interest and compromise penalty due to its sensitive financial situation. As a result, Regional Director Alfredo V. Misajon indorsed the docket of [respondent]'s tax case to [petitioner] for the approval of the abatement of interest and compromise penalty amounting to P5,291,047.85.
>
> In a letter dated November 9, 2009, [petitioner] approved the abatement of the compromise penalty amounting to P25,000.00, but denied the abatement of the interest on deficiency DST amounting to P5,266,047.85. [Respondent] received the subject letter on January 8, 2010.
>
> On December 18, 2013, [respondent] received the Certificate of Approval for the abatement of the compromise penalty and the Notice of Denial as regards the request for abatement of the interest in the deficiency DST. On even date, [petitioner] served upon [respondent] a Warrant of Distraint and/or Levy, collecting the interest on the latter's deficiency DST for TY 2003 in the amount of P5,266,047.85.
>
> Through a letter dated February 28, 2014, [respondent] questioned and protested the right of [petitioner] to initiate any collection proceedings for the interest and/or penalties in [respondent]'s deficiency DST for TY 2003 on the ground that the right of [petitioner] to collect has already prescribed. The copy of said letter was received by [petitioner] on March 4, 2014.
>
> On September 16, 2014, [petitioner] denied [respondent]'s protest against the aforesaid collection of interest on the ground that the right of the former has not yet prescribed. A copy of the said denial was received by [respondent] on September 30, 2014.[5] (*citations omitted*)

On October 29, 2014, respondent AUII filed its Petition for Review (With Motion to Suspend Collection of Deficiency Interest and Penalties Subject of this Petition) with the CTA Division.

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[5] *Rollo*, Decision dated May 17, 2017, pp. 17-21.

After trial, the CTA Division ruled in favor of respondent AUII, as follows:

> In recapitulation, the Court deems it proper to grant the instant petition considering that the collection of the subject deficiency interest in the amount of P5,266,047.85, as implemented by the Warrant of Distraint and/or Levy dated December 18, 2013 is already time-barred by the statute of limitations.
>
> **WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the Warrant of Distraint and/or Levy dated December 18, 2013 is **NULL** and **VOID**.
>
> **SO ORDERED**.[6]

The Motion for Reconsideration filed by the CIR was likewise denied.[7]

Thus, the CIR filed his Petition for Review with the CTA *En Banc* on October 27, 2017 praying that respondent AUII be ordered to pay the interest on deficiency DST amounting to Php5,266,047.85, and penalties, surcharges and delinquency interest until fully paid.

Upon notice,[8] respondent AUII filed its Comment (To Commissioner of Internal Revenue's Petition for Review dated 13 October 2017) on March 14, 2018.[9]

On May 15, 2018, petitioner CIR filed his Memorandum,[10] while respondent AUII filed its Memorandum[11] on May 16, 2018.

Considering the submission by both parties of their respective Memoranda, the case was deemed submitted for decision on June 4, 2018.[12]

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[6] *Rollo*, Decision dated May 17, 2017, pp. 35-36.
[7] *Rollo*, Resolution dated September 20, 2017, pp. 38-42.
[8] *Rollo*, Resolution dated February 21, 2018, pp. 53-54.
[9] *Rollo*, pp. 55-73.
[10] *Rollo*, pp. 77-84, mis-titled as "Respondent's Memorandum".
[11] *Rollo*, pp. 85-118.
[12] *Rollo*, Resolution dated June 4, 2018, pp. 120-121.

## Issue

Petitioner CIR assigns the following error:

> THE FIRST DIVISION OF THE CTA ERRED IN HOLDING THAT RESPONDENT'S REPEATED ACTS OF PAYING ITS PRINCIPAL DEFICIENCY DST LIABILITY BY INSTALLMENT SANS THE INTEREST, REPEATED REQUEST FOR THE REDUCTION, WAIVER OR ABATEMENT OF THE INTEREST AND COMPROMISE PENALTY CANNOT BE CONSIDERED AS POSITIVE REQUESTS OR POSITIVE ACTS THAT JUSTIFY THE SUSPENSION OF THE PRESCRIPTIVE PERIOD FOR COLLECTION.

## Petitioner's Arguments

Petitioner states that he is not barred from collecting the interest on the deficiency DST liability of respondent AUII for taxable year 2003. Petitioner argues that the words "reinvestigation" or "reconsideration" are not indispensable in order to suspend the running of the prescriptive period to collect; that respondent AUII's repeated acts of paying its principal deficiency DST liability by installment sans interest, and requests for reduction, waiver and abatement of the interest and increments, clearly demonstrate positive acts which justify the suspension of the prescriptive period for collection.

Petitioner CIR states that the prescriptive period to collect the tax assessment commenced to run only on January 8, 2010, when respondent AUII received the response to its request for abatement; and, that petitioner has until January 8, 2015 to enforce collection. Given the foregoing, petitioner states that the issuance of the Warrant of Distraint and/or Levy (WDL) dated December 18, 2013 is valid since the same was issued within the prescriptive period for collection.

## Respondent's Counter-Arguments

Respondent AUII argues that the petitioner's right to collect has clearly prescribed. The FAN dated January 27, 2006 was issued on January 31, 2006. No collection proceedings were instigated by petitioner within five (5) years from the assessment. Thus, when the BIR issued the WDL on December 18, 2013, more than seven (7) years has already passed since the period to collect commenced after the assessment was issued.

Respondent also argues that its letter requesting for abatement, and its act of paying the assessed deficiency tax in installment, do not stall the prescriptive period for collection, neither do these acts prohibit the CIR from beginning collection proceedings against respondent; that these acts do not fall under any of the circumstances enumerated in Section 223 of the NIRC which suspends the running of the prescriptive period; and, that the *Suyoc*[13] case does not apply to the instant case because of the different factual and legal circumstances of said case.

## Ruling of the Court

The petition has no merit.

**The Petition for Review was timely filed.**

The Court in Division issued the assailed Decision on May 17, 2017. Upon a timely motion for reconsideration, the Court in Division issued the assailed Resolution on September 20, 2017, which was received by petitioner CIR on September 28, 2017.

Pursuant to Rule 4, Section 2(a)(1)[14], in relation to Rule 8, Section 3(b) of the RRCTA, petitioner CIR had fifteen (15) days from September 28, 2017, or until October 13, 2017, within which to file his petition for review.

On October 11, 2017, petitioner filed his Motion for Extension of Time to File Petition for Review[15] praying for an extension of fifteen (15) days or until October 28, 2017 within

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[13] *Collector of Internal Revenue v. Suyoc Consolidated Mining Co., et al.*, G.R. No. L-11527, November 25, 1958.

[14] Rule 4 Jurisdiction of the Court

Sec. 2. Cases within the jurisdiction of the Court *en banc*. – The Court *en banc* shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Divisions in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies – Bureau of Internal Revenue, xxx

[15] *Rollo*, pp. 1-3.

which to file his appeal. Said extension was granted through the Court *En Banc*'s minute resolution dated October 18, 2017.[16]

On October 27, 2017, petitioner filed the instant petition. Hence, the Petition for Review was timely filed.

**There is no compelling reason to reverse or modify the Court in Division's Decision and Resolution.**

The Court *En Banc* finds no reason to reverse the Court in Division's Decision and Resolution finding that petitioner CIR's right to collect the deficiency DST assessments against respondent has prescribed.

It is undisputed that the FAN (Demand No. 34-2003) was issued by petitioner CIR on January 27, 2006 and was received by respondent AUII on January 31, 2006. Counting five (5) years from January 31, 2006, petitioner CIR had until January 31, 2011 within which to collect the interest on the deficiency DST liability. The WDL was served on AUII only on December 13, 2013, which is clearly more than five (5) years after the FAN, and is therefore prescribed.

To counter, petitioner CIR argues that the period to collect was suspended by respondent's repeated acts of paying its principal deficiency DST liability in installment, as well as the repeated request for the reduction, waiver or abatement of the interest and compromise penalty. Petitioner also relies on *The Collector of Internal Revenue v. Suyoc Consolidated Mining Company, et al.*[17] (*Suyoc* case).

However, these arguments are without merit, as discussed by the Court in Division in the portions quoted below:

> Records show that [AUII] received the FAN on January 31, 2006. Likewise, instead of filing a protest letter against the FAN, [AUII] sent a letter dated February 23, 2006 and received by [the CIR] on February 28, 2006, requesting that the interest be computed on the

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[16] *Rollo*, p. 4.
[17] G.R. No. L-11527, November 25, 1958.

deficiency DST balance of P23,419.06 and not on the original deficiency DST of P8,323,819.06, detailed as follows:

> "At the outset, we would like to thank your god Office for allowing us to pay our 2003 deficiency documentary stamp tax (DST) of P8,763,736.80, exclusive of interest, on installment basis.
>
> xxx xxx xxx
>
> In your Assessment Notice No. 34-2003 dated January 27, 2006, which we received January 31, 2006, we note that you are charging us interest in the amount of P5,266,047.85 computed on our original deficiency DST of P8,323,819.06. Again, we would like to request your good Office to compute said interest on the deficiency DST balance of P23,419.06, as the interest of P5,266,047.85 being charged by you is beyond our financial capacity to pay due to the following reasons:"

It is clear from the foregoing that [AUII] is not protesting the FAN, but instead it is requesting a reconsideration to reduce the amount of interest to be paid. Also, the said request cannot be considered a motion for reinvestigation since [AUII] did not submit any additional evidence but merely appealed to [the CIR] to reduce the interest due to the former's financial capacity to pay.

Accordingly, the FAN is final and executory. As such, [the CIR] may already begin the distraint or levy or proceed in court for the collection of [AUII]'s tax liability.

Further, the Court finds that [AUII]'s repeated acts in paying its principal deficiency DST liability by installment *sans* the interest and repeated requests for the reduction, waiver, and abatement of interest and increments would not justify the suspension of the prescriptive period for collection. Likewise, the doctrine laid down by the Supreme Court in the *Suyoc* case is not applicable to the instant case considering the differences on the facts attending the two cases.

> In the *Suyoc* case, the taxpayer filed a request for an extension to file its return since its records had been lost or destroyed, and the same was granted by the BIR Commissioner. The taxpayer filed three income tax returns for taxable year ending December 31, 1941. On the basis of the second final return, an assessment was made for deficiency income tax plus surcharges and interest. Then, the taxpayer asked for an extension of at least one year to pay the amount assessed, reserving its right to question the correctness of the assessment. The BIR Commissioner granted an extension of only three months. However, the taxpayer failed to pay its tax liability within the period granted, thus, the BIR Commissioner sent a letter demanding payment of the tax due as assessed. The taxpayer then filed a motion for reconsideration and reinvestigation which the BIR Commissioner granted. Subsequently, the BIR Commissioner made another assessment reducing the tax deficiency, and several other negotiations conducted thereafter at the request of the taxpayer. Eventually, the BIR Commissioner made a new assessment and notified the taxpayer of the same on July 28, 1955; however, the latter had already filed a petition for review of the assessment made on July 26, 1955.
>
> Unlike in this case, there is neither a motion for reinvestigation nor any amended FAN issued.
>
> It must be emphasized that [AUII] requested the reduction, waiver or abatement of the 2003 deficiency interest for the late payment of DST in the letters of [AUII] to [the CIR] dated April 25, 2006 and June 26, 2006. A closer perusal of the letter dated June 26, 2006 would reveal that [AUII] herein requested the abatement of the charges amounting to P5,266,047.85. The said letter is devoid of any fact that would establish that [AUII] herein sought for extensions of time to pay or requested for reinvestigation. Thus, [the CIR] may not invoke the ruling in the *Suyoc* case as there is nothing in [AUII]'s acts which would induce [the CIR] in postponing the collection of the deficiency interest against [AUII]. [18] (*Citations omitted*)

Since respondent AUII did not request for reinvestigation, the prescriptive period for collection was not suspended. Thus, when the WDL was issued on December 18, 2013, the same was

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[18] *Rollo*, Decision dated May 17, 2017, pp. 30-31.

already prescribed for having been issued more than five (5) years from the date of receipt of the assessment.

**WHEREFORE**, the instant Petition for Review is **DISMISSED** for lack of merit.

**SO ORDERED.**

**CATHERINE T. MANAHAN**
Associate Justice

**WE CONCUR:**

(With Concurring Opinion)
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

**CIELITO N. MINDARO-GRULLA**
Associate Justice

**MA. BELEN M. RINGPIS-LIBAN**
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 case was 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***

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|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB NO. 1725** (CTA Case No. 8916) |
| -versus- | Present: **DEL ROSARIO,** *P.J.,* **CASTANEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN,** and **MANAHAN,** *JJ.* |
| **ASIA UNITED INSURANCE, INC.,** *Respondent.* | Promulgated: MAR 27 2019 3:46 p.m. |

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## CONCURRING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* in dismissing the Petition for Review filed by the Commissioner of Internal Revenue (CIR) for lack of merit.

I, however, find it worthy to emphasize that the Final Assessment Notice (FAN) dated January 27, 2006 issued against Asia United Insurance, Inc. (AUII) is void *ab initio* for having been issued *sans* any Letter of Authority (LOA). Hence, the FAN could not be a valid source of obligation to pay deficiency documentary stamp tax (DST) and interest on the part of AUII. Being a void assessment, the FAN bears no fruit[1] and must be slain at sight. Otherwise stated, there is no basis for the CIR to issue the Warrant of Distraint and/or Levy dated December 18, 2013 to collect the amount assessed in the void FAN.

[1] *Commissioner of Internal Revenue vs. Metro Star Superama, Inc.,* G.R. No. 185371, December 8, 2010.

Records disclose that the aforesaid FAN was issued pursuant to **Letter Notice (LN) No. 032-34-2004 dated October 25, 2004**[2]. The **aforesaid LN was not converted into an LOA** after AUII allegedly failed to take positive actions to completely refute the validity of the CIR's findings therein.

In ***Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.,***[3] the Supreme Court, citing Section 1, Rule 4 of A.M. No. 05-11-07- CTA, or the Revised Rules of the Court of Tax Appeals, declared that the CTA can resolve the issue on the authority of the ROs to conduct the audit, albeit the same was not raised by the parties in their pleadings or memoranda. For want of valid LOA, the Supreme Court ultimately resolved to declare the assessment void.

In ***Medicard Philippines Inc. vs. Commissioner of Internal Revenue***[4] the Supreme Court emphasized the vital significance of an LOA to the validity of an assessment, albeit the assessment was made pursuant to an LN:

> "'Xxx both RMO No. 30-2003 and RMO No. 42-2003 are silent on the statutory requirement of an LOA before any investigation or examination of the taxpayer may be conducted. As provided in the RMO No. 42-2003, the LN is merely similar to a Notice for Informal Conference. However, for a Notice of Informal Conference, which generally precedes the issuance of an assessment notice to be valid, the same presupposes that the revenue officer who issued the same is properly authorized in the first place.
>
> With this apparent lacuna in the RMOs, in November 2005, RMO No. 30-2003, as supplemented by RMO No. 42-2003, was amended by RMO No. 32-2005 to fine tune existing procedures in handing assessments against taxpayers' issued LNs by reconciling various revenue issuances which conflict with the NIRC. **Among the objectives in the issuance of RMO No. 32-2005 is to prescribe procedure in the resolution of LN discrepancies, <u>conversion of LNs to LOAs</u> and assessment and collection of deficiency taxes.**
>
> xxx xxx xxx
>
> In this case, there is no dispute that **no LOA was issued prior to the issuance of a PAN and FAN against MEDICARD**. Therefore no LOA was also served on MEDICARD. **The LN that**

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[2] Exhibit "P-3", CTA Case No. 8916 Docket, Vol. I, p. 101.
[3] G.R. No. 183408, July 12, 2017.
[4] G.R. No. 222743, April 5, 2017.

> **was issued earlier was also <u>not converted into an LOA</u> contrary to the above quoted provision**. xxx xxx xxx.
>
> xxx xxx xxx
>
> **The Court cannot convert the LN into the LOA required under the law even if the same was issued by the CIR himself.** Xxx xxx xxx. **Since the law specifically requires an LOA and RMO No. 32-2005 requires the conversion of the previously issued LN to an LOA, the absence thereof cannot be simply swept under the rug**, as the CIR would have it. Xxx xxx xxx.
>
> xxx xxx xxx
>
> Xxx xxx xxx. **Simply put, LN is entirely different and serves a different purpose than an LOA**. Due process demands, as recognized under RMO No. 32-2005, that **after an LN has serve its purpose, the revenue officer should have properly secured an LOA before proceeding with the further examination and assessment of the petitioner**. Unfortunately, this was not done in this case.
>
> xxx xxx xxx
>
> **That the BIR officials herein were not shown to have acted unreasonably is beside the point <u>because the issue of their lack of authority was only brought up during the trial of the case</u>. What is crucial is whether the proceedings that led to the issuance of VAT deficiency assessment against MEDICARD had the prior approval and authorization from the CIR or her duly authorized representatives. Not having authority to examine MEDICARD in the first place, the assessment issued by the CIR is <u>inescapably void</u>**." *(Citations omitted; boldfacing and underscoring supplied)*

Since the FAN arose from a mere LN, without an audit being conducted pursuant to a valid LOA, the assessment that resulted therefrom is a nullity.

All told, I **VOTE** to **DISMISS** the Petition for Review filed by the Commissioner of Internal Revenue for lack of merit.

**ROMAN G. DEL ROSARIO**
Presiding Justice