REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

TRUSTMARK HOLDINGS CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9072

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
JUL 2 1 2017 10:35 AM

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RESOLUTION

CASANOVA, J.:

For resolution is respondent's **Motion for Reconsideration (RE: Decision dated May 19, 2017)**, filed on June 6, 2017, with petitioner's **Comment (To the Respondent's Motion for Reconsideration)**, filed on June 30, 2017.

Respondent moves for the reconsideration of the Court's Decision promulgated on May 19, 2017 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is **GRANTED**. Accordingly, respondent's imposition of surcharge and interests arising from the deficiency DST assessment is **DELETED**. Consequently, respondent's Formal Letter of Demand dated October 28, 2014 and Assessment Notice No. ELTAD-II-DS-09-0019, essentially assessing petitioner for surcharge and interests, are **CANCELLED**.

SO ORDERED."

Respondent avers that the Court erred in cancelling the Formal Letter of Demand dated October 28, 2014 and Assessment Notice No. ELTAD-II-DS-09-0019, assessing petitioner for surcharge and interest arising from deficiency documentary stamp tax (DST).

Respondent argues that the Court erred in ruling that petitioner is not liable for surcharge and interest because it relied in good faith on the BIR rulings discussed in the assailed Decision. Respondent stresses that these rulings were not issued to petitioner thus it cannot rely on these rulings in good faith as clearly laid down by the Supreme Court in *Commissioner of Internal Revenue (CIR) vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011 (*Filinvest* case), which held that Filinvest cannot rely on Bureau of Internal Revenue (BIR) rulings not issued to it.

Moreover, respondent points out that the imposition of surcharge and interest is the result of petitioner's failure to file and pay the correct tax due on time. The imposition of surcharge and interest is justified as the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged are not penal but compensatory in nature.

In its comment, petitioner avers that a reading of the Court's decision shows that the justification for the cancellation of the surcharge and interest assessments arising from the supposed deficiency DST was not merely based on petitioner's reliance on the BIR rulings since no less than the Supreme Court, in several cases, recognized good faith as a reason to cancel assessments for surcharge and interest.

Petitioner also argues that it did not skip the Court that even if the DST assessment for 2000, 2006, 2007 and 2008 should be disallowed since the Letter of Authority issued by the BIR covers only the taxable year 2009, yet petitioner chose to pay the same within five days from the issuance of the Preliminary Assessment Notice (PAN).

Moreover, petitioner points out that these BIR rulings were widely publicized by the BIR. It reasonably informs the taxpayers on how the BIR will most probably treat their transactions. Petitioner argues that when the BIR issued such rulings, although not directed to petitioner, it gives an impression that other taxpayers similarly situated may rely on such rulings. Petitioner contends that if the BIR wishes not to mislead other taxpayers on how the BIR would most likely rule on the tax consequences of their transactions, then, the most logical action for them to take is not to publish the ruling and just send it to the taxpayer to whom the ruling was issued.

After weighing the parties' arguments, the Court finds no merit in the instant motion.

Contrary to respondent's argument, the Court did not rule that petitioner is not liable for surcharge and interest based solely on its reliance on numerous BIR rulings holding that intercompany advances covered by board resolution, inter-office memo, instructional letter and/or cash and journal vouchers or similar documents are not subject to DST.

While these BIR rulings were not issued specifically to petitioner, still, as discussed in the assailed Decision, there were similar rulings issued by the Court of Appeals and Court of Tax Appeals regarding this issue. Hence, petitioner had reason to believe that its intercompany advances would be treated in the same way. Prior to the *Filinvest* case, there was no clear ruling on the matter, thus, petitioner cannot be faulted for its erroneous interpretation of a doubtful or difficult question of law.

In several cases[1], the Supreme Court recognized that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.

Moreover, applying the ruling of the Supreme Court in *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[2], the deficiency DST assessment should be cancelled considering that the same pertains to the years 2000, 2006, 2007 and 2008 even though

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[1] *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006; *Antam Pawnshop Corporation vs. C Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008; and *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.

[2] G.R. No. 178697, November 17, 2010.

the Letter of Authority only authorizes the BIR to conduct an investigation of petitioner's books of accounts for taxable year 2009. An examination of the breakdown of the DST assessment will show that no DST was even assessed for 2009. Hence, on this point alone, the deficiency DST assessment is not valid as respondent acted beyond the scope of his authority.

The Court also noted that after receipt of the PAN on December 23, 2011, petitioner immediately paid the basic deficiency DST on December 28, 2011 or five (5) days after the issuance of the PAN.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the Court's Decision dated May 19, 2017.

WHEREFORE, premises considered, respondent's **Motion for Reconsideration (RE: Decision dated May 19, 2017)** is **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice