REPUBLIC OF THE PHILIPPINES

# *Court of Tax Appeals*

QUEZON CITY

## *En Banc*

**E.E. BLACK LTD. – PHILIPPINE BRANCH,**
*Petitioner,*

-*versus*-

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

**CTA EB NO. 1196**
(CTA Case No. 8526)

Present:

***Del Rosario, P.J.***
***Castañeda, Jr.,***
***Bautista,***
***Uy,***
***Casanova,***
***Fabon-Victorino,***
***Mindaro-Grulla,***
***Cotangco-Manalastas,*** *and*
***Ringpis-Liban, JJ.***

Promulgated:

NOV 11 2015
1:58 p.m.

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# *DECISION*

***BAUTISTA, J:***

### *The Case*

This is a Petition for Review under *Rule 8 of the Revised Rules of the Court of Tax Appeals* ("CTA")[1] seeking the reversal of the Decision[2] promulgated on April 10, 2014 by the Second Division of the CTA ("Second Division") and the subsequent Resolution[3] by the same on June 25, 2014 on petitioner's Motion for Reconsideration[4] in the case entitled "*E.E. Black Ltd. – Philippine Branch v. Commissioner of Internal*

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[1] *Rules of Court*, Rule 43.
[2] penned by Associate Justice Juanito C. Castañeda, Jr., with Associate Justices Caesar A. Casanova and Amelia R. Cotangco-Manalastas, concurring; *Rollo, CTA EB No. 1196*, pp. 54-80.
[3] *Rollo, CTA EB No. 1196*, pp. 81-87.
[4] *Id.*, pp. 88-111.

*Revenue*" docketed as CTA Case No. 8526, involving deficiency Documentary Stamp Tax ("DST") assessment, inclusive of surcharge, interest and compromise penalty in the aggregate amount of **Two Million Seven Hundred Seventy-Five Thousand Seven Hundred Fifty-Nine Pesos and Sixty-Two Centavos (Php2,775,759.62)** for taxable year 2007.[5]

## *The Parties*

Petitioner E.E. Black Ltd. - Philippine Branch is a corporation duly organized and existing under and by virtue of the laws of the State of Hawaii, United States of America ("USA") and is duly licensed by the Securities and Exchange Commission ("SEC") to establish a branch office and do business as a general contractor in the Philippines. It holds office at 53 Paseo de Roxas Avenue, Urdaneta Village, Makati City.[6]

Respondent Commissioner of Internal Revenue ("CIR"), is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR"), empowered to perform the duties of her office, including the power to decide disputed assessments and other matters vested in her in the 1997 National Internal Revenue Code ("NIRC") and other special laws, with office address at the BIR National Office Building, Agham Road, Diliman, Quezon City.[7]

## *The Facts*

As stated in the Decision dated April 10, 2014,[8] the factual antecedents of this case are:

> On December 23, 2011, respondent issued a Formal Assessment Notice [("FAN")] Part I, [FAN] II, Assessment Notice No. DS-LA36895-07-11-0976 and Assessment Notice No. MC-LA36895-07-11-0976, all dated December 23, 2011, copies of which were received by petitioner on December 27, 2011, assessing petitioner

[5] *Id.*, p. 55.
[6] *Id.*, p. 56.
[7] *Id.*
[8] *Id.*, pp. 56-67.

for deficiency DST and compromise penalty for taxable year ended December 31, 2007.

The deficiency DST was computed by respondent as follows:

I. DOCUMENTARY STAMP TAX

| | | | |
|---|---|---|---|
| Basic Tax Due (Schedule 1) | | | 1,332,927.00 |
| Add: Surcharge (25%) | | 33,231.75 | |
| Interest (1.6.08 to 1.30.12) | 1,084,600.87 | 1,417,832.62 | |
| **Total Amount Due** | | | **2,750,759.62** |

Also, Schedule 1 (Details of Discrepancies) of the FAN Part I breaks down the basic DST Assessments as follows:

| **DEBT INSTRUMENTS** | | |
|---|---|---|
| Due from Head Office and Parent Company | | 220,973,058.00 |
| Due to Parent Company and Affiliates | | 44,877,778.00 |
| Total Borrowings/Advances | | 265,850,836.00 |
| Documentary Stamp Tax (P265,850,836/200*P1.00) | | 1,329,255.00 |
| **LEASE CONTRACTS** | | |
| Rental Expense per FS | 3,670,505.00 | |
| Documentary Stamp Tax | | |
| First P2,000.00 | 3.00 | |
| P1.00/P1,000 in excess of first P2,000.00 | 3,669.00 | 3,672.00 |
| **Total Documentary Stamp Tax** | | **1,332,927.00** |

On January 12, 2012, petitioner filed with respondent through Regional Director Nestor S. Valeroso, BIR Revenue Region No. 8, Makati City, its letter dated January 9, 2012, protesting the said assessments and submitted all the documents in support of its protest.

On February 17, 2012, petitioner received from [respondent] Regional Director for Revenue Region No. 8-Makati City a letter dated February 15, 2012 acknowledging receipt of the protest letter and informing [petitioner] that the entire tax docket with the protest letter would be forwarded to the Legal Division for resolution of the legal issues raised in the protest letter.

On July 10, 2012, the 180-day period under Section 228 of the [1997 NIRC], as amended, lapsed, hence, on

August 10, 2012 petitioner filed the instant Petition for Review. Petitioner prays that the assessment of its deficiency DST and compromise penalty, including increments, in the aggregate amount of ₱2,775,759.62 be declared as invalid and/or devoid of factual or legal basis, and that the said assessments be cancelled.

On September 21, 2012, respondent filed her Answer with Motion to Dismiss interposing the following Special and Affirmative Defenses:

> "4. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
>
> 5. This Honorable Court has no jurisdiction to act on the instant petition. Under *Section 228 of the 1997 [NIRC]*, it is clearly provided that:
>
> > '**SEC. 228. Protesting of Assessment.**
> >
> > XXX XXX XXX
> >
> > Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
> >
> > **If the protest is denied in whole or in part**, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of the one hundred eighty (180)-day period, **otherwise, the decision shall become final, executory and demandable**.'

In relation thereto, under Section 3 A(2), Rule 4 of the Revised Rules of the Court of Tax Appeals, it clearly provides that:

> ***SEC 3. Cases within the jurisdiction of the Court in Divisions. - The Court in Divisions snail exercise:***
>
> ***(a) Exclusive original or appellate jurisdiction to review by appeal the following:***
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) ***Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments,*** refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ***Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the***

> ***one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case;*** Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

In the recent case of ***LASCONA LAND CO., INC. [v.] COMMISSIONER OF INTERNAL REVENUE, G.R. No 171251, March 5, 2012,*** citing the ruling in the case of ***RCBC v. CIR, G.R. No. 168498, April 24, 2007, 522 SCRA 144,*** the Supreme Court consistently held that:

> In case the Commissioner of Internal Revenue failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer has two options, either (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await

> the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, ***these options are mutually exclusive and resort to one bars the application of the []other.'***

At the outset, it is worth emphasizing the following admitted facts by respondent, to wit: that on ***December 27, 2011***, petitioner received the [Bureau of Internal Revenue ("BIR")] FAN with Letter of Demand dated December 23, 2011, involving its deficiency [DST] and compromise penalty for taxable year 2007; that on ***January 12, 2012***, petitioner in a Letter dated January 9, 2012 filed an Administrative Protest against the subject deficiency tax assessments and submitted all the documents in support of its protest with the Assessment Division, BIR RR8 Makati City on the same date; that when respondent CIR failed to act on its disputed assessment within the 180-day period from the date of submission of all its supporting documents on January 12, 2012, petitioner opted to file an appeal by way of Petition for Review with this Honorable Court in the above-captioned case on ***August 10, 2012***.

Obviously, petitioner violated the mandatory requirements under Section 228 of the 1997 [NIRC], in cases when the [CIR] failed to act on the disputed assessment within the 180-day period from date of submission of documents and the taxpayer opted to file an appeal unto this Hon. Court within 30 days from the lapse of the 180 [day] period.

To reiterate, on ***January 12, 2012***, petitioner filed an Administrative Protest against the subject deficiency tax assessments and submitted all the documents in support of its protest with the Assessment Division, BIR RR8 Makati City on the same date. ***Counting from January 12, 2012, respondent CIR has a period of 180 days to act on its protest, or until July 10, 2012***. Since petitioner opted to file a Petition for Review with this Honorable Court due to the failure of respondent CIR to act on its disputed assessment within the 180-day period from the date of submission of documents on January 12, 2012, therefore,

***petitioner has a period of 30 days reckoned from July 10, 2012 or, until August 9, 2012, within which to file an appeal unto this Honorable Court***. However, petitioner filed its Petition for Review with this Honorable Court ***only on August 10, 2012, which is one (1) day late and way beyond the 30 day reglementary period prescribed under Section 228 at the 1997 [NIRC]***.

Consequently, petitioner's judicial appeal unto this Honorable Court has already prescribed. As such, the subject BIR [FANs] with Letter of Demand dated December 23, 2011, involving petitioner's deficiency documentary stamp tax and compromise penalty for taxable year 2007 has already become final, executory and demandable, pursuant to Section 228 of the 1997 [NIRC]. Hence, this Honorable Court has no jurisdiction to act on the instant petition.

> 6. In the case of ***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,*** **G.R. No. 168498, June 16, 2006**, which settled the issue squarely similar to the above-captioned case, the Supreme Court consistently ruled that:
>
> > As provided in Section 228, *the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment.*
> >
> > In ***Ker & Company, Ltd v. Court of Tax Appeals, G.R. No. L-12396, January 31, 1962, 4 SCRA 160***, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.

> In fine, *the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction [] to entertain and determine the correctness of the assessment*. ***[Commissioner of Internal Revenue v. Western Pacific Corporation, 121 Phil 889, 893 (1965)].***

7. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits ***(De Guzman, et. al., vs. Escalona, et. al., G.R. No. L-51773, May 16, 1980)***. The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (***Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150***).

8. Further, the Supreme Court in the case of ***Ker & Company, Ltd. vs. CTA, et. al., L-12396, January 31, 1962 and Commissioner of Internal Revenue vs. Joseph, et. al., L-14034, August 30, 1962,*** consistently ruled that:

> '***If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss***.'

9. Moreover, in the case of ***Yao vs. Court of Appeals, et. al., G.R. No. 132428, October 24, 2000,*** the Supreme Court held and we quote:

> '***The right to appeal is not a constitutional, natural or inherent right.*** It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural right nor part of due process,

> *it may be exercised only in the manner and in accordance with the provisions of law. Corollarily, its requirements must be strictly complied with.*
>
> *That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional.* Non-compliance with such legal requirements is fatal, for its renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.'

Thus, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for the court to act on a given controversy (***Commissioner of Internal Revenue vs. Villa, et. al., G.R. No. L-23988, January 2, 1968***), and is conferred only by law and not by the consent or waiver upon the court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties (***Laresma vs. Abellana, G.R. No. 140973, November 11, 2004***).

10. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency [DST] in the amount of ₱1,332,927.00 for taxable year 2007, pursuant to [Sections] 179 and 194 of the 1997 [NIRC], in relation to Revenue Regulations No. 13-2004, as amended, for its failure to pay the DST due on its advances/borrowings and lease contract in the value of ₱125,000.00 and ₱2,300,000.00.

11. Moreover, petitioner was assessed for compromise penalty due to its failure to file and/or pay the required DST return, pursuant to [Sections] 179 and 194 of the 1997 [NIRC], in relation to Section 255 of the same Code.

12. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 [NIRC], as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated December 6, 2011 and [FANs] dated December 23, 2011 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to convert the initial findings of the respondent involving its deficiency taxes for taxable year 2007 through the issuance of a Notice for Informal Conference and [PAN] dated December 6, 2011. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why he (respondent) arrived [at] such [] deficiency [DST] and compromise penalty, respectively for taxable year 2007, through the issuance of the Details of Discrepancies attached to the [FANs] dated December 23, 2011, the [PAN] dated December 6, 2011, as well as BIR Letter Reply and other BIR Correspondence duly received by petitioner which are found in the BIR records of this case.

13. The Supreme Court decision in the case of ***Commissioner of Internal Revenue vs. Filinvest Development Corp., G.R. No. 16353/167687, July 12, 2011***, in relation to ***Revenue Memorandum Circular No. 48-2011 dated October 6, 2011*** is applicable to the assessed deficiency [DST] and compromise penalty of petitioner for taxable year 2007.

14. It has already been settled that judicial interpretation of a statute constitute a part of the law as of the date it was originally passed, since the Courts construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. (***Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009***).

15. Petitioner was assessed by respondent CIR for deficiency [DST] for taxable year 2007, within

the ten (10) year prescriptive period pursuant to Section 222(a) of the 1997 [NIRC], in view of the fact that petitioner failed to file the required DST Return in violation of [Sections] 179 and 194 of the NIRC in relation to RR13-04, as amended.

16. The assessments issued against petitioner for deficiency [DST] and compromise penalty for taxable year 2007 was made in accordance with law and regulations.

17. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject tax assessment issued by the respondent. ***Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil 290; Sy Po vs. CTA, G.R. [No.] 81446, August 18, 1988; Dayrit vs. Cruz, [G.R. No.] L 39910, September 26, 1988; Cagayan Robina Sugar Milling Co. vs CA, G.R. [No.] 122451, October 12, 2000).*** Failure to present proof of error in the assessment will justify judicial affirmation of said assessment ***(Delta Motors Co. vs CIR, [CTA Case No. 3782, May 21, 1984; CIR vs. CA, G.R. Nos. 104151 and 105561, March 10, 1995).***"

On October 1, 2012, in reply to respondent's motion to dismiss incorporated in her Answer, petitioner filed its Opposition (to Motion to Dismiss) and argue that the Petition was timely filed on August 10, 2012 because the Supreme Court suspended work in all Courts in the National Capital Region on August 9, 2012 due to bad weather and flooding. Therefore, the last day for filing of the Petition for Review was on August 10, 2012 or the next day of August 9, 2012.

On October 22, 2012, this Court issued a Resolution denying Respondent's Motion to Dismiss for lack of merit. On November 8, 2012 respondent filed her Motion for Reconsideration through registered mail and received by this Court on November 15, 2012, while on November

22, 2012, petitioner filed its Opposition (to Respondent's Motion for Reconsideration). On December 19, 2012, this Court issued a Resolution denying respondent's Motion for Reconsideration for lack of merit.

During trial, petitioner presented its sole witness Cristina C. Paras, petitioner's Accounting Manager. Thereafter, on March 22, 2013, petitioner filed its Formal Offer of Evidence, submitting Exhibits "A" to "K-1", inclusive of sub-markings; which were admitted in the Resolution dated May 8, 2013.

On the other hand, on May 8, 2013, respondent presented her sole witness Joey R. Fragante.

Thereafter, on June 6, 2013, respondent filed her Formal Offer of Evidence, submitting Exhibits "1" to "13", inclusive of their sub-markings, which this Court admitted in the Resolution dated July 4, 2013.

On September 10, 2013, the case was submitted for decision taking into consideration petitioner's Memorandum filed on August 7, 2013 and respondent's "Manifestation and Motion" filed through registered mail on August 23, 2013 and received by this Court on September 4, 2013.

On April 10, 2014, the Second Division promulgated its Decision, the dispositive portion[9] thereof reads as follows:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment for compromise penalty for non-filing and/or payment of [DST] for taxable year 2007 in the amount of ₱25,000.00 is hereby **CANCELLED**.
>
> However, the assessment for deficiency [DST] issued by respondent against petitioner for taxable year 2007 is hereby **UPHELD** in part. Accordingly, petitioner is hereby **ORDERED to PAY** respondent the amount of **ONE MILLION SIX HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED SIXTY EIGHT PESOS**

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[9] *Id.*, pp. 78-79.

**& 75/100 (₱1,661,568.75),** inclusive of the 25% surcharge imposed under Section 248(A)(3) of the [1997 NIRC], as amended, computed as follows:

| | |
|---|---|
| Basic Deficiency DST of Debt Instruments | 1,329,255.00 |
| Add: 25% Surcharge | 332,313.75 |
| **Total** | **1,661,568.75** |

In addition petitioner is likewise **ORDERED to PAY** respondent (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency DST of ₱1,329,255.00 computed from January 5, 2008 until full payment thereof pursuant to Section 249(B) of the [1997 NIRC], as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱1,661,568.75 and on the deficiency interest which have accrued as aforestated in (a) computed from January 23, 2012 until full payment thereof pursuant to Section 249(C) of the [1997 NIRC], as amended.

**SO ORDERED.**

Not satisfied with the Decision, petitioner filed a Motion for Reconsideration on April 25, 2014.[10] Respondent filed its corresponding Comment/Opposition (To Petitioner's Motion for Reconsideration) on May 12, 2014.[11]

On June 25, 2014, the Second Division issued a Resolution,[12] where it held that:

**WHEREFORE,** there is no overwhelming justification to disturb the assailed Decision. Accordingly, petitioner's **"Motion for Reconsideration"** is **DENIED** for lack of merit.

**SO ORDERED.**

Upon the denial, petitioner raised the instant case to the Court *En Banc* when it filed a Petition for Review on July 24, 2014,[13] *viz.*:

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[10] *Id.*, pp. 88-111.
[11] *Records, CTA Case No. 8526*, pp. 456-467.
[12] *Rollo, CTA EB Case No. 1196*, pp. 81-87

**WHEREFORE,** premises considered, Petitioner respectfully prays that this Honorable Court:

1. Reverse and set aside the Decision dated 10 April 2014 and Resolution dated 25 June 2014;

2. Declare the deficiency [DST] assessment and 25% surcharge in the aggregate amount of ₱1,661,568.75 and the additional 20% per annum deficiency interest on the basic deficiency [DST] assessment and 20% per annum delinquency interest on the aggregate amount of deficiency [DST] assessment and 25% surcharge as invalid and/or devoid of factual and legal basis; and,

3. Cancel the said assessments.

Petitioner prays for such other reliefs as may be just and equitable under the foregoing premises.

Makati City for Quezon City, 23 July 2014.[14]

On September 8, 2014, the Court ordered respondent to file her comment to the Petition for Review within ten (10) days from receipt thereof.[15]

On November 17, 2014, the Court promulgated a Resolution stating that respondent is deemed to waive her right to file her comment due to her failure to file the same within the period granted despite notice on September 18, 2015; and submitting the case for decision.[16]

Hence, this Decision, considering respondent's "Omnibus Motion (a. For Reconsideration of the Resolution dated 17 Nov. 2014) (b. To Admit the Attached Respondent's Comment/Opposition with

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[13] *Id.*, pp. 8-47; "Motion for Extension of Time to File Petition for Review" filed on July 17, 2014 was granted by the Court *En Banc* on July 21, 2014, giving petitioner fifteen (15) days from July 17, 2014 or until August 1, 2014, within which to file its Petition for Review.
[14] *Id.*, p. 46.
[15] *Id.*, pp. 284-285.
[16] *Id.*, pp. 288-289.

Offer of Profuse Apologies),"[17] with attached "Comment/Opposition (To Petitioner's Petition for Review)" filed on December 11, 2014.[18]

### *The Issues*

Based on the Petition for Review[19], the assigned errors/issues of the case are as follows:

> THE HONORABLE SECOND DIVISION ERRONEOUSLY ERRED IN APPLYING THE CASE OF *COMMISSIONER OF INTERNAL REVENUE V. FILINVEST DEVELOPMENT CORPORATION* RETROACTIVELY TO THE INTER-COMPANY ACCOUNTS OF PETITIONER FOR THE YEAR 2007.
>
> THE HONORABLE SECOND DIVISION SERIOUSLY ERRED IN RULING THAT THE CASE OF *COMMISSIONER OF INTERNAL REVENUE V. FILINVEST DEVELOPMENT CORPORATION* WHICH INTERPRETED SECTION 180 OF THE 1993 [NIRC] APPLIES TO THE DST ASSESSMENT ISSUED BASED ON SECTION 179 OF THE 1997 [NIRC].
>
> THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT THE GENERAL RULE THAT A FOREIGN CORPORATION IS THE SAME JURIDICAL ENTITY AS ITS BRANCH OFFICE IN THE PHILIPPINES IS NOT APPLICABLE TO PETITIONER SIMPLY BECAUSE ITS INTER-COMPANY ACCOUNTS WERE BOOKED UNDER "DUE TO/FROM ACCOUNTS."
>
> THE HONORABLE SECOND DIVISION ERRED IN HOLDING THAT PETITIONER DID NOT ACT IN GOOD FAITH TO WARRANT THE LIFTING OF SURCHARGE, INTEREST AND PENALTIES ON THE ASSESSED DEFICIENCY DST ON DEBT INSTRUMENTS BECAUSE PETITIONER FAILED TO REQUEST RESPONDENT TO ISSUE A BIR RULING IN ITS FAVOR.

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[17] *Id.*, pp. 290-293.
[18] *Id.*, pp. 294-305.
[19] *Id.*, pp. 16-17.

## *The Ruling of the Court En Banc*

The Court *En Banc* finds no merit in the instant Petition for Review.

In the Decision dated April 10, 2014, the Second Division unanimously ruled as follows:

> The petition is partly meritorious.
>
> Respondent assessed petitioner of deficiency DST for taxable year 2007 in the amount of P1,332,927.00, computed as follows:
>
> | | | |
> |---|---|---|
> | **DEBT INSTRUMENTS** | | |
> | Due from Head Office and Parent Company | | P220,973,058.00 |
> | Due to Parent Company and Affiliates | | 44,877,778.00 |
> | Total Borrowings/Advances | | 265,850,836.00 |
> | Documentary Stamp Tax (P265,850,836/200*P1.00) | | 1,329,255.00 |
> | **LEASE CONTRACTS** | | |
> | Rental Expense per FS | P3,670,505.00 | |
> | Documentary Stamp Tax | | |
> | First P2,000.00 | P3.00 | |
> | P1.00/P1,000 in excess of first P2,000.00 | 3,669.00 | 3,672.00 |
> | **Total Documentary Stamp Tax** | | **1,332,927.00** |
>
> *Cash and Journal Vouchers Evidencing Intercompany Loans or Advances are subject to DST*
>
> Petitioner avers that the cash and journal vouchers evidencing the Intercompany Advances are not subject to DST under the [1997 NIRC], as amended by Republic Act (RA) No. 9243, and implemented by Revenue Regulations (RR) No. 13-04. Petitioner claims that cash or journal vouchers evidencing intercompany loans or advances are not debt instruments defined under Section 179 of the [1997 NIRC], as amended, and Section 5 of RR No. 13-04. Petitioner asserts that an instrument to be considered as

debt instrument under Section 179 of the [1997 NIRC], as amended, and Section 5 of RR No. 13-04 must not only represent "borrowing and lending transactions" but must also be originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor. Petitioner posits that the cash receipts or disbursement vouchers or journal vouchers are internal accounting documents which are not signed by or issued to the affiliates with whom it transacted in 2007, hence, the DST Assessment on debt instrument must be cancelled for lack of legal basis.

Moreover, petitioner argues that it cannot issue a debt instrument to its head office because being a branch office it does not have a separate legal personality from its head office. Petitioner further argues that the ruling in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation (Filinvest case)* does not apply to the instant Petition because it interprets the old Section 180 of the NIRC (prior to its amendment by RA No. 9243) and Section 6 of RR No. 09-94; and that it should not apply to the inter-company advances in 2007 in this case which is governed by the present Section 179 of the [1997 NIRC], as amended which was implemented by RR [No.] 13-04, and not by the old Section 180 as implemented by RR [No.] 09-94.

Finally, petitioner avers that even if it were to be assumed that it is liable for the assessed DST on debt instrument, any deficiency DST should not be subject to surcharge and interest, since 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 surcharge and interest, citing *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue.*

On the other hand, respondent in her Answer counters that petitioner was assessed for deficiency [DST] in the amount of P1,332,927.00 for taxable year 2007, pursuant to Sections 179 and 194 of the 1997 [NIRC], in relation to RR No. 13-2004, as amended, for its failure to pay the DST due on its advances/borrowings and lease contract in the value of P125,000.00 and P2,300,000.00. Further, respondent contends that Supreme Court decision in the case of ***Commissioner of Internal Revenue vs. Filinvest Development Corp., G.R. No. 16353/167687, July 19, 2011***, in relation to ***Revenue Memorandum Circular No. 48-2011 dated October 6, 2011*** is applicable to the assessed deficiency [DST].

This Court finds for respondent.

Contrary to petitioner's assertion, *Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. Nos. 163653 and 167689, July 19, 2011 ("Filinvest case")* is squarely applicable.

Although what was interpreted in *Filinvest case* is Section 180 of the 1993 NIRC, which then governed the imposition of DST on, among others, loan agreements, by and between affiliates and/or related interests, the provision is well carried on and further reinforced under the present Section 179 of the 1997 NIRC, as amended.

Section 180 of the 1993 NIRC, as interpreted in the *Filinvest case* reads:

> "Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** – <u>On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines</u>; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: **Provided**, That only one documentary stamp tax shall be imposed on either loan agreement, or

> promissory notes issued to secure such loan, whichever will yield a higher tax: **Provided however**, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section. (Underscoring Supplied.)

The foregoing provision concededly applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines" and covers other evidence of advances such as "instructional letters as well as the journal and cash vouchers".

The Supreme Court in the *Filinvest case* held in this wise:

> "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. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, to wit:
>
>> 'On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings or borrowings

> which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are, more or less, categorized as 'securities', is not subject to documentary stamp tax imposed under Sections 180, 174 and 175 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.'
>
> In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.
>
> Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997."

This interpretation by the Supreme Court of Section 180 of the 1993 NIRC could also well be applied in the interpretation of Section 179 of the 1997 NIRC, as amended, given that "Section 179 used to be Section 180 of the Code, and, as amended, it now covers all instruments representing borrowing and lending transaction under a single heading, *i.e.*, 'All Debt Instruments' and applying a unitary tax rate thereon".

As a matter of fact, Section 179 of the 1997 NIRC imposes DST on, among others, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, a phrase apparently lifted in part from Section 180 of the 1993 NIRC. Section 179 of the 1997 NIRC, as amended by RA No. 9243, reads:

> "SEC. 179. ***Stamp Tax on All Debt Instruments.*** – On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether

> negotiable or non-negotiable, except bank notes issued for circulation." (Underscoring Supplied.)

In the instant case, except in questioning the legal basis for the DST assessment, petitioner did not attempt to dispute the substantial merit of the amount or computation of such assessment by respondent. Instead, petitioner solely relied on advancing its legal theories and did not anymore present any evidence or witness to provide details of the transaction/s which resulted in DST assessment. Hence, respondent's DST assessment of P1,329,255.00 is afforded the presumption of regularity.

Anent petitioner's argument that it cannot issue a debt instrument to its head office because being a branch office, it does not have a separate legal personality from its head office, the Supreme Court, in *Marubeni Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 76573, September 14, 1989,* had occasion to address this argument, to wit:

> "Under the Tax Code, a resident foreign corporation is one that is 'engaged in trade or business' within the Philippines. Petitioner contends that precisely because it is engaged in business in the Philippines through its Philippine branch that it must be considered as a resident foreign corporation. Petitioner reasons that since the Philippine branch and the Tokyo head office are one and the same entity, whoever made the investment in AG&P, Manila does not matter at all. A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.
>
> The Solicitor General has adequately refuted petitioner's arguments in this wise:
>
> > 'The general rule that a foreign corporation is the same juridical entity as its branch office in the

> Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.
>
> 'Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation.'"

In the same vein, the general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here for purposes of imposing the DST; the cash advances and intercompany trade payables and receivables which were booked under "due to/from accounts" are well within the purview of 'debt instruments' under Section 179 of the 1997 NIRC, as amended.

*DST on Lease Contract was already paid*

Petitioner avers that it is not liable for DST on lease contract for the year 2007 because it already paid on October 21, 2011 for DST on the entire lease contract covering January 1, 2006 up to December 31, 2010. The contention is meritorious.

In this case, petitioner presented BIR Payment Form, Bank of the Philippine Islands BTR-BIR Deposit/Payment Slip dated 21 October 2011, Computation of deficiency DST on lease contract for January 2006 to December 2010, and BIR Revenue Accounting Division (RAD) Certification confirming the payment of deficiency DST.

A careful examination of the aforementioned exhibits reveal[s] that petitioner has sufficiently proven that it paid on October 21, 2011 before respondent the aggregate amount of P46,852.67, representing DST inclusive of surcharge, interest and compromise penalty on lease contracts for the period January 2006 to December 31, 2010. The said DST payment necessarily covers the DST on lease contract for the subject assessment period of year 2007. Hence, the said assessment in amount of P3,672.00 must be cancelled and withdrawn on account of said payment.

*Liable for Surcharges and Interest*

Anent the issue of good faith invoked by petitioner to warrant the lifting of surcharges and interest, suffice it to say that petitioner failed to request a BIR Ruling in its favor presenting facts and the law applicable to it. In fact, no BIR Ruling had been issued by respondent addressed to petitioner confirming that it is exempt from the DST which petitioner would have relied upon. It cannot rely on BIR Rulings which were requested by other entities and not addressed to petitioner. By failing to do so, petitioner's defense of good faith must fail.

*No basis to impose Compromise Penalty*

Finally, the compromise penalty imposed by respondent in the amount of P25,000.00 cannot be sustained. Under Revenue Memorandum Order No. 01-90, compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly belongs to the taxpayer. Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.

In fine, petitioner is liable to pay basic deficiency DST on debt instruments for taxable year 2007 in the amount of P1,329,255.00, computed as follows:

| | |
|---|---|
| DST Due on Debt Instruments | |
| Due from Head Office and Parent Company | P220,973,058.00 |
| Due to Parent Company and Affiliates | 44,877,778.00 |
| Total Borrowings/Advances | 265,850,836.00 |
| **Basic Deficiency DST Due (P265,850,836/ 200 x P1.00)** | **1,329,255.00** |

After a careful consideration of the factual circumstances of the case, the Court *En Banc* agrees in *toto* with the Second Division's ruling.

**The Court *En Banc* finds that the doctrine in *CIR v. APC Group, Inc.* does not apply to the case at bar.**

Petitioner relies heavily on the Resolution of the Supreme Court in ***Commissioner of Internal Revenue v. APC Group, Inc., G.R. 162185, May 17, 2004***[20] *("APC",)* which upheld the Decision[21] of the Court of Appeals in ***Commissioner of Internal Revenue v. APC Group, Inc., CA-G.R. SP-69869, November 29, 2002,*** cancelling the DST assessment against APC on the basis that board resolutions and cash vouchers are exempt from DST. The said Decision, in turn, affirmed the Decision of the [CTA] in ***APC Group, Inc. v. Commissioner of Internal Revenue, CTA Case No. 6155, March 11, 2002***[22]. The said Supreme Court Resolution provides as follows:

Gentlemen:

*Quoted hereunder, for your information, is a resolution of the Third Division of this Court dated May 17, 2004.*

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[20] *Records, CTA Case No. 8526,* pp. 318-319.
[21] *Id.,* pp. 310-317.
[22] *Id.,* pp. 188-198.

G.R. No. 162185 (Commissioner of Internal Revenue vs. APC Group, Inc.) -

In accordance with the provisions of Rule 45 governing appeals by certiorari to the Supreme Court, and
Rule 65, in relation to Rules 46 and 56, governing petitions for certiorari, prohibition and mandamus, as amended and provided in the 1997 Rules of Civil Procedure effective July 1, 1997, only petitions which are accompanied by or which comply strictly with the following requirements shall be entertained:

1. full payment upon the filing of petition of the prescribed docket other lawful fees, together with deposit for costs, within the reglementary period, unless the petitioner has theretofore done so;

2. appropriate service of a copy of the petition upon the adverse party or parties and on the lower court, tribunal, agency or entity concerned, with the required proof of service thereof;

3. a clearly legible duplicate original or a certified true copy of the judgment, final order or resolution certified by the clerk of court of the court *a quo* or the official authorized to do so;

4. a verified statement indicating the material dates when notice of the judgment, final order or resolution was received, when a motion for new trial or reconsideration, if any, was filed, and when notice of the denial thereof was received; and

5. a certification under oath by petitioner that he has not therefore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals, or different divisions

> thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the [] of the same; and if he should thereafter learn that a similar action has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.
>
> ACCORDINGLY, the Court Resolved to ***DENY*** the petition for review on certiorari of the decision dated November 29, 2002 of the Court of Appeals in CA-G.R. SP No. 69869 for failure to comply with requirement no. three (3), as the copies of the assailed decision and resolution submitted are not duly Certified.
>
> In any event, even if the petition complied with the aforesaid requirement, it would still be denied, as the petitioner failed to show that a reversible error had been committed by the appellate court.
>
> Very truly yours,
>
> **JULIETA Y. CARREON**
> Clerk of Court
>
> By:
>
> **LUCITA ABJELINA-SORIANO**
> Asst. Division Clerk of Court

The Court *En Banc* finds that petitioner's contention has no merit.

The Supreme Court, in the recent case of ***Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue, G.R. No. 188550, August 19, 2013***[23], discussed minute resolutions, *viz.*:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in CIR v. Baier-Nickel, the Court noted that a previous case, CIR v. Baier-Nickel involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case "ha(d) no bearing" on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.
>
> Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports.

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[23] Citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue,* G.R. No. 167330, September 18, 2009, 600 SCRA 413; and *Commissioner of Internal Revenue v. Baier-Nickel,* G.R. No. 153793, August 29, 2006, 500 SCRA 87 (extended Resolution, G.R. No. 156305, February 17, 2003).

> Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.
>
> Even if we had affirmed the CTA in Mirant, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

Moreover, *Article 8 of the New Civil Code* states that "judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

Based on the foregoing, the Court *En Banc* finds that the May 17, 2004 Resolution of the Supreme Court in the *APC* case is a mere minute resolution and not a decision since it does not provide the facts and law on which it is based; it merely affirmed the decision of the lower court; and it is signed by the Clerk of Court, with no certification of the Chief Justice. Being a minute resolution, *res judicata* will only apply to another case with the same subject matter, issues, and parties. APC being a different entity from petitioner, there is no *res judicata* and the Courts shall not be bound by the said Resolution.

**The Court *En Banc* finds that the *Filinvest* ruling relating to *Sections 173 and 180 of the 1993 NIRC* applies to the DST assessment based on *Section 179 of the 1997 NIRC.***

In ***Commissioner of Internal Revenue v. Filinvest Development Corporation, G.R. Nos. 163653 & 167689, July 19, 2011*** *("Filinvest")*, Filinvest Development Corporation ("FDC") extended advances to its affiliates, duly evidenced by instructional letters, and cash and journal vouchers on various dates throughout the years 1996 and 1997, for which it received an assessment for deficiency DST, plus interest and compromise penalty.

In the case at bar, petitioner is a branch of a Hawaiian Company, which was assessed DST through FAN Part I[24] and FAN Part II[25], both issued on December 23, 2011, with the amounts due on or before January 23, 2012, to wit:[26]

| | | | |
|---|---|---|---|
| Basic Tax Due (Schedule 1) | | | 1,332,927.00 |
| Add: Surcharge (25%) | | 33,231.75 | |
| Interest (1.6.08 to 1.30.12) | 1,084,600.87 | 1,417,832.62 | |
| **Total Amount Due** | | | **2,750,759.62** |

| NATURE OF VIOLATION | VIOLATED PROVISIONS | PROVISION ON CRIMINAL PENALTIES | COMPROMISE PENALTY |
|---|---|---|---|
| Non-filing and/or payment of [DST] | Section 179 and 194 of the NIRC in relation to RR 13-04 as amended | Section 255 of the NIRC | 25,000.00 |

The Details of Discrepancies[27] of FAN Part I provide the following:

| | | |
|---|---|---|
| **DEBT INSTRUMENTS** | | |
| Due from Head Office and Parent Company | | 220,973,058.00 |
| Due to Parent Company and Affiliates | | 44,877,778.00 |
| Total Borrowings/Advances | | 265,850,836.00 |
| Documentary Stamp Tax (P265,850,836/200*P1.00) | | 1,329,255.00 |
| **LEASE CONTRACTS** | | |
| Rental Expense per FS | 3,670,505.00 | |
| Documentary Stamp Tax | | |
| First P2,000.00 | 3.00 | |
| P1.00/P1,000 in excess of first P2,000.00 | 3,669.00 | 3,672.00 |
| **Total Documentary Stamp Tax** | | **1,332,927.00** |

The amounts in the assessment under the description "Due from Head Office and Parent Company" and "Due to Parent Company and Affiliates" were lifted from the Audited Financial Statements ("AFS") of petitioner for the year 2007.[28] Based on its Notes to the AFS, it has transactions with its parent company and other affiliates consisting principally of non-interest bearing cash

[24] *Records, CTA Case No. 8526*, p. 268.
[25] *Id.*, p. 271.
[26] *Id.*, pp. 272-273.
[27] *Id.*, pp. 269-270.
[28] *BIR Records*, p. 901.

advances, advances for expenses incurred and fees received by petitioner.

Based on the foregoing, the facts in the *Filinvest* case and the case at bar are the same. Just like FDC in *Filinvest*, petitioner extended cash advances to its affiliates, duly evidenced by cash receipts or cash disbursement vouchers throughout 2007,[29] for which it correctly received an assessment for deficiency DST. While the facts are the same, petitioner argues that *Filinvest*, which was promulgated in 2011, cannot be applied retroactively to inter-company accounts of petitioner for the year 2007 under the principle of *lex prospicit, non respicit*.

By way of overview, it must be noted that *Presidential Decree ("PD") No. 1158 ("1977 NIRC")* was approved on June 3, 1977, and *Sections 173 and 180* thereof were amended by *Republic Act ("RA") No. 7660*, which was signed on December 23, 2003 (hence, reference to the *"1993 NIRC"*), and took effect on February 1, 1994. The *1977 NIRC* was further amended by *RA No. 8424 ("1997 NIRC")* which was signed on December 11, 1997 and became effective on January 1, 2008. Therefore, at the time the advances were made by FDC to its affiliates in 1996 and 1997, *Sections 173 and 180 of the 1993 NIRC* were in effect, providing the following:

> Sec. 173. *Stamp taxes upon documents, instruments, loan agreements, and papers.* — Upon documents, instruments, loan agreements, and papers, and upon acceptances, assignments, sales and transfers of the obligation, right, or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following sections of this Title, by the person making, signing, issuing, accepting, or transferring the same wherever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: Provided, That whenever one party to the taxable document enjoys exemption from the tax

[29] *Rollo, CTA EB No. 1196*, Petition for Review, p. 12.

herein imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* — <u>On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines</u>; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non- negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section.

In *Filinvest*, the SC ruled that when *Sections 173 and 180 of the 1993 NIRC* are read together, it can be gathered that DST applies to "(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines." Further the said *1993 NIRC* must be read in relation with *RR No. 9-94, Section 3(b)* thereof defines "loan agreement" as "a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings." Additionally, *Section 6 of RR No. 9-94* provides the following:

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

On the outset, the Court *En Banc* would like to emphasize two things: *(1)* that assessments by tax examiners are presumed correct and made in good faith and the taxpayer has the duty to prove otherwise.[30] The law frowns on exemption from taxation, hence, an exempting provision should be construed *strictissimi juris*,[31] and the pieces of evidence presented entitling a taxpayer to an exemption are also strictly scrutinized and must be duly proven;[32] and *(2)* that the *Filinvest* case is a decision of the SC and not a mere minute resolution. Hence, in accordance with *Article 8 of the New Civil Code*, the doctrine therein shall form a part of the legal system of the Philippines.

The relevant provision which should apply to the advances of petitioner in 2007 is *Section 179 of the 1997 NIRC*, as amended by *Republic Act No. 9243*[33], *viz.*:

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[30] *Sy Po v. Court of Appeals*, G.R. No. L-81446, August 18, 1988, 164 SCRA 524.
[31] *Commissioner of Internal Revenue v. A.D. Guerrero*, G.R. No. L-20942, September 22, 1967, 21 SCRA 181.
[32] *Philippine National Bank v. Commissioner of Internal Revenue*, CTA EB Case No. 859, February 4, 2014 *citing Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008, 456 SCRA 150.
[33] February 17, 2004.

SEC. 179. *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ration of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term <u>debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to</u> debentures, certificates of indebtedness, due bills, bonds, <u>loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines,</u> instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

A comparison between *Section 180 of the 1993 NIRC,* as discussed in the *Filinvest* case; and the present *Section 179 of the 1997 NIRC* will shed light on whether an SC ruling regarding the former (*i.e. Filinvest* case) can apply to the latter, *viz.*:

| **1993 NIRC** | **1997 NIRC** |
|---|---|
| Sec. 180. *Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.* — <u>On all loan agreements</u> | SEC. 179. *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: |

| | |
|---|---|
| signed abroad wherein the object of the contract is located or used in the Philippines; bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at the sight or on demand, or on all promissory notes, whether negotiable or non- negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (P0.30) on each Two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit, or note: Provided, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: Provided, however, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (P250,000) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of the documentary stamp tax provided under this section. | Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ration of its term in number of days to three hundred sixty-five (365) days: Provided, further, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.<br><br>For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation. |

Based on the foregoing, both provisions impose a stamp tax on all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines. Hence, the latter is a mere reproduction of the former, insofar as DST on loan agreements is concerned.

In the case of ***Accenture, Inc. v. Commissioner of Internal Revenue***[34], which deals with the reproduction of *Section 102(b) of the 1977 NIRC* in *Section 108(B) of the 1997 NIRC*, the SC ruled that its interpretation of the latter may be used in interpreting the former, and petitioner therein cannot invoke the non-retroactivity of rulings.

[34] G.R. No. 190102, July 11, 2012, 676 SCRA 325.

Therefore, the Court *En Banc* finds that petitioner's claim has no leg to stand on, and sees no reason to reverse the Second Division's finding that the *Filinvest* case is applicable to the case at bar. In fact, this Court has consistently applied the *Filinvest* doctrine to advances between affiliates, made while the *1997 NIRC* was already in place.[35]

**The Court *En Banc* finds that there is no basis to warrant the lifting of interest on the assessed deficiency DST.**

Petitioner claims that having relied in good faith on the *APC* ruling and numerous BIR Rulings, there is no basis for the imposition of surcharge and interest.

In *Filinvest*, the SC found that that the imposition of deficiency interest is justified. Having found that the *Filinvest* case is applicable to the case at bar, it also follows that the decision therein relating to interest applies.

**WHEREFORE**, the instant Petition for Review is hereby **DENIED**. Accordingly, both the Decision dated April 10, 2014 and the Resolution dated June 25, 2014 are hereby **AFFIRMED**.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

***WE CONCUR:***

**ROMAN G. DEL ROSARIO**
Presiding Justice

[35] *e.g. Lingkod Bayan Pawnshop Co., Inc. v. Bureau of Internal Revenue*, CTA Case No. 8554, July 29, 2015; which applied the *Filinvest* case imposing DST on advances made in 2008.

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

**ERLINDA P. UY**
Associate Justice

**CAESAR A. CASANOVA**
Associate Justice

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

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

**AMELIA R. COTANGCO-MANALASTAS**
Associate Justice

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

## CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution,* it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

**ROMAN G. DEL ROSARIO**
Presiding Justice