**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

*EN BANC*

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE,** *Petitioner,* | **CTA EB No. 1724** (CTA Case No. 9007) |
| - *versus* – | |
| **SAN MIGUEL CORPORATION,** *Respondent.* | |

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|---|---|
| **SAN MIGUEL CORPORATION,** *Petitioner,* | **CTA EB No. 1726** (CTA Case No. 9007) |
| | Present: |
| - *versus* – | Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** *Respondent.* | Promulgated: OCT 11 2018 1:21 p.m. |

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**DECISION**

**CASTAÑEDA, JR., *J.*:**

## THE CASE

This is a consolidation of respective Petitions for Review filed by San Miguel Corporation (SMC) and the Commissioner of Internal Revenue (CIR), assailing the Decision dated April 19, 2017 (the "assailed Decision")[1] and the Resolution dated September 19, 2017, (the "assailed Resolution")[2] both promulgated by the Third Division of this Court (Court in Division) in CTA Case No. 9007.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

**Assailed Decision:**

> "**WHEREFORE**, premises considered, the Petition for Review and the Supplemental Petition for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱28,884,964.00**, representing the following amounts:

| PENALTIES ERRONEOUSLY PAID BY PETITIONER | AMOUNT |
|---|---|
| Surcharge | ₱ 10,472,399.86 |
| Interest up to March 15, 2013 | 18,362,564.14 |
| Compromise penalty | 50,000.00 |
| **TOTAL** | **₱ 28,884,964.00** |

> **SO ORDERED.**"

**Assailed Resolution:**

> "**WHEREFORE**, premises considered, petitioner's **Motion for Partial Reconsideration of the Decision dated April 19, 2017 and respondent's Motion for Partial Reconsideration (Re: Decision promulgated on 19 April 2017)**, are hereby **DENIED** for lack of merit.

[1] CTA EB No. 1724 Docket, pp. 20-41.
[2] *Id.*, pp. 42-49.

**SO ORDERED.”**

## THE FACTS

The facts of the present case, as found by the Court in Division in its Decision dated April 19, 2017, are as follows:[3]

> “Petitioner San Miguel Corporation is a corporation duly organized and existing under Philippine laws, with principal office at 40 San Miguel Avenue, Mandaluyong City.
>
> Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.
>
> On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* (“Filinvest case” for brevity) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.
>
> On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011, circularizing to all concerned internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases ‘to assess deficiency DST, if warranted, on these kinds of transactions.’
>
> Petitioner received on February 11, 2013 an undated Notice of Informal Conference issued by the BIR, informing it that, in connection with the examination of its internal revenue tax liabilities for taxable year 2010, petitioner is found liable for certain deficiency taxes and is requested to appear for an informal conference. The alleged deficiency taxes are summarized as follows:

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[3] *Id.*, pp. 20-29.

| KIND OF TAX | TOTAL AMOUNT |
|---|---|
| Income Tax (IT) | ₱ 5,014,122.97 |
| Value-added Tax (VAT) | 9,842,445.16 |
| Expanded Withholding Tax (EWT) | 5,397,905.11 |
| Withholding Tax on Compensation (WTC) | 50,000.00 |
| DST | 70,774,563.43 |
| **TOTAL** | **₱ 91,079,036.67** |

The alleged deficiency DST is broken down as follows:

| | |
|---|---|
| Taxable Base to be subjected to DST | |
| Pacific Central Properties Inc. | ₱ 231,374,770.99 |
| SMC Retirement Plan | 1,129,800,000.00 |
| Top Frontier Holdings Inc. | 2,542,720,000.00 |
| Challenger Aero Air Corporation | 1,129,800,000.00 |
| San Miguel Properties Inc. | 542,000,000.00 |
| South Premiere Power Corporation | 682,304,000.00 |
| Panasia Energy Holdings Inc. | 271,891,090.00 |
| Mindanao Corrugated Fibreboard Inc. | 82,786,966.55 |
| Coastal View Exploration Corp. | 1,765,243,060.00 |
| **Total Inter-Company Cash Advances** | **₱ 8,377,919,887.54** |
| Tax Rate | 1/200 |
| DST Due | 41,889,599.44 |
| Add: Increment | |
| Surcharge | 10,472,399.86 |
| Interest up to March 15, 2013 | 18,362,564.14 |
| Compromise Penalty | 50,000.00 |
| **Deficiency DST including increments** | **₱ 70,774,563.43** |

With respect to petitioner's advances to its affiliates in the amount of ₱8,377,919,887.54, the same were subjected to DST pursuant to Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to the decision of the Supreme Court in the Filinvest case.

On February 19, 2013, petitioner submitted to the BIR its Letter-Reply dated February 18, 2013 to the Notice of Informal Conference. Jc

Petitioner paid under protest to the BIR on March 15, 2013, through the Electronic Filing and Payment System (EFPS), the amount of ₱70,774,563.44, inclusive of surcharge and interest up to March 15, 2013 and penalty, for the alleged deficiency DST. On April 3, 2013, petitioner submitted its Letter dated March 25, 2013, informing the BIR that it paid under protest the amount of ₱70,774,563.44.

On February 23, 2015, petitioner filed with the BIR its Letter-Claim for Refund dated February 16, 2015, seeking the refund or issuance of TCC in the amount of ₱70,774,563.44, allegedly representing erroneously and/or illegally collected DST for taxable year 2010, pursuant to Section 229 and Section 204 (C) of the NIRC of 1997, as amended.

Petitioner filed its original Petition for Review on March 13, 2015. However, on March 24, 2015, petitioner received respondent's decision dated March 10, 2015, denying its claim for refund or issuance of TCC for lack of legal basis. As a result, petitioner filed its Supplemental Petition for Review on April 21, 2015.

Respondent filed his Answer through registered mail on June 5, 2015 and received by the Court on June 15, 2015, interposing the following Special and Affirmative Defenses:

'SPECIAL AND AFFIRMATIVE DEFENSES

5. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

**Commissioner of Internal Revenue v. Filinvest Development Corporation (Filinvest Case) is applicable to the instant case. Thus, respondent correctly denied petitioner's claim for refund.**

6. Petitioner argued that its advances to its affiliates in 2010 is not subject to Documentary Stamp Tax (DST) since at that time, the prevailing court decisions were to the effect that inter-company advances covered by

mere inter-office memos were not loan agreements subject to DST; not the Filinvest case.

7. Respondent disagrees.

8. The Honorable Supreme Court promulgated in the En Banc Decision of the Filinvest Case, which was reiterated in RMC 48-2011, that:

> On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides [as] follows:
>
> > Sec. 180. Stamp tax on all loan agreement, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax: Provided however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00)

> executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.

When read in conjunction with Section 173 of the 1993 NIRC, (sic) the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3(b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. Definition of Terms. — For purposes of these Regulations, the following term shall mean:
>
> (b) 'Loan agreement' — refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.
>
> Section 6. Stamp on all Loan Agreements. — All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the

> Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.
>
> **Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed. (Emphasis supplied).**

9. As can be seen from the above-quoted portion of the Decision in Filinvest Case, the Honorable Supreme Court merely clarified and applied the provisions of the Tax Code; that is intercompany advances, evidenced by instructional letters as well as the journals and cash vouchers, are indeed subject to DST.

10. Moreover, to further bolster respondent's position that the Filinvest Case is merely clarificatory, the subject Assessment Notices in the said case issued for deficiency DST pertains to taxable years 1996 and 1997.

11. Thus, there can be no other conclusion but that from the time of the enactment of the Tax Code, such intercompany advances were already subject to DST.

12.Accordingly, petitioner's argument must fail.

**A claim for refund cannot rely on vague inferences.**

13.Petitioner further argued that even assuming that respondent correctly applied Section 179 of the Tax Code in relation to the Filinvest case, it is not liable for DST since: (a) there were no debt instruments identified by respondent; (b) there were no advances made by petitioner to Pacific Central Properties, Inc. in 2010; and (c) the amount of advances petitioner made to South Premier Power Corporation is alleged overstated.

14.Petitioner's averments are bereft of merit.

15.It must be borne in mind that taxes collected and paid are presumed to be in accordance with laws and regulations.

16.Thus, in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications.

17.First, the law and jurisprudence on the matter are clear. Intercompany advances are subject to DST.

18.Second, factual averments of petitioner are mere allegations without proof.

19.Finally, petitioner must prove compliance with Section 229 of the Tax Code, the governing provision relative to refund of internal revenue taxes. It provides:

> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** — No suit or proceeding shall be maintained in any court for the recovery of any national

> internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress. In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

20. Taxes are essential to government's very existence; hence, the dictum that 'taxes are the lifeblood of the government.' Since tax refunds are regarded as tax exemptions and these are to be construed strictissimi juris against the person or entity claiming the exemption.

21. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim.'

The Pre-Trial was set on August 25, 2015. Respondent's Pre-Trial Brief was filed on August 14, 2015; while petitioner's Pre-Trial Brief was filed on August 20, 2015.

The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters on September 3, 2015. The Court issued the Pre-Trial Order on October 6, 2015.

> Petitioner presented Eileen P. Ratilla and Rogelio G. Lui as its witnesses. On December 22, 2015, petitioner filed its Formal Offer of Evidence offering Exhibits 'P', 'P-1', 'P-1-a', 'P-2', 'P-2-a', 'P-2-b', 'P-3', 'P-3-a', 'P-4', 'P-4-a', 'P-4-b', 'P-4-b-1', 'P-4-c', 'P-4-d', 'P-4-e', 'P-4-f', 'P-5', 'P-6', 'P-6-a', 'P-7', 'P-8', 'P-9', 'P-10', 'P-11', 'P-11-a', 'P-12', 'P-12-a', 'P-13', and 'P-13-a' as its documentary evidence. Respondent filed a Comment (Re: Petitioner's Formal Offer of Evidence) on January 4, 2016.
>
> In the Resolution dated January 14, 2016, the Court admitted Exhibits 'P', 'P-1', 'P-1-a', 'P-2', 'P-2-a', 'P-2-b', 'P-3', 'P-3-a', 'P-4', 'P-4-a', 'P-4-b', 'P-4-b-1', 'P-4-c', 'P-4-d', 'P-4-e', 'P-4-f', 'P-5', 'P-6', 'P-6-a', 'P-7', 'P-8', 'P-9', 'P-10", 'P-11', 'P-11-a', 'P-12', 'P-12-a', 'P-13', and 'P-13-a'.
>
> During the hearing on March 7, 2016, respondent manifested that he would not present evidence. The parties were then granted a period of thirty (30) days within which to file their respective memoranda.
>
> Respondent filed his Memorandum on April 20, 2016; while the Memorandum for the Petitioner was filed on April 29, 2016. Hence, the case was declared submitted for decision on May 12, 2016." *(Citations omitted)*

On April 19, 2017, the Court in Division rendered the assailed Decision partially granting SMC's Petition for Review.

Unsatisfied, SMC filed its *Motion for Partial Reconsideration of the Decision dated April 19, 2017* on May 16, 2017.[4] The CIR likewise filed his *Motion for Partial Reconsideration (Re: Decision promulgated on 19 April 2017)* on May 18, 2017.[5] The Court in Division denied both *Motions* for lack of merit in the assailed Resolution.

Within the extended period granted by the Court *En Banc*,[6] the CIR filed on October 26, 2017, its Petition for Review docketed as CTA EB No. 1724 raising the sole issue of:

> "Whether the Honorable Court erred in ordering petitioner to refund or issue tax credit certificate to respondent

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[4] Division Docket Vol. II, pp. 612-625.
[5] *Id.*, pp. 629-635.
[6] Minute Resolution dated October 18, 2017, CTA EB No. 1724 Docket, pp. 6-6-A.

in the aggregate amount of P28,884,964.00 representing surcharge, interest up to March 15, 2013 and compromise penalty."[7]

Likewise within the extended period duly granted by the Court *En Banc*,[8] San Miguel Corporation (SMC) filed its Petition for Review on October 26, 2017 docketed as CTA EB No. 1726 raising the following issues:[9]

1. Is SMC entitled to a refund of the amount of P41,889,599.44 that it paid to the BIR under protest for alleged basic deficiency documentary stamp tax?

2. Is SMC liable for the subject basic documentary stamp tax in the amount of P41,889,599.44?

3. May the decision in the Filinvest Case and RMC No. 48-2011 be applied retroactively against SMC?

4. Assuming the decision in the Filinvest Case may be applied retroactively, are the advances subject of the instant case covered by the aforesaid decision?

5. May DST be imposed on the advances by SMC to its affiliates on the mere basis of Notes appearing in its 2010 Audited Financial Statements and/or of its affiliates?

6. Are the findings of the BIR with respect to the alleged advances to Pacific Central Properties Inc. and South Premiere Power Corporation correct?

7. Did Respondent's predecessor still have jurisdiction over the Petitioner's administrative Claim for Refund at the time the Decision of the Respondent on the said Claim for Refund was served on the Petitioner after the filing with this Court of the original petition for review in this case and receipt by her of a copy thereof?

8. Assuming the aforesaid Decision of the Respondent is valid, is the same contrary to law and the evidence?

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[7] CTA EB No. 1724 Docket, p. 10.
[8] CTA EB No. 1726 Docket, pp. 8-8-A.
[9] *Id.*, pp. 28-29.

