

THIRD DIVISION

[G.R. Nos. 199729-30, February 27, 2019]

**MANILA BANKERS' LIFE INSURANCE CORPORATION, PETITIONER, VS.
COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.**

[G.R. Nos. 199732-33]

**COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MANILA
BANKERS' LIFE INSURANCE CORPORATION, RESPONDENT.**

DECISION

A. REYES, JR., J.:

Nature of the Case

Before the Court are the consolidated petitions of Manila Bankers' Life Insurance Corporation (MBLIC) and the Commissioner of Internal Revenue (CIR) filed under Rule 45 of the Rules of Court. Both parties appealed from the August 18, 2011 Decision^[1] and December 9, 2011 Resolution^[2] of the Court of Tax Appeals (CTA) *En Banc* in CTA EB Case Nos. 620 and 621. Said rulings held (a) that premium taxes on insurance policies are considered "costs of service" in computing the Minimum Corporate Income Tax (MCIT); (b) that Documentary Stamp Taxes (DSTs) paid on the insurance policies are *not* considered "costs of service" in the MCIT computation; (c) that the DST may be assessed on the increase in the assured coverage of an insurance policy, even when no new policy is issued; (d) that MBLIC belatedly raised the defense of prescription; and (e) that compromise penalties cannot be imposed.

The Facts

CTA Case No. 7266

On June 8, 2004, MBLIC received a Preliminary Assessment Notice from the Bureau of Internal Revenue (BIR), assessing the following alleged deficiency taxes for the year 2001:^[3]

Item No.	Tax Type	Amount (Php)
1	MCIT	929,474.20
2	Expanded Withholding Tax	167,871.77
3	Premium Tax	1,004,636.84
4	Percentage Tax - Rental Income	25,991.70
5	DST 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, MBLIC settled items 1 to 5 of the deficiency assessments with the BIR's Large Taxpayers Service (LTS), but moved for reconsideration of items 6 and 7.^[4]

However, on August 17, 2004, MBLIC received from the CIR a Formal Letter of Demand with Formal Assessment Notices (FAN), dated August 4, 2004, for its alleged MCIT and DST deficiencies for 2001 in the aggregate amount of P7,951,462.28, broken down as follows:^[5]

Item	Details	Amounts (Php)	Total (Php)
MCIT	Basic MCIT Due	398,233.52	
	Interest as of August 11, 2004	185,855.58	
	Compromise Penalty	16,000.00	600,089.10
DST	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
		Grand Total	7,951,462.28

The basic MCIT for 2001 in the amount of P398,233.52 was based on the disallowances from MBLIC's claimed deductions. Essentially, according to the CIR, premium taxes and DSTs on insurance policies are not deemed "costs of service" that can be deducted from gross receipts for purposes of computing MCIT. The CIR cited Section 27(E)(4) of the National Internal Revenue Code of 1997 (NIRC) and Revenue Memorandum Circular No. 4-2003 (RMC 4-2003). Under RMC 4-2003, premium taxes and DSTs are not included in the enumeration of an insurance company's direct costs. Thus, MBLIC's basic deficiency MCIT due for 2001 was computed as follows:^[6]

Disallowances:	DST	Php 1,508,128.17
	Premium Tax	<u>18,403,548.01</u>
Subtotal		19,911,676.18
MCIT Rate		2%
MCIT Due		Php 398,233.52

As regards the DST portion of the assessment, the base amount of **P4,841,002.50** was arrived at by applying the rate of P0.50 for every P200.00 of P1,936,401,000.00, which pertains to the total increase in the sum assured under the existing insurance policies in 2001 as reported by MBLIC to the Insurance Commission. It was noted that the increase in the assured amount under the policies entailed a corresponding increase in the DST due. Inclusive of interest and penalties, the total amount of DST due is **P7,351,373.18**.^[7]

On September 15, 2004, MBLIC filed its letter protest before the LTS, contesting the assessment of the subject deficiencies. On November 12, 2004, MBLIC submitted before the LTS Audit and Investigation Division all the documents requested by the office. Thereafter, on June 7, 2005, MBLIC filed a petition for review with the CTA to protect its right to refute the assessment. The case was docketed as CTA Case No. 7266. The CIR filed his Answer on August 30, 2005.^[8]

Subsequently, on October 12, 2005, MBLIC prayed for leave of court to file a Supplemental Petition, alleging therein that the deficiency DST on transactions made from January to June 2001 is null and void for having been issued beyond the three-year prescriptive period. The CTA admitted the Supplemental Petition over the opposition of the CIR.^[9]

In turn, the CIR filed his Amended Answer,^[10] alleging that the assessments were issued in accordance with existing law and regulations, and that they were issued within the prescriptive period. In any event, issues and defenses not raised in the administrative level, such as prescription herein, cannot be raised for the first time on appeal.

Anent the assessed deficiency MCIT, the CIR argued that RMC 4-2003 is applicable even though the assessment is for deficiencies in the year 2001 since it merely clarified an existing NIRC provision that MBLIC failed to rebut the findings of the CIR that premium taxes and DSTs are not direct costs; and that the alleged expenses are not deductions from gross receipts for computing MCIT, but from gross income for computing the basic domestic corporate tax.

Regarding the deficiency DST, the CIR justified its assessment of the increased assured amount by citing Section 198 of the NIRC, which specifically provides that any alteration on any

instrument or agreement subject to DST, a policy insurance included, shall be subject to incremental DST at the same rate as that imposed on the original instrument. Reliance was likewise made on *CIR v. Lincoln Philippine Life Insurance Company, Inc. (Lincoln)*.^[11]

Lastly, the CIR argued that claims for tax exemption ought to be construed *strictissimi juris* against the claimant MBLIC, and that the assessments are *prima facie* correct and presumed to have been made in good faith. Absent proof of irregularities in the performance of official duties, an assessment should not be disturbed.

CTA Case Nos. 7324 and 7378

CTA Case Nos. 7324 and 7378 arose from circumstances similar to CTA Case No. 7266. These pertain to deficiency DSTs assessed on the increases in the sums assured under existing insurance policies, this time for the years 2002 and 2003. A summary of the assessments is as follows:

CTA Case No.	Fiscal Year	Deficiency DST Due (Php)
7324	2002	2,528,424.74 ^[12]
7378	2003	2,083,203.48 ^[13]

Upon due observance of the procedure for administrative remedies, resulting in either the failure of the CIR to resolve the protest within the reglementary period or in the denial of MBLIC's protest, MBLIC filed petitions for review with the CTA, docketed as CTA Case Nos. 7324 and 7378. Upon motion of MBLIC, these cases were consolidated with CTA Case No. 7266.^[14] Trial on the merits thereafter ensued.

Ruling of the CTA Second Division

On November 6, 2009, the CTA Second Division rendered a Decision^[15] on the consolidated petitions of MBLIC, upholding the assessments made by the CIR with modifications.

According to the CTA Second Division, premium taxes are deemed cost of services deductible from gross receipts in computing for MCIT. It ruled, however, that DSTs are not so deductible. To quote:^[16]

In light of the foregoing, premium tax may be considered as a direct cost and/or expense necessary to provide the service of insurance considering that insurance companies, such as petitioner, cannot effectively issue insurance policies without incurring the said tax. It must be pointed out that in the issuance of a policy or contract of insurance, its validity and binding effect depends (sic) upon the payment of the premium, which is closely intertwined with the payment of the premium tax that is accruing thereto.

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However, [W]e can not say the same as regards the DST.

Unlike the premium tax, which is the direct liability of the insurance company, the DST xxx is imposed upon "the person making, signing, issuing, accepting or transferring" the document or facility evidencing the transaction. Thus, DST may be imposed upon either of the parties to the transaction in a contract of insurance, or upon either the insurance company or the insured.

It is not disputed herein that the corresponding DST (like the consequent premium tax) was included in the premiums charged to petitioner's clients. Thus, the latter are the ones who were made liable to pay the DST, and not the petitioner. This being the case, DST cannot be deemed as a direct cost or expense of petitioner necessary to provide the insurance service. Consequently, the same DST cannot form part of

petitioner's costs of service for purposes of computing its MCIT for taxable year 2001.
(Citations omitted)

Furthermore, the CTA Second Division ruled that the CIR erred in utilizing RMC 4-2003 as the basis for the disallowances of the deductions from gross receipts in computing for the MCIT, for the issuance, issued on December 31, 2002, cannot be applied retroactively to assess MBLIC for deficiency taxes for taxable year 2001.^[17]

Anent the deficiency DST due, the CTA Second Division sided with the CIR and applied the *Lincoln* ruling. Thus, it was held that an increase in the coverage or the sum assured by an insurance policy is subject to DST even though no new policy for such an increase was issued.^[18]

On the issue of prescription, the CTA Second Division cited *Aguinaldo Industries Corp. (Fishing Nets Division) v. CIR, et al.*,^[19] (*Aguinaldo*) and ruled that the defense cannot be considered, asserted as it was for the first time in MBLIC's Supplemental Petition instead of during the administrative stages of the proceeding.^[20]

Lastly, the compromise penalties imposed by the CIR were cancelled because there was no mutual agreement between the parties to compromise. A 25% surcharge was imposed in its stead.^[21]

In sum, the CTA Second Division disposed of MBLIC's petitions in the following manner:^[22]

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. 7324**; 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 (P14,063,607.51)**, 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	P30,162.56			
25% Surcharge	7,540.64			
20% Interest	<u>14,076.86</u>			
	P51,780.06			P51,780.06
DST				
Basic DST Due	P4,841,002.50	P1,764,579.41	P1,689,709.49	
25% Surcharge	1,210,250.63	441,144.85	422,427.37	
20% Interest	<u>2,485,370.68</u>	<u>763,848.53</u>	<u>393,493.99</u>	
	P8,536,623.81	P2,969,572.79	P2,505,630.85	P14,011,827.45

Total Amount Due	P8,588,403.87	P2,969,572.79	P2,505,630.85	P14,063,607.51

In addition, petitioner is hereby **ORDERED TO PAY** twenty percent (20%) delinquency interest on P8,588,403.87, representing the total amount due for taxable year 2001, computed from August 11, 2004; as well as on the P2,969,572.79 and P2,505,630.85 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.

The CTA Second Division would affirm the said Decision through its Resolution^[23] dated April 6, 2010.

Ruling of the CTA *En Banc*

Unsatisfied, both parties assailed the rulings of the CTA Second Division. MBLIC maintained its posturing in its petitions. The CIR, on the other hand, alleged that the CTA Second Division erred (a) in allowing MBLIC to deduct premium taxes from gross receipts for the purpose of computing the MCIT due, and (b) in cancelling the compromise penalties assessed in the FANs.

The CTA *En Banc*, however, found no cogent reason to disturb the findings and conclusions spelled out in the assailed rulings of the CTA Second Division. In its discussion, the CTA *En Banc* merely amplified the justification for barring MBLIC from raising prescription as a defense. Thus, the CTA *En Banc* disposed of both petitions in the following wise:^[24]

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.

The parties' respective motions for reconsideration were denied by the CTA *En Banc* through its December 9, 2011 Resolution.^[25]

Hence, the instant recourses.

The Issues

MBLIC framed the issues thusly:^[26]

- A. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER CANNOT RAISE THE ISSUE OF PRESCRIPTION FOR THE FIRST TIME ON APPEAL IN ITS PETITION FOR REVIEW FILED BEFORE THE CTA-DIVISION IN CTA CASE NO. 7266
- B. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT DST IS NOT PART OF COST OF SERVICE FOR PURPOSES OF COMPUTING [THE] MINIMUM CORPORATE INCOME TAX ("MCIT")
- C. WHETHER OR NOT THE CTA *EN BANC* IN UPHOLDING THE DECISION AND RESOLUTION OF THE CTA-DIVISION COMMITTED REVERSIBLE ERROR IN HOLDING THAT AN INCREASE IN THE COVERAGE OR THE SUM ASSURED BY AN INSURANCE POLICY IS SUBJECT TO DST ALTHOUGH NO NEW POLICY FOR SUCH INCREASE IS ISSUED

On the other hand, the CIR assigned the following errors:^[27]