REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PRULIFE OF UK INSURANCE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6774

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
SEP 1 1 2007

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DECISION

CASTAÑEDA, JR., *J*.:

The instant Petition for Review seeks the cancellation of the assessment issued by the Commissioner of Internal Revenue against Prulife of UK Insurance Corp. for deficiency premium and documentary stamp taxes and compromise penalties in the aggregate amount of P5,756,316.21 for taxable year 1999.

Prulife of UK Insurance Corp. (Petitioner) is the successor-in-interest of Allstate Life Insurance Company of the Philippines Inc. (Allstate), a duly registered corporation doing business in the country, with headquarters based in Hongkong and whose local principal office is at 25th Floor, Tower 1, The Enterprise Center, Ayala Avenue corner Paseo de Roxas and De la Rosa Streets, Makati City.[1]

Commissioner of Internal Revenue (Respondent) is the a public officer of the Bureau of Internal Revenue (BIR) authorized under the National Internal Revenue Code (NIRC) to examine any taxpayer including *inter alia*, the power to issue tax assessments, evaluate and decide upon protests relative thereto.[2]

On January 24, 2003, respondent issued Assessment/Demand Notices No. 34-99[3] addressed to Allstate, finding the latter liable for the following:

Tax Type	**Amount of Assessment**
Premium Tax (Sec. 123)	P 664,051.96
Compromise Penalty	16,000.00
Documentary Stamp Tax (Sec. 183)	411,675.50
Compromise Penalty	16,000.00
Documentary Stamp Tax (Sec. 175)	4,623,588.75
Compromise Penalty	25,000.00
	P 5,756,316.21

On February 21, 2003, petitioner seasonably protested the Assessment/Demand Notices, and attached documents in support of its protest.[4] BIR Regional Director Ruperto P. Somera informed petitioner that the case-docket will be reinvestigated and forwarded to Revenue District Office No. 34.[5]

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[1] Paragraph 1, Joint Stipulations of Facts, *Rollo*, page 69.
[2] Paragraph 2, Joint Stipulations of Facts, *Rollo*, pages 69-70.
[3] BIR Records, pages 42-50.
[4] BIR Records, pages 14-41.
[5] Paragraph 6, Joint Stipulations of Facts, *Rollo*, page 70.

On September 2, 2003, petitioner wrote a letter to the BIR District Officer (Atty. Alarcon) relative to the re-investigation of the case. The re-investigation has not been terminated as of September 19, 2003.[6]

Hence, petitioner filed a Petition for Review with this Court on September 19, 2003.

During trial, petitioner applied for compromise settlement of the premium tax assessment by paying forty percent (40%) of the basic assessed tax or an amount of P166,072.00, on the ground of doubtful validity of the assessment. The recommendation for the approval of the offer of compromise settlement was not yet final, being still subject to the approval of the Regional Evaluation Board according to Section 7(c) of the NIRC.[7]

The issues,[8] jointly submitted by the parties for resolution of this Court, are the following:

> "1. Whether or not the taxes covered by the 1999 deficiency assessments under Assessment and/or Demand Notices No. 34-99, all dated January 24, 2003 were already paid;
>
> 2. Whether or not the alleged findings of 1999 deficiency taxes have factual and legal bases;
>
> 3. Whether or not the issuance of Assessment and/or Demand Notices No. 34-99, all of which were dated January 24, 2003 are valid;
>
> 4. Whether or not Petitioner failed to submit all relevant supporting documents relative to the premium tax, within sixty (60) days from the filing of the protest on February 21, 2003, and if so, whether such failure is in violation of Section 228 of the 1997 Tax Code so as to render the Assessment Notices No. 34-99 and demand letters all dated January 24, 2003, final, executory and demandable;

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[6] Paragraphs 7 and 8, Joint Stipulations of Facts, *Rollo*, page 70; BIR Records, pages 8-9.
[7] TSN, August 17, 2004, pages 2-3; *Rollo*, page 141.
[8] Joint Stipulation of Facts, *Rollo*, page 73; Minutes of February 11, 2004 hearing, *Rollo*, page 116.

5. Whether or not the accounts receivable written off in the amount of P7,864,722.00, is subject to premium tax;

6. Whether or not the advance payment of policyholder and the non-policy related collections are included in the petitioner's premium income for 1999 which was made subject of the deficiency assessment of premium tax by respondent."

This Court shall first resolve the issues involving the applicability of Section 228 of the NIRC which states:

> "**SECTION 228.** *Protesting of Assessment.* - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings:
>
> x x x
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> 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 thirty (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."

Upon reviewing the assessment notices for the deficiency premium tax and documentary stamp tax, the Court finds the same to be factually and legally supported. The assessment/demand notices showed detailed computations and applicable provisions of the NIRC in arriving at the amount of deficiency taxes. The figures used in the computations were obtained from documents submitted by petitioner to respondent. Thus, the assessment/demand notices issued were valid.

The same, however, cannot be said about the compromise penalties imposed by respondent. The Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer.[9] Absent any showing that petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the compromise penalty without the conformity of the taxpayer is illegal and unauthorized.[10] Considering that respondent had not shown that petitioner conformed to the imposition of the compromise penalty, the compromise penalty is deleted.

Notwithstanding petitioner's lack of relevant documents in support of its protest insofar as the premium tax assessment is concerned, that assessment did not attain finality as respondent argued. The only effect of petitioner's lack of supporting documents submitted is that it lost its chance of

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[9] *Philippine Internal Fair, Inc. v Collector of Internal Revenue,* G.R. Nos. L-12928 and L-12932, March 31, 1962 (4 SCRA 774).
[10] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.,* G.R. No. 35266, January 21, 1999 (193 SCRA 86).

further contesting the premium tax assessment. In *Solidbank Corporation vs. Commissioner of Internal Revenue,*[11] this Court ruled:

> "xxx [T]he finality of the assessment, as worded in the provision of law, simply means that **where the taxpayer decides to forego with its opportunity to present the documents in support of its claim within sixty (60) days from the filing of its protest, it merely lost its chance to further contest the assessment.**
>
> **Effectively, its non-compliance with the submission of the necessary documents would either mean that the petitioner no longer wishes to further submit any document for the reason that its protest letter filed was more than enough to support its claim, or that the petitioner failed to comply thus it can no longer give justification with regard to its objections as to the correctness of the assessment notices.**
>
> Nonetheless, the necessity of the submission of the supporting documents lies on the petitioner. It cannot be left to the discretion of the respondent for in doing so would leave the petitioner's case at the mercy of the whims of the respondent. In other words, it is for the petitioner to decide whether or not supporting documents are necessary to support its protest, for it is in the best position, being the affected party to the assessment, to determine which documents are necessary and essential to garner a favorable decision from the respondent." (*Emphasis supplied*)

Now, this Court shall determine the merit of the assessments.

Respondent assessed petitioner of deficiency DST based on the latter's alleged non-payment of DST on original issue of shares of stocks and life insurance policies under Sections 175 and 183 of the NIRC, respectively, computed as follows:

	Section 175	**Section 183**
Taxable Sales Receipt	250,000,000.00	502,955,201.00
Applicable rate	2/200	0.5/200
Tax due thereon	2,500,000.00	1,257,388.00
Less: Allowable tax credits/taxes already paid		1,000,000.00
Deficiency Tax Due	2,500,000.00	257,388.00

[11] *C.T.A. CASE No. 6557, May 5, 2005.*

Add: 25% Surcharge	625,000.00	
20% Interest p.a. up to 1-24-03	1,498,588.75	154,287.50
Total Amount Due & Collectible	**4,623,588.75**	**411,675.50**

The Court disagrees.

An obligation such as that of taxes is extinguished by its payment.[12] The Certifications issued by Carmelita SJ. Pascual, Chief of the Revenue Accounting Division of the BIR,[13] show that petitioner indeed paid the DST due and that such payment was in fact remitted to the BIR. Both parties even stipulated that on May 6, 1998, petitioner filed its DST returns and paid P2,500,000.00 for its original issue of shares of stocks and on various dates in 1999, petitioner filed its DST returns and paid an aggregate amount of P1,400,000.00 for its life insurance policies,[14] even exceeding its payment of DST thereon by P142,612.00.

Furthermore, BIR Examiner Samilo A. Cortuna noted that the DST due thereon had been fully paid by petitioner.[15] In fact, the cancellation of the DST assessments was even recommended by BIR Examiner Alfred Manodon to whom the petitioner's case was originally assigned.[16]

Indubitably, all these prove that petitioner paid its DST due on its original issue of shares of stocks and life insurance policies; thus no deficiency DST is due.

Respondent also assessed petitioner of deficiency premium tax based on cash collections and accounts receivables written off by petitioner and treated as bad debts, computed as follows: Jr

[12] Article 1231 (1), New Civil Code.
[13] Exhibits "A" and "B"; *Rollo*, pages 167-168.
[14] Paragraphs 2 to 8, 10 of Additional Facts Jointly Stipulated, Joint Stipulation of Facts, *Rollo*, pages 71 to 72.
[15] Exhibit "C"; *Rollo*, page 170.
[16] TSN, July 26, 2006, pages 9 to 12.

Cash collected per O.R.	8,422,797.88
Add: A/R written off	7,864,722.00
Total	16,287,519.88
Less: Receivable end	306,578.00
Total collections	15,980,941.88
Premium tax due	799,047.09
Less: Allowable tax credits/taxes already paid	383,868.13
Deficiency Tax Due	415,178.96
Add: 20% Interest p.a. up to 1-24-03	248,873.00
Total Amount Due & Collectible	**664,051.96**

On the other hand, petitioner claims that cash collected per official receipts did not comprise entirely of premiums collected because these collections also included advance payments from the policyholders and non-policy related collections.[17] Petitioner also claims that accounts receivables written off as bad debts cannot be subject to premium tax because these were not collected.

The Court partly disagrees with petitioner.

Section 123 of the NIRC states:

> "**Section 123.** *Tax on Life Insurance Premiums.* - There shall be collected from every person, company or corporation (except purely cooperative companies or associations) doing life insurance business of any sort in the Philippines a tax of five percent (5%) of the **total premium collected**, whether such premiums are paid in money, notes, credits or any substitute for money; but premiums refunded within six (6) months after payment on account of rejection of risk or returned for other reason to a person insured shall not be included in the taxable receipts; nor shall any tax be paid upon reinsurance by a company that has already paid the tax; nor upon premiums collected or received by any branch of a domestic corporation, firm or association doing business outside the Philippines on account of any life insurance of the insured who is a nonresident, if any tax on such premium is imposed by the foreign country where the branch is established nor upon premiums collected or received on account of any reinsurance, if the insured, in case of personal insurance, resides outside the Philippines, if any tax on such premiums is imposed by the foreign country where the original insurance has been issued or

[17] TSN, June 30, 2004, page 9; BIR Records, page 8.

> perfected; nor upon that portion of the premiums collected or received by the insurance companies on variable contracts (as defined in Section 232(2) of Presidential Decree No. 612), in excess of the amounts necessary to insure the lives of the variable contract workers. xxx" (*Emphasis supplied*)

The mere claim of petitioner that its cash collections did not comprise entirely of premiums collected cannot be given credence. Petitioner should have presented supporting documents to prove such claim. Since petitioner failed to present a scintilla of evidence to that effect, this Court sustains respondent's basis of cash collections.

As for accounts receivables written off as bad debts, the Court agrees that the same should not be subject premium tax. First, respondent is not sure whether the accounts receivables consisted entirely of premiums. In fact, petitioner explained in its protest that the Bad Debts arose from Allstate's agreement with TF Consulting Company which did not push through and the money was not refunded to Allstate.[18] That explanation was not squarely disputed nor refuted by respondent. Second, assuming *arguendo* that the receivable consisted entirely of premiums, no premium tax can be imposed precisely because these receivables were uncollected. As pointed out in the afore-cited provision, only the total premiums collected may be subject to premium tax.

The same observation was also made by BIR Examiner Samilo Cortuna in his memorandum report to the Revenue District Officer[19] in this wise:

> "From the same case-docket, the nature of premium tax deficiency relates to the claimed accounts receivable written off in the amount of P7,864,722.00 for which 5% premium tax was

[18] BIR Records, page 9.
[19] Exhibit "C"; *Rollo*, pages 169-170.

imposed pursuant to Section 123 of the Tax Code. Again, the claim for deduction on this particular account for income tax purposes was disallowed by the examiner originally handling the case. Despite the disallowance as a deduction from gross income/loss, this bad debts written off was treated as if this was premium already collected resulting in its being subject to premium tax as aforesaid. But since by its very nature **this account was not collected**, there is doubt as to the validity of the premium tax because Section 123 of NIRC is very clear that premium tax accrues only from the moment the premium on insurance are collected. And since bad debts claimed appears *(sic)* to be uncollected during the 1999 taxable year, it means that no premium tax becomes due. x x x" (*Emphasis supplied*)

Assessments should not be based on presumptions no matter how logical the presumption might be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[20] All told, the premium tax assessment should be re-computed as follows:

Cash collected per O.R.	8,422,797.88
Less: Receivable end	306,578.00
Total collections	8,116,219.88
Premium tax due	405,810.99
Less: Allowable tax credits/taxes already paid	383,868.13
Deficiency Tax Due	21,942.86
Add: 20% Interest p.a. up to 1-24-03	13,153.33
Total Amount Due & Collectible	**35,096.20**

IN VIEW OF THE FOREGOING, the instant petition is hereby **PARTIALLY GRANTED.** Accordingly, the assessment for deficiency documentary stamp tax as well as interest in the total amount of P5,035,264.25 and compromise penalties in the total amount of P57,000.00 against petitioner for taxable year 1999 is **CANCELLED** and **SET ASIDE.** However, petitioner is **ORDERED** to **PAY** respondent P35,096.20 for deficiency premium tax as well as interest, plus twenty percent (20%)

[20] *Commissioner of Internal Revenue vs. Island Garment Manufacturing Corp.* (G.R. No. L-46644. September 11, 1987) citing *Collector of Internal Revenue vs. Benipayo* (L-13656. January 31, 1962).

delinquency interest commencing from February 24, 2003 for taxable year 1999.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
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
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ERNESTO D. ACOSTA
Presiding Justice