REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

LIBERTY TELECOMS HOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9311

Members:

CASTAÑEDA, JR., *Chairperson, and*
MANAHAN, and
MINDARO-GRULLA,[1] *JJ.*

Promulgated:
MAR 1 2 2019 3:45 pm

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated October 18, 2018**, filed on November 5, 2018, without respondent's comment per Records Verification dated December 18, 2018; and

2. respondent's **Motion for Partial Reconsideration Re: Decision promulgated on October 18, 2018**, filed on November 6, 2018, with petitioner's **Opposition to Respondent's "Motion for Partial Reconsideration....." dated October 30, 2018**, filed on December 6, 2018.

[1] Designated as a special member under Rule V Section 3(c) of the Internal Rules of the Court of Tax Appeals.

On October 18, 2018, this Court rendered a Decision (assailed Decision), the dispositive portion of which states:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱10,636,547.70, representing the following:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Interest	₱ 8,164,528.20
Surcharge	2,422,019.50
Compromise Penalty	50,000.00
TOTAL	**₱ 10,636,547.70**

> **SO ORDERED.**"

Petitioner's motion for partial reconsideration

In its motion, petitioner reiterates its previous arguments, contending that this Court should not apply the Supreme Court decision of *Commissioner of Internal Revenue (CIR) vs. Filinvest Corporation*[2] *(Filinvest)* to the cash advances involved in this case, which were extended/received in 2009, to the prejudice of petitioner, who relied on court decisions prevailing at that time. Petitioner avers that it is the decision of the Supreme Court in *Co vs. Court of Appeals (CA)*[3] that should be applied in the case at hand, and not its decision in *Visayas Geothermal Power Company vs. CIR* as well as the decisions of the Court of Tax Appeals (CTA) Third Division in *San Miguel Corporation vs. CIR* and CTA First Division in *Brewery Properties, Inc. vs. CIR.*

Petitioner asserts that contrary to this Court's ruling in the assailed Decision, there was indeed a previous doctrine that was overruled by the doctrine in *Filinvest,* as proven by the fact that prior to the promulgation of the said case, the BIR has not imposed any DST on inter-company cash advances, as well as the BIR Rulings,

[2] G.R. Nos. 163653 and 167689, July 19, 2011.
[3] G.R. No. 100776, October 28, 1993.

CTA and CA decisions, and the Resolution of the Supreme Court cited by petitioner.

Petitioner also contends that a debt instrument is essential in the imposition of DST under Section 179 of the National Internal Revenue Code of 1997, as amended (Tax Code), but that the BIR relied on mere Notes to the 2009 Audited Financial Statements of petitioner, which are not documents, much less debt instruments. Petitioner avers that while there may have been transactions in the form of advances in the instant case, the said transactions were not evidenced through the execution of debt instruments.

Petitioner argues that in *Filinvest*, the Supreme Court merely applied Section 180 (now Section 179) of the Tax Code, to the instructional letters and journal and cash vouchers involved in the said case, without any interpretation at all. According to petitioner, the Supreme Court did not interpret the aforesaid legal provision, and did not ascertain "the contemporaneous legislative intent" behind Section 180.

Petitioner also contends that with respect to the Waiver dated April 24, 2013 (fourth waiver), petitioner received a copy of the said waiver only on June 26, 2013, or after its acceptance by the CIR, and after the Waiver dated November 23, 2012 (third waiver) has already expired on June 15, 2013. Petitioner also argues that the waivers were prepared by the BIR and just given to the taxpayer for signature, and that these were not attached to the Judicial Affidavit of Revenue Officer Dalisay Umlas, who identified the same.

Petitioner posits that the ten-year prescriptive period does not apply in this case because the advances involved are not subject to DST, and therefore, no DST return was filed. Moreover, petitioner contends that Section 200 (B) of the Tax Code, which requires the filing of a DST return, provides that "the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the *taxable document* was made, signed, issued, accepted, or transferred", and since there is no taxable document involved, the provision cannot apply to this case.

Lastly, petitioner argues that the provisions of Revenue Memorandum Circular (RMC) No. 49-2003 should be disregarded for being against well-established judicial policies against multiplicity of suits and is not conducive to the orderly administration of justice, especially in view of the possibility of conflicting decisions by the CTA and BIR. The CIR being presumed to have denied petitioner's claim for refund, the petition for review filed with this Court is deemed an appeal, and hence, the CIR lost jurisdiction over the administrative claim for refund.

Upon evaluation of petitioner's motion, the Court finds that it merely reiterated the arguments it raised in its previous pleadings, which the Court has already passed upon and considered in resolving the assailed Decision.

This Court reiterates that the interpretation of Section 179 of the Tax Code was deemed constituted as of December 23, 1994, when it was inserted in the Tax Code through the enactment of Republic Act (RA) No. 7660, and up to the present time. Therefore, the same may be applied to this case without violating the principle on non-retroactivity of laws and rulings.

The Court maintains that there is no previously established doctrine that was overturned by the *Filinvest* case. This was the ruling in the similar case of *San Miguel Corporation vs. CIR*[4], where the CTA *En Banc* explained as follows:

> "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. 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. As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*, to wit:

[4] CTA EB No. 1726 (CTA Case No. 9007), October 11, 2018.

> '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 binding 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* is instructive:

> '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*, 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:

xxx xxx xxx

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.*, the Supreme Court held:

xxx xxx xxx

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*, the Supreme Court held:
>
> xxx xxx xxx
>
> 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 rulings."

In the same case, the Court *En Banc* held that even while the document evidencing the transaction is not shown, or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established, *viz:*

> "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.** As a corollary, there is no basis in the assertion that a DST is literally a tax on document. Thus, even while the subject document was 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, 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 Statement and the Notes thereto. Certainly, there is the settled presumption under the Rules of Court that 'evidence willfully suppressed would be adverse if produced.'"

In addition, it must be emphasized that petitioner did not discredit the accuracy and authenticity of its audited financial statements. The Court, therefore, has no reason to question the veracity of the contents thereof.[5]

The Court likewise maintains that respondent's right to assess has not prescribed. Petitioner contends that the fourth waiver is invalid as it received a copy of the waiver only after the third waiver has already expired. However, Revenue Memorandum Order (RMO) No. 20-90 and the case of *CIR vs. Kudos Metal Corporation*[6] only requires that both the date of execution by the taxpayer and date of acceptance by the BIR should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed. It does not require petitioner's receipt of the accepted waiver before the prescriptive period expires. In fact, the rule merely states that "the fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

Contrary to petitioner's contention that the Supreme Court did not interpret Section 180 (now Section 179) of the Tax Code and merely applied the same to the *Filinvest* case, the CTA *En Banc* explained in the case of *Brewery Properties, Inc. vs. CIR*[7] that the Supreme Court has clearly engaged in the construction or interpretation of the said provision, to wit:

> "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.

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[5] See *Insular Hotel Employees Union-NFL vs. Waterfront Insular Hotel Davao*, G.R. Nos. 174040-41, September 22, 2010.
[6] G.R. No. 178087, May 5, 2010.
[7] CTA EB No. 1609 (CTA Case No. 8892), April 23, 2018.

> 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."

Lastly, in the afore-cited case of *San Miguel Corporation vs. CIR*, the Court *En Banc* ruled that the power of the CIR over administrative claims and the authority of the CTA to take cognizance of judicial claims for refund are not mutually exclusive. Should conflicting decisions be made by the two, the decision of this Court shall prevail, consistent with the nature of this Court's appellate jurisdiction. The Court *En Banc* ruled, thus:

> "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:
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> '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 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."

Considering the foregoing, the Court finds no cogent reason to modify or reverse the assailed Decision, with respect to petitioner's motion.

Respondent's Motion for Partial Reconsideration

In its motion, respondent argues that the interest, surcharge and compromise penalty have factual and legal bases, and that reliance in good faith by respondent must be relatively applied.

Respondent avers that petitioner's reliance on the BIR Rulings it cited is misplaced because it is applicable only to the facts and circumstances of the taxpayer who applied for the same.

Moreover, respondent contends that the Supreme Court still imposed surcharge, deficiency and delinquency interest and even compromise penalties on *Filinvest* despite its allegation of reliance on a previous BIR ruling.

Respondent argues that petitioner cannot simply invoke good faith in order to escape liability from deficiency interest. Section 247(a) in relation to Section 249(B) and 249(C) of the Tax Code authorizes the imposition of deficiency and delinquency interest on all taxes under the Tax Code.

Lastly, respondent explains that compromise penalty is not only for settlement of criminal liability but for certain violations of the Tax Code as well. Respondent contends that the imposition of compromise penalty is warranted under Section 250 of the Tax Code which prescribes the imposition thereof in case of failure to file an information or return, statement or list, or keep any record or supply any information required on the date prescribed therefor.

On the other hand, petitioner opposes respondent's motion and argues that there is no logical reason why BIR Rulings, like court decisions, cannot be cited as precedents, or relied upon by taxpayers. Furthermore, petitioner insists that the well-established jurisprudence that a taxpayer will not be liable to pay surcharge, interest and penalty if he acted in good faith is recognized in this jurisdiction as well as in American jurisprudence. Lastly, as to the compromise penalty, petitioner alleges that the Supreme Court itself has held that the same may not be imposed on a taxpayer if the payment was under protest in the instant case.

The Court finds respondent's arguments unmeritorious.

In the similar case of *CIR vs. San Miguel Corporation*[8], the Court *En Banc* found San Miguel Corporation not liable for surcharge, interest, and compromise penalty, and ruled as follows:

> "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'. By law and jurisprudence, mistake upon a doubtful or difficult question of law may properly be the basis of good faith. 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

[8] CTA EB No. 1724 (CTA Case No. 9007), October 11, 2018.

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.*

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:
>
> (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. The objective of its imposition is to hasten payment of taxes and to punish for evasion or neglect of duty. 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. 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.

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:

> '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:
>
> xxx xxx xxx
>
> Considering that petitioner disputed respondent's imposition of compromise penalty, the same cannot be imposed upon it." *(Citation omitted)* 7z

> 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.

In view of the foregoing, the Court finds no overriding justification to disturb the assailed Decision, and likewise denies respondent's motion.

WHEREFORE, finding no reversible error in the assailed Decision to warrant its reconsideration, petitioner's **Motion for Partial Reconsideration of the Decision dated October 18, 2018** and respondent's **Motion for Partial Reconsideration Re: Decision promulgated on October 18, 2018** are both **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

Catherine T. Manahan
With all due respect, I maintain my Concurring and Dissenting Opinion.
CATHERINE T. MANAHAN
Associate Justice

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