Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

STANDARD INSURANCE CO., INC., Petitioner,	**CTA CASE NO. 9550**
-versus-	Members: CASTAÑEDA, JR., *Chairperson*, and MINDARO-GRULLA, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: MAR 25 2019 3:00 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on October 2, 2018, is a Petition for Review (To Invalidate the Tax Deficiency Assessment) with Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST under Assessment Notice No. 34-2001[1], filed on March 20, 2017, by petitioner Standard Insurance Co., Inc., questioning the deficiency documentary stamp tax ("DST") assessment issued by respondent Commissioner of Internal Revenue for taxable year 2001, in the amount of ₱218,904,053.18.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the Philippine laws, with principal office address at 28th Floor, Petron Mega Plaza Building, 358 Sen. Gil Puyat Avenue, Makati City. It may be served with pleadings, notices and processes through the office of its counsel, Romulo Mabanta Buenaventura Sayoc & Delos

[1] Docket (Vol. I), pp. 10-42.

Angeles at 21st Floor, Philam Life Tower, 8767 Paseo de Roxas, Makati City.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to collect internal revenue taxes for the support of the government, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[3]

THE ANTECEDENTS

On December 5, 2002, petitioner received a Letter of Authority ("LOA") No. 19283[4] from the Bureau of Internal Revenue ("BIR") authorizing Revenue Officers Jocelyn Quevedo and Gemma Aguila and their Group Supervisor Carolina Realin of Revenue District Office No. 34, Revenue Region No. 6, Manila, to examine the books of accounts and other accounting records of petitioner for taxable year 2001. Said group found petitioner liable for the following deficiency taxes[5]:

KIND OF TAX	AMOUNT
Documentary Stamp Tax	₱1,531,864.15
Value-added Tax	2,150,299.73
Expanded Withholding Tax	1,732,142.05
Income Tax	3,000.00

[2] Pars. 3 and 3.1, The Parties, Petition for Review (To Invalidate the Tax Deficiency Assessment) with Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST under Assessment Notice No. 34-2001 ("Petition for Review"), Docket (Vol. I), p. 11; The Parties, Respondent's Memorandum, Docket (Vol. II), pp. 516-517.
[3] The Parties, Respondent's Memorandum, Docket (Vol. II), p. 517.
[4] Exhibit "P-10".
[5] Pars. 10-11, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), pp. 12-13; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 517; Annex "P-2" to the Petition for Review, Docket (Vol. I), p. 54.

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After paying the foregoing deficiency taxes, petitioner received a Letter of Termination[6] dated June 26, 2003 from Regional Director Rupertro P. Somera.[7]

However, the said Letter of Termination was recalled by Regional Director Somera in his August 5, 2003 letter on the ground that his office learned only on August 4, 2003, that there was a Letter Notice No. 067-021[8] issued by then Commissioner of Internal Revenue Guillermo L. Parayno, Jr., informing petitioner of the discrepancy found on its 2001 DST (based on a third party information).[9]

Petitioner's counsel, Atty. Wilfredo E.J.E. Reyes, questioned the withdrawal of the said Termination Letter in his letter dated August 7, 2003[10], in which he primarily argued that the "Termination Letter was a product of a valid investigation conducted pursuant to a validly issued Letter of Authority".[11]

On October 21, 2003, a Pre-Assessment Notice was issued against petitioner[12], which petitioner protested on the ground that the investigation conducted pursuant to the said LOA was already final and can no longer be reopened as it would constitute harassment to the taxpayer.[13]

On February 26, 2004, Assessment Notice No. 33-2001 was issued against petitioner demanding payment of the

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[6] Exhibit "P-9".
[7] Par. 12, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 13; Statement of Facts, Respondent's Memorandum, Docket (Vol. II), p. 517; Annex "P-3" to the Petition for Review, Docket (Vol. I), p. 55.
[8] Annex "P-4" to the Petition for Review, Docket (Vol. I), pp. 56-58.
[9] Par. 13, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 13; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.
[10] Annex "P-5" to the Petition for Review, Docket (Vol. I), p. 59.
[11] Par. 14, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 13; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.
[12] Par. 16, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 13; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.
[13] Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.

amount of ₱208,337,600.00[14], which petitioner contested in its Letter dated March 4, 2004.[15] Afterwards, a Supplemental Protest dated March 23, 2004 was filed by petitioner. [16]

Petitioner subsequently received an Amended Pre-Assessment Notice dated March 24, 2004, finding it liable for deficiency DST in the amount of ₱215,461,407.91. The same was protested by petitioner in its letter dated April 12, 2004.[17]

Thereafter, respondent issued a Final Assessment Notice dated May 5, 2004, which petitioner protested through a letter dated May 19, 2004.[18] However, the same was denied by Regional Director Teodorica R. Arcega in her Decision dated September 20, 2004.[19] As such, petitioner filed a Request for Reconsideration.[20]

Respondent claims that, during the pendency of petitioner's Motion for Reconsideration, he commenced the enforcement of collection through the issuance of Preliminary Collection Letter[21] dated December 9, 2004 and Final Notice Before Seizure[22] dated January 5, 2005. Accordingly, said documents were served to petitioner's registered business address at Stanisco Tower, 999 P. Gil cor. Agoncillo St.,

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[14] Par. 16, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 13; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.
[15] Par. 17, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 14; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518; Annex "P-8" to the Petition for Review, Docket (Vol. I), pp. 127-128.
[16] Par. 17, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 14; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518.
[17] Pars. 18 and 19, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 14; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 518-519.
[18] Pars. 20 and 21, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), pp. 14-15; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), pp. 518-519.
[19] Par. 22, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 15; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 519.
[20] Par. 23, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 15; Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 519.
[21] Exhibit "R-1".
[22] Exhibit "R-2".

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Ermita, Manila.[23] However, the enforcement of collection was allegedly held in abeyance, pursuant to the Memorandum[24] dated January 24, 2005, issued by then Deputy Commissioner Jose Mario C. Buñag, to the Regional Director of Revenue Region No. 6, Manila. Copy of the said Memorandum is hereby quoted for ready reference:

> "This refers to the request of the above-named taxpayer thru counsel, Tax Counseling Integrated, to hold in abeyance the service and execution of the warrants of distraint/levy and garnishment as per final notice before seizure dated January 5, 2005, to enforce the collection of the disputed tax liability in the amount of ₱218,904,053.18 representing alleged deficiency documentary stamp tax for taxable year 2001.
>
> Considering that the taxpayer anchors its defense on the denial of its substantive right to due process under Section 228 of the Tax Code of 1997, which is a legal issue pending adjudication in the courts, we find merit on the herein request.
>
> Pending judicial resolution of the issues involved, you are hereby directed to hold in abeyance the service of the warrants of distraint/levy and garnishment.
>
> The docket/records bearing on the disputed assessment must likewise be traced and forwarded to the Appellate Division, Legal Service, which has jurisdiction on cases involving legal issues."

Thereafter, petitioner's Motion for Reconsideration was denied by Commissioner Caesar R. Dulay in his Decision[25] ("assailed Decision") dated January 31, 2017.[26]

Petitioner, on the other hand, alleges that "it did not hear from the Bureau until **15 February 2017**, when it received a Decision promulgated on **31 January 2017**"[27], affirming the denial of its protest and ordering petitioner to pay the

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[23] Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 519.
[24] Exhibit "R-3".
[25] Exhibit P-8.
[26] Statement of the Facts, Respondent's Memorandum, Docket (Vol. II), p. 519.
[27] Par. 24, Statement of Relevant Facts and Timeliness of the Petition, Petition for Review, Docket (Vol. I), p. 16;

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aggregate amount of ₱218,904,053.18, representing deficiency DST for the taxable year 2001.

For such reason, petitioner filed the instant Petition for Review (to Invalidate the Tax Deficiency Assessment) with Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST under Assessment Notice No. 34-2001[28] before the Court of Tax Appeals (CTA) on March 20, 2017.

In the hearing held on March 30, 2017, respondent's counsel failed to appear. Thus, the Court granted respondent a period of fifteen (15) days from the receipt of its Order[29] to file a Comment to petitioner's Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST under Assessment No. 34-2001. Petitioner is, likewise, granted a period of ten (10) days from receipt of the comment within which to file its Reply thereto.

On March 30, 2017, petitioner filed, *via* registered mail, a Manifestation to Note the Filing of Six Copies Pertaining to the Petition for Review to Invalidate the Tax Deficiency Assessment with Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST Filed Last 17 March 2017[30].

On April 11, 2017, respondent filed an Omnibus Motion (For Additional Time to File Answer and For Leave of Court to File Opposition/Comment to the Motion to Dispense with the Surety Bond Requirement)[31], which was granted in an Order[32] dated April 12, 2017. In the same Order, the Court noted the foregoing Manifestation filed by petitioner and granted respondent an additional period to file his Answer and comment on petitioner's Motion to Dispense with the Surety Bond Requirement.

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[28] Docket (Vol. I), pp. 10-42.
[29] Docket (Vol. I), p. 139.
[30] Docket (Vol. I), pp. 140-146.
[31] Docket (Vol. I), pp. 153-156.
[32] Docket (Vol. I), p. 157.

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On April 18, 2017, respondent filed an *Ex-parte* Manifestation[33] praying that the additional four (4) copies of respondent's Opposition and/or Comment (To Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain the Collection of Deficiency DST) be noted and admitted on record. Said Manifestation was noted by the Court in its Minute Resolution[34] dated April 19, 2017. Petitioner filed, through registered mail, its Reply (To the Opposition and/or Comment dated 11 April 2017)[35] on May 5, 2017.

On May 15, 2017, respondent filed an *Ex-parte* Manifestation[36] stating that he already filed his Answer on May 12, 2017, *via* registered mail. He, likewise, attached therein his Answer *Ex-Abudanti Ad Cautelam*[37], in which he raised the following special and affirmative defenses, *viz*:

> ***"The Honorable Court Has No Jurisdiction Over the Instant Petition.***
>
> *9. A taxpayer's right to contest assessments, particularly the right to appeal to the Court of Tax Appeals, may be waived or lost as in this case.*
>
> *10. It is respectfully submitted that the petition for review filed on 20 March 2017 was filed beyond the jurisdictional thirty (30) day period from receipt of the Final Decision on Disputed Assessment by petitioner. It is a well-entrenched rule that,* ***failure of the petitioner to appeal to the Court of Tax Appeals in due time made the assessments in question, final, executory and demandable****.*
>
> *11. Section 228 of the NIRC, explicitly directs the taxpayer to file its Petition for Review with the Court of Tax Appeals within the mandatory period of thirty (30) days from receipt of the decision of respondent, to wit:*
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> *'SEC. 228. Protesting of Assessment.— xxx*

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[33] Docket (Vol. I), pp. 158-167.
[34] Docket (Vol. I), p. 168.
[35] Docket (Vol. II), pp. 178-190.
[36] Docket (Vol. II), pp. 191-192.
[37] Docket (Vol. II), pp. 193-208.

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> *If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents,* ***the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within (30) days from receipt of the said decision****, or from the lapse of the one hundred eighty (180)-day period;* ***otherwise the decision shall become final, executory and demandable****. (Emphases Supplied)*

12. Consistently, the fifth paragraph of Section 3.1.5, Revenue Regulations No. 12-99, provides:

> *'x x x*
>
> *If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision,* ***otherwise, the assessment shall become final executory and demandable****.'*

13. Section 9 of Republic Act 9282, amending RA 1125 reads:

> *'****SECTION 9****. Section 11 of the same Act is hereby amended to read as follows:*
>
> > *'SEC. 11. Who may appeal; Mode of Appeal; Effect of Appeal.—* ***Any party adversely affected by a decision, ruling or inaction of the Commissioner of Internal Revenue****, the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry or the Secretary of Agriculture or the Central Board of Assessment Appeals or the Regional Trial Courts* ***may file an appeal with the CTA <u>within thirty (30) days after the receipt of such decision or ruling</u>*** *or after the expiration of the period fixed by law for action as referred to in Section 7(a)(2) herein. (Emphasis Supplied)*
> >
> > *x x x'*

14. Parenthetically, ***Section 7(a)(1)*** *in relation to Section 9 of Republic Act 9282, further provides:*

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*'**SECTION 7.** Section 7 of the same Act is hereby amended to read as follows:*

'Sec. 7. Jurisdiction.— The CTA shall exercise;

'(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

'(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue or other laws administered by the Bureau of Internal Revenue;
'(2) xxx'

*15. Also, in **Section 3, Rule 4 and Section 3(a) Rule 8** of the Revised Rules of the Court of Tax Appeals, state:*

'RULE 4
Jurisdiction of the Court
xxxx

SECTION 3. Cases Within the Jurisdiction of the Court in Divisions.— The Court in Divisions shall exercise:

(a) Exclusive original or appellate jurisdiction to by appeal the following:

(1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;

RULE 8
Procedure in Civil Cases
xxxx
SECTION 3. Who May Appeal; Period to File Petition.— (a) A party adversely affected by a

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> *decision,* ***ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court <u>by petition for review filed within thirty days after receipt of a copy of such decision or ruling</u>, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments.*** *In case of inaction of the Commissioner of Internal Revenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.'*

16. The decisions, rulings or inaction of the Commissioner are necessary in order to vest the Court of Tax Appeals with jurisdiction to entertain the appeal. In the same vein, it is equally important that a judicial protest is filed within 30 days after the receipt of such decision or ruling, or within 30 days after the expiration of the 180-day period fixed by law for the Commissioner to act on the disputed Assessments. ***This 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. <u>Such period is not merely directory but mandatory and is beyond the power of the courts to extend the same</u>.***

17. ***In RCBC v. CIR, G.R. No. 168498, April 24, 2007****, the Honorable Supreme Court has held that in case the Commissioner failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer can either: (1) file a petition for review with the Court of Tax Appeals within 30 days after the expiration of the 180-day period; or (2)* ***<u>await the</u>***

final decision of the Commissioner on the disputed assessments and appeal such final decision to the Court of Tax Appeals within 30 days after receipt of a copy of such decision.

