REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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SAN MIGUEL HOLDINGS CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1935
(CTA Case No. 9401)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

SAN MIGUEL HOLDINGS CORP.,
Respondent.

CTA EB No. 1941
(CTA Case No. 9401)

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

Promulgated:

JUN 25 2020 2:47pm

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DECISION

UY, *J.*:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, namely: CTA EB No. 1935 entitled "*San Miguel Holdings Corp., Petitioner, vs. Commissioner of Internal Revenue,* *Respondent"*, filed on October 8, 2018, and CTA EB No. 1941, entitled "*Commissioner of Internal Revenue, Petitioner, vs. San Miguel Holdings Corp., Respondent"*, filed on October 10, 2018. Both Petitioners assail the Decision dated June 5, 2018[1] and Resolution dated September 3, 2018[2], rendered by the Second Division of this Court (Court in Division) in CTA Case No. 9401 entitled "*San Miguel Holdings Corp., Petitioner, vs. Commissioner of Internal Revenue, Respondent"*. The dispositive portions thereof respectively read as follows:

Decision dated June 5, 2018:

"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱50,618,995.10, representing the following:

Penalties erroneously paid by petitioner	Amount
Interest	₱ 35,590,862.92
Surcharge	14,831,132.18
Compromise Penalty	197,000.00
Total	**₱50,618,995.10**

SO ORDERED."

Resolution dated September 3, 2018:

"**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Partial Reconsideration of the Decision dated June 5, 2018,** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 June 2018)** are **DENIED** for lack of merit.

SO ORDERED."

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[1] Penned by Associate Justice Caesar A. Casanova, and concurred by Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Catherine T. Manahan, EB Docket (CTA EB No. 1935), pp. 66 to 93; and EB Docket (CTA EB No. 1941), pp. 23 to 50.
[2] *Id.*, EB Docket (CTA EB No. 1935), pp. 94 to 107; EB Docket (CTA EB No. 1941), pp. 51 to 64.

THE FACTS

San Miguel Holdings Corp. (or SMHC) is a holding company duly organized and existing under the laws of the Republic of the Philippines with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.

On the other hand, the Commissioner of Internal Revenue (or CIR) is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.

On July 19, 2011, the Supreme Court rendered a decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation (Filinvest)*[3] holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest extended to its affiliates qualified as loan agreements upon which DST may be imposed.

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011,[4] circularizing to all internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the *Filinvest* case, and enjoining all employees engaged in the audit and review of cases "to assess deficiency DST, if warranted, on these kinds of transactions."

On July 21, 2014, SMHC received an undated *Preliminary Assessment Notice* (PAN) issued by the BIR, assessing petitioner for the following deficiency taxes in connection with the examinations of its internal revenue tax liabilities for the taxable year 2011:

Tax	Basic	Surcharge	Interest (Until July 31, 2014)	Compromise	Total (with penalties)
Income Tax	70,732.15	-	32,401.14	12,000.00	115,133.29
VAT	34,892.86	-	17,532.47	6,000.00	58,425.33

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[3] G.R. Nos. 163653 and 167689, July 19, 2011.

[4] SUBJECT: Circularization of the relevant excerpts from the *En Banc* Supreme Court Decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 dated July 19, 2011, on the imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliated corporation.

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DST	59,665,630.39	14,916,407.60	35,828,419.20	213,000.00	110,623,457.19
Total	59,771,255.40	14,916,407.60	35,878,352.81	231,000.00	110,797,015.81

Based on the Details of Discrepancy attached to the PAN, the alleged deficiency DST assessment amounting to ₱110,623,457.19 was based on two transactions, which are: (1) Advances from San Miguel Corporation (SMC) and to related parties; and (2) Other Non-Current Assets under Finance Lease, as follows:

TRANSACTION DATE	ADVANCES FROM SMC TAX BASE AMOUNT	BASIC TAX Divided by ₱200	DUE ON	INTEREST	SURCHARGE	COMPRO-MISE	TOTAL AMOUNT DUE
Beginning Balance: Advances from SMC – 2009 (assessed in conglo audit under ELTAD I)	4,384,981,048.43 952,621,000.00						
Balance – 2011	3,432,360,048.43	17,161,800.24	1/6/2011	12,243,651.46	4,290,450.06	50,000.00	33,745,901.76
January 3, 2011	420,000.00	2,100.00	2/6/2011	1,462.52	525.00	1,000.00	5,087.52
February 1, 2011	420,000.00	2,100.00	3/6/2011	1,430.30	525.00	1,000.00	5,055.30
June 9, 2011	180,000,000.00	900,000.00	7/6/2011	552,821.92	225,000.00	20,000.00	1,687,821.92
October 11, 2011	5,870,922,756.37	29,354,613.78	11/6/2011	16,052,550.44	7,338,653.45	50,000.00	52,795,817.67
December 30, 2011	1,753,600,000.00	8,768,000.00	1/6/2012	4,501,707.40	2,192,000.00	50,000.00	15,511,707.40
Advances from SMC	11,237,722,804.80	56,188,614.02	144,234.00	33,353,624.04	14,047,153.51	172,000.00	103,761,391.57
Due Related Party	627,182,942.64	3,135,914.71	1/6/2011	2,237,238.88	783,978.68	25,000.00	6,182,132.27
Sub Total – Related Parties	11,864,905,747.44	59,324,528.74		35,590,862.92	14,831,132.18	197,000.00	109,943,523.84
Other Non-current Asset – Beg.	68,220,331.23	341,101.66	2/6/2011	237,556.28	85,275.41	16,000.00	679,933.35
Balance	11,933,126,078.67	59,665,630.39		35,828,419.20	14,916,407.60	213,000.00	110,623,457.19

The Details of Discrepancy shows that the alleged deficiency DST was based on data gathered from Note 7 in the 2011 Audited Financial Statements (AFS) of SMHC, and that the deficiency DST on the advances from SMHC and to related parties was "assessed pursuant to Section 179 of the NIRC as amended and RMC No. 48-2011 and in consonance with Supreme Court Decision in the case of CIR vs. Filinvest Development Corp., in G.R. No. 163653 and 167689 promulgated on July 19, 2011 which rules that advances are subject to DST.

On July 31, 2014, to stop the running of interest and with a view of filing a claim for refund, SMHC paid to the BIR through the latter's Electronic Filing and Payment System the amount of ₱110,623,457.19 (inclusive of interest up to July 31, 2014, surcharge and penalty) for the alleged deficiency DST per the PAN.

However, the claim for refund subject of the Petition for Review before the Court in Division involves only the Documentary Stamp Tax (DST) payment amounting to ₱109,943,523.84, representing the alleged deficiency DST assessment on advances from SMC and to related parties. The alleged deficiency DST assessment on the "financial lease", amounting to ₱679,933.35, is not included. The alleged deficiency Income Tax and Value-Added Tax mentioned in the PAN were paid by petitioner on the same date, July 31, 2014.

On August 5, 2014, SMHC informed the CIR that it had paid the alleged deficiency DST assessment under protest and that it shall file the corresponding administrative claim for refund of the DST paid. On the same date, SMHC filed its Reply to the undated PAN.

On June 28, 2016, SMHC filed with the BIR the *Letter/Claim for Refund* requesting the refund or issuance of a Tax Credit Certificate (TCC) in the amount of ₱109,943,523.84 allegedly representing DST erroneously and/or illegally collected from it by the BIR for the taxable year 2011, pursuant to Section 229 in relation to Section 204(C) of the National Internal Revenue Code of 1997, as amended.

The BIR has not taken action on the aforesaid Letter/Claim for Refund. Hence, SMHC filed a *Petition for Review* with the Court in Division on July 28, 2016, entitled "*San Miguel Holdings Corp, Petitioner, vs. Commissioner of Internal Revenue, Respondent*", docketed as CTA Case No. 9401.[5]

On August 31, 2016, the CIR filed his *Answer* in CTA Case No. 9401[6], alleging certain special and affirmative defenses, to wit: (a) that SMHC is liable for DST from its advances from SMC pursuant to Section 179 of the National Internal Revenue Code (NIRC), as amended and RMC No. 48-2011 and in consonance with the *Filinvest* case; (b) that there is no retroactive application of the Supreme Court in the *Filinvest* case; (c) that the BIR's right to assess petitioner has not yet prescribed; (d) that the amount SMHC paid for the deficiency DST assessment was not illegally or erroneously collected by the CIR and the said amount cannot be the proper subject of a claim for refund; and (e) that claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

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[5] Division Docket – Vol. 1 (CTA Case No. 9401) pp. 10 to 43.
[6] Division Docket – Vol. 1 (CTA Case No. 9401) pp. 126 to 136.

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Thereafter, a *Notice of Pre-Trial Conference* was issued by the Court in Division on September 2, 2016, setting the case for pre-trial conference on September 29, 2016. Accordingly, the CIR's *Pre-Trial Brief* was filed on September 22, 2016, while SMHC's *Pre-Trial Brief* was filed on September 26, 2016.

After the Pre-Trial Conference held on September 2, 2016, the parties filed their *Joint Stipulation of Facts, Documents, Issues, and Other Matters* on December 2, 2016. Subsequently, the Court in Division issued a *Pre-Trial Order* on December 27, 2016 and pre-trial was deemed terminated.

During trial, SMHC presented witness, Virgilio S. De Guzman on January 23, 2017[7] and subsequently filed its *Formal Offer of Evidence* on February 15, 2017. In the Resolution dated March 9, 2017, the Court admitted Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-3-a", "P-3-b", "P-4", "P-4-a", "P-4-b", "P-5", "P-5-a", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", "P-9", "P-9-a", "P-10", and "P-10-a".

On the other hand, counsel for the CIR manifested during the hearing held on May 15, 2017[8] that the case has no report of investigation, and that he has no witness to present in CTA Case No. 9401. Thus, the parties were directed to file their respective Memoranda.

On June 14, 2017, the CIR filed his *Memorandum*, while SMHC filed its *Memorandum for the Petitioner* on June 28, 2017. Hence, the Court in Division issued a Resolution submitting CTA Case No. 9401 for decision on July 5, 2017.

In the assailed Decision dated June 5, 2018,[9] the Court in Division partially granted the Petition for Review in CTA Case No. 9401, ordering the CIR to refund or issue a tax credit certificate in the amount of ₱50,618,995.10.

SMHC filed a *Motion for Partial Reconsideration of the Decision dated June 5, 2018*[10] on June 19, 2018, while the CIR filed *Motion for*

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[7] Division Docket (CTA Case No. 9401) p. 327
[8] Division Docket (CTA Case No. 9401) p. 362
[9] EB Docket (CTA EB No. 1935), pp. 66 to 93; EB Docket (CTA EB No. 1941), pp. 23 to 50; and Division Docket – Vol. 11 (CTA Case No. 9401), pp. 435 to 462.
[10] Division Docket – Vol. 2 (CTA Case No. 9401), pp. 463 to 477.

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Partial Reconsideration (Re: Decision promulgated 5 June 2018),[11] on June 21, 2018.

On July 12, 2018, the CIR filed his *Opposition (Re: Motion for Reconsideration);*[12] while SMHC filed on July 25, 2018, its *Opposition to Respondent's "Motion for Partial Reconsideration...dated June 21, 2018."*[13]

In the assailed Resolution dated September 3, 2018,[14] the Court in Division denied both SMHC's *Motion for Partial Reconsideration of the Decision dated June 5, 2018* and the CIR's *Motion for Partial Reconsideration (Re: Decision promulgated 5 June 2018),* for lack of merit.

Thus, on September 21, 2018, SMHC filed before the Court *En Banc a Motion for Extension of Time to File Petition for Review,*[15] praying for an additional period of fifteen (15) days from September 26, 2018, or until November 11, 2018, to file its *Petition for Review.* As prayed for, the Court *En Banc* granted SMHC a final and non-extendible period of fifteen (15) days from September 26, 2018 or until October 11, 2018 (not November 11, 2018) within which to file its Petition for Review.[16]

Likewise, on September 26, 2018, the CIR filed a *Motion for Extension of Time to File Petition for Review,*[17] praying for an extension of fifteen (15) days from September 27, 2018, or until October 12, 2018, within which to file his *Petition for Review.* The Court *En Banc* also granted the CIR a final and non-extendible period of fifteen (15) days from September 27, 2018, or until October 12, 2018, within which to file his *Petition for Review.*[18]

On October 8, 2018, SMHC filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1935;[19] while on

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[11] Division Docket – Vol. 2 (CTA Case No. 9401), pp. 482 to 490.
[12] Division Docket – Vol. 2 (CTA Case No. 9401), pp. 496 to 506.
[13] Division Docket – Vol. 2 (CTA Case No. 9401), pp. 512 to 517.
[14] EB Docket (CTA EB No. 1935), pp. 94 to 107; EB Docket (CTA EB No. 1941), pp. 51 to 64; and Division Docket – Vol. II (CTA Case No. 9401), pp. 564 to 577.
[15] EB Docket (CTA EB No. 1935), pp. 1 to 6.
[16] Minute Resolution dated September 26, 2018, EB Docket (CTA EB No. 1935), p. 8.
[17] EB Docket (CTA EB No. 1941), pp. 1 to 4.
[18] Minute Resolution dated September 28, 2018, EB Docket (CTA EB No. 1941), p. 6.
[19] EB Docket (CTA EB No. 1935), pp. 15 to 62.

October 10, 2018, the CIR filed his *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 1941.[20]

In its *Petition for Review* in CTA EB No. 1935, SMHC prays that the assailed Decision and Resolution of the Court in Division in CTA Case No. 9401 be partially reconsidered by granting the refund of the amount of ₱59,324,528.73, representing its payment for the basic deficiency Documentary Stamp Tax assessment for the taxable year 2011, in addition to the amount of ₱50,618,995.48 which was ordered refunded to it.

On the other hand, in his *Petition for Review* in CTA EB No. 1941, the CIR prays that the same Decision and Resolution be reconsidered and set aside, and another decision be rendered denying the entire claim for refund.

Considering that the instant cases are appeals from the Decision promulgated on June 5, 2018 and Resolution promulgated on September 3, 2018, rendered by the Court in Division in CTA Case No. 9401, CTA EB No. 1941 was consolidated with CTA EB No. 1935 on October 12, 2018.[21]

On November 13, 2018, the Court *En Banc* ordered the CIR in CTA EB No. 1935, and SMHC in CTA EB No. 1941, to file their respective *Comments* to the corresponding *Petitions for Review.*[22]

On December 4, 2018, SMHC filed *a Motion for Extension of Time to File Comment on the Petition for Review in CTA EB. 1941*,[23] praying for an extension of ten (10) days from December 7, 2018 or until December 17, 2018, within which to file its *Comment*. The Court *En Banc* granted SMHC a final and non-extendible period of ten (10) days from December 7, 2018, or until December 17, 2018, within which to file its *Comment.*[24]

The CIR filed its *Comment (Re: Petition for Review)* on December 7, 2018,[25].

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[20] EB Docket (CTA EB No. 1941), pp. 7 to 18.
[21] Minute Resolution, 2018, EB Docket (CTA EB No. 1935), p. 115.
[22] Resolution, EB Docket (CTA EB No. 1935), pp. 117 to 118.
[23] EB Docket (CTA EB No. 1935), pp. 119 to 121.
[24] Minute Resolution dated December 5, 2018, EB Docket (CTA EB No. 1935), p. 122.
[25] EB Docket (CTA EB No. 1935), pp. 123 to 133.

On December 13, 2018, SMHC filed a *Motion for Further Extension of Time to File Comment on the Petition for Review in CTA EB No. 1941*, praying for another extension of ten (10) days from December 17, 2018, or until December 27, 2018, within which to file its Comment on the CIR's Petition for Review in CTA EB No. 1941.

In the Resolution dated January 11, 2019,[26] the Court *En Banc* denied SMHC's *Motion for Further Extension of Time to File Comment on the Petition for Review* in CTA EB No. 1941, for lack of merit. Simultaneously, the Court *En Banc* directed both parties to submit their respective memoranda within thirty (30) days from receipt of the Court's resolution.

The CIR filed a *Manifestation* on February 11, 2019 stating that he is adopting the arguments raised in the Comment to the Petition for Review filed on October 10, 2018 as his memorandum.[27]

On March 6, 2019, SMHC filed a *Motion for Extension of Time to File Memorandum for San Miguel Holdings Corporation*,[28] praying for an extension of fifteen (15) days from March 9, 2019, or until March 24, 2019, to file its *Memorandum*. The Court *En Banc* granted SMHC a final and non-extendible period of fifteen (15) days from March 9, 2019, or until March 24, 2019, within which to file its *Memoranda*.[29] SMHC filed its *Consolidated Memorandum for San Miguel Holdings Corp.* on March 21, 2019.[30]

Thereafter, the instant consolidated cases were submitted for decision on April 8, 2019.[31] Hence, this Decision.

ASSIGNMENTS OF ERRORS

In **<u>CTA EB No. 1935</u>**, SMHC raises the following issues for resolution of the Court *En Banc*, to wit:

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[26] EB Docket (CTA EB No. 1935), pp. 199 to 200.
[27] EB Docket (CTA EB No. 1935), pp. 201 to 202.
[28] EB Docket (CTA EB No. 1935), pp. 206 to 208.
[29] Minute Resolution dated March 13, 2019, EB Docket (CTA EB No. 1935), p. 209.
[30] EB Docket (CTA EB No. 1935), pp. 211 to 272.
[31] EB Docket (CTA EB No. 1935), pp. 358 to 359.

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"7.01. The main issue for resolution of the Court is: Whether SMHC is entitled to a refund of the amount of P59,324,528.74 that it paid to the BIR for alleged basic deficiency documentary stamp tax.

7.02. The following are the corollary issues:

7.02.a. Whether SMHC is liable for the subject basic documentary stamp tax in the amount of P59,324,528.74

7.02.b. Whether the decision in the Filinvest Case and RMC No. 48-2011 may be applied retroactively against SMHC with respect to advances received/extended prior to July 19, 2011.

702.c. Assuming the decision in the Filinvest Case may be applied retroactively, whether the aforementioned advances are covered by the said decision

7.02.d. Whether the DST may be imposed on the advances received/extended by Petitioner on the mere basis of a Note appearing in its Audited Financial Statements.

7.02.e. Whether the right of the Government to assess SMHC for deficiency DST on advances made before July 2011 has already prescribed."[32]

In **CTA EB No. 1941**, the CIR presents the following assignment of error supposedly committed by the Court in Division, to wit:

"THE HONORABLE SECOND DIVISION VIOLATED ESTABLISHED JURISPRUDENCE WHEN IT ORDERED THE CANCELLATION OF THE DEFICIENCY INTEREST SURCHARGE AND COMPROMISE PENALTY PAID BY RESPONDENT

a) The interest, surcharge and compromise penalty have factual and legal bases.

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[32] *Petition for Review*, EB Docket (CTA EB No. 1935), pp. 31 to 32.

b) Reliance in good faith by respondent must be relatively applied."[33]

SMHC's arguments:

SMHC argues that the Court in Division erred in holding that the decision of the Supreme Court in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[34] (*Filinvest*) promulgated on July 19, 2011, and Revenue Memorandum Circular (RMC) No. 48-2011 may be applied retroactively to the cash advances subject of the instant case. According to SMHC, the doctrine of prospectivity of judicial decisions should be considered pursuant to the ruling of the Supreme Court in the case of *Co vs. Court of Appeals.*[35] Thus, the *Filinvest* case may not be invoked against SMHC on advances extended to it prior to July 19, 2011.

Allegedly, the Court in Division also erred in holding that the DST may be imposed on the subject cash advances received/extended by SMHC on the basis of a mere note appearing in its 2011 Audited Financial Statements. SMHC contends that notes to financial statements are not debt instruments referred to in Section 179 of the NIRC, nor are they instructional letters of journal and cash vouchers subject of the decision in the *Filinvest* case.

SMHC also argues that the Court in Division erred in holding that the right of the government to assess SMHC for deficiency DST on advances made before July 2011 has not prescribed. According to SMHC, the exception in Section 222 of the NIRC cited by the Court in Division in the assailed Decision is not applicable in the instant case; that the advances involved are not subject to DST because they were received and extended prior to the promulgation of the *Filinvest* case and no DST return was filed.

In light of the foregoing grounds, SMHC contends that the Court in Division erred in not granting the refund amount of ₱59,324,528.74, representing erroneously and/or illegally collected basic deficiency documentary stamp tax for the taxable year 2011.

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[33] *Petition for Review*, EB Docket (CTA EB No. 1941), p. 10.
[34] G.R. Nos. 163653 & 167689, July 19, 2011.
[35] G.R. No. 100776, October 28, 1993.

The CIR's arguments:

The CIR argues that the ruling of the Court in Division, on the imposition of deficiency interest, surcharge and compromise penalty should be dispensed with since SMHC acted in good faith in relying previous court decisions and BIR rulings, is utterly misplaced. The CIR asserts that in the *Filinvest* case, no such consideration was given to *Filinvest* by the Supreme Court despite such allegation of previous reliance in good faith. As such, the imposition of interest, surcharge and compromise penalty has factual and legal basis under the NIRC of 1997 and as ruled by the Supreme Court in the *Filinvest* case.

Further, the CIR argues that reliance by good faith by SMHC must be relatively applied. SMHC cannot simply invoke good faith in order to escape liability and deficiency interest. According to the CIR, Section 249(B) and 249(C) of the NIRC is clear and it does not admit of an exception from the imposition of deficiency delinquency interest for non-payment of taxes.

THE COURT *EN BANC*'S RULING

The Petitions for Review are not meritorious.

The decision in the Filinvest case and RMC No. 48-2011 can be applied retroactively because no old doctrine of the Supreme Court was overruled therein

SMHC asserts that the decision on the *Filinvest* case promulgated by the Supreme Court on July 19, 2011 and RMC No. 48-2011 issued by the BIR on October 6, 2011 should not be given retroactive effect to cover the cash advances extended by SMHC to and from its related parties in 2011. SMHC submits that the Court should apply the decision of the Supreme Court in *Co vs. Court of Appeals, et al.,*[36] (Co case), which ruled that judicial decisions shall be applied prospectively.

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[36] G.R. No. 100776, October 28, 1993.

Moreover, SMHC avers that prior to the promulgation of the *Filinvest* case and the issuance of RMC No. 48-201 by the BIR, the prevailing rule was that mere inter-office memos covering inter-company advances were not loan agreements subject to DST under the NIRC. It further avers that it relied on the said rule which was embodied in the following court decisions and BIR rulings:

(a) Decision of the Court of Appeals (CA) in *Commissioner of Internal Revenue vs. APC Group, Inc*[37];

(b) CTA *En Banc* decision in *Commissioner of Internal Revenue vs. Belle Corporation*[38];

(c) BIR Ruling Nos. [DA (C-035) 127-08] dated August 8, 2008; and

(d) Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185 entitled "*Commissioner of Internal Revenue vs. APC Group, Inc.*".

We are not persuaded by SMHC's arguments.

The ruling of the Supreme Court in the case of *Philippine International Trading Corporation vs. Commission of Audit*[39], is instructive, to wit:

> "Article 8 of the Civil Code declares that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." While decisions of the Court are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves.
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> Article 4 of the Civil Code, on the other hand, enunciates the rule on non-retroactivity of laws, in that "(l)aws shall have no retroactive effect, unless the contrary is provided."

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[37] CA-GR No. 69869, November 29, 2002.
[38] CTA EB No. 147, October 13, 2006.
[39] G.R. No. 205837, November 21, 2017.

In *Columbia Pictures, Inc. v. Court of Appeals,* we expounded on the import of our ruling in *Senarillos* in relation to the rule of nonretroactivity of laws. Thus:

> Article 4 of the Civil Code provides that "(l)aws shall have no retroactive effect, unless the contrary is provided.["] Correlatively, Article 8 of the same code declares that "(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines."
>
> Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the law mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.
>
> Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.* that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. x x x.
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> xxx xxx xxx
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> **It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the <u>qualification</u> that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should**

> **not apply to parties who relied on the old doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication. (Emphasis supplied, citations omitted.)"

Based on the foregoing, the interpretation placed upon a law by the Supreme Court shall form part of the law as of the date it was enacted because it establishes the contemporaneous legislative intent of the law. Furthermore, prospective application of decisions is applicable only when an old doctrine of the Supreme Court is overruled by a subsequent decision adopting a new doctrine. In such a situation, the new doctrine must be applied prospectively.

In the *Filinvest* case, the Supreme Court interpreted Section 180 of the Tax Code (now Section 179 of the NIRC of 1997), particularly on the scope of the word 'loan agreements', as being subject to DST. The Supreme Court held that loan agreement includes "*instructional letters, as well as, the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates"*. Section 180 was inserted in the NIRC through the enactment of RA No. 7660 on December 23, 1994. This provision is, up until now, still in our statute books. Relative thereto, the same Section 180 was also carried in RA No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended through the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case becomes part of the NIRC as of said date, *i.e.,* December 23, 1994, up to the present time.

Therefore, contrary to the allegations of SMHC, the application of the *Filinvest* case to the present case will not constitute a violation of the principle of non-retroactivity of laws and rulings because the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997), in the *Filinvest* case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present.

Moreover, there is no previous doctrine issued by the Supreme Court that is overruled by the doctrine enunciated in the *Filinvest* case. The cases and BIR Ruling cited by SMHC do not constitute binding precedents. Decisions of the CTA or CA, unlike those of the Supreme Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents.[40] Hence, the doctrine laid down in the *Filinvest* case that may be retroactively applied to this case.

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

In the case of *Philancor Credit Corporation vs. Commissioner of Internal Revenue*[41], the Supreme Court ruled that BIR Ruling and Revenue Regulations issued even after the transaction took place are till applicable because they are issuances interpreting the same rule imposing a DST, thus:

> "The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but no on their assignment or transfer: xxx"

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[40] *Commissioner of Internal Revenue vs. San Roque Power Corporation; Taganito Mining Corporation vs. Commissioner of Internal Revenue; Philex Mining Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 187485, 196113 & 197156, October 8, 2013.

[41] G.R. No. 169899, February 6, 2013.

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DST may be imposed on the advances to SMHC on the basis of a Note appearing in its 2011 Audited Financial Statement

SMHC argues that even assuming that the decision in *Filinvest* case may be applied retroactively, the same will not cover the subject advances in this case because the documents subject of the *Filinvest* case were instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates. On the other hand, SMHC alleges that, in the instant case, the BIR relied on a mere Note to the 2011 Audited Financial Statements of SMHC. SMHC claims that under Section 179 of the NIRC, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.

We do not agree.

The Court in Division had extensively addressed the foregoing arguments in the assailed Decision. To emphasize, the DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[42] Also, Section 6 of Revenue Regulations (RR) No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes that are executed. Based on the foregoing, DST may be imposed on the advances on the basis of a Note appearing in SMHC's 2011 Audited Financial Statement.

The Court in Division did not err in ruling that respondent's right to assess has not prescribed

SMHC argues that the Court in Division erred in holding that the right of the government to assess SMHC for deficiency DST on advances made before July 2011 has not prescribed. According to SMHC, the exception in Section 222 of the NIRC cited by the Court in Division in the assailed Decision is not applicable in the instant case because the advances involved are not subject to DST because they were received and extended prior to the promulgation of the *Filinvest* case and no DST return was filed.

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[42] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.

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SMHC's arguments are devoid of merit.

Based on the above discussions, We find SMHC liable for deficiency DST. However, in the instant case, the records of the case is bereft of any evidence that SMHC filed a DST return for the subject transactions. Hence, the Court in Division was correct in applying Section 222 of the NIRC of 1997, as amended, which states that in case of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the omission. Thus, the period to assess has not yet prescribed when the BIR issued the assessment against SMHC.

The Court in Division did not err in holding SMHC not liable to pay interest, surcharge and penalty

The CIR argues that the Court in Division erred in ruling that the imposition of deficiency interest, surcharge and compromise penalty should be dispensed on the ground of good faith. The CIR claims that good faith must be relatively applied; that SMHC cannot simply invoke good faith in order to escape liability and deficiency interest. According to the CIR, Section 249(B) and 249(C) of the NIRC is clear and it does not admit of an exception from the imposition of deficiency delinquency interest for non-payment of taxes.

The CIR's arguments are untenable.

It is settled 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.[43]

In the instant case, a perusal of SMHC's claim for refunds shows that it merely relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 and CTA/CA decisions issued prior to *Filinvest* case promulgated on July 19, 2011, which states that inter-company loans and advances covered by inter-office memoranda are not subject to

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[43] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 179085, January 21, 2010.

DST. Hence, SMHC's reliance on the said rulings and court decisions justifies the non-imposition of surcharges and interest.

Moreover, SMHC is not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by SMHC could only mean that there was no agreement that had effectively been reached between the parties.[44]

WHEREFORE, in light of the foregoing considerations, the *Petition for Review* in CTA EB No. 1935 filed by SMHC and the *Petition for Review* in CTA EB No. 1941 filed by the CIR are both **DENIED** for lack of merit.

Accordingly, the Decision dated June 5, 2018 and the Resolution dated September 3, 2018 rendered by the Court in Division in CTA Case No. 9401, are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

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

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[44] *Dr. Felisa L. Vda De San Agustin, in substitution of Jose Y. Feria, in his capacity as executor of the estate of Jose San Agustin vs. Commissioner of Internal Revenue,* G.R. No. 138485, September 10, 2001.

(Retired)
CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(With due respect, I Concur with Presiding Justice Del Rosario's Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the cases were assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SAN MIGUEL HOLDINGS CORP., *Petitioner,*	**CTA EB NO. 1935** (CTA Case No. 9401)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent,*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1941** (CTA Case No. 9401)
	Present:
-versus-	**DEL ROSARIO**, ***P.J.***, **CASTAÑEDA**, **JR.**, **UY**, **FABON-VICTORINO**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, ***JJ.***
SAN MIGUEL HOLDINGS CORP., *Respondent.*	Promulgated: JUN 2 5 2020 2:47pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1941 for lack of merit.

With due respect, I am constrained to withhold my assent on the denial of the Petition for Review filed by San Miguel Holdings Corp. (SMHC) in CTA EB No. 1935.

In the present case, there is no denying that SMHC relied in good faith on *BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008*, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are **not** subject to Documentary Stamp Tax (DST) under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

But more than that, SMHC also relied in good faith on the judicial interpretation then prevailing prior to the promulgation by the Supreme Court of its decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] on July 19, 2011. In *Filinvest*, the Supreme Court laid down the doctrine that instructional letters, journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which DST may be imposed. In contrast, the prevailing judicial interpretation **prior** to *Filinvest* is that inter-company advances covered by mere inter-office memos were **not loan agreements subject to DST** under Section 179 of the NIRC of 1997, as amended.

To be specific, SMHC relied on the following:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002,* wherein the Court of Appeals (CA) held that the interpretation of the Bureau of Internal Revenue (BIR) in **BIR Ruling No. 116-98 dated July 30, 1998** (i.e., that inter-office memo covering advances granted by an affiliate company is not subject to DST) is in accordance with law; and,

(ii) *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006,* wherein the Court of Tax Appeals (CTA) declared that the ruling in **BIR Ruling No. 116-98 dated July 30, 1998** (i.e., that inter-company advances made by Belle to its affiliates is not subject to DST) is consistent with the provisions of the NIRC of 1997.

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[1] G.R. Nos. 163653 & 167689, July 19, 2011.

The rulings of the CA in *APC Group* and the CTA in *Belle Corporation*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on non-imposition of DST on loans and advances to affiliates which are covered by inter-office memoranda. Pronouncements of the CA and the CTA are at the very least persuasive.

Specifically, on the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals / Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*[2] is enlightening:

> "**Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides.** It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
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> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.**" (*Boldfacing supplied*)

While the doctrine laid down by the CA in ***APC Group*** and the CTA in ***Belle Corporation***, respectively, was effectively over-ruled on July 19, 2011 when the Supreme Court promulgated *Filinvest*, the same cannot be applied retroactively to the prejudice of taxpayers who relied thereon in good faith. Note that, jurisprudentially, a Supreme Court pronouncement reversing a BIR Ruling favorable to a taxpayer would not as a rule cause any prejudice to the latter, as the same may only be applied prospectively.

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[3] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[4] *and Philex Mining Corporation*

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[2] G.R. Nos. 104151 and 105563, March 10, 1995.
[3] G.R. No. 187485, February 12, 2013, 690 SCRA 336 (2013).
[4] G.R. No. 196113, February 12, 2013, 690 SCRA 336, (2013).

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vs. Commissioner of Internal Revenue,[5] the Supreme Court, citing the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,[6] held that the **reversal of a general interpretative rule should be applied prospectively**, thus:

> "Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:
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> > In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
> >
> > This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.), Inc., and Commissioner of Internal Revenue v. Court of Appeals.* **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**
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> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, **this Court ruled that applying such**

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[5] G.R. No. 197156, February 12, 2013, 690 SCRA 336, (2013).
[6] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

> **ruling retroactively would be prejudicial to the taxpayer.**" (*Boldfacing supplied*)

If a taxpayer can rely in good faith on an <u>erroneous</u> "favorable" ruling of the BIR without suffering any legal prejudice (that is - - by applying a new ruling reversing a previous favorable BIR ruling <u>prospectively</u>), I submit that reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.

In view of the foregoing, SMHC is entitled to a refund of the basic **DST paid** on advances for the period January 1, 2011 to July 18, 2011, in addition to the surcharge, interest, and compromise penalty previously paid in the amount of ₱50,618,995.10.

All told, I VOTE to: (i) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1941; (ii) PARTIALLY GRANT the Petition for Review filed by San Miguel Holdings Corp. in CTA EB No. 1935; and, (iii) REMAND the case to the Court in Division for the determination of the amount of basic documentary stamp tax to be refunded to San Miguel Holdings Corp. for the period January 1, 2011 to July 18, 2011.

ROMAN G. DEL ROSARIO
Presiding Justice