Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

En Banc

MANILA BANKERS' LIFE INSURANCE CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 620
(CTA Case No. 7266, 7324 & 7378)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MANILA BANKERS' LIFE INSURANCE CORPORATION,
Respondent.

CTA EB Case No. 621
(CTA Case No. 7266, 7324 & 7378)

Members:
ACOSTA, PJ,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
PALANCA-ENRIQUEZ,
FABON-VICTORINO,
MINDARO-GRULLA, and
COTANGCO-MANALASTAS, *J.J.*

Promulgated:
AUG 18 2011 4:15pm

x- -x

DECISION

CASANOVA, J.:

This is a case where both parties filed their respective Petitions for Review, assailing the Decision[1] (assailed Decision) dated November 6, 2009 and the Resolution[2] (assailed Resolution) dated April 6, 2010 of the Court of Tax Appeals (CTA) *Former* Second Division.

Manila Bankers' Life Insurance Corporation (MBLIC) and Commissioner of Internal Revenue (CIR) filed their Petitions for Review on May 7, 2010[3] and May 5, 2010[4], respectively.

The facts of the case, as found by the CTA *Former* Second Division, are as follows:

> "Petitioner is a domestic corporation organized and existing under the laws of the Republic of the Philippines and duly registered with the Securities and Exchange Commission (SEC). It is likewise registered with the Bureau of Internal Revenue (BIR) under Tax Identification No. 000-474-490-000.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, the government agency charged with the assessment and collection of all national internal revenue taxes, fees, and charges, as well as the enforcement of all forfeitures, penalties, and fines

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[1] CTA En Banc Rollo (EB 620), pp. 37-70; (EB 621), pp. 31-64.
[2] Ibid, pp. 72-84.
[3] Petition for Review, Ibid, pp. 8-35.
[4] Petition for Review, Ibid, pp. 7-29.

connected therewith. He holds office at the 4th Floor, BIR Building, Agham Road, Diliman, Quezon City.

CTA Case No. 7266

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

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

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

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

Assessment No.	Details	Amounts	Total
INC-MCIT-01-000001	Basic MCIT Due	**₱ 398,233.52**	
	Interest as of August 11,		

	2004	185,855.58	
	Compromise Penalty	16,000.00	P 600,089.10
DST-01-000102	Basic DST Due	**₱ 4,841,002.50**	
	Interest as of August 11, 2004	2,485,370.68	
	Compromise Penalty	25,000.00	7,351,373.18
Aggregate Total:			**₱ 7,951,462.28**

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

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

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

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

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

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

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

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

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

'<u>Deficiency Documentary Stamp Tax on Policies - (P7,351,373.18) - Sec. 183 of NIRC</u>

In reference to IC Report, page 16, the total sum assured of increased policies were taxed at fifty centavos (0.50) on each Two hundred pesos or fractional thereof. It resulted to a deficiency documentary stamp tax assessment of 7,351,373.18 inclusive of interest and penalty.'

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

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

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

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

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

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

6. The assessments were issued in accordance with existing law and regulations. The legal and factual bases for the issuance of the assessments were embodied in the assessment notices;

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

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

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

10. It bears stressing that expenses which are allowed by law as deduction from gross income are those enumerated under Section 34 of the Tax Code, as

amended, and only after complying with the substantiation requirements of the law.

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

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

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

'The petition is impressed with merit.

Section 49, Title VI of the Insurance Code defines an insurance policy as the written instrument in which a contract of insurance is set forth. Section 50 of the same Code provides that the policy, which is required to be in printed form, may contain any word, phrase, clause, mark, sign, symbol, signature, number, or word necessary to complete the contract of insurance. It is thus clear that any rider, clause, warranty or endorsement pasted or attached to the policy is considered part of such policy or contract of insurance.

The subject insurance policy at the time it was issued contained an 'automatic increase clause.' Although the clause was to take effect only in 1984, it was written into the policy at the time of its issuance. The distinctive feature of the 'junior estate builder policy' called the 'automatic increase clause' already formed part and parcel of the insurance contract, hence, there was no need for an execution of a separate agreement for the increase in the coverage that took effect in 1984 when the assured reached a certain age.

It is clear from Section 173 that the payment of documentary stamp taxes is done at the time the act is done or transaction had and the tax base for the computation of documentary stamp taxes on life insurance policies under Section 183 is the amount fixed in policy, unless the interest of a person insured is susceptible of exact pecuniary measurement. What then is the amount fixed in the policy? Logically, we believe that the amount fixed in the policy is the figure written on its face and whatever increases will take effect in the future by reason of the 'automatic increase clause' embodied in the policy without the need of another contract.

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

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

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

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

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

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

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

12. Claims for exemption from taxation shall be construed in *strictissimi juris* against the claimant-petitioner. Petitioner has the burden of proving entitlement to exemption from taxation or exemption from the payment of DST for that matter.

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

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

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

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

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

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

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

admitted in its supplemental Petition is unwarranted and, therefore, should be denied.

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

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

19. Failure to present proof of error in the assessment will justify judicial affirmation of said assessment. (*Delta Motors Co. vs. Commissioner, CTA Case No. 3782, May 21, 1986; Commissioner of Internal Revenue v. Court of appeals, et al., G.R. Nos. 104151 and 105563, March 10, 1995*)."

CTA Case No. 7324

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

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

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

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

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

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

Assessment No. DST-05-00076

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

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

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

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

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

"In the case of ***Commissioner of Internal Revenue vs. Lincoln Philippine Life Insurance Company, Inc. (now Jardine-CM No. 119176, promulgated 19 March 2002, A Life Insurance Company, Inc.) and the Court of Appeals, G.R.*** the Supreme Court ruled thus:

xxx xxx xxx

The contention of petitioner that the above-quoted case cannot justify the imposition of Documentary Stamp Tax (DST) on the subsequent increase in coverage or sum assured of the life insurance policies issued by petitioner is utterly misplaced. It is understood that the 2002 decision on the Lincoln Case covers only the automatic increases on individual life insurance policy because this is determinable at the time the policy as taken out and does not cover all kinds of riders/increases attached to other insurance product, such as group and industrial. However, respondent is of the position that since riders, clauses and warranties, which increases the sum assured, to be binding between the insured and the insurer should not only be pasted or attached to the said policy but should be mentioned and written on the blank spaces provided in the policy, describing therein the title or name of riders, thus making the said riders, therefore, part and parcel of the policy.

If an automatic increase which is only determinable at the time the policy was taken out is taxable, how much more the increase and/or riders which have been actually determined at the end of the taxable year.

All presumptions are in favor of the correctness of tax assessments. The good faith of tax assessors and the validity of their actions are presumed. They will be presumed to have taken into consideration all the facts to which their attention was called *(CIR vs. Construction Resources of Asia, Inc. 145 SCRA 671)*. It is incumbent upon the taxpayer to prove the contrary *(Mindanao Bus Company vs. CIR, 1 SCRA 538; CIR vs. Tuazon, Inc., 173 SCRA 397)* and failure to do so shall vest legality to respondent's actions and assessments.

Failure to present proof of error in the assessment will justify judicial affirmation of said assessment *(Delta Motors Co. vs. Commissioner, CTA Case No. 3782, 21 May 1986; Commissioner of Internal Revenue vs. Court* *of Appeals, et al., 21 May 1986; Commissioner of Internal Revenue vs. Court of Appeals, et al., G.R. Nos. 104151 and 105563, 10 March 1995).*"

CTA Case No. 7378

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

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

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

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

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

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

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

In the Details of Discrepancy attached to the Formal Letter of Demand, respondent also cited the 2002 case of *Commissioner of Internal*

Revenue vs. Lincoln Philippine Life Insurance Company, Inc. as its basis for assessing the DST on the increases.

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

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

Consolidation of CTA Cases Nos. 7266, 7324 and 7378

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

On August 22, 2007, the parties filed their Joint Stipulation of Facts and Issues in these consolidated cases and was approved by this Court on September 4, 2006. Thereafter, both parties presented their respective evidence. Upon termination thereof, the parties were granted thirty (30) days from receipt thereof to file their respective memorandum in the Resolution dated September 2, 2008. Correspondingly, within separate extension periods granted to the parties, they filed their respective Memorandum on November 10, 2008. And in the Resolution dated November 13, 2008, these consolidated case were submitted for decision.[5]"

[5] CTA En Banc Rollo (EB 620), pp. 38-53.

On November 6, 2009, CTA *Former* Second Division promulgated the assailed Decision, the dispositive portion of which is hereunder quoted, to wit:

> "**WHEREFORE**, in view of the foregoing considerations, the consolidated Petitions for Review seeking the cancellation of respondent's assessments for: deficiency Minimum Corporate Income Tax (MCIT) and deficiency Documentary Stamp Tax (DST) and increments for taxable year 2001 in **CTA Case No. 7266**; deficiency DST and increments for taxable year 2002 in **CTA Case No. 7326**; and deficiency DST and increments for taxable year 2003 in **CTA Case No. 7378** are **DENIED.** The Formal Assessment Notices issued by respondent against petitioner covering deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002 and 2003 are hereby **AFFIRMED WITH MODIFICATIONS**. The compromise penalties are **CANCELLED.** However, a twenty-five percent (25%) surcharge is imposed, pursuant to Section 248(A) of the NIRC of 1997.
>
> Accordingly, petitioner is hereby **ORDERED TO PAY** respondent the amount of **FOURTEEN MILLION SIXTY-THREE THOUSAND SIX HUNDRED SEVEN PESOS AND 51/100 (₱ 14,063,607.51)**, representing its deficiency MCIT for taxable year 2001 and deficiency DST for taxable years 2001, 2002, and 2003, inclusive of increments, computed as follows:

	2001	2002	2003	Grand Total
MCIT				
Basic MCIT Due	₱ 30,162.56			
25% Surcharge-	7,540.64			
20% Interest	14,076.86			
	₱ 51,780.06			**₱ 51,780.06**
DST				
Basic DST Due	₱ 4,841,002.50	₱ 1,764,579.41	₱ 1,689,709.49	

25% Surcharge	1,210,250.63	441,144.85	422,427.37	
20% Interest	2,485,370.68	763,848.53	393,493.99	
	₱ 8,536,623.81	**₱ 2,969,572.79**	**₱ 2,505,630.85**	**14,011,827.45**
Total Amount Due	**₱ 8,588,403.87**	**₱ 2,969,572.79**	**₱ 2,505,630.85**	**₱ 14,063,607.51**

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

SO ORDERED."

Not satisfied with the said Decision, MBLIC filed its Partial Motion for Reconsideration (Re: Decision dated 6 November 2009)[6] on November 27, 2009 while CIR filed her Motion for Partial Reconsideration[7] on December 4, 2009.

The CTA *Former* Second Division, in a Resolution[8] dated April 6, 2010, denied both parties' respective Motion for lack of merit.

Hence, the instant Petitions for Review filed by both parties, viz:

a. CTA EB No. 620 – Manila Bankers' Life Insurance Corporation vs. Commissioner of Internal Revenue;

b. CTA EB No. 621 – Commissioner of Internal Revenue vs. Manila Bankers' Life Insurance Corporation.

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[6] Division Docket (Case No. 7266) Vol. II, pp. 662-681.
[7] Ibid, pp. 682-691.
[8] Ibid, pp. 706-718.

On May 12, 2010, the Court issued a Resolution[9] consolidating CTA EB Case No. 621 with CTA EB Case No. 620, the case bearing the lower docket number.

In a Resolution[10] dated June 10, 2010, the Court En Banc directed both parties to submit their respective Comment. MBLIC filed the same[11] on July 8, 2010.

On August 16, 2010, the Court ordered[12] both parties to submit simultaneously their respective memorandum within thirty (30) days from receipt thereof after which the consolidated Petitions for Review shall be deemed submitted for resolution. MBLIC complied upon the said order on September 22, 2010[13].

On September 20, 2010, CIR filed a Manifestation[14], stating therein that she will adopt the relevant facts, proceeding, issue and discussion specifically declared in her Petition for Review filed on May 05, 2010 as her Memorandum.

Thereafter, the case was submitted for decision on September 29, 2010.[15]

[9] CTA En Banc Rollo (EB 620), pp. 85-86.
[10] Ibid, pp.89-90.
[11] Ibid, pp.97-104.
[12] Ibid, pp.108-109.
[13] Ibid, pp.116-151.
[14] Division Docket (CTA Case No. 7266) Vol. 2, pp. 910-913.
[15] Ibid, pp.154-155.

In support of their respective Petition for Review, both parties presented the following grounds/arguments, to wit:

CTA EB Case No. 620 (MBLIC, petitioner)[16]

'V. ASSIGNMENT OF ERRORS

'A. THIS HONORABLE COURT'S SPECIAL SECOND DIVISION ERRED IN HOLDING THAT MBLIC CANNOT RAISE THE ISSUE OR QUESTION OF PRESCRIPTION IN ITS PETITION FOR REVIEW FILED BEFORE THIS HONORABLE COURT IN CTA CASE NO. 7266;

B. THIS HONORABLE COURT'S SPECIAL SECOND DIVISION ERRED IN HOLDING THAT DST IS NOT PART OF COST OF SERVICE FOR PURPOSES OF COMPUTING MCIT;

C. THIS HONORABLE COURT'S SPECIAL SECOND DIVISION ERRED IN HOLDING THAT AN INCREASE IN THE COVERAGE OR SUM ASSURED BY AN INSURANCE POLICY IS SUBJECT TO DST ALTHOUGH NO NEW POLICY FOR SUCH INCREASE IS ISSUED'.

CTA EB Case No. 621 (*CIR*, petitioner)[17]

'ASSIGNED ERROR

THE HONORABLE COURT'S SPECIAL SECOND DIVISION ERRED IN PARTIALLY GRANTING RESPONDENT'S PETITION FOR REVIEW BY DENYING PETITIONER'S ASSESSMENT FOR DEFICIENCY DST AND INCREMENTS FOR TAXABLE YEAR 2001 IN CTA CASE NO. 7266; DEFICIENCY DST AND INCREMENTS FOR TAXABLE YEAR 2002 IN CTA CASE NO. 7324; AND DEFICIENCY DST AND INCREMENTS FOR TAXABLE YEAR 2003 IN CTA CASE NO. 7378; AND CANCELLING THE COMPROMISE PENALTIES'.

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[16] Ibid, p. 20.
[17] CTA En Banc Rollo (EB 621), p.20.

After a closer look and scrutiny of the arguments laid down by both parties in their respective Petition, the Court En Banc observes that the grounds relied upon and matters raised therein are mere restatements of the issues raised in their Joint Stipulation of Facts and Issues[18] and their respective Partial Motion for Reconsideration, which have already been exhaustively considered, discussed and passed upon in the assailed Decision and Resolution. Hence, the CTA En Banc finds no merit in both Petitions.

The first assignment of error raised by MBLIC in its Petition is not of first impression. As correctly pointed out by CTA *Former* Second Division, such issue had long been resolved in the case of *Aguinaldo Industries Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals* (Aguinaldo Case),[19] where the High Tribunal ruled in this wise:

> "To allow a litigant to assume a different posture when he comes before the court and challenge the position he had accepted at the administrative level, would be to sanction a procedure whereby the Court — which is supposed to review administrative determinations — would not review, but determine and decide for the first time, a question not raised at the administrative forum. . . This cannot be permitted, for the same reason that underlies the requirement of prior exhaustion of administrative remedies to give administrative authorities the prior opportunity to decide controversies within its competence, and in much the same way that, on the judicial level, issues not raised in the lower court cannot be raised for the first time on appeal (Pampanga Sugar Dev. Co., Inc. v. CIR, 114 SCRA 725; Garcia v. CA, 102 SCRA 597; Matialonzo v. Servidad, 107 SCRA 726)."

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[18] Division Docket, (CTA Case No. 7266) Vol. 2, pp. 331-335.
[19] G.R. No. L-29790 , February 25, 1982.

The ruling in the Aguinaldo Case was likewise adopted in several decisions[20] of the Court of Tax Appeals. In the more recent case of *Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian,*[21] the CTA Court En Banc ruled in this wise:

> "Moreover, in an earlier Decision in the case of *Multi-Realty Development Corporation vs. Makati Tuscany Condominium Corporation,* the Supreme Court stressed that when prescription was not alleged as an affirmative defense and was not raised throughout the proceeding, it need not be considered by the reviewing court as they cannot be raised for the first time on appeal. It ruled:
>
> On the first issue, we sustain petitioner's contention that the CA erred in dismissing its appeal solely on its finding that when petitioner filed its complaint below in 1990, the action had already prescribed. It bears stressing that in respondent's answer to petitioner's complaint, prescription was not alleged as an affirmative defense. Respondent did not raise the issue throughout the proceedings in the RTC. Indeed, the trial court did not base its ruling on the prescription of petitioner's action; neither was this matter assigned by respondent as an error of the RTC in its brief as defendant-appellant in the CA.
>
> Settled is the rule that no questions will be entertained on appeal unless they have been raised below. Points of law, theories, issues and arguments not adequately brought to the attention of the lower court need not be considered by the reviewing court as they cannot be raised for the first time on appeal. Basic considerations of due process impel this rule.
>
> Thus, <u>the rule is well settled that no question will be considered by the appellate court which has not been raised in the</u>

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[20] Philippine Fisheries Development Authority vs. Central Board of Assessment Appeals, et.al., CTA EB Case No. 193, May 9, 2007; Dillingham (Philippines), Inc. vs. Acting Commissioner of Internal Revenue, CTA Case No. 3139, April 29, 1988.
[21] CTA EB Case No. 487, August 13, 2009.

court below. When a party deliberately adopts a certain theory, and the case is tried and decided upon the theory in the court below, he will not be permitted to change his theory on appeal, because to permit him to do so would be unfair to the adverse party.

Similarly, the above cited doctrine was enunciated by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (formerly Southern Energy Quezon, Inc.)* when it held:

It is already well-settled in this jurisdiction that a party may not change his theory of the case on appeal. Such a rule has been expressly adopted in Rule 44, Section 15 of the 1997 Rules of Civil Procedure, which provides —

'SEC. 15. Questions that may be raised on appeal. — Whether or not the appellant has filed a motion for new trial in the court below, he may include in his assignment of errors any question of law or fact that has been raised in the court below and which is within the issues framed by the parties.'

Thus, in *Carantes v. Court of Appeals*, this Court emphasized that —

'The settled rule is that defenses not pleaded in the answer may not be raised for the first time on appeal. A party cannot, on appeal, change fundamentally the nature of the issue in the case. When a party deliberately adopts a certain theory and the case is decided upon that theory in the court below, he will not be permitted to change the same on appeal, because to permit him to do so would be unfair to the adverse party."

Furthermore, the question of prescription is not jurisdictional as provided in the case of *Arches vs. Bellosillo*.[22] It is deemed waived if such defense is not raised seasonably.[23]

[22] Japar b. Dimaampao, Tax Principles and Remedies, 3rd Ed., 2008.

Applying the above doctrines to the instant case, herein petitioner is therefore barred from raising the issue of prescription for the first time on appeal.

With respect to other issues raised by MBLIC and CIR, the same have been exhaustively discussed in the assailed Decision and Resolution and a reiteration thereof is no longer necessary.

In sum, the Court En Banc finds no cogent reason and justification to disturb the findings and conclusion spelled out in the assailed Decision dated November 6, 2009 and the assailed Resolution dated April 6, 2010 of the CTA *Former* Second Division. What the instant petitions seek is for the Court En Banc to view and appreciate the evidence in their own perspective of things, which unfortunately has already been considered and passed upon.

WHEREFORE, the assailed Decision dated November 6, 2009 and Resolution dated April 6, 2010 of the CTA *Former* Second Division are hereby **AFFIRMED *in toto*,** and the instant Petitions for Review are hereby **DISMISSED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

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[23] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 3rd Ed., 2006, citing Sy Chiuco vs. Collector, 107 Phil. 128.

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

C E R T I F I C A T I O N

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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice