REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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EAGLE I LANDHOLDINGS, INC.,
Petitioner,

CTA EB NO. 2222
(CTA Case No. 9638)

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB NO. 2227
(CTA Case No. 9638)

- versus -

EAGLE I LANDHOLDINGS, INC.,
Respondent.

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:

MAR 01 2022 4:12pm

x - x

DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, CTA EB No. 2222 and CTA EB No. 2227, filed on February

21, 2020 and February 18 2020, respectively, assailing the Decision[1] dated September 12, 2019 and Resolution[2] dated January 9, 2020, both rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9638 entitled *"Eagle I Landholdings, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*, the dispositive portions of which respectively read:

Decision dated September 12, 2019:

> "**WHEREFORE,** premises considered, the **Petition for Review** is **PARTIALLY GRANTED**. Accordingly, respondent CIR is **ORDERED TO REFUND** or **ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱36,803,273.10**, representing the 25% surcharge erroneously overpaid by petitioner:
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> | | |
> |---|---|
> | Basic DST Due | ₱ 147,213,092.40 |
> | **(50% - 25%) Surcharge** | **36,803,273.13** |
>
> **SO ORDERED.**"

Resolution dated January 9, 2020:

> "**WHEREFORE**, premises considered, petitioner's **Motion for Reconsideration (Of the Decision dated 12 September 2019)**, and respondent's **Motion for Reconsideration** are both **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE PETITIONS BEFORE THE COURT EN BANC

CTA EB No. 2222 entitled ***"Eagle I Landholdings, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*** is the *Petition for Review* filed on February 21, 2020[3] by Eagle I Landholdings, Inc. (or "EAGLE I"), against the Commissioner of Internal Revenue (or "CIR"), praying that the Court render judgment

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[1] Penned by Associate Justice Cielito N. Mindaro-Grulla (retired) and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Jean Marie A. Bacorro-Villena; EB Docket (CTA EB No. 2222), pp. 55 to 82.

[2] EB Docket (CTA EB No. 2222), pp. 46 to 53.

[3] EB Docket (CTA EB No. 2222), pp. 16 to 40.

ordering the CIR to refund or issue a Tax Credit Certificate (TCC) in the amount of ₱403,121,879.05, allegedly representing its erroneously paid deficiency documentary stamp tax (DST), inclusive of interest and fifty percent (50%) surcharge relating to its Advances made from Related Companies for taxable years 2008, 2009, 2010 and 2011.

CTA EB No. 2227 entitled ***"Commissioner of Internal Revenue, Petitioner, vs. Eagle I Landholdings, Inc., Respondent"*** is the *Petition for Review* filed on February 18, 2021[4] by the CIR against EAGLE I, praying that the assailed Decision and Resolution rendered in CTA Case No. 9638 be reversed and set aside; and a new one be entered denying EAGLE I's claim for refund granted by the Court in Division.

THE FACTS

EAGLE I is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the Manila Bay Resort, Temporary Facilities Office, Atlantic Drive, Asiaworld City Boulevard 200, Paranaque City. Its primary purpose is to purchase, lease, develop, exchange or otherwise acquire lands, or any interest therein and to sell, lease, sublet, mortgage, exchange, assign, transfer, convey or otherwise alienate or dispose of any lands or any interest or right therein.

On the other hand, the CIR is tasked to implement the National Internal Revenue Code (NIRC), including among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. He is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City with office address at the 2nd floor, Legal Division, Bureau of Internal Revenue (BIR) Building, No. 313 Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Court may be served.

On December 29, 2014, EAGLE I received *Formal Assessment Notice* (FAN) No. DS-ELA55300-12-14-1237 from the BIR assessing the former for deficiency DST, interest and fifty percent (50%) surcharge in the aggregate amount of ₱403,121,879.05, relative to its

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[4] EB Docket (CTA EB No. 2227), pp. 5 to 13.

non-interest bearing loans and Advances from Affiliates and Related Parties, for taxable years 2008 to 2011.

EAGLE I protested the said assessment in the *Letter* dated January 27, 2015. While its *Letter Protest* was pending before the CIR, EAGLE I opted to voluntarily pay in installments the deficiency DST, and the corresponding interest and fifty percent (50%) surcharge without admitting liability, and to assist the government in its collection efforts. On July 31, 2015, EAGLE I paid the final installment of the deficiency DST, interest and fifty percent (50%) surcharge in the total amount of ₱403,121,879.05.

In the *Letter* dated August 7, 2015, BIR acknowledged the payment made by EAGLE I for the deficiency DST liability inclusive of interest and fifty percent (50%) surcharge, to wit: [5]

IV. DOCUMENTARY STAMP TAX				
Basic Tax Due				₱147,213,092.40
Add:	50% Surcharge		₱73,606,546.20	
	Interest from 02.05.09 to 7.31.15		182,302,240.45	255,908,786.65
TOTAL AMOUNT DUE				₱403,121,879.05
Less:	Particulars	Name of Bank		
	December 29, 2014	THE BANK OF TOKYO	20,000,000.00	
	March 24, 2015	THE BANK OF TOKYO	10,000,000.00	
	May 22, 2015	THE BANK OF TOKYO	30,000,000.00	
	May 29, 2015	THE BANK OF TOKYO	115,000,000.00	
	June 30, 2015	THE BANK OF TOKYO	115,000,000.00	
	July 31, 2015	THE BANK OF TOKYO	113,121,879.05	403,121,879.05
BALANCE				-

On May 19, 2017, EAGLE I filed an administrative claim for refund of tax or tax credit with the Revenue District Office (RDO) No. 52 of the BIR pursuant to Section 249(B) of the NIRC, seeking recovery of one installment payment made on May 22, 2015 relative to the deficiency DST on Advances made from Related Companies for taxable years 2008, 2009, 2010, 2011. However, the same was subsequently withdrawn by EAGLE I in a *Letter* dated July 13, 2017.

On July 27, 2017, EAGLE I filed its administrative claim for refund or tax credit with RDO No. 52 of the BIR pursuant to Section 249(B) of the NIRC, seeking recovery of deficiency DST, interest, and

[5] Exhibit "P-16", Docket (CTA Case No. 9638) – Vol. II, p. 432.

fifty percent (50%) surcharge paid on July 31, 2015 relative to the deficiency DST on "*Advances made from Related Companies*" for taxable years 2008, 2009, 2010, 2011, in the total amount of ₱403,121,879.05.

On July 31, 2017, EAGLE I filed a *Petition for Review* before the Court in Division docketed as CTA Case No. 9638 entitled "*EAGLE I Landholdings, Inc. Petitioner, vs. Commissioner of Internal Revenue, Respondent*".

On September 25, 2017, the CIR filed his *Answer* in CTA Case No. 9638, interposing, among others, special and affirmative defenses which include the following: taxes collected are presumed to be in accordance with laws and regulation; a claim for refund is not *ipso facto* granted because the CIR still has to investigate and ascertain the validity of the claim; and the Court in Division has no jurisdiction over EAGLE I's claim for refund for its failure to comply with all the administrative requirements required by law. Moreover, it is the CIR's position that pursuant to the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[6], EAGLE I is liable for DST on the inter-office memos covering advances to its affiliates during taxable years 2008, 2009, 2010 and 2011. Allegedly, judicial interpretation of a statute constitutes, as part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

After the Pre-Trial Conference held on October 26, 2017, the parties submitted their *Joint Stipulation of Facts and Issues* on November 10, 2017. The Court in Division issued the Pre-Trial Order on November 24, 2017 thereby terminating the pre-trial.

To support its material allegations, EAGLE I presented the following witnesses namely, (1) Atty. Jose Lis C. Leagogo[7], Director and Treasurer of EAGLE I; and (2) Minerva A. Tablan[8], Senior Accounting Manager of Tiger Resort, Leisure & Entertainment, Inc. an entity which has an existing service agreement with EAGLE I.

Subsequently, EAGLE I filed its *Formal Offer of Evidence* on May 7, 2018. In the Resolution dated July 20, 2018, the Court in

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[6] G.R. Nos. 163653 & 167689, July 19, 2011.
[7] Exhibit "P-17", Division Docket (CTA Case No. 9638) – Vol. II, pp. 503 to 508.
[8] Exhibit "P-18", Division Docket (CTA Case No. 9638) – Vol. II, pp. 399 to 405.

Division admitted Exhibits "P-1" to "P-12" and "P-16" to "P-18a", but denied the admission of Exhibits "P-13", "P-14" and "P-15" for failure to identify the same. Consequently, EAGLE I filed a *Motion for Reconsideration and Manifestation [Re: Resolution promulgated on 20 July 2018]*. On October 4, 2018, the Court in Division partially granted EAGLE I's *Motion* and admitted Exhibits "P-13" and "P15" but denied the admission of Exhibit "P-14".

For his part, the CIR's counsel manifested during the hearing held on May 2, 2018 that he has no evidence to present.

Thus, CTA Case No. 9638 was deemed submitted for decision on December 4, 2018, in view of the filing of EAGLE I's *Memorandum* on November 14, 2018 and the CIR's *Memorandum* on November 12, 2018.

On September 12, 2019, the Court in Division issued the assailed Decision[9] in CTA Case No. 9638, partially granting EAGLE I's *Petition for Review* and ordering the CIR to refund or issue TCC in favor of EAGLE I, the amount of ₱36,803,273.10, representing the 25% surcharge erroneously overpaid by EAGLE I.

On September 30, 2019, EAGLE I filed its *Motion for Reconsideration (Of the Decision dated 12 September 2019)*[10]; while the CIR filed *Motion for Reconsideration*[11] on October 1, 2019. On November 11, 2019, EAGLE I filed *Comment/Opposition*[12] to the CIR's Motion; while the CIR failed to file his comment to Eagle I's Motion.[13]

In the assailed Resolution[14] dated January 9, 2020, the Court in Division denied both EAGLE I's *Motion for Reconsideration (Of the Decision dated 12 September 2019)* and the CIR's *Motion for Reconsideration*, for lack of merit.

Thus, the CIR filed his *Motion for Extension of Time to File Petition for Review*[15] on February 4, 2020; while EAGLE I filed its

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[9] Division Docket (CTA Case No. 9638) – Vol. II, pp. 642 to 669.
[10] Division Docket (CTA Case No. 9638) – Vol. II, pp. 690 to 698.
[11] Division Docket (CTA Case No. 9638) – Vol. II, pp. 683 to 688.
[12] Division Docket (CTA Case No. 9638) – Vol. II, pp. 713 to 727.
[13] *Records Verification* dated November 12, 2019; Division Docket (CTA Case No. 9638) – Vol. II, p. 729.
[14] Division Docket (CTA Case No. 9638) – Vol. II, pp. 731 to 738.
[15] EB Docket (CTA EB No. 2227), pp 1 to 2.

Motion for Additional Time to File Petition for Review[16] on February 5, 2020, praying for an extension of fifteen (15) days and fourteen (14) days, respectively, within which to file their respective *Petitions for Review*. Both *Motions* were granted by the Court *En Banc*.[17]

On February 21, 2020, EAGLE I filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 2222[18]. On the same day, the Court received the *Petition for Review* filed by the CIR *via* registered mail on February 18, 2020, docketed as CTA EB No. 2227.[19]

Considering that the instant cases are appeals from the Decision dated September 12, 2019 and Resolution dated January 9, 2020, rendered by the Court in Division in CTA Case No. 9638, CTA EB No. 2227 was consolidated with CTA EB No. 2222 on February 26, 2020.[20]

In the Resolution[21] dated June 30, 2020, the Court *En Banc* ordered both parties to file their respective *Comments*.

On July 20, 2020, EAGLE I filed its *Comment*[22]; while the CIR filed his *Manifestation*[23] on July 22, 2020, stating that he is adopting all his arguments in his *Petition for Review* as his Comment.

On July 28, 2020, the parties filed a *Joint Motion to Refer the Case to Mediation*[24] stating that in the interest of a speedy and amicable resolution of the instant case, the parties mutually agree to refer the case to mediation pursuant to A.M. No. 11-1-5-SC-PHILJA and manifest their willingness to enter into a compromise.

On October 7, 2020, the Court *En Banc* issued a Resolution[25] granting the parties' *Joint Motion to Refer the Case to Mediation* and directing the parties to personally appear before Avigail B. Sanchez,

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[16] EB Docket (CTA EB No. 2222), pp 1 to 4.
[17] Minute Resolution dated February 13, 2020, EB Docket (CTA EB No. 2227), p. 4; Minute Resolution dated February 7, 2020, EB Docket (CTA EB No. 2222), p. 15.
[18] EB Docket (CTA EB No. 2222), pp. 16 to 40.
[19] EB Docket (CTA EB No. 2227), pp. 5 to 13.
[20] Minute Resolution dated February 26, 2020, EB Docket (CTA EB No. 2222), p. 399.
[21] EB Docket (CTA EB No. 2222), pp. 401 to 402.
[22] EB Docket (CTA EB No. 2222), pp. 403 to 417.
[23] EB Docket (CTA EB No. 2222), pp. 425 to 426.
[24] EB Docket (CTA EB No. 2222), pp. 419 to 423.
[25] EB Docket (CTA EB No. 2222), pp. 430 to 432.

Mediation Staff Assistance at the Philippine Mediation Center Unit–Court of Tax Appeals (PMC-CTA) on October 29, 2020.

On December 17, 2020, PMC-CTA filed *PMC-Form 9- Request for Extension*[26] before the Court *En Banc*, requesting for an extension of thirty (30) days from December 23, 2020 or until January 24, 2021, within which to reach an amicable settlement. The same was granted in the Resolution[27] dated January 13, 2021.

On February 9, 2021, the PMC-CTA filed a *Mediator's Report*[28] signed by the Appellate Mediator, Justice Amelia R. Cotangco-Manalastas, indicating that the mediation was unsuccessful.

In the Resolution[29] dated March 1, 2021, the instant consolidated cases were submitted for decision.

On March 19, 2021, EAGLE 1 filed a *Manifestation*[30] stating that the assessment for the deficiency DST sought to be refunded in the instant case was issued beyond the authority given to the revenue officers and must be declared void. In the Resolution[31] dated June 16, 2021, the Court *En Banc* noted EAGLE I's *Manifestation.*

Hence, this Decision.

ISSUES

In **CTA EB No. 2222**, petitioner EAGLE I raises the following issues, *to wit:*

"IV. ISSUE

I. Whether or not the Filinvest case could be applied retroactively and therefore not entitle the taxpayer to the refund of the basic tax due in the total amount of ₱147,213,092.40.

[26] EB Docket (CTA EB No. 2222), p. 433.
[27] EB Docket (CTA EB No. 2222), pp. 435 to 436.
[28] EB Docket (CTA EB No. 2222), p. 437.
[29] EB Docket (CTA EB No. 2222), pp. 449 to 450.
[30] EB Docket (CTA EB No. 2222), pp. 451 to 455.
[31] EB Docket (CTA EB No. 2222), pp. 458 to 459.

> II. Whether or not Petitioner is liable for interest and therefore entitled to refund in the amount of ₱182,302,240.45.
>
> III. Whether or not Petitioner is liable for 25% surcharge and therefore entitled to the refund of the 25% penalty that it paid."[32]

In **CTA EB No. 2227**, the issue, as gathered from the arguments raised by the CIR in his *Petition for Review*, is as follows:

> Whether or not EAGLE I should be liable for fifty-percent (50%) surcharge for willful neglect to file the required DST returns covering taxable years 2008 to 2011.

EAGLE I's arguments:

EAGLE I argues that the Court in Division erred in applying the case of *Commissioner of Internal Revenue vs Filinvest Development Corporation*[33] (or the "*Filinvest* case") retroactively.

Citing the case of *Albino S. Co vs Court of Appeals and People of the Philippines*[34] (or the "*Co* case"), EAGLE I claims that the principle of prospectivity applies not only to statutes, administrative rulings and circulars, but also to judicial decisions; and that the prejudice suffered by EAGLE I as a result of its reliance in good faith on prevailing rule justifies the prospective application of the *Filinvest case*.

EAGLE I maintains that the *Filinvest case* reversed the prevailing rule embodied in BIR Ruling Nos. [DA (FIT-004) 076-08] dated July 24, 2008 and [DA (C-035)127-08] dated August 8, 2008, wherein inter-company advances are not subject to DST; and that such reversal should be applied prospectively pursuant to Section 246 of the NIRC of 1997, as amended.

Further, EAGLE I avers that it relied on the decision of the Court of Appeals in *Commissioner of Internal Revenue vs. Filinvest*

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[32] *Petition for Review*, EB Docket (CTA EB No. 2222), p. 24.
[33] G.R. Nos. 163653 & 167689, July 19, 2011.
[34] G.R. No. 100776, October 28, 1993.

Development Corporation[35] (or the "*CA Filinvest case*"), which affirmed the ruling of the Court of Tax Appeals in the case of *Filinvest Development Corporation and Filinvest Alabang Inc., vs. CIR*[36] (or the "*CTA Filinvest case*") that instructional letters and vouchers are not loan agreements and are therefore not subject to DST. According to EAGLE I, the decisions of the Court of Appeals and Court of Tax Appeals carry persuasive juridical effect.

EAGLE I likewise argues that since it received the FAN on December 29, 2014, the subject assessment for deficiency DST for the period covering taxable years 2008, 2009 and 2010 is already barred by prescription.

In addition, EAGLE I asserts that contrary to the ruling in the assailed Decision, it is not liable for interest and surcharge considering that it relied in good faith in the prevailing interpretations of the Court of Appeals and Court of Tax Appeals that advances made from related companies are not subject to DST.

In its *Manifestation* filed on March 19, 2021, EAGLE I claims that the assessment for the deficiency DST sought to be refunded in the instant case, was issued as a result of the CIR's tax investigation of Eagle I pursuant to LOA 047-2014-00000095 dated May 9, 2014 for the period from January 1, 2012 to December 31, 2012. However, the revenue officers assessed Eagle I for alleged deficiency taxes for transactions which happened outside of the scope of the LOA – from 2009 to 2011. Thus, the assessment against Eagle I was issued beyond the authority given to the revenue officers and as such, must be declared void.

The CIR's arguments:

The CIR counter-argues that EAGLE I should be liable for the fifty percent (50%) surcharges for its willful neglect to file the required DST return covering taxable years 2008 to 2011. According to the CIR, EAGLE I cannot claim good faith considering that as early as 1999, the BIR had already ruled that intercompany advances extended to affiliates are subject to DST.

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[35] CA-G.R. No. 74510, January 26, 2005.
[36] CTA Case No. 6182, September 10, 2002.

Further, there is willful neglect on the part of EAGLE I to file the required DST return, when upon learning of the *Filinvest case*, it did not take any action and merely waited for the BIR to make an investigation and issue an assessment. Allegedly, where the filing of the return has been delayed for a considerable length of time, the delinquency is presumed to be due to willful neglect.

THE COURT *EN BANC*'S RULING

At the outset, the Court *En Banc* deems it necessary to first resolve the matter raised by EAGLE I in its *Manifestation* filed on March 19, 2021.

The CIR did not exceed his authority when he issued the assessment for deficiency DST.

In its *Manifestation*[37], EAGLE I claims that the CIR exceeded his authority in issuing the subject assessment for deficiency DST, interest and surcharge amounting to ₱403,121,879.05, the amount sought to be refunded in the instant case. Allegedly, while LOA 047-2014-00000095 dated May 9, 2014, authorized Revenue Officer (RO) Gerardo Nuestro and Group Supervisor (GS) Medina Lopez, to examine its book of accounts and other accounting records for the period January 1, 2012 to December 31, 2012, EAGLE I was assessed for deficiency DST arising from its "Advances from Related Parties" covering taxable years 2008 to 2011. Thus, EAGLE I avers that the assessment for deficiency DST for taxable years 2008 to 2011 was issued beyond the authority given to the revenue officers and must be declared void.

Moreover, EAGLE I invokes the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[38] wherein the Supreme Court ruled that since an audit is limited to the taxable year specified in the LOA, an assessment covering taxable year/s outside of the period specified in the LOA is void.

We find that EAGLE I failed to establish that the CIR exceeded his authority in issuing the subject DST assessment.

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[37] EB Docket (CTA EB No. 2222), pp. 451 to 455.
[38] G.R. No. 183408, July 12, 2017.

In the instant case, a perusal of the records reveal that although EAGLE I has manifested[39] that a copy of the subject LOA is attached as Annex "A"[40] to its administrative claim for refund (*i.e., BIR Form No. 1914 or Application for Tax Credits or Refund*[41] filed on July 27, 2017), We are unable to uphold EAGLE I's assertion that the revenue officers went beyond the scope of their authority in assessing EAGLE I for transactions made during taxable years not covered by the subject LOA. While the subject LOA was attached as Annex "A" to EAGLE I's administrative claim for refund, Eagle I however, failed to formally offer the same as part of its evidence.

Section 34, Rule 132 of the Revised Rules on Evidence is clear that evidence must be formally offered for it to be considered by the courts, *to wit*:

> "SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

In *Federico Sabay v. People of the Philippines,*[42] the Supreme Court emphasized that courts cannot take notice of evidence not formally offered, *to wit*:

> "Section 34 of Rule 132 of our Rules on Evidence provides that **the court cannot consider any evidence that has not been formally offered**. Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects.[43] **Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified**.
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> This rule however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted.

[39] Paragraph 4 of EAGLE I's *Manifestation*, EB Docket (CTA EB No. 2222), p. 452.
[40] Division Docket – Vol. I (CTA Case No. 9638), p. 115.
[41] Exhibit "P-15", Division Docket – Vol. I (CTA Case No. 9638), pp. 94 to 114.
[42] G.R. No. 192150, October 1, 2014.
[43] *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011.

> The cases of *People v. Napat-a,*[44] *People v. Mate,*[45] and *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.,*[46] to cite a few, enumerated the **requirements so that evidence, not previously offered, can be admitted, namely: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case.**" *(Emphasis supplied)*

Accordingly, the rule is that a document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered and the opposing counsel given an opportunity to object to it or cross-examine the witness called upon to prove or identify it.[47] The rules of procedure and jurisprudence do not sanction the grant of evidentiary value to evidence which was not formally offered.[48]

Further, it must be remembered that being a court of record[49], cases filed before the CTA are litigated de novo, and that party-litigants must prove every minute aspect of their cases.[50] It is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[51] Indubitably, no evidentiary value can be given to any documentary evidence that is merely attached to the records of the case as the rules on documentary evidence require that such documents must be formally offered before the Court.[52]

Thus, although EAGLE I's administrative claim for refund (*BIR Form No. 1914 or Application for Tax Credits or Refund*) was formally offered and admitted by the Court in Division, We are constrained to disregard the attached subject LOA marked as Annex "A" thereof, for

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[44] 258-A Phil. 994 (1989).
[45] 191 Phil. 72 (1981).
[46] G.R. No. 152866, October 6, 2010, 632 SCRA 236.
[47] *Heirs of Serapio Mabborang, et al. vs. Hermogenes Mabborang and Benjamin Mabborang*, G.R. No. 182805, April 22, 2015.
[48] *Jose R. Catacutan vs. People of the Philippines*, G.R. No. 175991, August 31, 2011.
[49] Section 8 of R.A. No. 1125, amended.
[50] *Commissioner of Internal Revenue vs. Lucio L. Co, et al.*, G.R. No. 241424, February 26, 2020, citing *Commissioner of Internal Revenue vs. United Salvage and Towage (Phils.), Inc.*, 738 Phil. 335, 344 (2014).
[51] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.
[52] *Pilipinas Shell Petroleum vs. Commissioner of Customs*, G.R. No. 195876, December 5, 2016.

being a mere photocopy, and for EAGLE I's failure to formally offer the same. At most, what can be considered by this Court is the existence of the subject LOA but not the contents thereof.

Moreover, while the Court may consider evidence not formally offered, the same must, however, comply with the following essential conditions:

(1) it must have been duly identified by testimony duly recorded; and
(2) it must have been incorporated in the records of the case.[53]

Being an exception, the same may only be applied when there is strict compliance with the foregoing requisites; otherwise, the general rule in Section 34 of Rule 132 of the Rules of Evidence should prevail.

In the instant case, a perusal of the records show that the LOA has not been duly identified by EAGLE I's witness.[54] In fact, the said LOA was never mentioned by any of EAGLE I's witnesses. Thus, having failed to comply with the *first* condition cited above, the exception cannot be applied in this case. Further, as mentioned earlier, the said LOA is a mere photocopy and thus cannot be given any probative value by the Court.

Clearly, EAGLE I failed to fully substantiate its allegation that the assessment for deficiency DST, interest and surcharge covering the period from TY 2008 to 2011 is outside the scope of the LOA. Hence, the subject assessment cannot be invalidated on the ground that the CIR exceeded his authority in issuing the subject assessment.

It bears emphasis that actions for tax refund, as in the instant case, are in the nature of a claim for exemption and the law is not only construed in *strictissimi juris* against the taxpayer, but also the pieces of evidence presented entitling a taxpayer to an exemption is

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[53] *Elvira Mato Vda. De Oñate, et al. vs. The Court of Appeals et al,* G.R. No. 116149, November 23, 1995, citing *People v. Napat-a,* 179 SCRA 403 [1989] and *People vs. Mate* 103 SCRA 484 [1981].

[54] Exhibit "P-17", Division Docket (CTA Case No. 9638) – Vol. II, pp. 503 to 508; Exhibit "P-18", Division Docket (CTA Case No. 9638) – Vol. II, pp. 399 to 405.

strictissimi scrutinized and must be duly proven.[55]

The Filinvest case may be applied retroactively.

In the assailed Decision, the Court in Division applied retroactively the doctrine laid down in the *Filinvest* case which held that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements which is subject to DST. According to the Court in Division, judicial interpretations of a statute constitute a part of the law as of the date it was originally passed.

EAGLE I, however, contends that the decision in the *Filinvest* case promulgated by the Supreme Court should not be given any retroactive effect. Citing the *Co* case, EAGLE I submits that the principle of prospectivity applies not only to statutes, administrative rulings and circulars but also to judicial decisions.

The Court *En Banc* is not persuaded.

In the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[56], the Supreme Court held that the interpretation placed upon a law by the Supreme Court shall form part of the law as of the date it was enacted, *to wit:*

> "Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. **Thus, such interpretation constitutes a part of the law as of the date the statute is enacted.** It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have

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[55] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[56] G.R. No. 197525, June 4, 2014.

acted in good faith." (*Emphasis and underscoring supplied*).

Based on the foregoing jurisprudential pronouncements, it is clear that a judicial interpretation placed upon a law by the Supreme Court becomes a part of the law interpreted as of the date when the law was originally passed because it establishes the contemporaneous legislative intent of the law. The **only exception** is that when there is already a prevailing doctrine or interpretation of the Supreme Court, and the High Court overrules or reverses the said doctrine, then the new doctrine must be applied prospectively. Considering however that there was no prevailing doctrine or interpretation of the Supreme Court that was reversed or overturned by the High Court in the *Filinvest* case, then the said exception cannot be applied in the instant case.

In view thereof, We find EAGLE I's reliance on the *Co case* to be without merit. In fact, the *Co* case, citing the ruling of the Supreme Court in the case of *People of the Philippines vs. Jabinal*[57], states:

> "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 **<u>'Judicial decisions applying or interpreting the laws or the Constitution</u>** shall form a part of the legal system . . .' The **interpretation upon a law by this Court constitutes, in a way, <u>a part of the law as of the date that law originally passed</u>, since this Court's construction merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate.** The settled rule supported by numerous authorities is a restatement of legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. . ., **but when a doctrine of this Court is <u>overruled and a different view is adopted</u>, the <u>new doctrine</u> should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** . ." (Emphasis and underscoring supplied)

[57] G.R. No. L-30061, February 27, 1974.

A careful reading of the foregoing ruling reveals that the prospective application of a "new" doctrine will come into play only when an "old" doctrine is overruled.

Pertinent to the instant case is the *Filinvest case* where the Supreme Court interpreted Section 180 of the Tax Code (now Section 179 of the NIRC of 1997, as amended) particularly on the scope of the word 'loan agreements', as being subject to DST. The Supreme Court held that loan agreement includes "*instructional letters, as well as, the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates*". Section 180 was inserted in the NIRC through the enactment of RA No. 7660 on December 23, 1993. This provision is, up until now, still in our statute books.

Relative thereto, the same Section 180 was also carried over in RA No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243 and RA No. 10963 or the "Tax Reform for Acceleration and Inclusion (TRAIN) Law".

Thus, as mentioned earlier, considering that there was no previously established doctrine or ruling that was overturned by the *Filinvest* case, the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997), as amended, is deemed constituted as part of the NIRC as of December 23, 1994 up to the present time.

Filinvest case did not reverse a general interpretative rule.

EAGLE I insists that there was an existing doctrine that was reversed by the *Filinvest case*. According to EAGLE I, prior to the promulgation of *Filinvest* case, the prevailing rule is that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST; and that such prior rule was embodied in BIR Ruling Nos. [DA (FIT-004) 076-08] dated July 24, 2008 and [DA (C-035) 127-08] dated August 8, 2008. As such, considering that such prevailing rule was overturned by the *Filinvest* case, the new doctrine laid down in the said case must only be applied prospectively pursuant to Section 246 of the NIRC of 1997, as amended.

We disagree.

A cursory reading of the said BIR rulings relied upon by EAGLE I shows that the same are not general interpretative rule applicable to all taxpayers. It bears emphasis that the said rulings were issued as a response to the specific query made by a particular taxpayer. Correspondingly, not being the taxpayer who sought the said rulings from the CIR, EAGLE I cannot validly invoke the same.

Likewise, EAGLE I's reliance on the ruling of the Court of Appeals in the *CA Filinvest case*, which affirmed the decision of the CTA in the *CTA Filinvest case*, that instructional letters and vouchers were not loan agreements and are thus not subject to DST, is misplaced.

In the case of *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al,*[58] it was held that **only** decisions of the Supreme Court establish jurisprudence or doctrine in this jurisdiction, *to wit*:

> ". . . the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are <u>only</u> 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 **'<u>[O]nly</u> the decisions of this Honorable Court establish <u>jurisprudence or doctrines</u> in this jurisdiction.'** xxx." (Emphasis and underscoring supplied).

Further, in *Commissioner of Internal Revenue v. San Roque Power Corporation,*[59] the Supreme Court has declared, in no uncertain terms, that CTA decisions do not constitute as binding precedents, 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

[58] G.R. No. L-25291, January 30, 1971.
[59] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

> 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.*)

Clearly therefore, only decisions of the Supreme Court and not the decisions of the CA or CTA, constitute as binding precedents and establish jurisprudence or doctrines in this jurisdiction. Thus, the CA and CTA decisions relied upon by EAGLE I cannot be treated or equated as doctrinal pronouncement.

In sum, there being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 (now Section 179) of the NIRC constitutes part thereof as of the date it was originally passed, i.e., on December 23, 1994.

Thus, We sustain the Court in Division's ruling that the doctrine in the *Filinvest* case may be applied to this case without violating the principle on non-retroactivity of laws and rulings.

The BIR's right to assess and collect the subject deficiency DST has not yet prescribed.

EAGLE I contends that since the FAN No. DS-ELA55300-12-14-1237 was received only on December 29, 2014, the assessment for the period covering taxable years 2008 to 2010 is already barred by the three-year prescriptive period.

We do not agree.

Section 222 of the NIRC of 1997, as amended, provides the exceptions to the three-year prescriptive period espoused under Section 203, as follows:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) In the case of a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission:** Provided, That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. " (*Emphasis and underscoring supplied.*)

It is evident from the foregoing that in case of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the omission.

In the instant case, considering that the record is bereft of any showing that EAGLE I filed DST returns for the subject transactions covering taxable period 2008 to 2010, the ten-year prescriptive period applies. Clearly, the period to assess has not yet prescribed when the BIR issued the assessment against EAGLE I.

EAGLE I is not liable to pay interest and surcharge.

In the assailed Decision, the Court in Division ruled that EAGLE I is liable for interest and 25% surcharge. The Court in Division likewise ruled that the CIR may only impose 25% surcharge considering that there was no "willful neglect" on the part of EAGLE I to justify the imposition of the 50% surcharge. Thus, the Court in Division held that EAGLE I is entitled to the refund of the reduced surcharge of 25% amounting to ₱36,803,273.10.

In assailing the ruling of the Court in Division, EAGLE I, in its *Petition for Review* in **CTA EB No. 2222,** argues that it is entitled to refund both the interest and surcharge since it relied in good faith on the prevailing interpretations of the CTA and CA that advances made from related companies are not subject to DST.

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On the other hand, the CIR, in his *Petition for Review* in **CTA EB No. 2227**, insists that EAGLE I should be liable for the fifty percent 50% surcharge for its willful neglect to file the required DST returns covering taxable years 2008 to 2011.

We agree with EAGLE I that both the interest and surcharge should be cancelled.

It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.[60]

A perusal of EAGLE I's claim for refund shows that it merely relied in BIR Ruling Nos. [DA (FIT-004) 076-08] dated July 24, 2008 and [DA (C-035) 127-08] dated August 8, 2008 and the CTA/CA decisions issued prior to *Filinvest* case promulgated on July 19, 2011, which states that inter-company loans and advances covered by inter-office memoranda are not subject to DST. Hence, EAGLE I's reliance on said rulings and court decisions justifies the non-imposition of surcharges and interest.

In sum, Court *En Banc* finds that EAGLE I is liable for deficiency DST but not for interest and surcharge. Correspondingly, We partly modify the findings of the Court in Division and rule that EAGLE I is entitled to the refund of the amount of interest and surcharge in the aggregate amount of **₱255,908,786.65,** broken down as follows:

Interest	₱ 73,606,546.20
Surcharge	182,302,240.45
TOTAL	**₱ 255,908,786.65**

WHEREFORE, in light of the foregoing considerations, EAGLE I's *Petition for Review* in CTA EB No. 2222 is **PARTIALLY GRANTED**, while the CIR's *Petition for Review* in CTA EB No. 2227, is **DENIED** for lack of merit.

Accordingly, the assailed Decision dated September 12, 2019 and Resolution dated January 9, 2020, both rendered by the Court in

[60] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.

Division in CTA Case No. 9638 are **MODIFIED**. The CIR is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of EAGLE I in the amount of **₱255,908,786.65**, representing the following:

Interest	₱ 73,606,546.20
Surcharge	182,302,240.45
TOTAL	**₱ 255,908,786.65**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, please see my Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

(I join the Concurring and Dissention Opinion of Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

(I join the Concurring and Dissention Opinion of Presiding Justice Roman G. Del Rosario and Associate Justice Catherine T. Manahan)
LANEE S. CUI-DAVID
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 cases were 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

EAGLE I LANDHOLDINGS, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 2222
(CTA Case No. 9638)

x- -x

COMMISSIONER OF INTERNAL REVENUE
Petitioner,

- versus -

EAGLE I LANDHOLDINGS, INC.,
Respondent.

CTA EB No. 2227
(CTA Case No. 9638)

Present:

DEL ROSARIO, ***P.J.***,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, *JJ.*

Promulgated:
MAR 01 2022 4:13pm

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 (CIR) in CTA EB No. 2227 for lack of merit.

With due respect, however, I am constrained to withhold my assent on the *ponencia* in so far as it partially grants the Petition for Review filed by Eagle I Landholdings, Inc. (Eagle I) in CTA EB No. 2222.

I humbly submit that the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] (*Filinvest* case) cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on rulings available during the concerned taxable period.

In failing to subject to Documentary Stamp Tax (DST) its inter-company advances covering taxable years (TYs) 2008, 2009, 2010 and 2011, Eagle I relied in good faith on the prevailing rule prior to the promulgation of the *Filinvest case* 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, Eagle I relied on the following:

(i) *Filinvest Development Corp. vs. CIR*,[2] wherein the Court of Appeals (CA) affirmed the decision of the Court of Tax Appeals (CTA) in *CIR vs. Filinvest Development Corp.*[3] that instructional letters and vouchers containing advances to affiliates are not loan agreements and therefore, not subject to DST;

(ii) BIR Ruling DA-(FIT-004) 076-08 dated January 26, 2005, wherein the BIR ruled that advances between the related companies even if covered by board resolutions are not subject to DST under Section 179 of the NIRC of 1997, as amended, if there is no loan agreement documenting the advances; 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 Pic to member companies of Star Group, which are covered by inter-office memoranda, are not subject to DST under Section 179 of the NIRC of 1997, as amended.

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[1] G.R. No. 163653 and 167689, July 19, 2011.
[2] CTA Case No. 6182, September 10, 2002.
[3] CA-G.R. SP No. 74510, January 26, 2005.

Clearly, the existing interpretation at the time of the transactions (TYs 2008, 2009, 2010 and 2011) was that loans and advances to affiliates covered by inter-office memoranda are not subject to DST. This interpretation was bolstered by the decision of the CA in *Commissioner of Internal Revenue vs. APC Group, Inc.*[4] and the CTA in *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue*[5] declaring that the ruling in BIR Ruling No. 116-98 dated July 30, 1998 (i.e., that inter-company advances made by Belle to its affiliates are not subject to DST) is consistent with the provisions of the NIRC of 1997. These rulings are 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*[6] is enlightening:

> "**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 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 laid down by the CA in APC Group and the CTA in Belle Corporation, respectively, was effectively over-ruled on July 19, 2011 when the Supreme Court promulgated *Filinvest case*,

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[4] CA-G.R. SP No. 69869, November 29, 2002.
[5] CTA EB Nos. 147 and 155, October 13, 2006.
[6] G.R. Nos. 104151 and 105563, March 10,1995.

the latter cannot be applied retroactively to the prejudice of taxpayers who relied on the former doctrine in good faith.

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 <u>prospectively</u>), 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.

In fine, I submit that Eagle I may not be held liable for DST on its transactions prior to July 19, 2011, when the *Filinvest case* was promulgated, since the prevailing doctrine prior to said date was the exemption of inter-company advances from DST.

All told, I VOTE to: (i) DENY the Petition for Review in CTA EB No. 2227 filed by the Commissioner of Internal Revenue, and (ii) GRANT the Petition for Review in CTA EB No. 2222 filed by Eagle I Landholdings, Inc. and ORDER the REFUND or ISSUANCE of TAX CREDIT CERTIFICATE in favor of Eagle I Landholdings, Inc., of the erroneously and/or illegally collected DST for taxable years 2008, 2009, 2010, and for period January 1, 2011 to July 18, 2011.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

EAGLE I LANDHOLDINGS, INC., *Petitioner,*

CTA *EB* NO. 2222 (CTA Case No. 9638)

-versus-

COMMISSIONER OF INTERNAL REVENUE, *Respondent.*

x- x

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*

CTA *EB* NO. 2227 (CTA Case No. 9638)

-versus-

EAGLE I LANDHOLDINGS, INC., *Respondent.*

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA,
MODESTO-SAN PEDRO,
REYES-FAJARDO, and
CUI-DAVID, JJ.

Promulgated:

MAR 01 2022 4:12pm

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

The *ponencia* ruled that the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest*

Development Corporation[1] *(Filinvest* case*)* may be applied to "Advances from Affiliates and Related Parties" which occurred prior to its promulgation, thus, holding Eagle I Landholdings, Inc. (Eagle Landholdings), liable for deficiency documentary stamp tax (DST).

I respectfully disagree.

This case involves the advances from Affiliates and Related Parties of Eagle Landholdings which were borne out by the accounting records of the company pursuant to an audit conducted by the revenue officers of the Bureau of Internal Revenue (BIR). The Commissioner of Internal Revenue (CIR) assessed petitioner for deficiency DST in the total amount of Php403,121,879.05 for taxable years 2008 to 2011, citing Sec. 179 of the 1997 National Internal Revenue Code, as amended (NIRC) and the ruling of the Supreme Court in the *Filinvest* case which ruled as follows:

> "When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "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 or used in the Philippines.
>
> xxx xxx xxx
>
> **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)

There is no dispute that prior to the afore-quoted *Filinvest* case, the prevailing legal milieu was that "inter-office memos" covering intercompany advances were not considered loan agreements subject to DST based on various rulings of the BIR and more significantly the decision of the Court of Appeals (CA) in the case entitled *Commissioner of Internal Revenue vs. Filinvest Development Corp.*[2] In short, the doctrine enunciated by the Supreme Court in the *Filinvest* case was lacking or absent at the time that herein petitioner entered into such transactions during the period covered by the assessment.

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[1] G.R. Nos. 163563 and 167680, July 19, 2011.
[2] CA-G.R. SP No. 74510, January 26, 2005.

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Given that lacuna in the judicial interpretation of the subject matter, petitioner faithfully relied on the pronouncements made by respondent and the CA on a similar matter, thus prompting non-payment of said DST. It must be noted that Eagle Landholdings eventually paid the DST plus interest and surcharge in response to the deficiency tax assessment issued by the CIR which is now the subject of the instant claim for refund.

The *ponencia* elucidated that the *Filinvest* decision of the Supreme Court that merely interpreted and applied Section 179 of the 1997 NIRC, effectively forms part of the law as of the date of its enactment.

I humbly register my dissent to this conclusion and advance the view that the power to tax must be construed strictly against the government[3] and any retroactive application of the ruling in the *Filinvest* case violates the taxpayer's constitutional rights to equity and due process.

A taxpayer relying on the official interpretation of the NIRC provisions by the CIR who, by law, is vested with the power to interpret tax laws,[4] must be amply protected by law. The principle of prospectivity has also been applied to judicial decisions which although by themselves are not laws, *per se*, are nevertheless evidence of what the laws mean.[5]

In the absence of a definitive Supreme Court decision interpreting Section 179 of the 1997 NIRC, as amended at the time that the subject transactions of the instant case took place, we must adhere to the principles of equity and justice and resist applying retroactively a Supreme Court decision which rules otherwise. This has been my consistent stand in previous cases decided by the Court involving a similar issue.[6] Conversely, I do concur with the portion of the *ponencia* which partially granted the claim for refund by declaring that Eagle

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[3] *Republic of the Philippines vs. Intermediate Appellate Court and Sps. Antonio and Clara Pastor*, G.R. No. 69344, April 26, 1991.

[4] **1997 National Internal Revenue Code**

"Section 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."

[5] Albino S. Co vs. Court of Appeals and People of the Philippines, G.R. 100776, October 28, 1993.

[6] *South Premiere Power Corporation vs. CIR, CTA Case No. 9337, February 27, 2018; Liberty Telecoms Holdings, Inc., CTA Case No 9311, October 18, 2018; CIR vs. San Miguel Corp vs. CIR; San Miguel Corp. vs. CIR, CTA EB Nos. 2167 and 2169, September 23, 2021.*

Landholdings is not liable to pay interest and surcharge on the ground that it relied in good faith on the prior rulings of the CIR, hence must not be penalized for non-payment. My concurrence to this portion of the *ponencia* precisely emphasizes my point that the Court should instead study the entitlement of Eagle Landholdings to the entire claim for refund and not just delete the imposition of surcharges and interest.

Accordingly, I vote to grant the Petition for Review filed by Eagle Landholdings and remand the case to the Court in Division to decide on the amount to be refunded based on the factual veracity of Eagle Landholdings' evidence.

CATHERINE T. MANAHAN
Associate Justice