REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION, *Petitioner,*	**CTA Case No. 9504**
	Members:
-versus-	**DEL ROSARIO**, *P.J., Chairperson,* **FABON-VICTORINO**, *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUL 30 2020 11:00am

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RESOLUTION

MANAHAN, *J.:*

On January 14, 2020, the Court rendered its Decision partially granting petitioner's claim for refund, as follows:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is ordered is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **Php9,200,138.00**.
>
> **SO ORDERED**.[1]

On January 28, 2020, petitioner filed its *Motion for Partial Reconsideration of the Decision dated January 14, 2020.* Petitioner states that it should also be refunded the amount of Php10,865,867.00, representing its payment for the basic deficiency Documentary Stamp Tax (DST) assessment for taxable year 2011, inclusive of the deficiency DST of Php8,099,492.85 on the advances up to July 18, 2011, in addition to, and apart from, the amount of Php9,200,138.00, already ordered to be refunded.

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[1] Decision dated January 14, 2020, p. 17.

Petitioner states that it adduced evidence on record, by way of testimony,[2] that the amount of advances for the period January 1, 2011 to July 18, 2011 is Php1,619,898,570.00, and that this evidence was never rebutted by respondent. Considering that the amount of Php1,619,898,570.00 is unrebutted as the amount of advances extended prior to July 19, 2011, petitioner argues that the DST computed based on this amount, or Php8,099,492.85, should also be refunded.

Petitioner also argues that Notes to the Financial Statements are not the "debt instruments" referred to in Section 179 of the 1997 National Internal Revenue Code, as amended (NIRC), nor are they the "instructional letters" or "journal and cash vouchers" subject of the decision in the *Filinvest case*[3]. As such, the DST may not be imposed on the basis of the Notes to the Financial Statements. Based on this position, petitioner also argues that no DST may be imposed even after July 19, 2011, thus, all of the basic deficiency DST of Php10,865,867.00 should be refunded, in addition to the amount of Php9,200,135.00 already refunded in the Decision dated January 14, 2020, representing surcharge, interest and compromise penalty.

On January 31, 2020, respondent filed his *Motion for Partial Reconsideration (Re: Decision dated 14 January 2020).* Respondent states that the "good faith defense" should not apply to the instant case to justify the refund of the interest, surcharge, and compromise penalty. Respondent states that no such consideration was given to *Filinvest* by the Honorable Supreme Court despite such allegation of previous reliance in good faith.

On March 12, 2020, petitioner filed its *Opposition to Respondent's "Motion for Partial Reconsideration (Re: Decision dated 14 January 2020) dated January 31, 2020.* On the other hand, respondent failed to file his comment to petitioner's *Motion for Partial Reconsideration,* per Records Verification dated June 3, 2020.

On June 17, 2020, the subject *Motions* were submitted for resolution.

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[2] Exhibit "P-9" Judicial Affidavit of Ms. Eileen P. Ratilla, Q&A No. 15, p. 6.
[3] *Commissioner of Internal Revenue v. Filinvest Development Corporation,* G.R. Nos. 163653 and 167689, July 19, 2011.

Petitioner's Motion for Partial Reconsideration

In the instant case, while there is unrebutted testimony that advances made prior to July 19, 2011 amounted to Php1,619,898,570.00, there were no other supporting evidence in order to aid the Court in the determination of the advances made for the period of July 1, 2011 to July 18, 2011. The Court reiterates that claims for refund are strictly construed against the taxpayer, and that the taxpayer must prove every minute aspect of its claim for refund.

As to the argument that Notes to the Financial Statements may not be the basis of imposition of DST, the Court has previously held that "even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established."[4] Here, the transactions clearly existed so as to be reported in petitioner's Notes to the Financial Statements for year 2011.

Hence, petitioner's *Motion for Partial Reconsideration of the Decision dated January 14, 2020* is denied for lack of merit.

Respondent's Motion for Partial Reconsideration

Respondent argues that the interest, surcharge, and compromise penalty should not be refunded, since the Supreme Court still imposed interest, surcharge, and compromise penalty in the *Filinvest case*. The relevant portion of the *Filinvest case* is quoted below:

> 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 997 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

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[4] *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 1609, April 23, 2018; citing *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016.

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 Section 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 no-retroactivity of BIR rulings.

> Viewed in the light of the foregoing consideration, 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. In Assessment Notice No. SP-DST-96-00020-2000, the CIR correctly assessed the sum of P6,400,693.62 for documentary stamp tax, P3,999,793,44 in interests and P25,000.00 as compromise penalty, for a total of P10,425,487.06. Alongside the sum of P4,050,599.62 for documentary stamp tax, the CIR similarly assessed P1,721,099.78 in interests and P25,000.00 as compromise penalty in Assessment Notice No. SP-DST-97-00021-2000 or a total of P5,796,699.40. The imposition of deficiency interest is justified under Sec. 249(a) and (b) of the NIRC which authorizes the assessment of the same "at the rate of twenty percent (20%), or such higher rate as may be prescribed by regulations", from the date prescribed for the payment of the unpaid amount of tax until full payment. The imposition of the compromise penalty is, in turn, warranted under Sec. 250 of the NIRC which prescribes the imposition thereof "in case of each failure to file an information or return, statement or list, or keep any record or supply any information required" on the date prescribed therefor.

Based on the discussion abovequoted, good faith reliance on previous rulings by the taxpayer was neither raised as an issue nor passed upon by the Supreme Court in the *Filinvest case.*

Thus, it is reiterated 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."[5]

Respondent's *Motion for Partial Reconsideration (Re: Decision dated 14 January 2020)* is likewise denied for lack of merit.

WHEREFORE, the *Motion for Partial Reconsideration of the Decision dated January 14, 2020* filed by petitioner, and the

[5] *Commissioner of Internal Revenue v. St. Luke's Medical Center,* G.R. Nos. 195909 and 195960, September 26, 2012 citing *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* G.R. No. 166786, September 11, 2006.

Motion for Partial Reconsideration (Re: Decision dated 14 January 2020) filed by respondent, are both **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(I reiterate my Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice