Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	EB Case No. 466 (CTA Case No. 7291)
- versus -	Members: ACOSTA, PJ, CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
THE INSULAR LIFE ASSURANCE CO., LTD., Respondent.	Promulgated: OCT 12 2009

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DECISION

CASANOVA, J.:

This is an appeal, by way of a Petition for Review[1] filed by petitioner-Commissioner of Internal Revenue (CIR) seeking the reversal and setting aside of the Decision[2] dated August 12, 2008 (the "*Assailed Decision*") rendered by the Court of Tax Appeals, Second Division (*CTA Second Division*) and the Resolution[3] dated February 6, 2009 (the "*Assailed Resolution*") denying petitioner's Motion for Reconsideration.

The facts of the case, as aptly found by the CTA Second Division and narrated in the Assailed Decision, are as follows:

> "The Insular Life Assurance Co., Ltd. (Petitioner) is a corporation duly organized and existing under and by virtue of Philippine laws, with principal office located at IL Corporate Center, Insular Drive, Filinvest Corporate City,

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[1] Docket, pp. 750-761
[2] Ibid, pp. 686-697
[3] Ibid, pp. 739-743

Alabang, Muntinlupa City.[4] It is duly registered with the Insurance Commission and authorized to engage in the business of providing life insurance[5], but is not registered with the Cooperative Development Authority (CDA).[6]

The Commissioner of Internal Revenue (Respondent) is the official of the Bureau of Internal Revenue (BIR) duly authorized to assess and collect internal revenue taxes, and to decide disputed assessments, among others.

On October 26, 2004, petitioner received the Formal Letter of Demand and Assessment Notice dated September 3, 2004 (FAN), which assessed petitioner for deficiency DST on its premiums on direct business/sums assured in the amount of P63,073,860.00 and interest in the amount of P34,501,401.42 or a total of P95,575,261.42 (sic) for calendar year 2001. The assessment was based on Section 183 of the National Internal Revenue Code (NIRC) of 1997[7], which provides:

'**Section 183**. Stamp Tax on Life Insurance Policies. – On all policies of insurance or other instruments by whatever name the same may be called, whereby any insurance shall be made or renewed upon any life or lives, there shall be collected a documentary stamp tax of Fifty centavos (P0.50) on each Two hundred pesos (P200), or fractional part thereof, of the amount insured by any such policy.'

On November 25, 2004, petitioner wrote and filed a protest to the FAN.[8] On December 14, 2004, petitioner submitted all its relevant supporting documents to the BIR.[9]

Hence, the instant Petition for Review filed on July 15, 2005.

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[4] Paragraph 1.01, Joint Stipulation of Facts and Issues (JSFI); Docket, pages 148 to 149
[5] Paragraph 1.02, JSFI, Docket, page 149; Exhibit "E", Docket, page 320
[6] Paragraph, 2.04, JSFI, Docket, page 150
[7] Paragraph, 2.02, JSFI, Docket, page 149
[8] Paragraph 2.03, JSFI, Docket, page 149; Docket, pages 321 to 329
[9] Exhibit "G", Docket, pages 331 to 332

On July 22, 2005, petitioner received a decision dated June 30, 2005 denying petitioner's protest.[10]

On September 29, 2005, respondent filed her Answer with the following Special and Affirmative Defenses:

'4. The assessment was issued in accordance with existing law and regulations. The factual and legal bases for the assessment are incorporated in the subject assessment.

5. Petitioner is not registered as a cooperative company pursuant to the Cooperative Development Authority, or Republic Act No. 6938, and the Bureau of Internal Revenue's implementing revenue regulations; hence, it is not entitled to tax exemptions enumerated under the law, including exemption from the payment of DST. Petitioner as an ordinary corporation is, therefore, subject to the DST prescribed under Section 183 of the Tax Code, as amended.

6. Investigation of the BIR disclosed that the tax due per information gathered from the Insurance Commissioner against the petitioner's actual payments showed a discrepancy in the DST liability for the year 2002. Petitioner did not introduce any evidence in its protest to overthrow the validity of the questioned assessment. Hence, the denial of the protest.

7. Tax exemptions are not presumed. (*Lealda Electric Co., Inc. v. Collector of Internal Revenue, L-16428, April 30, 1963*). Exemption from taxation are highly disfavored in law, and he who claims an exemption must be able to justify his claim by the clearest grant of organic or stature law. An exemption from the common burden cannot be permitted to exist upon vague implications (*Asiatic Petroleum Co., (P.I.), Ltd. v. Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc. 98 Phil. 670; Davao Light & Power Co., Inc. v. Commissioner of Customs, et al., L-28739 & L-28902, March 29, 1972*).

8. Assessments are *prima facie* presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any

[10] Exhibit "B", Docket, pages 287 to 288

> irregularities in the performance of official duties, an assessment will not be disturbed. All presumptions are in favor of the correctness of tax assessments. *(Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue, 98 Phil. 290; Sy Po v. CTA, et al., GR No. 81446, August 18, 1988; Dayrit, et al. v. Cruz, et al., L-39910, September 26, 1988; Cagayan Robina Sugar Milling Company v. Court of Appeals, et al., G.R. No. 122451, October 12, 2000).* Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. *(Delta Motors Co. v. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of Appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995).*

On January 9, 2006, the parties filed their 'Joint Stipulation of Facts and Issues' to the Court.[11]

During the trial, petitioner and respondent submitted their respective testimonial and documentary evidence in support of their position.

On May 20, 2008, the case was submitted for decision, taking into consideration the Memorandum filed by petitioner and respondent on March 18, 2008 and April 21, 2008, respectively.

The parties stipulated the following issues[12] for this Court's resolution:

> 1. Whether or not the assailed Formal Letter of Demand and Assessment Notice for deficiency documentary stamp taxes for calendar year 2001 is void for failing to state the facts on which it is based.
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> 2. Whether the petitioner is liable for deficiency DST in the total amount of P95,575,261.42. (sic)"

After trial on the merits, the CTA Second Division promulgated a Decision on August 12, 2008, the dispositive portion of which reads as follows:

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[11] Docket, pages 148 to 151
[12] Docket, page 150

> "***WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. The Formal Letter of Demand and Assessment Notice dated September 3, 2004 assessing petitioner of deficiency DST in the amount of P95,575,261.42, (sic) inclusive of interest and compromise penalties for calendar year 2001, are hereby **CANCELLED** and **WITHDRAWN**.*
>
> ***SO ORDERED**."*

Not satisfied with the above decision, petitioner filed his Motion for Reconsideration (RE: Decision dated 12 August 2008)[13] on September 1, 2008, which was subsequently denied by the CTA Second Division in a Resolution[14] promulgated on February 6, 2009.

Petitioner, hence, filed the instant Petition for Review[15] on March 11, 2009 to resolve the issue on "whether or not petitioner, as a cooperative company is liable for deficiency documentary stamp tax in the aggregate amount of P95,575,261.42 (sic) for taxable year 2001.

On April 21, 2009, respondent filed its Comment/Opposition (Re: Petition for Review dated 10 March 2009).[16]

Pursuant to the Resolution of the CTA *En Banc* dated May 5, 2009, ordering the parties to simultaneously submit their respective memorandum, petitioner filed his Memorandum on June 8, 2009[17], while respondent filed its Memorandum on June 25, 2008.[18]

In a Resolution[19] dated July 1, 2009, the CTA *En Banc* deemed the case submitted for resolution.

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[13] Ibid, pp. 698-706
[14] Ibid, pp. 739-743
[15] Ibid, pp. 750-761
[16] CTA En Banc Rollo, pp. 42-51
[17] Ibid, pp. 56-63
[18] Ibid, pp. 65-93
[19] Ibid, p. 94

In support of the instant Petition for Review, petitioner presented the following grounds/arguments, to wit:

> "(1) Petitioner's (sic) case is not on all fours with the case of Sunlife Assurance Company Canada (Sunlife). Presidential Decree No. 175 (PD 175) took effect in 1973. Republic Act No. 6938 (RA 6938), or the Cooperative Development Act and its implementing Revenue Regulations, on the other hand, took effect in 1990 and 2001, respectively;[20] and
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> (2) Petitioner (sic), not having registered with the CDA as required by law, is not considered a cooperative company, and thus not entitled to the exemption provided under Section 199(a) of the National Internal Revenue Code of 1997 (NIRC of 1997), as amended, but rather covered by the taxable provision under Section 183 of the NIRC of 1997.[21]

After a careful and thorough evaluation and consideration of the records of the case, the CTA *En Banc* finds no merit in the Petition.

The arguments raised by the petitioner in the instant Petition for Review are mere reiterations of its arguments in its Motion for Reconsideration dated August 29, 2008. The CTA *En Banc* finds no new matters which have not yet been considered and passed upon by the CTA Second Division in its assailed Decision and Resolution.

As aptly discussed by the CTA Second Division in the Assailed Decision and, We quote, with approval, excerpts therefrom, to wit:

> "Section 199 of the NIRC of 1997 enumerates the documents and papers which are not subject to DST, to wit:
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> '**Section 199**. Documents and Papers Not Subject to Stamp Tax. – The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:

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[20] Petition for Review, par. 5, p. 5 En Banc Rollo, p. 11
[21] Ibid, par. 1, p. 6, En Banc Rollo, p. 12

(a) Policies of insurance or annuities made or granted by a fraternal or beneficiary society, order, association or cooperative company, operated on the lodge system or local cooperation plan and organized and conducted solely by the members thereof for the exclusive benefit of each member and not for profit.

xxx xxx xxx.'

Under Section 123 of the NIRC of 1997, a 'cooperative' is defined as a company or association conducted by the members thereof with the money collected from among themselves and solely for their own protection and not for profit. Indubitably, petitioner is a 'cooperative' engaged in mutual life insurance business for the following reasons:

First, petitioner is managed by its members. A stock insurance company doing business in the Philippines may alter its organization and transform itself into a mutual insurance company.[22] Article 7 of its Amended Articles of Incorporation[23] shows that petitioner has been converted from a stock life insurance company to a non-stock mutual life insurance corporation pursuant to Section 266, Title 17 of the Insurance Code of 1978. Under such set-up, the ownership of petitioner is vested in its members who are entitled to one vote each and who, in turn, elect from among themselves the members of its board of trustees.[24] The board of trustees, on their part, exercises the powers and conducts the business of the corporation.[25]

Seen from the above, all the members of petitioner have actual democratic participation in their choice of who should represent them in the running of corporate affairs. In this sense, petitioner is solely conducted, managed or guided by its member-policyholders.

Second, petitioner is operated with money collected from its members by way of premiums for their exclusive benefit and protection from risks assumed by their

[22] Last paragraph, Section 188 of the Insurance Code of 1978, as amended by Presidential Decree (P.D.) No. 1455
[23] Exhibit "C", Article 7, Docket, page 293
[24] Exhibit "D", Article 3.1, 3.2 and 3.3, Docket, page 302
[25] Exhibit "D", Article 4.1, Docket, page 306

> insurance policy. Since petitioner is composed of members who are all policyholders thereof, all premiums collected are entirely sourced from the members only. Such premiums are thereafter pooled in a common fund to answer directly for the cost of insurance protection, which includes operating costs and payment of indemnity and benefit claims of the member-policyholders. The cash paid in for premiums constitute the assets of petitioner.[26]
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> Third, petitioner is licensed for the mutual protection of its members, not for the profit of anyone. Petitioner invests the common fund in order to earn additional income to ensure that sufficient funds are available to meet benefit claims of members-policyholders and to pay operating expenses. The effect of investment income is to reduce the cost of insurance to the policyholders. As such, these investments ultimately redound to the protection and benefit of its members-policyholders. In case there is surplus over the intended benefit claims and the incidental expenses, they are distributed back to the policyholders as return of premiums.[27]"

On petitioner's other argument that respondent, not being registered with the Cooperative Development Authority (CDA) and, thus, is not considered a cooperative and, therefore is not entitled to the tax exemption granted under Sec. 199(a) of the NIRC of 1997, the CTA Second Division correctly ruled as follows:

> "Likewise, the argument that petitioner must be registered with the Cooperative Development Authority in order to be entitled to tax exemption, will not prosper. In *Republic of the Philippines, et al. vs. Sunlife Assurance Company of Canada*[28]
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> 'First, the Tax Code does not require registration with the CDA. No tax provision requires a mutual life insurance company to register with that agency in order to enjoy exemption from both percentage and documentary stamp taxes.

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[26] Exhibit "M", paragraph 15.0, Docket, page 404
[27] Exhibit "M", paragraph 16.0, Docket, page 404
[28] Republic of the Philippines vs. Sunlife Assuarnce Company of Canada, G.R. No. 158085, October 14, 2005, 473 SCRA 129

A provision of Section 8 of Revenue Memorandum Circular (RMC) No. 48-91 requires that submission of the Certificate of Registration with the CDA, before the issuance of a tax exemption certificate. That provision cannot prevail over the clear absence of an equivalent requirement under the Tax Code. One, as we will explain below, the Circular does not apply to respondent, but only to cooperatives that need to be registered under the Cooperative Code. Two, it is a mere issuance directing all internal revenue officers to publicize a new tax legislation. Although the Circular does not derogate from their authority to implement the law, it cannot add a registration requirement, when there is none under the law to begin with.

Second, the provisions of the Cooperative Code of the Philippines do not apply. xxx xxx xxx xxx xxx.

Third, not even the Insurance Code requires registration with the CDA. The provisions of this Code primarily govern insurance contracts; only if a particular matter in question is not specifically provided for shall the provisions of the Civil Code on contracts and special laws govern.

True, the provisions of the Insurance Code relative to the organization and operation of an insurance company also apply to cooperative insurance entities organized under the Cooperative Code. The latter law, however, does not apply to respondent, which already existed as a cooperative company engaged in mutual life insurance prior to the laws passage of that law. The statutes prevailing at the time of its organization and mutualization were the Insurance Code and the Corporation Code, which imposed no registration requirement with the CDA.' (Emphasis supplied)

Having established that petitioner is a cooperative that does not have to be registered with the Cooperative Development Authority, the Court holds that petitioner is entitled to exemption from DST on the insurance policies it issues to its members."

In view of the foregoing discussions, the Court *En Banc* finds no cogent reason to reverse the assailed Decision and Resolution dated August 12, 2008 and February 6, 2009, respectively, of the CTA Second Division.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.

ERNESTO D. ACOSTA
Presiding Justice