Both Petitions for Review were consolidated in a Minute Resolution issued by the Court *En Banc* on November 2, 2017.[10]

In a Resolution dated December 13, 2017,[11] the Court *En Banc* ordered the parties to file their respective Comments within ten (10) days from receipt thereof. Within the extended period granted by the Court *En Banc*,[12] SMC filed its *Comment on the Petition for Review in CTA EB No. 1724* on January 26, 2018.[13] The CIR, on the other hand, failed to file his Comment on SMC's Petition for Review as per the Records Verification report dated January 29, 2018[14] issued by the Judicial Records Division of this Court. In a Resolution dated February 12, 2018,[15] the Court *En Banc* gave due course to both Petitions for Review and required the parties to submit their respective memoranda within thirty (30) days from receipt thereof.

On April 2, 2018, the CIR filed his Memorandum.[16] Within the extended period duly granted by the Court *En Banc*,[17] SMC filed its *Consolidated Memorandum*[18] on April 20, 2018. With the submission of the parties' respective Memoranda, the Court *En Banc* submitted the case for decision in a Resolution dated May 15, 2018.[19]

## THE COURT *EN BANC*'S RULING

***CTA EB No. 1724***

In his Petition, the CIR argues that the Court in Division erred in ruling that SMC is entitled to refund of surcharge, interest and compromise penalty.[20] He claims that Sections 248 and 249 of the 1997 NIRC do not provide good faith as an excuse for the non-payment of interest and surcharge.[21] According to the CIR, SMC cannot be held in good faith in relying on BIR Ruling DA(C-035)127-08 dated August 8, 2008 because the said ruling was issued in favor of another taxpayer and can be invoked only by the one who sought it.[22]

The CIR also contends that this Court exceeded its jurisdiction when it ordered the cancellation of the interest and surcharge due since it

[10] CTA EB No. 1724 Docket, pp. 53-53-A.
[11] *Id.*, pp. 55-56.
[12] *Id.*, pp. 60-60-A.
[13] *Id.*, pp. 61-83.
[14] *Id.*, p. 160.
[15] *Id.*, pp. 162-163.
[16] *Id.*, pp. 164-178.
[17] *Id.*, pp. 183-183-A.
[18] *Id.*, pp. 188-248.
[19] *Id.*, pp. 308-309.
[20] CTA EB No. 1724 Docket, pp. 10-11.
[21] *Id.*, p. 13.
[22] *Id.*, pp. 13-14.

effectively abated SMC's tax liability in essence.[23] The CIR maintains that pursuant to Section 204 of the 1997 NIRC, he has the sole discretion to grant or deny an application for abatement.[24]

The CIR's Petition for Review shall be denied.

After careful review of the case records and the arguments presented by the parties, the Court *En Banc* agrees with the Court in Division in ruling that SMC is not liable for surcharge, interest, and compromise penalty and thus, the same should be refunded. The Court in Division correctly applied the rule that "good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest".[25] By law and jurisprudence, mistake upon a doubtful or difficult question of law may properly be the basis of good faith.[26] Accordingly, while reliance on BIR Ruling DA(C-035)127-08 dated August 8, 2008, which states that intercompany loans and advances covered by inter-office memoranda are not subject to DST, may not be invoked to extricate SMC from its DST liability, it may nevertheless be used as basis of good faith on the part of SMC sufficient to negate the latter's liability for surcharge and interest. Remarkably, the issue of whether instructional letters as well as journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreement subject to DST may be considered as a doubtful or difficult question of law given that it required no less than the Supreme Court to definitively settle the same in *Commissioner of Internal Revenue v. Filinvest Development Corporation.*[27]

As regards the CIR's contention that this Court exceeded its jurisdiction when it ordered the cancellation of the interest and surcharge due since it effectively abated SMC's tax liability in essence and that under Section 204 of the 1997 NIRC, the CIR has the sole discretion to grant or deny an application for abatement, the Court *En Banc* finds the same to be patently erroneous.

In cancelling the surcharge and interest imposed, this Court merely exercised its jurisdiction under Section 7(a)(1) and 7(a)(2) of Republic Act (RA) No. 1125, as amended, which provides:

"Sec. 7. *Jurisdiction.* — The CTA shall exercise: ✓

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[23] *Id.*, p. 14.
[24] *Id.*
[25] Assailed Decision (CTA Case No. 9007) citing *The City of Iloilo, et. al. v. Smart Communications, Inc. (Smart)*, G.R. No. 167260, February 27, 2009, *Id.*, p. 37.
[26] *Limcoma Multi-purpose Cooperative v. Republic*, G.R. No. 167652, July 10, 2007, 527 SCRA 233; *Philippine National Bank v. Heirs of Militar*, G.R. No. 164801, June 30, 2006, 494 SCRA 308; *Development Bank of the Philippines v. The Honorable Court of Appeals*, G.R. No. 111737, October 13, 1999, 316 SCRA 650 citing Article 526, Civil Code; *Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, 305 SCRA 396.
[27] G.R. Nos. 163653 & 167689, July 19, 2011, 654 SCRA 56 ("*Filinvest*").

> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **<u>refunds of</u> internal revenue taxes, <u>fees or other charges, penalties in relation thereto</u>,** or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, **<u>refunds of</u> internal revenue taxes, <u>fees or other charges, penalties in relation thereto</u>**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis and underscoring supplied)*

A *surcharge* is a civil penalty imposed once for late payment of a tax.[28] The objective of its imposition is to hasten payment of taxes and to punish for evasion or neglect of duty.[29] On the other hand, *interest* is imposed to compensate the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands.[30] Both the surcharge and interest are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.[31]

Considering the above-quoted provisions vis-à-vis the nature of surcharge and interest, it is beyond doubt that this Court has jurisdiction to cancel the surcharge and interest imposed upon SMC.

With respect to the compromise penalty, the Court *En Banc* agrees and adopts the Court in Division's ratiocination in the assailed Decision as follows:

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[28] *National Power Corporation v. City of Cabanatuan, represented by its City Mayor, Hon. Honorato Perez*, G.R. No. 177332, October 1, 2014, 737 SCRA 305 citing *Commissioner of Internal Revenue v. Japan Air Lines, Inc.*, 279 Phil. 499 (1991).
[29] *Id.*, citing *Philippine Refining Company v. CA*, 326 Phil. 680, 691 (1996) and *Jamora v. Meer*, 74 Phil. 22 (1942).
[30] *Id.*, citing *Aguinaldo Industries Corporation v. Commissioner of Internal Revenue*, 197 Phil. 822, 832 (1982).
[31] *National Power Corporation v. City of Cabanatuan, represented by its City Mayor, Hon. Honorato Perez*, G.R. No. 177332, October 1, 2014, 737 SCRA 305.

> "This Court further notes that compromise penalty may not be imposed upon petitioner considering that this penalty, by its nature, is mutual in essence. Therefore, the payment made under protest by petitioner could only mean that there was no agreement between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*, the Supreme Court held that:
>
> > 'The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.'
>
> Considering that petitioner disputed respondent's imposition of compromise penalty, the same cannot be imposed upon it." *(Citation omitted)*

The Court *En Banc* finds the above statements by the Court in Division as sound, accurate, and sufficient in addressing the particular matter raised by the CIR. There is no need to add to, much less modify or reverse the same.

***<u>CTA EB No. 1726</u>***

***Applicability of the Filinvest Decision and Revenue Memorandum Circular (RMC) No. 48-2011***

SMC, in arguing against the application of the *Filinvest* doctrine in the present case, asserts that the Supreme Court in *Filinvest* did not interpret Section 180 [now Section 179] of the National Internal Revenue Code of 1997, as amended, (1997 NIRC) such as ascertaining the "contemporaneous legislative intent" behind Section 180.[32] According to SMC, the Supreme Court simply applied the said legal provision to the "instructional letters and journal and cash vouchers" involved in *Filinvest* by peremptorily declaring that the said "instructional letters and journal and cash vouchers" qualified as "loan agreements" nothing more, without any interpretation at all.[33]

SMC's position lacks merit.

[32] CTA EB No. 1726 Docket, p. 31.
[33] *Id.*

It is not true that the Supreme Court did not interpret Section 180 [now Section 179] of the 1997 NIRC in *Filinvest* and simply applied the said legal provision. Quite the contrary, the Supreme Court clearly engaged in the construction or interpretation of Section 180 [now Section 179] of the 1997 NIRC as it was only in *Filinvest* where the Supreme Court, for the first time, declared that intercompany advances as evidenced by instructional letters and journal and cash vouchers are subject to documentary stamp tax based on the said legal provision. Notably, the Supreme Court had carefully scrutinized the wording of the law and relevant regulations before it reached its conclusion regarding the taxability of intercompany advances as loan agreements subject to DST, albeit evidenced only by instructional letters and journal and cash vouchers.

SMC also submits that the Court in Division erred in citing the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*[34] as authority in the present case. According to SMC, the case of *Co v. Court of Appeals*[35] should instead be applied. SMC also takes exception to the Court in Division's pronouncement that there is no previous doctrine that is overruled by the doctrine in the *Filinvest*.[36] Contrary to the Court in Division's ruling, SMC maintains that prior to the promulgation of *Filinvest*, the rule was that inter-company advances covered by mere inter-office memos were not loan agreements subject to documentary stamp tax (DST) under the 1997 NIRC on which SMC had allegedly relied.[37] SMC added that such prior rule was embodied, among others, in the Court of Appeals decision entitled *Commissioner of Internal Revenue v. APC Group, Inc.*;[38] decision of the CTA *En Banc* in *Commissioner of Internal Revenue v. Belle Corporation*;[39] and BIR Ruling [DA (C-035) 127-08] dated August 8, 2008. SMC posits that the previous doctrine that was overruled need not be embodied in a Supreme Court decision, citing *Co* as an example wherein the alleged prior doctrine was contained in an opinion of the Minister of Justice.[40] Given that there was an existing doctrine that was overruled by *Filinvest*, according to SMC, the said case cannot thus be applied retroactively.[41] SMC also postulates that the Court of Appeals ruling in *Commissioner of Internal Revenue v. APC Group, Inc.* regarding the non-taxability of memos and vouchers evidencing intercompany advances was effectively adopted by the Supreme Court in its Resolution dated May 17, 2004 in G.R. No. 62185 when it stated that the "petitioner [Commissioner of Internal Revenue] failed to show that a reversible error had been committed by the appellate court [Court of Appeals]".[42]

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[34] G.R. No. 197525, June 4, 2014, 725 SCRA 130.
[35] G.R. No. 100776, October 28, 1993, 227 SCRA 444 ("*Co*").
[36] CTA EB No. 1726 Docket, pp. 32-33.
[37] CTA EB No. 1726 Docket, pp. 32.
[38] CA-GR No. 69869, November 29, 2002.
[39] CTA EB No. 147, October 13, 2006.
[40] CTA EB No. 1726 Docket, p. 33.
[41] *Id.*, p. 34.
[42] *Id.*, p. 35.

The Court *En Banc* cannot subscribe to SMC's view that the doctrine in *Co* should be applied in the present case. By the same token, the Court *En Banc* holds that the Court in Division correctly applied the rule that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

In *Co,* the Supreme Court reiterated the doctrine previously laid down in the case of *People v. Jabinal,*[43] which states that "when a doctrine of this [Supreme] Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof". It is also true that in *Co*, the Supreme Court refused to give retroactive effect to the doctrine laid down in *Que v. People*[44] (promulgated 4 years after the commission of the alleged crime in *Co*) to the prejudice of the petitioner who had relied on the contrary doctrine as contained in the official opinion of then Minister of Justice. Nonetheless, a more circumspect reading of *Co* showed that it is inapplicable to the present case because the prospectivity doctrine applied by the Supreme Court in that case, and which same doctrine was previously enunciated in *Jabinal,* was articulated within the context of criminal prosecution where the required quantum of evidence to sustain a judgment of conviction is proof beyond reasonable doubt, and with all doubts to be resolved in favor of the accused. In fact, the Supreme Court had invoked Article 22 of the Revised Penal Code[45] as one of the bases for its discussion of the prospectivity rule. In contrast, the present case merely involves the construction or interpretation of tax statute which is civil in nature[46] and as such, is not governed by criminal law principles. For a proper perspective, the relevant portions of *Co* are quoted below:

> "'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines,' according to Article 8 of the Civil Code. **'Laws shall have no retroactive effect, unless the contrary is provided,' declares Article 4 of the same Code, a declaration that is echoed by Article 22 of the Revised Penal Code: 'Penal laws shall have, a retroactive effect insofar as** ge

[43] G.R. No. L-30061, February 27, 1974, 55 SCRA 607 ("*Jabinal*").
[44] G.R. Nos. L-75217-18, September 21, 1987, 154 SCRA 160.
[45] Article 22 of the Revised Penal Code states:

> "Article 22. *Retroactive effect of penal laws.* - Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

[46] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382, 394.

**they favor the person guilty of a felony, who is not a habitual criminal** **.'

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The principle of prospectivity has also been applied to judicial decisions which, 'although in themselves not laws, are nevertheless evidence of what the laws mean, ** (this being) the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system **.'

So did this Court hold, for example, in *People v. Jabinal*, 55 SCRA 607, 611:

> 'It will be noted that when appellant was appointed Secret Agent by the Provincial Government in 1962, and Confidential Agent by the Provincial commander in 1964, the prevailing doctrine on the matter was that laid down by Us in *People v. Macarandang* (1959) and *People v. Lucero* (1958). Our decision in *People v. Mapa*, reversing the aforesaid doctrine, came only in 1967. The sole question in this appeal is: should appellant be acquitted on the basis of Our rulings in *Macarandang* and *Lucero*, or should his conviction stand in view of the complete reverse of the *Macarandang* and *Lucero* doctrine in *Mapa*? ***
>
> Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system **.' <u>The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim *'legis interpretatio legis vim obtinet'* — the interpretation placed upon the written law by a competent court has the force of law. The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence, of the law, of the land, at the time appellant was found in possession of the firearm in</u>

question and where he was arraigned by the trial court. It is true that the doctrine was overruled in the Mapa case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on, the old doctrine and acted on the faith thereof. **This is especially true in the construction and application of criminal laws, where it is necessary that the punishment of an act be reasonably foreseen for the guidance of society.**

So, too, did the Court rule in *Spouses Gauvain and Bernardita Benzonan v. Court of Appeals, et al.* (G.R. No. 97973) and *Development Bank of the Philippines v. Court of Appeals, et al (G.R. No. 97998), Jan. 27, 1992, 205 SCRA 515, 527-528*:

'We sustain the petitioners' position. It is undisputed that the subject lot was mortgaged to DBP on February 24, 1970. It was acquired by DBP as the highest bidder at a foreclosure sale on June 18, 1977, and then sold to the petitioners on September 29, 1979.

At that time, the prevailing jurisprudence interpreting Section 119 of R.A. 141 as amended was that enunciated in *Monge* and *Tupas* cited above. The petitioners Benzonan and respondent Pe and the DBP are bound by these decisions for pursuant to Article 8 of the Civil Code 'judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.' But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that 'laws shall have no retroactive effect unless the contrary is provided.' This is expressed in the familiar legal maxim *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (Francisco vs. Certeza, 3 SCRA 565 [1061]).

The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. Thus, we emphasized in *People v. Jabinal*, 55 SCRA 607 [1974] '** when a doctrine of

> this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.'

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It would seem then, that the weight of authority is decidedly in favor of the proposition that the Court's decision of September 21, 1987 in *Que v. People,* 154 SCRA 160 (1987) that a check issued merely to guarantee the performance of an obligation is nevertheless covered by B.P. Blg. 22 — should not be given retrospective effect to the prejudice of the petitioner and other persons situated, who relied on the official opinion of the Minister of Justice that such a check did not fall within the scope of B.P. Blg. 22.

Inveighing against this proposition, the Solicitor General invokes *U.S. v. Go Chico*, 14 Phil. 128, applying the familiar doctrine that in crimes *mala prohibita*, the intent or motive of the offender is inconsequential, the only relevant inquiry being, 'has the law been violated?' The facts in *Go Chico* are substantially different from those in the case at bar. In the former, there was no official issuance by the Secretary of Justice or other government officer construing the special law violated; and it was there observed, among others, that 'the defense ** (of) an honest misconstruction of the law under legal advice' could not be appreciated as a valid defense. **In the present case on the other hand, the defense is that reliance was placed, not on the opinion of a private lawyer but upon an official pronouncement of no less than the attorney of the Government, the Secretary of Justice, whose opinions, though not law, are entitled to great weight and on which reliance may be placed by private individuals is reflective of the correct interpretation of a constitutional or statutory provision; this, particularly in the case of penal statutes, by the very nature and scope of the authority that resides in as regards prosecutions for their violation.** *Senarillos vs. Hermosisima, supra,* relied upon by the respondent Court of Appeals, is crucially different in that in said case, as in *U.S. v. Go Chico, supra,* no administrative interpretation antedated the contrary construction placed by the Court on the law invoked.

**This is after all a criminal action all doubts in which, pursuant to familiar, fundamental doctrine, must be** ge

> **resolved in favor of the accused.** Everything considered, the Court sees no compelling reason why the doctrine of *mala prohibita* should override the principle of prospectivity, and its clear implications as herein above set out and discussed, negating criminal liability." *(Emphasis and underscoring supplied; citations omitted)*

At any rate, the Court in Division correctly held in the Assailed Decision that there is no previous doctrine that is overruled by the doctrine pronounced by the Supreme Court in *Filinvest*. The decisions of the Court of Appeals and of this Court *En Banc* as cited by SMC cannot be deemed to have enunciated a prior doctrine (allegedly prevailing at the time when the subject advances were extended) that was overruled by that of *Filinvest* because only the decisions of the Supreme Court constitute binding precedents and form part of the Philippine legal system, pursuant to Article 8 of the Civil Code.[47] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[48] As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[49] to wit:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.**" *(Emphasis supplied)*

Needless to state, the foregoing pronouncement may also be applied, *mutatis mutandis*, to decisions of the Court of Appeals.

Neither can SMC take refuge under BIR Ruling [DA (C-035) 127-08] dated August 8, 2008. Such rulings are merely of persuasive character and cannot be considered as conclusive interpretation of the law. On this point, the ruling of the Supreme Court in *Philippine Bank of Communications v. Commissioner of Internal Revenue*[50] is instructive:

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[47] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[48] *The Philippine Veteran Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[49] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336, 411 ("*San Roque*").
[50] G.R. No. 112024, January 28, 1999, 302 SCRA 241, 252.

> "x x x It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.**" (Emphasis supplied)

In *San Roque*,[51] the Supreme Court also explained that pursuant to Section 4 of the 1997 NIRC, the Commissioner of Internal Revenue (CIR) has the exclusive and original jurisdiction to interpret tax laws. As such, taxpayers acting in good faith should not be made to suffer for adhering to ***general interpretative rules*** of the CIR interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the CIR himself or by the Supreme Court. As held by the Supreme Court:

> "Section 4 of the Tax Code, a new provision introduced by RA 8424, expressly grants to the Commissioner the power to interpret tax laws, thus:
>
> > Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
> >
> > The power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.
>
> Since the Commissioner has **exclusive and original jurisdiction to interpret tax laws**, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section

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[51] *Supra*, Note 49.

246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

> Sec. 246. *Non-Retroactivity of Rulings.* — Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner **shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers**, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, '***Any*** revocation, modification or reversal' without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered under Section 246.

Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:

> In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
>
> This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.), Inc., and Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer. (Emphasis supplied)

Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer. *Jz*

BIR Ruling No. DA-489-03 is a general interpretative rule because it was a response to a query made, not by a particular taxpayer, but by a government agency tasked with processing tax refunds and credits, that is, the **One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance**. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was in fact asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in Aichi on 6 October 2010, where this Court held that the 120+30 day periods are mandatory and jurisdictional." *(Underscoring supplied and citations omitted)*

As may be gleaned from the foregoing, the Supreme Court had ruled that taxpayers can validly rely on BIR Ruling No. DA-489-03 from the time of its issuance up to the time of its reversal given that the Supreme Court had found it to be a general interpretative rule covered by non-retroactivity rule under Section 246 of the 1997 NIRC.

In the present case, however, BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 cannot, in any way, be considered as a general interpretative rule. On its face, it was clear that the said ruling was issued as a response to the specific query made by a particular taxpayer on behalf of its client.

SMC is likewise mistaken in claiming that the Supreme Court had effectively adopted the ruling of the Court of Appeals regarding the non-taxability of memos and vouchers evidencing intercompany advances.

In *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. v. The Insular Life Assurance Co., Ltd., et al.,*[52] the Supreme Court held:

"... the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the

[52] G.R. No. L-25291, January 30, 1971, 37SCRA 244, 279-280.

> laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort**. We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al. (77 Phil. 1066)* that **'[O]nly the decisions of this Honorable Court establish <u>jurisprudence or doctrines</u> in this jurisdiction.'** xxx." *(Emphases and underscoring supplied)*

Thus, the CA decision in the *APC Group* case cannot be treated or equated as a doctrinal pronouncement.

Neither can it be treated as a binding precedent, notwithstanding the fact that the said case was appealed to the Supreme Court via Petition for Review on *Certiorari* and that this Petition was denied for the failure of petitioner therein *'to show that a reversible error had been committed by the appellate court'* via the Minute Resolution dated May 17, 2004.

In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[53] the Supreme Court held:

> "It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, <u>*if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.*</u> Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

[53] G.R. No. 167330, September 18, 2009 (Resolution), 600 SCRA 413, 446-447.

> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision.
>
> *Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice*." *(Italics and underscoring supplied)*

Viewed in the light of the foregoing considerations, the Court *En Banc* holds that SMC cannot validly claim that it had relied in good faith on the abovementioned decisions and ruling.

SMC also disagrees with the application of RMC No. 48-2011 to the present case. It posits that the *Philacor*[54] decision, as cited in the assailed Decision, cannot apply to RMC No. 48-2011 because the said RMC "did not interpret the same rule".[55] SMC contends that prior to the issuance of said RMC, the rule was different, *i.e.*, that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the NIRC.[56] Accordingly, SMC submits that RMO No. 48-2011 may not be used against it, citing Section 246 of the 1997 NIRC which provides for non-retroactivity of rulings which are prejudicial to the taxpayer as well as the principle of non-retroactivity of rulings enunciated under *Co* as its legal bases.[57]

SMC's position is not well-taken.

RMC No. 48-2011 merely circularizes the doctrine in *Filinvest*. It is clearly apparent, upon a cursory reading of the said RMC, that it uses the term *'Circularization'* in its subject matter and it merely quotes the *'relevant*

[54] *Philacor Credit Corporation v. Commissioner of Internal Revenue*, G.R. No. 169899, February 6, 2013, 690 SCRA 28.
[55] CTA EB No. 1726 Docket, p. 36.
[56] *Id.*
[57] *Id.*

*excerpts'* from the *Filinvest* case. The fact that the said RMC No. 48-2011 enjoined all employees of the BIR engaged in the audit and review of cases to assess deficiency DST, if warranted, on these kinds of transactions is not an indication that it has made a specific ruling and has overruled or reversed a prior one, because the assessment of deficiency DST, if warranted, will be merely a necessary consequence of what has been ruled in the same *Filinvest* case, as quoted therein.

SMC likewise postulates that *Filinvest* will not cover the advances subject of the present case because the facts of the said case and that of the present case are different. SMC avers that the subject documents in *Filinvest* were instructional letters and journal and cash vouchers while the present case involves Notes to Audited Financial Statement of petitioner.[58]

SMC's argument is too strained for comfort.

In the case of *Santiago v. Subic Bay Metropolitan Authority*,[59] the Supreme Court spelled out the doctrine of *stare decisis* as follows:

> "The doctrine of *stare decisis* embodies the legal maxim that a principle or rule of law which has been established by the decision of a court of controlling jurisdiction will be followed **in other cases involving a similar situation**. It is founded on the necessity for securing certainty and stability in the law and does not require identity of or privity of parties. This is unmistakable from the wordings of Article 8 of the Civil Code. It is even said that such decisions assume the same authority *as the statute itself and, until authoritatively abandoned, necessarily become, to the extent that they are applicable*, the criteria which must control the actuations not only of those called upon to decide thereby but also of those in duty bound to enforce obedience thereto. Abandonment thereof must be based only on strong and compelling reasons, otherwise, the becoming virtue of predictability which is expected from this Court would be immeasurably affected and the public's confidence in the stability of the solemn pronouncements diminished." *(Emphasis supplied)*

On the other hand, in *Philippine Carpet Manufacturing Corporation et. al. v. Tagyamon*,[60] the Supreme Court expounded on the proper application of the said doctrine in this wise: *ge*

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[58] *Id.*, pp. 35-36.
[59] G.R. No. 156888, November 20, 2006, 507 SCRA 283, 297.
[60] G.R. No. 191475, December 11, 2013, 712 SCRA 489, 500.

> **Under the doctrine of *stare decisis*, when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same, even though the parties may be different. Where the facts are essentially different, however, *stare decisis* does not apply**, for a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variant is introduced. *(Emphasis supplied)*

Guided by the foregoing jurisprudential precepts, the Court *En Banc* holds that the factual difference pointed out by SMC cannot negate the applicability of *Filinvest* as a binding precedent in the present case, given that the key facts, issues, and the applicable law and regulations involved in both cases are substantially the same.

***Imposition of DST on Notes to Audited Financial Statements***

SMC also takes issue with the Court in Division's ruling that DST may be imposed on the subject advances to petitioner on the basis of the Note appearing in its Audited Financial Statements.[61] SMC maintains that two (2) basic requisites must exist before DST may be imposed, namely: (1) there must be a transaction or privilege which is exercised by persons; and (2) this transaction is evidenced through the execution of specific instruments.[62] It posits that a Note to Audited Financial Statement may not be categorized as document, much less as a debt instrument, as required by Section 179 of the 1997 NIRC as this is a mere additional information added to Financial Statements that help explain specific items in the statements as well as provide a more comprehensive assessment of a company's financial condition.[63]

The Court *En Banc* is unconvinced.

A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, **because it is imposed on the transaction rather than on the document**.[64] As a corollary, there is no basis in the assertion that a DST is literally a tax on a document.[65] Thus, even while the subject document was

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[61] CTA EB No. 1726 Docket, pp. 35-40.
[62] *Id.*, p. 37.
[63] *Id.*, p. 38.
[64] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016, 794 SCRA 34 citing *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil. 227 (2009).
[65] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006, 489 SCRA 147.

not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established.

Moreover, it is noteworthy that Section 6 of Revenue Regulations No. 9-94, which has the force of law,[66] provides for the imposition of DST where even no formal agreements or promissory notes are executed, to wit:

> "SECTION 6. *Stamp Tax on All Loan Agreements.* — All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> **In cases where no formal agreements or promissory notes have been executed to cover credit facilities**, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code." *(Emphasis supplied)*

In the present case, while it may be true that the CIR based the DST imposition on the information obtained from the Notes to SMC's audited financial statements, the latter does not deny the existence of the subject transactions to which the CIR imposed the DST nor does SMC deny that it is a party thereto.

Considering the existence of the subject transactions, the Court *En Banc* finds no reason not to uphold the imposition of the DST thereon on the basis of SMC's Audited Financial Statements and the Notes thereto. Otherwise, it would be relatively easy for any taxpayer to circumvent the law on DST by simply hiding the corresponding and/or supporting document/s.

Moreover, it bears stressing that while it was shown that the subject transactions do exist, SMC did not bother to present the pertinent documents that brought about the reporting thereof in its Financial Statements and the

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[66] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 546 SCRA 150.

Notes thereto. Certainly, there is the settled presumption under the Rules of Court that "evidence willfully suppressed would be adverse if produced".[67]

***Advances to Pacific Central Properties Inc. and South Premiere Power Corporation***

In its Petition, SMC also claims that the Court in Division erred in holding that the amount of ₱231,374,770.99 representing the advances made by SMC to Pacific Central Properties Inc. was extended in 2010 and that the advances to South Premiere Power Corporation in 2010 amounted to ₱682,304,000.00.[68] In support of such argument, SMC cites the Judicial Affidavit of its witness, Mr. Rogelio G. Liu[69] as well as Exhibits P-13 and P-13-a, which refer to the excerpts of the Audited Financial Statements of Pacific Central Properties Inc. and South Premiere Power Corporation, respectively, for the year 2010.

On the basis of the excerpts of Pacific Central Properties Inc.'s 2010 Audited Financial Statement and the testimony of it witness, SMC maintains that Pacific Central Properties Inc. did not receive any advances from SMC in 2010 because, as shown in the excerpts, the amount of cash advances reflected in the year 2010 was even lower compared to the amount reflected as advances in the year 2009.[70] In other words, SMC posits that the amount reflected as advances in 2010 was a mere carry-over of the portion of advances made by SMC to Pacific Central Properties Inc. in 2009.

On the other hand, based on the excerpts of South Premiere Power Corporation's 2010 Audited Financial Statement and the testimony of its witness, SMC contends that the amount of ₱682,304,000.00 reflected as cash advances made by SMC to South Premiere Power Corporation in the year 2010 was overstated by ₱204,000.00.[71] According to SMC, the amount of ₱204,000.00 represents the advances it gave to South Premiere Power Corporation in the year 2009. As such, the latter amount should have been deducted from the amount of ₱682,304,000.00 to properly reflect the net advances made by SMC to South Premiere Power Corporation in 2010, *i.e.*, ₱682,100,000.00.[72] In other words, SMC impresses upon this Court that the amount of advances made to South Premiere Power Corporation in 2009, *i.e.*, ₱204,000.00, was merely carried over to and was added to the amount reflected as advances in the year 2010.

[67] Section 3(e), Rule 131, Rules of Court.
[68] CTA EB No. 1726 Docket, p. 40.
[69] Exhibit "P-12", Division Docket Vol. I, pp. 352-359.
[70] CTA EB No. 1726 Docket, p. 41.
[71] *Id.*
[72] *Id.*

At this juncture, it bears stressing that tax refunds are a derogation of State's taxing power.[73] Such being the case, tax refunds, like tax exemptions, are strictly construed against the taxpayer and liberally in favor of the State.[74] Consequently, the taxpayer is charged with the heavy burden of proving clearly the factual basis of its claim.[75] Failure to present sufficient evidence to justify the claim for refund is fatal.[76]

Consistent with the foregoing principles, the Court *En Banc* holds that SMC failed to sufficiently prove its assertions. The Court *En Banc* cannot reasonably determine merely on the basis of the evidence duly presented whether the amount reflected as advances made by SMC to Pacific Central Properties Inc. was indeed a mere carry-over of the portion of advances made in 2009. What the relevant pieces of evidence plainly show is that SMC extended advances to Pacific Central Properties Inc. in 2010 in the amount of ₱231,374,770.99.

The same is true with regard to advances made by SMC to South Premiere Power Corporation in 2010. The evidence presented are inadequate to justify the conclusion that the amount of ₱204,000.00, allegedly representing the advances made by SMC in 2009, was merely carried over to and was added to the amount reflected as advances in the year 2010 and thus, should be deducted therefrom. What the relevant pieces of evidence simply reveal is that SMC extended advances to South Premiere Power Corporation in 2010 in the amount of ₱682,304,000.00.

Considering SMC's failure to prove its allegations by substantial evidence, the Court in Division correctly ruled that the presumption of correctness of tax assessment stands.[77]

***Jurisdiction of the CIR over SMC's Administrative Claim for Refund***

Finally, SMC assails the provision in Revenue Memorandum Circular (RMC) No. 49-2003 allowing an administrative claim for refund filed before the BIR to proceed simultaneously with the judicial claim for refund pending before this Court.[78] SMC submits that the said provision runs counter to the well-established judicial policy against multiplicity of suits.[79] It maintains that the required certification against forum-shopping is not only directed

[73] *Compagnie Financiere Sucres Et Denrees v. Commissioner of Internal Revenue*, G.R. No. 133834, August 28, 2006, 499 SCRA 664.
[74] *Coral Bay Nickel Corporation v. Commissioner of Internal Revenue*, G.R. No. 190506, June 13, 2016, 793 SCRA 190.
[75] *Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005, 461 SCRA 369.
[76] *Id.*
[77] CTA EB No. 1726 Docket, p. 66.
[78] *Id.*, pp. 43-44.
[79] *Id.*

against "actions" but also against "claims" such as a claim for refund pending in a quasi-judicial agency like the BIR.[80] SMC also asserts that RMC No. 49-2003 is not also conducive to the orderly administration of justice in view of the possibility of conflicting decisions of the this Court and the BIR.[81]

Citing the case of *Collector of Internal Revenue v. Court of Tax Appeals*[82] as basis, SMC also posits that when the CIR has not issued a decision or ruling on the refund claim when the two-year prescriptive period is about to expire, it is presumed to have denied the refund claim and thus, the Petition for Review filed with this Court is deemed an appeal from the presumed denial. In such case, the CIR loses jurisdiction over the claim for refund upon the filing of the Petition for Review with this Court.[83]

SMC's position has no legal basis.

Note that the power of the CIR over administrative claims for refund on one hand, and the authority of this Court to take cognizance of judicial claims for refund on the other hand, emanate from distinct and independent sources. Section 7(a)(1) and (a)(2) of RA No. 1125, as amended, explicitly provides for the jurisdiction of the Court of Tax Appeals over the decisions or inaction of the CIR in refund cases:

> "Sec. 7. *Jurisdiction.* — The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) **Decisions of the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto,** or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto,** or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code

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[80] *Id.*
[81] *Id.*, p. 44.
[82] G.R. No. L-11494, January 28, 1961, 1 SCRA 87, 91.
[83] CTA EB No. 1726 Docket, p. 44.

> provides a specific period for action, in which case the inaction shall be deemed a denial;" *(Emphasis supplied)*

On the other hand, Section 4 of the 1997 NIRC grants the CIR the power to take cognizance of and decide cases involving refunds of internal revenue taxes, fees, and other charges as well as penalties imposed in relation thereto, among other cases, to wit:

> "SEC. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* — The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.
>
> **The power to decide** disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto,** or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue **is vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals.**" *(Emphasis supplied)*

RMC No. 49-2003 is apparently issued by the CIR pursuant to its powers under Section 4 of the 1997 NIRC.

Notably, there is nothing in the aforecited statutory provisions which suggests that this Court's jurisdiction and the CIR's power over claims for refund of internal revenue taxes, fees and other charges, and penalties imposed in relation thereto are mutually exclusive. The jurisdiction of this Court over decisions or inaction of the CIR provided under RA 1125, as amended, cannot be construed so as to curtail the CIR's administrative powers duly granted under the 1997 NIRC. If at all, there is complementarity between these two powers as they together afford the parties comprehensive remedies for purposes of threshing out the merit of taxpayers' refund claims.

The concern regarding the possibility of conflicting decisions of this Court and that of the BIR over refund cases is more imagined than real because if such event should actually occur, the decision of this Court shall prevail, consistent with the nature of this Court's appellate jurisdiction.

**WHEREFORE**, the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1724 as well as the Petition for Review filed by San Miguel Corporation in CTA EB No. 1726 are both **DENIED** for lack of merit.

**SO ORDERED.**

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

*WE CONCUR:*

See Concurring & Dissenting Opinion
**ROMAN G. DEL ROSARIO**
Presiding Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

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

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

Catherine T. Manahan
**CATHERINE T. MANAHAN**
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.

**ROMAN G. DEL ROSARIO**
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

**CTA EB NO. 1724**
**(CTA CASE NO. 9007)**

- versus –

**SAN MIGUEL CORPORATION,**
Respondent.

x--------------------------------------------x

**SAN MIGUEL CORPORATION,**
Petitioner,

**CTA EB NO. 1726**
**(CTA CASE NO. 9007)**

- versus -

Present:

**DEL ROSARIO**, *PJ*,
**CASTAÑEDA, JR.**,
**UY**,
**FABON-VICTORINO**,
**MINDARO-GRULLA**,
**RINGPIS-LIBAN**, and
**MANAHAN**, *JJ*.

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

Promulgated:

OCT 11 2018 1:21 p.m.

x-------------------------------------------x

## CONCURRING AND DISSENTING OPINION

***DEL ROSARIO, P.J.:***

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1724 for lack of merit.

With due respect, the point of my dissent is the denial of the Petition for Review filed by San Miguel Corporation (SMC) in CTA EB No. 1724 for lack of merit. While in previous cases, I joined the majority's position on the retroactive application of the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which Documentary Stamp Tax (DST) may be imposed, I am constrained to depart therefrom after re-visiting the basis of SMC in insisting that the doctrine laid down in *Filinvest* cannot be applied retroactively.

I submit that SMC correctly relied on the judicial interpretation prevailing in the year 2010 that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

To be specific, SMC relied on the following:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002* wherein the Court of Appeals (CA) held that the interpretation of the Bureau of Internal Revenue (BIR) in **BIR Ruling No. 116-98 dated July 30, 1998** that inter-office memo covering advances granted by an affiliate company is not subject to DST is in accordance with law;

(ii) *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006* wherein the Court of Tax Appeals (CTA) ruled that the ruling in **BIR Ruling No. 116-98 dated July 30, 1998** that the inter-company advances made by Belle to its affiliates is not subject to DST is consistent with the provisions of the NIRC of 1997; and,

(iii) *BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008*, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to

[1] G.R. Nos. 163653 and 167689, July 19, 2011.

DST under Section 179 of the NIRC of 1997, as amended.

Clearly, the existing interpretation at the time of the transaction (year 2010) was that loans and advances to affiliates covered by inter-office memoranda are not subject to DST. **The rulings of the CA in *APC Group* and the CTA in *Belle Corporation*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on the non-taxability of loans and advances to affiliates which are covered by inter-office memoranda.** Pronouncements of the CA and the CTA are at the very least persuasive.

Specifically, on the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals / Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*[2] is enlightening:

> "The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.
>
> The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.
>
> **Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides**. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that

[2] G.R. Nos. 104151 and 105563, March 10, 1995.

> it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
>
> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.**" (Boldfacing supplied)

While the doctrine on the non-taxability of loans and advances covered by inter-office memoranda was over-ruled in year 2011 when the Supreme Court promulgated *Filinvest*, the same cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on the judicial interpretation laid down in *APC Group* and *Belle Corporation*. Needless to say, **if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice (that is - - by applying the Supreme Court doctrine reversing the BIR ruling prospectively), I submit that reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.**

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1724 for lack of merit; (ii) GRANT the Petition for Review filed by San Miguel Corporation in CTA EB No. 1724; (iii) SET ASIDE the assailed Decision and Resolution of the Court in Division; and, (iv) ORDER the REFUND or ISSUANCE of TAX CREDIT CERTIFICATE in favor of San Miguel Corporation, in the amount of Php70,774,563.44, representing erroneously and/or illegally collected DST for taxable year 2010.

**ROMAN G. DEL ROSARIO**
Presiding Justice