*18. However, in **Lascona Land Co., v CIR, GR No. 171251, March 5, 2012**, the Highest Tribunal pointed out the following:*

> *' It must be emphasized, however, that in the case of inaction of the CIR on the protested assessment, while we reiterate- the taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, **these options are mutually exclusive and resort to one bars the application of the other.'** (Stressed in the original)*

19. Well to emphasize that here, petitioner opted to wait for the Decision of the Commissioner and the same was received by petitioner on 15 February 2017.

*20. By its own admission and going by the tenor of Section 228, petitioner has therefore 30 days **from 15 February 2017**, within which to appeal the Decision of the Commissioner to the Honorable Court of Tax Appeals, or until **17 March 2017.***

*21. Unfortunately for the petitioner, it filed its appeal with the Honorable Court on **20 March 2017**.*

22. The periods provided under Section 228 of the NIRC of 1997, are given for strict compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason, the courts construe these provisions of statutes as mandatory. Hence the Honorable Supreme Court:

> *'**The right to appeal is not a natural right. It is also not part of due process. It is merely a statutory privilege and may be exercised only in the manner and in accordance with the provisions of law.** Thus, one who seeks to avail of the right to appeals must comply with the requirements of the Rules. Failure to so often leads to the loss of the right to appeal.'*

*23. In **Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, GR No. 168498, April 24, 2007**, the Honorable Supreme Court had explained that the 30 day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.' The Honorable Supreme Court went further:*

> *'Besides, tax assessments by tax examiners are presumed correct and made in good faith, and all presumptions are in favor of the correctness of a tax assessment unless proven otherwise. Also, **petitioner's failure to file a petition for review with the Court of Tax Appeals within the statutory period rendered the disputed assessment final, executory and demandable, thereby precluding it from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess.'** (Emphasis Supplied)*

*24. In **Ker & Company, Ltd. v. Court of Tax Appeals, L-12396, January 31, 1962** the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it*

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must be commenced within a prescribed time, such requirements is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.

25. It is apparent from the admissions in the petition the assessment subject of this case has become final, executory, and demandable. Being such, the assessments are not subject to judicial scrutiny and beyond the jurisdiction of the Honorable Court. Jurisprudentially, ***when a court has no jurisdiction over the subject matter, the only power it has is to dismiss the action****.*

26. Clearly, when petitioner filed an appeal on ***20 March 2017****, this Honorable Court did not acquire jurisdiction over the petition for review docketed as CTA Case No. 9550.*

The application for suspension of collection of taxes should be denied as the Honorable Court does not have jurisdiction over the main action hence it cannot grant the ancillary remedy prayed for by petitioner.

27. Aside from the fact that petitioner has no cause of action to seek the suspension of collection of taxes, respondent respectfully submits that he cannot be ordered to suspend collection by this Honorable Court as the latter has no jurisdiction over the case.

28. Provisional or ancillary remedies can only be granted by a court which has jurisdiction over the main action. As held by the Highest Court:

> *'Since the RTC* ***had no jurisdiction over the Petition*** *of BF Homes and PWCC in Civil Case No. 03-0151,* ***then it was also devoid of any authority to act on the application*** *of BF Homes and PWCC* ***for the issuance of a writ of preliminary injunction contained in the same Petition. The ancillary and***

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> ***provisional remedy of preliminary injunction cannot exist except only as an incident of an independent action or proceeding.'*** *(Emphasis supplied)*

29. As claimed by petitioner in its allegations under the caption 'NATURE OF THE PETITION AND JURISDICTIONAL ALLEGATION', this Petition for Review is filed pursuant to Section 228 of the National Internal Revenue Code of 1997 ('NIRC') to appeal the Final Decision on Disputed Assessment of Respondent dated 31 January 2017 xxx. It includes a motion to dispense with the surety bond requirement as a condition to restrain the collection of deficiency DST under Assessment Notice No. 34-2001. Verily, the main action is to assail the validity of a decision on a disputed assessment as provided under the cited provisions of law and rules.

30. However, respondent submits that this Honorable Court has no jurisdiction to grant the ancillary remedy prayed for by petitioner. This is based on the simple fact that the Honorable Court has no jurisdiction over the main action.

31. Jurisdiction, is the court's authority to hear and determine a case. The conferment of jurisdiction upon courts or judicial tribunals is derived exclusively from the constitution and statutes of the forum. In this jurisdiction, it is a power granted by the Constitution to the Supreme Court and conferred by law to other lower courts to hear and decide cases involving a justiciable controversy. A primary example of jurisdiction conferred by statute is that of the Honorable Court of Tax Appeals.

32. The Court of Tax Appeals is a highly specialized body specifically created for the purpose of reviewing tax cases. By the nature of its functions, it is dedicated exclusively to the study and consideration of tax problems. For which reason, it is not hard to see why the law vested upon the Court of Tax Appeals the exclusive appellate jurisdiction to review decisions, orders [and] resolutions in tax cases. From the foregoing, it is easy to see that the Honorable Court is a court

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of special jurisdiction empowered to hear only certain kind of cases specified by law. Specifically, as such court of special jurisdiction, the Honorable court ***can only try cases permitted by statute, i.e. RA 1125, as amended by RA 9282****.*

33. In sum, respondent submits the ancillary remedies can only be granted by a court which has jurisdiction over the main action. Here, respondent's decision on the disputed assessment was allowed to attain finality well beyond the 30-day period provided by law due to the lack of diligence of petitioner. Hence, in ***Dayrit, et al., vs. CIR, G.R No. L-39910, September 26, 1988****, the Honorable Supreme Court reminded all and sundry:*

> *'Taxes are the lifeblood of the nation through which the government agencies continue to operate and with which the State effects its functions for the welfare of its constituents. We cannot tolerate taxpayers hampering expedient collection of taxes by their failure to act within a reasonable period. No government could exist if all litigants were permitted to delay the collection of its taxes. Thus, this Court ruled earlier that a suit for the collection of internal revenue taxes, as in this case, where the assessment has already become final and executory, the action to collect is akin to an action to enforce the judgment. No inquiry can be made therein as to the merits of the original case or the justness of the judgment relied upon.'*

34. At the risk of being repetitive, this 30-day period within which to file an appeal is jurisdictional and failure to comply therewith would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessments. Such period is not merely directory but mandatory and it is beyond the power of the courts to extend the same.

35. The Highest Court long decided that when a court ***has no jurisdiction over the subject matter; in consequence, it is powerless to grant an ancillary remedy therein****. Here, since*

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this Honorable Court has no jurisdiction over the main petition assailing the Final Decision on Disputed Assessment, then it is axiomatic that it cannot grant the ancillary remedy of suspension of collection.

Assuming the Honorable Court has Jurisdiction, it is Submitted that the Assessments issued against petitioner have legal and factual bases.

36. The Petition for Review filed by petitioner deserves scant consideration. Petitioner is liable to pay deficiency documentary stamp tax for 2001 in the amount of Two Hundred Eighteen Million Nine Hundred Four Thousand Fifty-Three Pesos and 18/100 (Php218,904,053.18).

37. The following facts are well to revisit:

- *On 20 March 2001, petitioner filed with RDO 34 2001 DST Return. And on several dates other DST Returns were likewise filed;*
- *On 28 June 2002, petitioner filed its 2001 Income Tax Return with RDO 34;*
- *On 19 November 2002, respondent issued LN No. 067-021 addressed to the petitioner, informing the latter of a discrepancy on its 2001 DST due based on a third party information (Insurance Commission) in the amount of Php110,358,516.70;*
- *On 5 December 2002, a Letter of Authority was issued by Regional Director Ruperto P. Somera of Revenue Region 6, Manila authorizing the conduct of examination of the books of accounts and other accounting records of petitioner covering the year 2001;*
- *On 30 May 2003, based on the examiner's audit report, petitioner paid the following taxes:*

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Expanded Withholding Tax	*Php1,732,142.05*
Income Tax	*Php3,000.00*
VAT	*Php2,150,299.73*
DST	*Php1,531,864.15*

- *The examiner's report was forwarded to the Assessment Division for review;*

- *On 26 June 2003, a Letter of Termination was issued to petitioner by Director Somera;*

- *However, the said Letter of Termination was recalled by Director Somera as it came to his knowledge that a Letter Notice was issued by the then Commissioner Guillermo L. Parayno, Jr. and received by petitioner on 22 November 2002, informing it of a discrepancy on its 2001 DST due based on a third party information;*

- *On 21 October 2003, a Pre-Assessment Notice was issued against petitioner which it subsequently opposed;*

- *On 26 February 2004, Assessment Notice No. 33-2001 was issued against petitioner demanding payment of the amount of Php208,337,600.11;*

- *On 04 March 2004, petitioner filed its protest against the said assessment, contesting its validity;*

- *That petitioner further filed its Supplemental Protest dated 23 March 2004;*

- *An Amended Pre-Assessment Notice and Final Assessment No. 34-2001 were respectively issued against petitioner on 24 March 2004 and 05 May 2004 in the amount of Php218,904,053.18 as deficiency documentary stamp tax for the year 2001;*

- *Petitioner protested the said Pre-Assessment Notice and Final Assessment Notice;*

- *On 20 September 2004, Regional Director Teodorica R. Arcega denied petitioner's protest based on the Memorandum of the Chief, Legal Division-Manila;*

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- *On 3 November 2004, petitioner appealed to the CIR the Decision of the Manila Regional Director;*

- *A Final Notice Before Seizure (FNBS) dated 5 January 2005 was issued by Revenue Region No. 6 against petitioner;*

- *Petitioner requested through a letter dated 21 January 2005 to restrain collection in light of the FNBS;*

- *A Memorandum dated 24 January 2005 was issued to the Regional Director of Manila by then Deputy Commissioner Bunag, directing the former to hold in abeyance the service of the warrants of distraint/levy and garnishment;*

- *A Decision dated 31 January 2017 has been issued by the respondent.*

38. As may be gleaned from the allegations of the petition, petitioner never questioned the factual and legal bases of the assessment issued against it. That being the case, the assessment must stand. Thus—

> *'xxx upon discovery of the discrepancy in the DST payments and the transactions subject to DST, the Bureau is not estopped from re-opening the case and re-assessing STANDARD despite the valid issuance of Letter of Authority No. 00019283 and the issuance of the corresponding Letter of Termination. As correctly stated by the examiner, the discovery of the falsity based on a third party information and the subsequent issuance of Letter of Notice No. 067-021 render the former investigation. Settlement and termination moot and academic. The right of the BIR to assess based on a false return pre-empts and supersedes ordinary investigation as provided by the Tax Code, specially where the falsity was discovered within the three-year period to assess or immediately upon termination of the investigation.*

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As to whether or not STANDARD was informed of the law and facts on which the assessment was based, the Amended Final Assessment Notice No. 34-2001 dated May 5, 2004 contains a notice and demand to STANDARD of its deficiency DST in the amount of P218,904,053.18 inclusive of interest and surcharge wherein it clearly stated the facts and the law upon which the assessment is based. It shows the 2001 premium income and reinsurance based on STANDARDS's financial statements, the tax rate imposed under Sections 184 & 185 of the Tax Code and all other data emanating and gathered from the Bureau and its agent bank.

The records of the number of correspondence between STANDARD and the Bureau belie STANDARDS's claim that it was not informed of the assessment against it nor was it given an opportunity to be heard. Such correspondence are clear indications that STANDARD very well knew the laws and the facts on which the assessment was made at the time it received the assessment in question.

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Considering that petitioner never assailed the factual and legal bases of the assessment issued against it, it is indubitable that there is no 'disputed' assessment being appealed here.

The Right of Respondent to Collect From Petitioner the Subject Deficiency Taxes has not yet Prescribed

39. In the alternative that the Honorable Court will find that it has jurisdiction over the instant petition, respondent posits that respondent's right to collect from petitioner for deficiency taxes for taxable year 2001 has not prescribed.

*40. **Until and unless the Formal Letter of Demand has not yet attained finality,***

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respondent cannot collect from the petitioner. *Hence, it is misplaced to argue that the reckoning period for collection should be from 05 May 2004 (date appearing on the Final Assessment Notices), wherein the Formal Letter of Demand has not yet attained finality.*

41. In fact, petitioner itself was the one who invoked this claim in a letter dated 21 January 2005 addressed to the then Deputy Commissioner Bunag through its former counsel, to wit:

> *'This is to bring to your attention the above-captioned subject matter, copy enclosed for ready reference. This illegal collection action is a gross violation of the cardinal right of the taxpayer to protest the BIR assessment, as provided under Section 228 of the Tax Code and implemented by RR No. 12-99. This action, coupled with the unjust refusal of the official of Revenue Region No. 4 to transmit the records of the case to the Legal Service on request, for evaluation and judicious decision of the protest that was elevated to the Office of the Commissioner of Internal Revenue, is clearly evident bad faith under Section 3 (C) of Republic Act No. 3019, as amended, commonly known as the anti-graft law.*
>
> *To avoid the irreparable damage that would be caused upon our client by the threatened issuance of the warrants of distraint, levy and garnishment, even before the final adjudication of the appealed protest, it is requested that the Regional officials concerned be restrained from proceeding with such high-handed actions.*

*Copy of the Letter dated 21 January 2005 is attached hereto as **Annex R-1**, forming an integral part hereof*

42. The letter belies petitioner claims that it did nothing to prevent the collection effort of the Bureau. In fact, a Final Notice Before Seizure dated January 5, 2005 has already been issued by the Bureau.

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43. In reply to the said letter, the then Deputy Commissioner Bunag issued a Memorandum dated 24 January 2005 to the then Regional Director of Revenue Region No. 6, directing the latter to hold in abeyance the service of the warrants of distraint/levy and garnishment.

44. From the foregoing, it is definitely a defiance of fair play when in fact petitioner was able to utilize the period in the interim for him to protest the Formal Letter of Demand without tolling the period of prescription for collection. And as here, it was even the one who requested and invoked such claim.

45. In fact, the period for collection was further suspended when petitioner has elevated the case to the CIR through the Appellate Division, which was acted upon, through a Final Decision on Disputed Assessment dated 31 January 2017. Applying ***Section 223 of the National Internal Revenue Code****, to wit:*

> ***'SEC. 223. Suspension of Running of Statute of Limitations.*** *--- The running of Statute of Limitations provided in Sections 203 and 222 on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty days thereafter; when the taxpayer requests for a reinvestigation which was granted by the Commissioner; xxx'*

46. Likewise, during the pendency of the appeal to the Commissioner, records reveal that petitioner even filed a Supplemental Appeal on 29 November 2005 and other clarification letter to the CIR on several occasions.

47. Petitioner was attempting in effect, to enrich itself at the expense of the Government. This Honorable Court should not allow petitioner to reap the fruits of its falseness.

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The Assessments issued against petitioner are valid and lawful

*48. Respondent posits that, assessments are 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. Even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)***

*49. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co. Inc., G.R. No. 136975, March 31, 2005)**. The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.*

*50. All presumptions are in favor of the correctness of tax assessments **(Sy Po vs. Court of Tax Appeals, 164 SCRA 524)**. Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice."*

On June 2, 2017, respondent filed a Motion for Early Resolution on the Issue of Jurisdiction[38]. Accordingly, petitioner received the Final Decision dated January 31, 2017 on February 15, 2017; hence, it had thirty (30) days from February 15, 2017, or until March 17, 2017, within which to file its Petition with the Court of Tax Appeals. However, petitioner filed the same only on March 20, 2017. Thus, it is

[38] Docket (Vol. I), pp. 236-246.

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respondent's position that the Court is bereft of jurisdiction over the instant Petition.

On May 29, 2017, petitioner filed, *via* registered mail, a Motion for Extension of Time to File Reply[39], praying that it be granted an additional period of ten (10) days or until June 8, 2017, within which to file its Reply.

On June 7, 2017, petitioner filed through registered mail its Reply (To: Respondent Commissioner of Internal Revenue's *Answer* dated 11 May 2017 and Motion for Early Resolution on the Issue of Jurisdiction of the Honourable Court)[40]. According to petitioner, it has jurisdiction over the present Petition as the Final Decision issued by respondent on January 31, 2017 was actually received by petitioner on February 16, 2017, as shown in the attached copy of the Registry Return Receipt No. 720 372 699 ZZ, and not on February 15, 2017 as erroneously stated in its Petition.[41] Thus, counting thirty (30) days from February 16, 2017, petitioner had until March 20, 2017 within which to file its Petition. As such, petitioner insists that it timely filed the instant Petition on March 20, 2017.

In a Resolution[42] dated October 10, 2017, the Court considered moot the resolution on petitioner's Motion for Extension of Time to File Reply due to the filing of the foregoing Reply (To: Respondent Commissioner of Internal Revenue's *Answer* dated 11 May 2017 and denied respondent's Motion for Early Resolution on the Issue of Jurisdiction of the Honorable Court on the ground that the instant Petition was seasonably filed. The Court also denied respondent's Motion for Early Resolution on the Issue of Jurisdiction and scheduled the joint hearing of petitioner's Motion to Suspend Collection of Tax and Urgent Motion to Dismiss with Surety Bond Requirement as a Condition to

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[39] Docket (Vol. I), pp. 247-250.
[40] Docket (Vol. I), pp. 254-268.
[41] Par. 10, Counter Arguments and Discussion, Reply (To: Respondent Commissioner of Internal Revenue's Answer dated 11 May 2017 and Motion for Early Resolution on the Issue of Jurisdiction of the Honourable Court), Docket (Vol. I), p. 256.
[42] Docket (Vol. I), pp. 273-281.

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Restrain the Collection of Deficiency DST under Assessment Notice No. 34-2001 on November 13, 2017.

In the hearing[43] held on January 24, 2018, petitioner presented its First Vice President/Chief Accountant, Ms. Janet R. Inoceno, as its sole witness. Both parties' counsels agreed therein that the instant case only involves the legal issue on whether the right of respondent to collect on petitioner's deficiency DST is already barred by prescription. By such reason, the hearing on the Motion to Suspend Collection of Tax and Urgent Motion to Dispense with the Surety Bond Requirement as a Condition to Restrain Collection of Deficiency Documentary Stamp Tax under Assessment No. 34-2001 was considered as a pre-trial conference and deemed trial on the merits. Upon motion, the Court granted petitioner a period of five (5) days from February 5, 2018 within which to file a Formal Offer of Evidence. Respondent was also granted a period of five (5) days from receipt thereof within which to file his Comment thereto.

On January 29, 2018, petitioner filed, via registered mail, a Manifestation (Compliance with the Submission of Secretary's Certificate)[44].

On January 29, 2018, petitioner filed, *via* registered mail, its Formal Offer of Evidence[45], sans respondent's comment, as per Records Verification[46] dated February 13, 2018. Petitioner offered the following documentary evidence for the consideration of the Court:

EXHIBIT	PURPOSE/S
P-1	Original Judicial Affidavit of Ms. Janet R. Inoceno dated November 23, 2017
P-1-1	Signature of Ms. Janet R. Inoceno
P-2	2016 Audited Financial Statement (AFS) of Standard Insurance Co., Inc. dated March 24, 2017

[43] As per Minutes of the Hearing dated January 24, 2018, Docket (Vol. I), pp. 415-416.
[44] Docket (Vol. I), pp. 419-429.
[45] Docket (Vol. I), pp. 425-435.
[46] Docket (Vol. I), p. 424.

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P-2-1	Signature of KL Siy & Associates ("KLS") as represented by Ms. Kathleen L. Siy
P-3	Contract of Service between Petitioner Standard Insurance and KLS for the year 2016 dated December 12, 2016
P-4	Securities and Exchange Commission stamp dated May 24, 2017 appearing on page 8 of Petitioner's 2016 AFS (P-2)
P-5	Bureau of Internal Revenue stamp dated April 27, 2017 appearing on pages 4 to 13 of Petitioner's 2016 AFS (P-2)
P-6	Pages 96 of the Insurance Commission Circular CL29
P-7	Supplemental Judicial Affidavit of Ms. Janet R. Inoceno dated January 18, 2018
P-7-1	Signature of Ms. Janet R. Inoceno
P-8	Decision of the Commissioner of Internal Revenue dated January 31, 2017, received by the Petitioner on February 16, 2017
P-9	Letter of Termination dated June 26, 2003
P-10	Letter of Authority dated December 5, 2002

In a Minute Resolution[47] dated February 12, 2018, the Court noted petitioner's Manifestation (Compliance with the submission of Secretary's Certificate) and admitted the attached Secretary's Certificate.

On March 9, 2018, the Court admitted[48] all documentary evidence presented by petitioner.

In the hearing[49] held on April 30, 2018, respondent presented Revenue Officer II Jefferson T. Ocampo, as his sole witness.

On May 11, 2018, respondent filed his Formal Offer of Evidence[50], submitting the following documentary evidence:

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[47] Docket (Vol. II), p. 442.
[48] As per Resolution, Docket (Vol. II), pp. 444-445.
[49] As per Minutes of the Hearing, Docket (Vol. II), p. 461.
[50] Docket (Vol. II), pp. 466-469.

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Exhibit	Nature
R-1	Preliminary Collection Letter dated December 09, 2004
R-2	Final Notice Before Seizure dated January 05, 2005
R-3	Memorandum
R-4	Letter dated January 21, 2005
R-5	Judicial Affidavit of Revenue Officer Jefferson T. Ocampo
R-5-a	Name and signature of Revenue Officer Jefferson T. Ocampo on the middle right portion of the fourth page of his Judicial Affidavit

On May 22, 2018, petitioner filed its Comment (To Respondent's Formal Offer of Evidence).[51]

In a Resolution[52] dated July 10, 2018, the Court admitted all documentary evidence presented by respondent.

On September 3, 2018, the instant case was submitted[53] for decision taking into consideration the Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.)[54] filed on August 9, 2018, and Respondent's Memorandum[55] filed on August 20, 2018.

In view of the reorganization of the three (3) Divisions of the Court effective September 18, 2018, the foregoing Resolution of the Court submitting the instant case for decision was recalled and set aside; and, the case was submitted anew for resolution on October 2, 2018.[56]

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[51] Docket (Vol. II), pp. 470-474.
[52] Docket (Vol. II), pp. 477-478.
[53] As per Resolution dated September 3, 2018, Docket (Vol. II), p. 525
[54] Docket (Vol. II), pp. 479-514.
[55] Docket (Vol. II), pp. 516-523.
[56] As per Resolution, Docket (Vol. II), p. 526.

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ISSUES

The parties submitted the following issues for the consideration of the Court:

Issues Raised by Petitioner in its Memorandum:

> **"WHETHER OR NOT THE DECISION RENDERED BY THE COMMISSIONER OF INTERNAL REVENUE SHOULD BE RENDERED NULL AND VOID FOR BEING ISSUED BEYOND THE PRESCRIPTIVE PERIOD TO COLLECT.**
>
> **A. WHETHER OR NOT BIR EXERCISED ITS RIGHT TO COLLECT WITHIN THE PRESCRIPTIVE PERIOD OF FIVE (5) YEARS.**
>
> **B. WHETHER OR NOT THE REQUEST FOR RECONSIDERATION MADE BY HEREIN PETITONER SUSPEND THE RUNNING OF THE PRESCRIPTIVE PERIOD TO COLLECT.**
>
> **C. WHETHER OR NOT THE PETITIONER HAS BEEN GROSSLY DEPRIVED OF ITS OPPORTUNITY TO FULLY SUPPORT ITS ARGUMENTS AND DEFEND ITSELF FROM GOVERNMENT'S CLAIM DUE TO CONSIDERABLE AND UNREASONABLE LAPSE OF TIME CAUSED BY THE BIR'S OWN NEGLIGENCE AND INADVERTENCE."[57]**

Issue Raised by Respondent in his Memorandum:

> **"WHETHER THE RIGHT OF THE RESPONDENT TO COLLECT ON PETITONER'S DEFICIENCY DOCUMENTARY STAMP TAX**

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[57]Statement of the Issues, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), p. 493.

LIABILITY FOR TAXABLE YEAR 2001 IS ALREADY BARRED BY PRESCRIPTION."[58]

In gist, the sole issue for the resolution of this court is whether the right of respondent to collect on petitioner's deficiency documentary stamp tax (DST) liability for taxable year 2001 is already barred by prescription.

PETITIONER'S ARGUMENTS

Petitioner insists that the 5-year prescriptive period for collection of tax should be reckoned from the issuance of FAN dated May 5, 2004. Thus, the BIR had until May 4, 2009, within which to collect the subject deficiency DST.[59] However, the latter, accordingly, voluntarily desisted and neglected to exercise its right to collect, as shown from the facts cited by petitioner in its Legal Memorandum, to wit:

"a) Petitioner received a Final Assessment Notice dated **05 May 2004**.

b) Within the mandatory thirty (30)-day period to question the FAN, Petitioner protested the same through a letter dated **19 May 2004** as stated in the *Assailed Decision.*

c) Thereafter, Petitioner received a *Decision* signed by RD Arcega dated **20 September 2004**, informing Petitioner that the Legal Division concurred with the findings of his office, and thus, Petitioner was still liable for deficiency DST.

d) Within the time required under Section 3.1.5 of Revenue Regulations No. 12-99 to elevate the case to the CIR, Petitioner filed a *Request for Reconsideration* on **04 November 2004.**

e) From then, Petitioner did not hear from the BIR until **16 February 2017**, when it received a *Decision* promulgated on **31 January 2017**, in

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[58] Respondent's Memorandum, Docket (Vol. II), p. 519.
[59] Par. 82, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), p. 495.

which, the incumbent CIR, Caesar R. Dulay ultimately denied the Request for Reconsideration.

f) Clearly, within the period to collect or **from May 2004 to May 2009**, the BIR voluntary desisted and neglected to collect. Worse, from **May 2009 to January 2017** or within 8 years from the time prescription has set in, the BIR likewise desisted to collect the alleged deficiency DST.

g) **For almost 10 years from Petitioner's receipt of the FAN**, the BIR did nothing to collect the alleged deficiency DST and did not issue any warrant of distraint/levy.

h) **For almost 10 years from Petitioner's receipt of the FAN**, the BIR did nothing to collect the alleged deficiency DST and did not issue any warrant of distraint/levy."[60]

It further avers that its request for reconsideration should not be considered as a request for reinvestigation that could toll the running of the prescriptive period to collect since the same was not supported by new or additional evidence.[61]

Lastly, petitioner also argues that even the Final Notice Before Seizure dated January 5, 2005 issued by respondent could not toll the running of the prescriptive period to collect.[62]

RESPONDENT'S ARGUMENTS

On the other hand, respondent claims that during the pendency of petitioner's Request for Reconsideration[63] to the Decision[64] dated September 20, 2004, rendered by Regional

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[60] Pa. 131, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), pp. 510-511.
[61] Par. 91 and 92, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), pp. 499-500.
[62] Par. 97 to 99, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), pp. 501-502.
[63] See Footnote No. 20.
[64] See Footnote No. 19.

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Director Teodorica R. Arcega, he effected summary remedies for the enforcement of collection. However, the enforcement of the same was allegedly held in abeyance, as testified by Revenue Officer II, Jefferson T. Ocampo, in this wise:

> "Q16. After you prepared the Warrant of Distraint and/or Levy and Warrant of Garnishment, what happened next, if any.
>
> A. The service of the Warrant of Distraint and/or Levy and Warrant of Garnishment to petitioner Standard Insurance Co., was held in abeyance due to the issuance by then Deputy Commissioner Jose Mario C. Buñag, Deputy Commissioner, Legal and Inspection Group, of a Memorandum directing to hold in abeyance the service of warrants of distraint/levy and garnishment, granting the request of petitioner Standards Insurance Co., to hold in abeyance the service and execution of the warrants of distraint/levy and garnishment as per final notice before seizure in a Letter dated January 21, 2005."[65]

For respondent, such request of petitioner to hold in abeyance the service and execution of the said warrants of distraint/levy and garnishment demonstrates positive request or positive act on the part of petitioner that justifies the suspension of the period of collection. For such reason, respondent believes that the prescriptive period to collect the subject tax assessment commenced to run only on February 16, 2017, when petitioner received the January 31, 2017 Decision of then Commissioner Dulay, denying its request for consideration. Consequently, his right to collect the subject deficiency tax has not yet prescribed.

COURT'S RULING

The Court finds that respondent's right to collect the Deficiency DST under Assessment Notice No. 34-2001, within the five (5) year prescriptive period has lapsed.

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[65] Page 6, Judicial Affidavit of Jefferson T. Ocampo, Docket (Vol. II), p. 453.

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Sections 222 of the 1997 NIRC, as amended, provides that the BIR has five (5) years following the assessment of tax within which to collect the said tax, *viz*:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* —
>
> (a) xxx xxx xxx
>
> xxx xxx xxx
>
> (b) **Any internal tax which has been assessed within the period of limitation** as prescribed in paragraph (a) hereof **may be collected by distraint or levy or by a proceeding in court within five (5) years following the assessment of the tax**.
>
> (c) Any internal revenue tax, which has been assessed within the period agreed upon as provided in paragraph (b) hereinabove, **may be collected by distraint or levy or by a proceeding in court within the period agreed upon in writing before the expiration of the five (5)-year period.** The period so agreed upon may be extended by subsequent written agreements made before the expiration of the period previously agreed upon.
>
> xxx xxx xxx" *(Emphasis Suppled)*

Clearly, internal revenue taxes which are assessed within the period of limitation may be collected within five (5) years following the assessment.

The 5-year period to collect should be reckoned from the date when the BIR mails/releases/sends the assessment notice to the taxpayer. The Supreme Court in the case of *Bank* *of the Philippine Islands vs. Commissioner of Internal Revenue*[66], ruled as follows:

> *"When the BIR validly issues an assessment, within either the three-year or ten-year period, whichever is appropriate, then the BIR has another three years [now five years] after the assessment within which to collect the national internal revenue tax due thereon by distraint, levy, and/or court proceeding. The assessment of the tax is deemed made and* ***the three-year period [now five-year period] for collection of the assessed tax begins to run on the date the assessment notice had been released, mailed or sent by the BIR to the taxpayer.***
>
> *In the present Petition, there is no controversy on the timeliness of the issuance of the Assessment, only on the prescription of the period to collect the deficiency DST following its Assessment. While Assessment No. F AS-5-85-89-002054 and its corresponding Assessment Notice were both dated 10 October 1989 and were received by petitioner BPI on 20 October 1989, there was no showing as to when the said Assessment and Assessment Notice were released, mailed or sent by the BIR. Still, it can be granted that the latest date the BIR could have released, mailed or sent the Assessment and Assessment Notice to petitioner BPI was on the same date they were received by the latter, on 20 October 1989. Counting the three-year prescriptive period, for a total of 1,095 days, from 20 October 1989, then the BIR only had until 19 October 1992 within which to collect the assessed deficiency DST.*
>
> *The earliest attempt of the BIR to collect on Assessment No. F AS-5-85-89-002054 was its issuance and service of a Warrant of Distraint and/or Levy on petitioner BPI. Although the Warrant was issued on 15 October 1992, previous to the expiration of the period for collection on 19 October 1992, the same was served on petitioner BPI only on 23 October 1992.*
>
> *Under Section 223(c) of the Tax Code of 1977, as amended, it is not essential that the Warrant of Distraint and/or Levy be fully executed so that it can suspend the running of the statute of limitations on the*

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[66] G.R. No. 139736, October 17, 2005.

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> *collection of the tax. It is enough that the proceedings have validly began or commenced and that their execution has not been suspended by reason of the voluntary desistance of the respondent BIR Commissioner.* ***Existing jurisprudence establishes that distraint and levy proceedings are validly begun or commenced by the issuance of the Warrant and service thereof on the taxpayer. It is only logical to require that the Warrant of Distraint and/or Levy be, at the very least, served upon the taxpayer in order to suspend the running of the prescriptive period for collection of an assessed tax, because it may only be upon the service of the Warrant that the taxpayer is informed of the denial by the BIR of any pending protest of the said taxpayer, and the resolute intention of the BIR to collect the tax assessed.***
>
> *If the service of the Warrant of Distraint and/or Levy on petitioner BPI on 23 October 1992 was already beyond the prescriptive period for collection of the deficiency DST, which had expired on 19 October 1992, then what more the letter of respondent BIR Commissioner, dated 13 August 1997 and received by the counsel of the petitioner BPI only on 11 September 1997, denying the protest of petitioner BPI and requesting payment of the deficiency DST? Even later and more unequivocally barred by prescription on collection was the demand made by respondent BIR Commissioner for payment of the deficiency DST in her Answer to the Petition for Review of petitioner BPI before the CTA, filed on 08 December 1997." (Emphases supplied)*

In this case, while there is no allegation as to when the FAN dated May 5, 2004 was actually mailed, released or sent to petitioner, the Court notes the acknowledgement made by petitioner in its Legal Memorandum that it was able to receive the subject FAN.[67] Petitioner's witness, Ms. Janet R. Inoceno, even testified[68] that a protest thereon was filed by petitioner on May 19, 2004. In the said "Protest Against the Final Assessment Notice and Letter of Demand both dated May 5

[67] Par. 20, Legal Memorandum (For Petitioner: Standard Insurance Co., Inc.), Docket (Vol. II), p. 483
[68] Answer to Question No. 4, Supplemental Judicial Affidavit of Janet R. Inoceno (In Question and Answer Form), p. 394.

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2004 of Standard Insurance Co., Inc. for alleged DST liability 2001"[69], petitioner acknowledged the receipt of that Final Assessment Notice on May 5, 2004. Consequently, reckoning date from which the 5-year prescriptive period to collect is on May 5, 2004. Thus, the BIR had 5 years from such date, or until May 5, 2009 to collect the same.

Records reveal that respondent held in abeyance the service of warrants of distraint/levy and garnishment in a Memorandum[70] dated January 24, 2005. Likewise, as testified by respondent's witness, Revenue Officer II, Jefferson T. Ocampo, the service of warrants of distraint/levy and garnishment was held in abeyance and there is no evidence that the same were served to petitioner. In fact, respondent did nothing to pursue its assessment until the January 31, 2017 Decision of CIR Caesar R. Dulay. The CIR eventually denied petitioner's Request for Reconsideration of the Decision dated September 20, 2004 of Regional Director Teodorica R. Arcegar. Evidently, respondent's right to collect the Deficiency DST under Assessment Notice No. 34-2001, within the five (5) year prescriptive period has lapsed.

The running of the aforementioned 5-year period to collect may nonetheless be suspended under Section 223 of the 1997 NIRC, as amended, *viz*:

> SEC. 223. **Suspension of Running of Statute of Limitations**. — **The running of the Statute of Limitations provided in** Sections 203 and **222** on the making of assessment and the beginning of distraint or levy or a proceeding in court for collection, in respect of any deficiency, shall be suspended for the period during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court and for sixty (60) days thereafter; when the taxpayer requests for a reinvestigation which is granted by the Commissioner; when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected: Provided, That, if the taxpayer informs the Commissioner of

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[69] BIR Records, p. 380.
[70] Exhibit "R-3", Docket (Vol. II), pp. 458-459.

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any change in address, the running of the Statute of Limitations will not be suspended; when the warrant of distraint or levy is duly served upon the taxpayer, his authorized representative, or a member of his household with sufficient discretion, and no property could be located; and when the taxpayer is out of the Philippines." (Emphasis supplied)

Based thereon, only the following grounds can suspend the collection of taxes: (1) during which the Commissioner is prohibited from making the assessment or beginning distraint or levy or a proceeding in court; (2) when the taxpayer requests a reinvestigation which is granted by the Commissioner; and, (3) when the taxpayer cannot be located in the address given by him in the return filed upon which a tax is being assessed or collected.

In this case, none of the above-mentioned grounds for suspension is present.

As to the first cause for suspension, while records, indeed, show that petitioner had requested Deputy Commissioner Jose Mario C. Buñag, through a letter[71] dated January 21, 2005, to hold in abeyance the issuance of warrants of distraint/levy and garnishment and that the same was granted by the latter in his Memorandum[72] dated January 24, 2005, it appears, however, that petitioner was not informed or notified of the existence of such Memorandum. This is clear from the following testimony of respondent's witness, Mr. Jefferson T. Ocampo, to wit:

"Q; Mr. Witness, regarding this Memorandum which was marked as 'R-3', are you aware whether the Standard Insurance was made aware of this Memorandum?

A: What do you mean by 'made aware'?

Q: Let me repeat the question. Mr. Witness, are you aware whether the Standard

[71] Exhibit "R-4", Docket (Vol. II), p. 460.
[72] Exhibit "R-3", Docket (Vol. II), pp. 458-459.

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	Insurance was made aware of this memorandum and the directive containing this memorandum?
A:	Yes.
Q:	So, you furnish(ed)[sic] a copy of this memorandum the Standard Insurance Co. Inc. the petitioner?
A:	Well, I cannot recall because that is 2001.
JUSTICE CASTAÑEDA:	How is it that you know that the petitioner is aware of that memorandum if you did not furnish a copy?
A:	Thru the letter of our Commissioner, your Honors.
ATTY. GRUESO:	Your Honor, that is not the question. The questions, Mr. Witness is, whether or not Standard Insurance was made aware on this memorandum and the directive containing this memorandum.
JUSTICE CASTAÑEDA:	He answered, yes. That's why, I asked the question.
ATTY. GRUESO:	Do you have any proof to show that Standard Insurance has made aware of this memorandum?
A:	I cannot recall, Mam, because it's already 2001.
Q:	It is answerable by yes or no.
A:	Yes.
Q:	What is your proof that Standard Insurance is aware of this Memorandum?

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A:
We have here. You wrote a letter from us through the Commissioner.

Q:
Mr. Witness, my question is, what is your proof that Standard Insurance is aware of this Memorandum on January 24, 2005?

JUSTICE CASTAÑEDA:
Was there any communication on the part of Standard Insurance which will indicate that they are aware of that memorandum? Did they answer any point regarding that memorandum?

A:
All I know, your Honors, is that there is a letter from the Standard Insurance and then in Exhibit 'R-4', you wrote a letter from us through a Commissioner. And then our Commissioner wrote a letter of Memorandum Exhibit 'R-4'.

Q:
Mr. Witness, the date of the alleged letter is January 21, 2005, is that correct?

A:
Yes.

Q:
And the date of the Memorandum is January 24, 2005, is that correct?

A:
January 21 and 25.

Q:
So, am I correct to say that the memorandum comes after the letter dated January 21?

A:
Yes.

Q:
So, apart from that letter which was sent prior to the Memorandum, do you have any other proof that Standard Insurance was made aware of Memorandum dated January 24 or three (3) days after the purported letter which Standard Insurance sent to your office?

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A: I cannot remember."[73]

From the foregoing testimony of respondent's witness, petitioner was not duly informed or notified of the action taken by the BIR on its letter request to hold in abeyance the service of distraint/levy and garnishment dated January 21, 2005.

The Court, likewise, notes that no other written communication was sent by respondent to petitioner, other than the assailed Decision dated January 31, 2017, in which he denied petitioner's request for reconsideration. The issuance thereof was certainly beyond the five-year period to collect, which had expired on May 5, 2009. Consequently, the said assailed Decision could no longer be enforced as the same was already barred by prescription.

For such reasons, respondent's defense that the prescriptive period provided for the collection of the assessed tax was suspended by the issuance of the said Memorandum has no leg to stand on.

As regards to the second basis for the suspension of the 5-year period to collect, the records are bereft of any showing that petitioner filed a request for reinvestigation of the subject deficiency tax assessment. Such fact was even confirmed during the cross-examination of respondent's witness, Mr. Jefferson T. Ocampo, in this wise:

"Q: Mr. Witness, when you conducted a review of the whole records of the 2001 Internal revenue Tax docket of petitioner Standard, did you come across any request for reinvestigation coming from Standard Insurance?

A: No."[74]

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[73] Pages 7-10 of the Transcript of the Stenographic Notes Taken During the Hearing on April 30, 2018.
[74] Pages 10-11 of the Transcript of the Stenographic Notes Taken During the Hearing on April 30, 2018.

With regard to the third ground for the suspension of collection, there is likewise no showing that petitioner could not be located by the BIR.

With respect to the other issues raised, it is no longer necessary to discuss the same as the prescriptive period to collect never tolled as discussed above. Thus, the attempt of respondent to collect the alleged deficiency DST through the issuance of the January 31, 2017 Decision of then Commissioner Dulay, produces no effect as prescription has already set in.

WHEREFORE, premises considered, this Court is constrained to **GRANT** the Petition for Review. The Decision dated January 31, 2017 of respondent Commissioner of Internal Revenue (CIR) is **SET ASIDE**. Accordingly, Assessment Notice No. 34-2001 against the petitioner as to its 2001 Documentary Stamp Tax deficiency is **CANCELLED** and **SET ASIDE** on ground that respondent's right to collect the same has prescribed.

SO ORDERED.

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

I CONCUR:

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

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice