REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL CORPORATION, *Petitioner,*	**CTA CASE NO. 9007**
- versus -	Members: **BAUTISTA,** *Chairperson* **FABON-VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 19 2017 4:06 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated April 19, 2017**, filed on May 16, 2017, without respondent's comment as per Records Verification dated June 27, 2017; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 19 April 2017)**, filed on May 18, 2017, with petitioner's **Opposition to Respondent's Motion for Partial Reconsideration dated May 18, 2017**, filed on June 22, 2017.

Both parties move for the reconsideration of the Court's Decision dated April 19, 2017, the dispositive portion of which reads:

> "**WHEREFORE,** premises considered, the Petition for Review and the Supplemental Petition for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT**

CERTIFICATE in the aggregate amount of **₱28,884,964.00,** representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 10,472,399.86
Interest up to March 15, 2013	18,362,564.14
Compromise Penalty	50,000.00
TOTAL	**₱28,884,964.00**

SO ORDERED."

The Court finds that both parties' motions lack merit.

Petitioner's Motion for Partial Reconsideration

Petitioner contends that the Court should apply in this case the decision of the Supreme Court in *Co vs. Court of Appeals*[1], which ruled that judicial decisions shall also be applied prospectively, instead of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[2] (*Visayas case*). Moreover, petitioner asserts that the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3] (*Filinvest case*), did not interpret Section 180 (now Section 179) of the National Internal Revenue Code (NIRC), as ascertaining "the contemporaneous legislative intent" behind Section 180. The Supreme Court simply applied the said legal provision to the "instructional letters as well as journal and cash vouchers" by peremptorily declaring that the said "instructional letters and journal and cash vouchers" qualified as "loan agreements". Hence, the *Filinvest case* cannot be characterized as "interpretation of a statute" constituting "part of the law as of the date it was originally passed" as it did not establish "the contemporaneous legislative intent" that then Section 180 of the NIRC supposedly "carried into effect". Consequently, the *Filinvest case* does not fall within the coverage of the Supreme Court decision in the *Visayas case.*

Petitioner's arguments must fail.

It is worthy to note that the Supreme Court in the *Visayas case* recognizes the prospective application of judicial decisions, but qualifies that the prospective application shall only apply if there is a prior ruling that was overruled by new doctrine. In that case, the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine

[1] G.R. No. 100776, October 28, 1993.
[2] G.R. No. 197525, June 4, 2014.
[3] G.R. Nos. 163653 and 167689, July 19, 2011.

and have acted in good faith. In the present case, however, there is no previous doctrine that was overruled by the doctrine in the *Filinvest case.* Hence, the interpretation placed upon Section 180 of the NIRC (now Section 179 of the NIRC of 1997) by the Supreme Court in the *Filinvest case* constitutes part of the NIRC as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by this Court in the assailed Decision:

> It must be stressed that the interpretation placed upon a law by the Supreme Court constitutes a part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal* Revenue, as follows:
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> > "Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. **It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.**" (*Emphasis supplied*)

Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the *Filinvest case* was deemed constituted as part of the NIRC as of December 23, 1994 up to the present time, the same may therefore be applied to this case without violating the principle on non-retroactivity of laws and rulings.

Petitioner also states that there was a previous doctrine that was overruled by the doctrine in the *Filinvest case.* Petitioner contends that prior to the promulgation of the *Filinvest case*, the rule was that intercompany advances covered by mere inter-office memos were not loan agreements subject to documentary stamp tax (DST) under the NIRC, on which petitioner had relied. This rule was embodied, among others, in (a) the decision of the Court of Appeals in *Commissioner of Internal Revenue vs. APC Group, Inc.*; (b) the decision of the Court of Tax Appeals En Banc in *Commissioner of Internal Revenue vs. Belle Corporation*; (c) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008; and (d) in the Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 62185. Thus, petitioner concludes that the *Filinvest case* cannot be applied retroactively.

Petitioner seems to lose sight of the fact that the cited decisions were those issued by the Court of Appeals (CA) and Court of Tax Appeals (CTA) and not by the Supreme Court. Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. In this regard, "it must be stressed that judicial decisions which form part of our legal system are only the decisions of the Supreme Court."[4] "CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court (Supreme Court), do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court (Supreme Court)."[5] Hence, petitioner's cited decisions cannot be considered previous doctrines and therefore have no value as precedents.

Petitioner argues that in any case, the decision in the *Filinvest case* will not cover the advances subject of this case. The documents subject in the *Filinvest case* were instructional letters and journals and cash vouchers evidencing advances which Filinvest extended to its affiliates. In this case, the BIR relied on mere Notes in the Audited Financial Statements of SMC and/or its affiliates. Further, the Notes are not debt instruments under Section 179 of the NIRC.

This Court had already discussed the foregoing arguments by petitioner in the assailed Decision, as follows:

> Petitioner claims that under Section 179 of the NIRC of 1997, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.
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> DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. **The DST is actually an excise tax, because it is imposed on the transaction rather than on the document. Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document. In other words, DST may be imposed even in**

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[4] *Government Service Insurance System vs. Cadiz*, G.R. No. 154093, July 8, 2003.

[5] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013, *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113, October 8, 2013, *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, October 8, 2013.

> **the absence of a debt instrument, as long as the transactions are clearly established.** (*Emphasis supplied*)

As to the issues on advances made by petitioner to Pacific Central Properties Inc., and South Premiere Power Corporation, petitioner did not present evidence to support its claims. It is worthy to reiterate this Court's decision, as follows:

> Petitioner also alleges that the BIR erred in subjecting to DST the amount of ₱1,156,873.85, representing the alleged advances to Pacific Central Properties Inc., for the reason that it had no advances to Pacific Central Properties Inc. in 2010. It claims that the advances in the amount of ₱231,374,770.99 pertain to its advances in 2011. Similarly, petitioner argues that the BIR erred in subjecting to DST the advances to South Premiere Power Corporation in the amount of ₱3,411,520.00, because the amount of advances is overstated by ₱204,000.00. It contends that its actual advances amounted to ₱682,100,000.00 instead of ₱682,304,000.00. In support of the foregoing, petitioner presented Exhibits "P-13"and "P-13-a". However, contrary to petitioner's claims, an examination of these exhibits shows that the amount of ₱231,374,770.99 pertaining to advances to Pacific Central Properties Inc. was extended in 2010 and that the actual advances to South Premiere Power Corporation in 2010 were ₱682,304,000.00.
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> Aside from its bare allegation, petitioner presented no other evidence to prove its claims. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.

Petitioner also claims that RMC No. 49-2003 should be disregarded for contravening a well-established judicial policy against multiplicity of suits. Moreover, petitioner alleges that respondent was presumed to have denied his claim if no action was taken during the two-year prescriptive period. The petition for review filed with this Court is deemed an appeal from the presumed denial. Thus, respondent thereby loses jurisdiction over the administrative claim for refund upon filing of its original petition with this Court.

Petitioner's argument has no merit.

In the case of *FCD Pawnshop and Merchandising Company, et al. vs. Union Bank of the Philippines, et al.*[6], the Supreme Court discussed "forum shopping", as follows:

> There is forum shopping "when a party repetitively avails of **several judicial remedies in different courts**, simultaneously or successively, all substantially founded on the same transactions and the same essential facts and circumstances, and all raising substantially the same issues either pending in or already resolved adversely by some other court." xxx (*Emphasis supplied*)

Forum-shopping exists only when a party avails of several judicial remedies which is not present in this case. Therefore, RMC No. 49-2003, which in essence allows the continuation of the processing of an administrative claim for refund/TCC case even if a case is pending in the tax court, does not violate the well-established judicial policy against multiplicity of suits or forum shopping.

Respondent's Motion for Partial Reconsideration

Respondent states that good faith is not an exception to the imposition of interest and surcharge on unpaid taxes and that this Court has no jurisdiction to abate interest and surcharge imposed against petitioner pursuant to Section 204 of the NIRC of 1997.

On the other hand, petitioner argues that respondent is precluded from filing a motion for reconsideration on the portion of this Court's assailed Decision which ordered the refund or issuance of tax credit certificate of the surcharge, interest and compromise penalty based on the doctrine of *res judicata.* Moreover, petitioner claims that the non-imposition of interest and surcharge on the basis of good faith is recognized in decisions of Supreme Court and in American jurisprudence. It also asserts that this Court did not abate any tax liability but merely applied well-established jurisprudence that a taxpayer will not be liable to pay surcharge, interest and penalty if he acted in good faith.

Respondent's arguments have no basis.

The Court has already settled that petitioner's reliance on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 is sufficient justification to delete the imposition of surcharges and interest, as follows:

> The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of

[6] G.R. No. 207914, January 18, 2017.

government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest,

A perusal of petitioner's claim for refund shows that it merely relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that intercompany loans and advances covered by inter-office memoranda are not subject to DST. Accordingly, petitioner's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest.

In the case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*[7], the Supreme Court held that:

> xxx The settled rule is 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. In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
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> > We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.
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> > WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.
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> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply

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[7] G.R. No. 166786, September 11, 2006.

> the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST.

Thus, petitioner's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest. Moreover, petitioner disputed respondent's imposition of compromise penalty. Consequently, the same cannot also be imposed upon petitioner.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration of the Decision dated April 19, 2017** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated on 19 April 2017)**, are hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice