REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EAGLE II HOLDCO, INC., *Petitioner,*	**CTA CASE NO. 9637** For: Refund
-versus-	Members: CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE *Respondent.*	Promulgated: SEP 10 2019 1:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision on December 4, 2018, is a Petition for Review filed by petitioner Eagle II Holdco, Inc. against respondent Commissioner of Internal Revenue ("CIR") on July 31, 2017, seeking the refund or issuance of a Tax Credit Certificate ("TCC") in the total amount of ₱108,025,207.31, inclusive of fifty (50%) percent surcharge and interest, representing petitioner's alleged erroneously paid deficiency documentary stamp tax ("DST").

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines[1], with registered address at Manila Bay Resort, Temporary Facilities Office, Atlantic Drive, Asiaworld City Boulevard 2000, Parañaque City, 1703, Metro Manila, Philippines.[2]

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[1] Docket (Vol. II), Exhibit "P-1", p. 615
[2] Docket (Vol. II), Exhibit "P-1-b", p. 619.

Respondent is the duly appointed CIR 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. Respondent 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, BIR Building, No. 313 Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Court may be served.

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3] ("*Filinvest* case" for brevity) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation 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".

On December 29, 2014, petitioner received Formal Assessment Notice ("FAN") with Assessment Notice No. DS-ELA55300-12-14-1238 and Details of Discrepancies from the BIR assessing petitioner of deficiency DST, interest and fifty percent (50%) surcharge amounting to ₱99,581,993.21 on advances from affiliates and related parties pursuant to Section 179 of the NIRC, as amended, as established in the *Filinvest* case.[4]

Petitioner protested the above assessment in a letter protest to the FAN dated January 27, 2015.[5]

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[3] G.R. Nos. 163653 and 167689, July 19, 2011.
[4] Docket (Vol. II), Exhibit "P-2", 630-632.
[5] Docket (Vol. II), Exhibit "P-3", 633-666.

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While the letter protest was pending, petitioner, without admitting liability, voluntarily paid the deficiency DST including the interest and fifty percent (50%) surcharge. Petitioner made a total of six installment payments of ₱10,000,000.00; ₱5,000,000.00; ₱15,000,000.00; ₱25,000,000.00; ₱25,000,000.00; and ₱28,025,207.31 for the alleged deficiency assessment on December 29, 2014[6]; March 20, 2015[7]; May 22, 2015[8]; May 29, 2015[9]; June 30, 2015[10]; and July 31, 2015[11], respectively.

On May 19, 2017, petitioner filed an administrative claim for refund or tax credit addressed to Revenue District Officer Federico Q. Pilarca of the Revenue District Office ("RDO") No. 52 of the BIR, seeking recovery of one installment payment for deficiency DST, interest and fifty (50%) surcharge paid on May 22, 2015.[12]

On July 14, 2017, petitioner submitted a letter to Revenue District Officer Pilarca, requesting the withdrawal of its administrative claim for refund for the reason that it will be incorporated in one administrative claim.[13]

On July 27, 2017, petitioner filed its administrative claim for refund or tax credit with RDO No. 52 of the BIR, seeking the recovery of the total amount of ₱108,025,207.31, representing deficiency DST, interest, and fifty percent (50%), and surcharge paid in six installments, the last and final installment of which was made on July 31, 2015.[14]

Due to the failure of respondent to resolve the administrative claim for refund, petitioner filed the instant Petition for Review[15] on July 31, 2017 before this Court.

On August 11, 2017, this Court issued summons against respondent who was ordered to submit an Answer to the said

[6] Docket (Vol. II), Exhibits "P-4" and "P-4-a", pp. 667 and 668, respectively.
[7] Docket (Vol. II), Exhibits "P-6" and "P-6-a", pp. 677 and 678, respectively.
[8] Docket (Vol. II), Exhibits "P-7" and "P-7-a", pp. 679 and 680, respectively.
[9] Docket (Vol. II), Exhibits "P-8" and "P-8-a", pp. 681 and 682, respectively.
[10] Docket (Vol. II), Exhibits "P-9" and "P-9-a", pp. 683 and 684, respectively.
[11] Docket (Vol. II), Exhibits "P-10" and "P-10-a", pp. 685 and 686, respectively.
[12] Docket (Vol. II), Exhibit "P-12", pp. 691-717.
[13] Docket (Vol. II), Exhibit "P-13", pp. 718-746.
[14] Docket (Vol. II), Exhibit "P-14", pp. 747-842.
[15] Docket (Vol. I), pp. 10-258.

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petition.[16] On August 31, 2017, respondent filed through registered mail a Motion for Extension of Time to File Answer[17], which the Court granted in an Order dated September 11, 2017.[18] Respondent filed his *Answer*[19] through registered mail on October 2, 2017, interposing the following special and affirmative defenses:

SPECIAL AND AFFIRMATIVE DEFENSES

> 3. Respondent reiterates and repleads the preceding paragraphs of the Answer as part of his Special and Affirmative Defenses which are discussed hereunder;
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> 4. Petitioner's alleged claim for refund or issuance of tax credit certificate is still subject to administrative investigation/examination by the BIR.
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> 5. On the issue as to whether or not the "Filinvest case" will apply to the case at bar, basic is the rule that judicial interpretation of the law retroacts to the date when the said law became effective.
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> 6. In the case of **Accenture, Inc. vs. Commissioner of Internal Revenue**, G.R. No. 190102, July 11, 2012, the Supreme Court sustained the ruling of the CTA *En Banc* which allowed the retroactive application of the Supreme Court's pronouncement in **Commissioner of Internal Revenue vs. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.**, 541 Phil. 119:
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>> "This Court upholds the position of the CTA *en banc* that, because Section 108(B) of the 1997 Tax Code is a

[16] Docket (Vol. I), p. 259.
[17] Docket (Vol. I), pp. 263-264
[18] Docket (Vol. I), p. 266.
[19] Docket (Vol. I), pp. 268-271.

verbatim copy of Section 102(b) of the 1997 Tax Code, any interpretation of the latter holds true for the former.

"**Moreover, even though Accenture's Petition was filed before Burmeister was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one.** When this Court interpreted Section 102(b) pf the 1977 Tax Code in Burmeister, this interpretation became part of the law from the moment it became effective. It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."

7. Further, in **Eagle Realty vs. Republic of the Philippines**, 594 SCRA 555, the Supreme Court held:

"**Judicial interpretation of a statute constitutes 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. Such judicial doctrine does not amount to the passage of a new law, **but consists merely of a construction or interpretation of a pre-existing one."**

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8. From the abovementioned rulings made by the Supreme Court, it can be resolved that the case of CIR vs. Filinvest Development Corporation issued on July 19, 2011 is applicable to transactions or advances made in favor of petitioner from related companies covering taxable years 2008 to 2011. Hence, respondent's position in finding petitioner liable to pay deficiency documentary stamp tax must be upheld by the Honorable Court.

9. Furthermore, the petition must be dismissed based on Section 1(g), Rule 16 of the Rules of Court because petitioner is not entitled to the claim for refund and respondent committed no act or omission constituting a breach of the obligation for which the petitioner may maintain an action for recovery of damages.

10. To sustain a motion to dismiss for lack of cause of action, the complaint must show that the claim for relief does not exist, rather than that a claim has been defectively stated, or is ambiguous, indefinite or uncertain. **(Universal Aquarius, Inc. and Conchita Tan vs. Q.C. Human Resources Management Corporation, G.R. No. 155990, September 12, 2007)**

11. The imposition of deficiency interest under Section 249 (B) of the NIRC, as amended, certainly applies to all internal revenue taxes imposed by the Tax Code.

Section 247(a) of the Tax Code clearly provides that:

> "SEC. 247. **General Provisions.** – The additions to the tax or deficiency tax prescribed in this Chapter **shall apply to all taxes, fees and charges imposed in this**

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> **Code.** The Amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. (Emphasis supplied)

12. The penalty of fifty percent (50%) has been imposed pursuant to Section 248 (A), for wilful neglect on the part of petitioner to file return and pay the tax due thereon as required under the rules and regulations.

13. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.

14. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to claimed refund and failure to adduce sufficient proof is fatal to the claim for refund/credit.

15. It is incumbent upon the latter to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.

16. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation (***Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*** and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).***

On October 10, 2017, this Court set the pre-trial conference of the instant case and ordered both parties to submit their respective pre-trial brief.[20] Respondent filed via courier his pre-trial

[20] Docket (Vol. I), Notice of Pre-Trial Conference, pp. 273-274.

brief[21] on January 24, 2018, while petitioner filed its pre-trial brief[22] on January 26, 2018.

On February 1, 2018, this Court ordered[23] the parties to file a joint stipulation of facts and issues which they submitted on February 13, 2018.[24] Hence, the Pre-trial Order was issued on March 14, 2018.[25]

To prove its case, petitioner presented as witnesses Atty. Jose Lis C. Leagogo[26], petitioner's former President and counsel in the instant case, and Minerva A. Tablan[27], Senior Accounting of Tiger Resort Leisure & Entertainment, Inc., which has an existing service agreement with petitioner.

On June 18, 2018, petitioner filed its Formal Offer of Evidence.[28]

On September 5, 2018, respondent manifested that he will no longer be presenting any evidence/witnesses.[29]

On September 28, 2018, the Court's First Division issued an Order[30] transferring the instant case to the Court's Second Division.

In a Resolution dated October 8, 2018, the Court admitted all of petitioner's evidence.[31]

Petitioner's documentary evidence are as follows:

Exhibit:	Description:
P-1	Petitioner's Amended Articles of Incorporation
P-1-a	Article Second of the Amended Articles of

[21] Docket (Vol. I), pp. 275-277.
[22] Docket (Vol. I), pp. 280-287.
[23] Docket (Vol. I), pp. 559-560.
[24] Docket (Vol. I), pp. 569-574.
[25] Docket (Vol. I), pp. 582-590.
[26] Docket (Vol. I), Order dated May 8, 2018, pp. 591-592.
[27] Docket (Vol. I), Order dated June 5, 2018, pp. 850-851.
[28] Docket (Vol. II), pp. 603-846.
[29] Docket (Vol. II), pp. 854-855; Order dated September 6, 2018.
[30] Docket (Vol. II), p. 858.
[31] Docket (Vol. II), pp. 860-861.

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	Incorporation
P-1-b	Article Third of the Amended Articles of Incorporation
P-2	Formal Assessment Notice (FAN) No. DS-ELA55300-12-14-1238 issued against petitioner
P-3	Petitioner's Letter of Protest to the FAN dated 27 January 2015
P-3-a	Signature of Atty. Jose Lis C. Leagogo in petitioner's Letter of Protest to the FAN dated 27 January 2015
P-4	BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 29 December 2014 for the total amount of Ten Million Pesos (Php10,000,000.00)
P-4-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Ten Million Pesos (Php10,000,000.00)
P-4-b	Signature of Atty. Jose Lis C. Leagogo in BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 29 December 2014 for the total amount of Ten Million Pesos (Php10,000,000.00)
P-5	Expense Reimbursement Agreement between Tiger Resort, Leisure & Entertainment Inc. and Tiger Resorts Property Management Incorporated, Eagle I Landholdings, Inc., and Eagle II Holdco, Inc., executed on 06 January 2015
P-5-a	Third (3rd) Whereas Clause of the Expense Reimbursement Agreement
P-5-b	Paragraph (1.1)(D)(b) of the Expense Reimbursement Agreement
P-6	BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 20 March 2015 for the total amount of Five Million Pesos (Php5,000,000.00)
P-6-a	BTR-BIR Tax Payment Slip dated 20 March 2015 for the total amount of Five Million Pesos (Php5,000,000.00)
P-7	BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 22 May 2015 for the total amount of Fifteen Million Pesos (Php15,000,000.00)
P-7-a	BTR-BIR Tax Payment Slip dated 22 May 2015 for the total amount of Fifteen Million Pesos (Php15,000,000.00)
P-8	BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitusbishi UFJ on 29 May 2015 for the total amount of Twenty Five Million Pesos (Php25,000,000.00)

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P-8-a	BTR-BIR Tax Payment Slip dated 29 May 2015 for the total amount of Twenty Five Million Pesos (Php25,000,000.00)
P-9	BIR Payment Form No. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 30 June 2015 for the total amount of Twenty Five Million Pesos (Php25,000,000.00)
P-9-a	BTR-BIR Tax Payment Slip dated 30 June 2015 for the total amount of Twenty Five Million Pesos (Php25,000,000.00)
P-10	BIR Payment Form NO. 0605 stamp received by the Bank of Tokyo – Mitsubishi UFJ on 31 July 2015 for the total amount of Twenty Eight Million Twenty Five Thousand Two Hundred Seven and 31/100 (Php28,025,207.31)
P-10-a	BTR-BIR Tax Payment Slip dated 31 July 2015 for the total amount of Twenty Eight Million Twenty Five Thousand Two Hundred Seven and 31/100 (Php28,025,207.31)
P-11	Letter from the BIR dated 7 August 2015 acknowledging Petitioner's payments
P-12	BIR Form No. 1914 received on 19 May 2017 by BIR Revenue District Office (RDO) No. 52 with attached Letter dated 19 May 2017 entitled "Eagle II Holdco, Inc. Tax Identification No. 007-035-167 Application for Refund/Tax Credit of Deficiency Documentary Stamp Tax Paid in the Amount of Php15,000,000.00 Inclusive of Interest and Surcharge for Taxable Years 2008-2011
P-12-a	Signature of Atty. Jose Lis C. Leagogo in the Letter dated 19 May 2017
P-13	Letter dated 13 July 2017 received on 14 July 2017 by BIR RDO No. 52 entitled "Eagle II Holdco, Inc. Tax Identification No. 007-035-167 Request for the Withdrawal of the Application for Refund/Tax Credit of Deficiency Documentary Stamp Tax Paid in the amount of Php15,000,000.00 Inclusive of Interest and Surcharge for Taxable Years 2008, 2009, 2010, and 2011 dated 19 May 2017
P-13-a	Signature of Atty. Jose Lis C. Leagogo in the Letter dated 13 July 2017
P-14	BIR Form No. 1914 received on 27 July 2017 by BIR RDO No. 52 with attached Letter dated 27 July 2017 entitled "Eagle II Holdco, Inc. Tax Identification No. 007-035-167 Application for Refund/Tax Credit of Deficiency Documentary Stamp Tax Paid in the Amount of Php108,025,207.31 Inclusive of Interest and Surcharge for Taxable Years 2008-2011

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P-14-a	Signature of Atty. Jose Lis C. Leagogo in the Letter dated 27 July 2017
P-15	Secretary's Certificate dated 19 May 2017
P-16	Special Power of Attorney dated 19 May 2017
P-17	Judicial Affidavit of Atty. Jose Lis C. Leagogo
P-17-a	Signature of Atty. Jose Lis C. Leagogo in his Judicial Affidavit
P-18	Judicial Affidavit of Ms. Minerva Tablan
P-18-a	Signature of Ms. Minerva Tablan in her Judicial Affidavit

The case was submitted for decision on December 4, 2018[32] considering the filing through registered mail of respondent's Memorandum on October 25, 2018[33] and petitioner's Memorandum on November 14, 2018.[34]

Petitioner's Arguments[35]

Petitioner maintains that the BIR's retroactive application of the *Filinvest* case in assessing petitioner of deficiency DST on its advances made from related companies for taxable years 2008, 2009, 2010, and 2011 is improper. Moreover, petitioner contends that granting without admitting that it is liable for DST, said liability should not be subject to interest for the reason that the deficiency which is the basis for interest exists only in income, estate and donor's taxes. According to petitioner, considering that there can be no deficiency in the case of DST, there also should be no interest because the basis for interest is the existence of "deficiency".

Petitioner also argues that no surcharge should have been imposed against petitioner inasmuch as during the taxable years covered by the investigation, the prevailing case law was that no DST is imposable. Petitioner contends that assuming without conceding that the advances from related companies of petitioner made in 2008 were subject to DST, the BIR erred in imposing a 50% surcharge for its alleged willful neglect to file the DST return. According to petitioner, at most, the BIR should have imposed only

[32] Docket (Vol. II), Resolution dated December 4, 2018, p. 896.
[33] Docket (Vol. II), pp. 862-865.
[34] Docket (Vol. II), pp. 867-894.
[35] Docket (Vol. II), pp. 873-892.

a 25% surcharge under Section 248(A) since there was no "willful neglect" to file the return on the part of petitioner.

Petitioner avers that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of the lower courts regarding similar issues are sufficient justification to cancel the imposition of surcharge and interest. Further, petitioner maintains that it has sufficiently proven the requisites for the claim for refund.

Respondent's Counter-Arguments[36]

Respondent, on the other hand, argues that petitioner cannot invoke good faith for failure to file the required DST return based on its contention that it was in honest belief that the inter-company advances are not subject to DST because of decisions of the Court of Tax Appeals and Court of Appeals. According to respondent, as early as 1999, BIR Ruling No. 108-99 was issued by the BIR modifying its previous ruling and had already ruled that inter-company advances (evidenced by inter-office memos) extended by a corporation to its affiliates are subject to DST. Respondent argues that the CTA and CA did not declare BIR Ruling No. 108-99 as invalid, but only ruled that the same cannot be given retroactive application. Thus, respondent claims that BIR Ruling No. 108-99 is subsisting and valid.

According to respondent, even assuming that petitioner believed that inter-office memos covering advances granted by it to its affiliates are not subject to DST, it could have at least filed the corresponding DST return without payment of corresponding DST and instead placed in the return as "Exempt", especially so when the CTA and CA decisions principally anchored on the non-retroactivity of BIR rulings and the said decisions are not yet final and executory and still pending with the Supreme Court. Respondent avers that petitioner failed to do so. As such, respondent maintains that it seems clear that there was intentional wrongdoing with the object of avoiding the tax on the part of petitioner and willful neglect is the basis of the imposition of the 50% surcharge in this case.

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[36] Docket (Vol. II), pp. 863-865.

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Respondent avers that further proof that there is willful neglect on the part of petitioner to file the required documentary stamp tax return is when in 2011 upon learning of the above-mentioned decision of the Supreme Court and as circularized by the BIR subjecting to DST the inter-company advances, petitioner still failed to file the DST return and pay the taxes due on its inter-company advances. Respondent argues that petitioner took no action and waited for the BIR to make an investigation and issue an assessment.

ISSUE

The lone issue submitted by the parties for resolution of this Court is:[37]

> Whether petitioner is entitled to the refund of or issuance of Tax Credit Certificate (TCC) in the amount of One Hundred Eight Million Twenty Five Thousand Two Hundred Seven Pesos and 31/100 (Php108,025,207.31), inclusive of fifty percent (50%) surcharge and interest, representing Petitioner's erroneously paid deficiency DST.

The Petition for Review is timely filed.

The Court shall determine first whether petitioner's claim for refund was timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide:

> SEC. 204. **Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.** -The Commissioner may - XXX XXX XXX

[37] Docket (Vol. I), Joint Stipulation of Facts and Issues, Issues to be Tried or Resolved, p. 570.

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, that a return filed showing an overpayment shall be considered as a written claim for credit or refund.

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, 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. (*Emphasis supplied*)

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Based on the afore-quoted provisions, to be entitled to a refund of erroneously or illegally collected taxes, the following requisites must be satisfied:[38]

> 1. There must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;
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> 2. The claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and
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> 3. The suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

On the timeliness of the filing of the administrative and judicial claims, the same must both be filed within two (2) years from date of payment of the claim for refund or tax credit of erroneously or illegally collected tax.

In *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.*[39], citing *Collector of Internal Revenue vs. Antonio Prieto*[40] and *Commission of Internal Revenue vs. Carlos Palanca, Jr.*[41] the Supreme Court held that when a tax is paid in installments, the prescriptive period of two years provided in the NIRC should be counted from the date of the final payment.

In this case, petitioner paid ₱108,025,207.31, representing deficiency DST, interest, and fifty percent (50%), and surcharge paid in six installments, the last and final installment of which was made on July 31, 2015. Therefore, petitioner had until July 31, 2017 within which to file both the administrative and judicial claims for refund.

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[38] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1078, (CTA Case No. 8049), July 27, 2015.
[39] G.R. No. 83736 January 15, 1992.
[40] GR No. L-11976, Aug 29, 1961.
[41] G.R. No. L-16626, October 29, 1966.

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Records show that petitioner filed its administrative and judicial claims on July 27, 2015 and on July 31, 2017, respectively. Clearly, both the administrative and judicial claims were filed within the two-year prescriptive period.

The Court shall now resolve the issue raised in this case, to wit: whether or not petitioner is entitled to the refund of or issuance of Tax Credit Certificate ("TCC") in the amount of One Hundred Eight Million Twenty Five Thousand Two Hundred Seven Pesos and 31/100 (₱108,025,207.31), inclusive of fifty percent (50%) surcharge and interest, representing petitioner's erroneously paid deficiency DST.

The instant Petition for Review is partly meritorious.

Applying the Filinvest case to the present case will not constitute a violation of the principle of non-retroactivity of laws and rulings.

Petitioner maintains that the *Filinvest* case should not have been applied in the assessment of deficiency DST against it considering that the deficiency DST assessment was for advances from related companies made in 2008, while the *Filinvest* case was decided by the Supreme Court only in 2011.

Petitioner's argument is bereft of merit.

In *Philippine International Trading Corporation vs. Commission on Audit*[42], the Supreme Court, citing *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.*[43] ruled that the judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent:

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[42] G.R. No. 205837, November 21, 2017.
[43] G.R. No. 110318. August 28, 1996.

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The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes 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, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, x x x.

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a **reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication. (Emphasis supplied, citations omitted.)

In *Liberty Telecoms Holdings, Inc. vs. Commissioner of Internal* Revenue[44], this Court's Special Second Division, citing *San Miguel Corporation vs. Commissioner of Internal Revenue*[45], noted that the interpretation of Section 180 of the Tax Code in the *Filinvest* case is deemed constituted as part of the Tax Code as of the date of its enactment:

In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word "loan agreements" as being subject to DST, in that it includes "instructional letters as well as the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates." Said Section 180 was inserted in the NIRC, through the

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[44] CTA Case No. 9311, October 18, 2018.

[45] CTA Case No. 9007, April 19, 2017 citing *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016.

> enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in the Republic Act (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 is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the Filinvest case constituted as part of the NIRC as of said date, i.e., December 23, 1994, up to the present time.

Accordingly, the application of the *Filinvest* case to the present case will not constitute a violation of the principle of non-retroactivity of laws and rulings because the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended), in the *Filinvest* case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present. To reiterate, in *Filinvest*, the Supreme Court in 2011 found that the instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates in 1996 and 1997 qualified as loan agreements which are subject to DST.

Furthermore, prospective application of decisions is applicable only when an old doctrine of the Supreme Court is overruled by a subsequent decision adopting a new doctrine. In such a situation, the new doctrine must be applied prospectively, as ruled by the Supreme Court in the case of *Chavez vs. Public Estates Authority, et al.*[46], as follows:

> 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 [197 4] x x x 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.

[46] G.R. No. 133250, May 6, 2003.

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In this case, there is no previous doctrine issued by the Supreme Court that is overruled by the doctrine enunciated in the *Filinvest* case. In the *Filinvest* case, 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. Thus, 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.[47]

Accordingly, the doctrine laid down in the *Filinvest* case may be retroactively applied to this case without violating the principle of non-retroactivity of laws and rulings.

In addition, considering that RMC No. 48-2011 merely implements the doctrine laid down in the *Filinvest* case, the same may also be applied to the present case. In *Philacor Credit Corporation vs. Commissioner of Internal Revenue*[48], the Supreme Court ruled that BIR rulings and revenue regulations issued even after the transaction took place are still applicable because they are issuances interpreting the same rule imposing a DST, thus:

> The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended.

[47] *Brewery Properties, Inc. vs. Commissioner of Internal Revenue,* CTA EB No. 1609 (CTA Case No. 8892), April 23, 2018.
[48] G.R. No. 169899, February 6, 2013.

Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 - the part dealing with promissory notes - remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer:

xxx xxx xxx

As can be gleaned from the foregoing, RMC No. 48-2011 may also be applied in this case because it merely implements the doctrine laid down in the *Filinvest* case which interpretation was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

Petitioner is not liable to pay interest and surcharge.

Petitioner contends that assuming that it is liable to pay DST under Section 179 of the NIRC of 1997, as amended, such liability should be without surcharge and interest considering that it relied on existing court decisions and BIR rulings prevailing at the time of the extension of the advances.

There is merit in petitioner's contention.

In *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.*[49], the Supreme Court held 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 law, are sufficient justification to delete the imposition of surcharges and interest.

An examination of petitioner's claim for refund[50] shows that at the time the advances were made from 2008 to 2011, petitioner relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of

[49] G.R. Nos. 195909 and 195960, September 26, 2012.
[50] Docket (Vol. II), Exhibit "P-14", pp. 747-841.

Filinvest Development Corporation, et al. vs. Commissioner of Internal Revenue[51] and *Commissioner of Internal Revenue vs. Filinvest Development Corporation, et al.*[52] 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.[53]

Accordingly, petitioner's reliance on the said cases justifies the non-imposition of surcharge and interest.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱68,576,280.31**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge 50%	₱ 19,724,463.50
Interest	48,851,816.81
TOTAL	**₱ 68,576,280.31**

SO ORDERED.

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

WE CONCUR:

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

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[51] CTA Case No. 6182, September 10, 2002.
[52] CA-GR No. SP No. 74510, January 26, 2005.
[53] *Commissioner of Internal Revenue vs. Court of Appeals/Atlas Consolidated Mining and Development Corporation and Court of Tax Appeals*, G.R. Nos. 104151 and 105563, March 10, 1995.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice