REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA EB No. 2326
(CTA Case No. 9504)

-versus-

SAN MIGUEL CORPORATION,
Respondent.

x--x

SAN MIGUEL CORPORATION,
Petitioner,

CTA EB No. 2330
(CTA Case No. 9504)

-versus-

Present:
Del Rosario, *P.J.*,
Castañeda, Jr.,
Uy,
Ringpis-Liban,
Manahan,
Bacorro-Villena,
Modesto-San Pedro,
Reyes-Fajardo, and
Cui-David, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 24 2022 3:50pm

x--x

D E C I S I O N

CASTAÑEDA, JR., *J.*:

Before this Court are the consolidated Petitions for Review filed by the Commissioner of Internal Revenue (CIR) and San Miguel Corporation (SMC) on September 23, 2020 (CTA EB No. 2326) and on September 21, 2020 (CTA EB No. 2330), respectively. Both petitions assail the Decision[1] and Resolution[2] promulgated on January 14, 2020 and on July 30, 2020, respectively, by the First Division ("CTA Division", for brevity) in the case *San Miguel Corporation v. Commissioner of Internal Revenue,* docketed as CTA Case No. 9504.

The dispositive portion of the January 14, 2020 Decision ("Assailed Decision") reads:

> "**WHEREFORE,** 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 aggregate amount of **Php9,200,138.00.**
>
> **SO ORDERED.**"

The dispositive portion of the July 30, 2020 Resolution ("Assailed Resolution") reads:

> "**WHEREFORE,** the *Motion for Partial Reconsideration of the Decision dated January 14, 2020* filed by petitioner, and the *Motion for Partial Reconsideration (Re: Decision dated 14 January 2020)* filed by respondent, are both **DENIED** for lack of merit.
>
> **SO ORDERED.**"

THE FACTS

The facts of this case as found by the then CTA First Division[3] are as follows:

> "Petitioner is a corporation 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. *Je*

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[1] *Rollo (CTA EB No. 2326),* pp.27-44, Penned by Associate Justice Catherine T. Manahan; With Concurring Opinion from Presiding Justice Roman G. Del Rosario (*Rollo*, pp. 45-48) and Concurring and Dissenting Opinion from Associate Justice (now Retired) Esperanza R. Fabon-Victorino (*Rollo*, pp. 49-55).
[2] *Id.*, pp. 56-61.
[3] *Rollo*, pp. 27-33; Citations omitted; In the Division case, petitioner is the SMC, while respondent is the CIR.

Respondent 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.

On April 18, 2013, petitioner received a Letter of Authority (LOA) No. 121-2013-00000026 dated April 12, 2013, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period starting January 1, 2011 to December 31, 2011.

On November 26, 2014, petitioner received a Preliminary Assessment Notice (PAN) dated November 25, 2014, stating that after investigation, respondent found deficiency taxes for taxable year 2011, namely, deficiency DST amounting to Php20,000,085.00, inclusive of 25% surcharge, interest from January 6, 2011 to November 15, 2014, and compromise penalty of Php25,000.00, computed as follows:

Advances to:		
Bell Telecommunications Phils., Inc.	P	28,798,570.00
Clariden Holdings, Inc.		554,495,000.00
Coastal View Exploration Corp.		2,100,000.00
SMC Global Power Holdings Corp.		10,085,760.00
SMC Retirement Plan		1,577,693,940.00
Total Advances	**P**	**2,173,173,270.00**
Basic tax due (1 peso for every 200)	P	10,865,867.00
Add: 25% surcharge		2,716,467.00
Interest (1/6/2011 to 11/15/2014) 78%		6,392,751.00
Compromise		25,000.00
Total tax due	**P**	**20,000,085.00**

On December 11, 2014, petitioner paid Php20,066,005.00, representing the alleged basic deficiency DST (Php10,865,867.00), inclusive of surcharge (Php2,716,467.00), interest (Php6,458,671.00), and compromise penalty (Php25,000.00).

On March 16, 2015, petitioner filed a Letter dated March 13, 2015 [Re: Preliminary Assessment Notice (PAN) issued to San Miguel Corporation], stating that on December 11, 2014, it paid under protest the alleged deficiency DST for taxable year 2011 in the amount of Php20,066,005.00, inclusive of surcharge, interest up to December 11, 2014, and penalties. In any event, it shall file an administrative claim for the refund of said amount.

On November 9, 2016, petitioner filed with respondent a Letter dated November 3, 2016 (Re: Claim for Refund — P20,066,005.00), for the refund or issuance of a TCC in the amount of Php20,066,005.00, representing the alleged DST erroneously/illegally collected, allowed under Section 229 of the 1997 National Internal Revenue Code, as amended (NIRC).

Respondent, however, failed to act on petitioner's claim for refund, prompting the filing of the instant Petition for Review before the Court on December 8, 2016.

In his Answer (with Motion to Admit) filed on February 23, 2017, respondent submits that petitioner failed to establish that the subject tax was erroneously or illegally collected. For respondent, petitioner erroneously relied on the legal principle of non-retroactivity of laws and rulings considering that the cited *Filinvest case* merely affirmed the tax treatment of inter-company advances as loan agreements subject to DST under Section 179 of the NIRC.

Respondent also puts a premium on petitioner's payment of the assessed DST which he considers as petitioner's admission of the factual basis of the assessment. Thus, the said payment of the deficiency DST assessment cannot be deemed erroneous.

Finally, respondent argues that petitioner cannot rely on its supposed good faith and honest belief that it was not liable for DST on the loan advances to its affiliates to escape from tax liability.

After the Pre-Trial Conference on May 2, 2017, the parties were granted ten (10) days or until May 12, 2017 to submit their Joint Stipulation of Facts and Issues (JSFI) which shall include their respective lists of documentary evidence and witnesses as well as their agreed hearing dates.

However, on May 19, 2017, petitioner filed a Manifestation stating that the parties would not be able to comply with the filing of the proposed JSFI as they failed to stipulate on substantial matters other than those already stated in their respective pleadings.

On June 15, 2017, the Pre-Trial Order (PTO) was issued terminating the pre-trial proceeding.

During the trial, petitioner presented two witnesses: (1) Eileen P. Ratilla, and (2) Rogelio G. Lui.

Witness Eileen P. Ratilla testified that as petitioner's Assistant Vice-President and Finance Manager, she attends to the financial concerns not only of petitioner but also its selected subsidiaries. She is also authorized to sign documents in the name of petitioner and other subsidiaries. As Finance Manager, she is responsible for the preparation of financial statements, submission of requirements to the BIR, and management of audit investigations conducted by the BIR.

Petitioner, through its subsidiaries, is engaged in various businesses, including beverage, food and packaging, energy, mining, fuel and oil, infrastructure, and real estate property management and development.

On April 18, 2013, petitioner received a LOA dated April 12, 2013, authorizing the examination of its books of accounts and other accounting records for the period January 1, 2011 to December 31, 2011.

In compliance with the Checklist of Requirements attached to the LOA, petitioner submitted to the BIR its 2011 Audited Financial Statements (AFS) and a Schedule of 'Amounts Owed by Related Parties.' Petitioner, through its Tax Adviser, Rogelio G. Lui, met with the BIR examiners.

Rogelio G. Lui informed her that from the Notes to the 2011 AFS of petitioner and its subsidiaries, BIR examiners found petitioner liable for deficiency DST.

Witness Ratilla further declared that on November 26, 2014, petitioner received from respondent a PAN dated November 25, 2014, for deficiency DST, income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) in the aggregate amount of Php40,005,752.00, inclusive of increments. The Details of Discrepancies attached to the said PAN indicated that the deficiency DST of Php20,000,085.00 (inclusive of interest and penalties) was imposed on the advances that petitioner extended to related parties, following the Supreme Court ruling in the *Filinvest case* that 'intercompany advances to and from affiliates are subject to DST under Section 179 of the Tax Code.'

Insofar as the subject advances extended by petitioner to related parties in taxable year 2011, petitioner believed that the DST under Section 179 of the NIRC may not be imposed on inter-company advances in the absence of a debt instrument evidencing such advances, per prevailing court decisions and BIR rulings. According to the witness, the advances extended by petitioner to related parties were unsecured, had no provisions for definite payment terms, and were considered payable upon demand. Besides, the said advances were not covered by debt instruments, such as certificates of indebtedness, bonds, or loan agreements.

Witness Ratilla further testified that on December 11, 2014, petitioner paid under protest the assessed deficiency DST amounting to Php20,066,005.00 in order to stop the imposition of interest and with the intention to file a claim for refund. All these were indicated in petitioner's Letter dated March 13, 2015 filed with the BIR on March 16, 2015.

On November 9, 2016, petitioner filed with the BIR a Letter/Claim for Refund dated November 3, 2015, for the amount of Php20,066,005.00, representing the DST that was erroneously and/or illegally collected by the BIR for taxable year 2011. Due to respondent's inaction, petitioner filed the instant case on December 8, 2016.

Witness Rogelio G. Lui testified that he is petitioner's current Tax Adviser. As such, he provides tax advocacy, tax consultancy/advisory, tax planning and tax compliance audit for petitioner and/or any of its subsidiaries. He also monitors communications to and from the BIR which may usher issuance of assessments and coordinate with it on the matter.

As instructed by Eileen P. Ratilla, he met with the BIR examiners to discuss the LOA issued against petitioner. The BIR examiners disclosed that petitioner was liable for deficiency DST per data gathered from the Notes to the 2011

AFS of petitioner and its subsidiaries/affiliates. Such finding was hinged on the Supreme Court ruling in the *Filinvest case* as circularized through Revenue Memorandum Circular No. (RMC) 48-2011, holding that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualified as loan agreements subject to DST.

After such meeting, petitioner received from respondent a PAN for deficiency DST and other assessments.

The Court admitted all of petitioner's formally offered exhibits.

Respondent, on the other hand, presented his lone witness, Group Supervisor (GS) Rona B. Marcellano, who testified that she was among the revenue officers authorized to conduct the audit/examination of petitioner per LOA No. 121-2013-00000026 (SN: eLA201100007422). After their examination of petitioner's books of accounts and other accounting records, they found petitioner liable for deficiency IT, VAT, DST, and EWT for taxable year 2011. Thus, a PAN dated November 25, 2014 was issued against petitioner for deficiency tax liabilities for taxable year 2011.

DST was imposed against petitioner following the Supreme Court Decision dated July 28, 2011 stating that intercompany advances to and from affiliates are subject to DST under Section 179 of the NIRC. Petitioner's 2011 AFS revealed that it did not pay DST on advances made to its affiliates.

On October 12, 2018, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.

On January 14, 2019, the instant case was submitted for decision after receipt of respondent's Memorandum on December 13, 2018, and petitioner's Memorandum on December 17, 2018."

On January 14, 2020, SMC's Petition for Review was partially granted. The CIR was ordered to refund or issue a tax credit certificate in favor of SMC in the aggregate amount of Php9,200,138.00.

On July 30, 2020, SMC's Motion for Partial Reconsideration of the Decision dated January 14, 2020 and the CIR's Motion for Partial Reconsideration (Re: Decision dated 14 January 2020) were both denied for lack of merit.

On September 9, 2020, the CTA *En Banc* granted the CIR's "Motion for Extension of Time to File Petition for Review" filed on September 4, 2020, thus, the Court gave the CIR until September 23, 2020, within which to file the petition.

On September 11, 2020, the CTA *En Banc* granted SMC's "Motion for Extension of Time to File Petition for Review" filed on September 9, 2020. The Court granted SMC until October 3, 2020, within which to file its petition.

Within the period of extension granted, the CIR and SMC filed their respective petitions before this Court.

On October 9, 2020, this Court consolidated CTA EB No. 2330 with CTA EB No. 2326, the case bearing the lower docket number.

On November 3, 2020, this Court ordered the parties to file their respective comments on each other's petitions within ten (10) days from notice.

On December 2, 2020, SMC filed its Comment on the Petition for Review in CTA EB No. 2326.

As of January 6, 2021, per Records Verification, the CIR failed to file comment on SMC's Petition for Review.

On January 19, 2021, the consolidated Petitions for Review were submitted for decision.

Hence, this Decision.

ISSUES

In CTA EB No. 2326 (filed by the CIR), the grounds for the petition[4] are as follows:

[4] *Rollo* (CTA EB No. 2326), p. 10.

"THE HONORABLE COURT IN DIVISION ERRED AND VIOLATED ESTABLISHED JURISPRUDENCE IN ORDERING THE CANCELLATION OF THE DEFICIENCY INTEREST, SURCHARGE AND COMPROMISE PENALTY PAID BY SAN MIGUEL CORPORATION.

a.) The interest, surcharge and compromise penalty have factual and legal bases.
b.) Reliance in good faith by petitioner must be relatively applied."

In CTA EB No. 2330 (filed by the SMC), the grounds relied upon for review[5] state that:

A. THE HONORABLE FIRST DIVISION ERRED IN HOLDING THAT DOCUMENTARY STAMP TAX MAY BE IMPOSED ON THE BASIS OF MERE NOTES APPEARING IN THE 2011 AUDITED FINANCIAL STATEMENTS OF SMC AND ITS SUBSIDIARIES/AFFILIATES PERTAINING TO THE SUBJECT ADVANCES EXTENDED BY SMC TO RELATED PARTIES.

B. THE HONORABLE FIRST DIVISION ERRED IN NOT GRANTING TO THE PETITIONER THE REFUND OF THE AMOUNT OF P10,865,867.00, REPRESENTING ERRONEOUSLY AND/OR ILLEGALLY COLLECTED BASIC DEFICIENCY DOCUMENTARY STAMP TAX FOR THE TAXABLE YEAR 2011.

C. THE HONORABLE FIRST DIVISION ERRED IN NOT HOLDING THAT THE PETITIONER IS ALTERNATIVELY ENTITLED TO THE REFUND OF THE AMOUNT OF P8,099,429.85, REPRESENTING ERRONEOUSLY AND/OR ILLEGALLY COLLECTED BASIC DEFICIENCY DOCUMENTARY STAMP TAX FOR THE PERIOD JANUARY 1, 2011 TO JULY 18, 2011.

Based on the foregoing, the issues in these consolidated cases are:

[5] *Rollo* (CTA EB No. 2330), p. 18.

1. **WHETHER THE CTA DIVISION IS CORRECT IN DENYING THE REFUND CLAIM FOR BASIC DST; and**

2. **WHETHER THE CTA DIVISION IS CORRECT IN ALLOWING THE REFUND OF SURCHARGE, INTEREST, AND COMPROMISE PENALTY.**

THIS COURT'S RULING

The petitions for review are bereft of merit, thus, denied.

This Court finds that the parties have already raised the same grounds/issues in their respective Motions for Partial Reconsideration on the Decision promulgated on January 14, 2020, which were considered and passed upon by the CTA Division in the Assailed Resolution.

Pertinent to these consolidated cases is Section 179 of the 1997 National Internal Revenue Code (NIRC), as amended, which reads, as follows:

> "SEC. 179. *Stamp Tax on All Debt Instruments.* — On every original issue of debt instruments, there shall be collected a documentary stamp tax of 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." *(Emphasis Supplied.)*

The above-cited provision was originally Section 180 of the NIRC until its renumbering and amendment. As a background, on December 23, 1993, Section 180 was incorporated in the NIRC, through Republic Act No. (RA) 7660[6]. On January 1, 1998, the same Section 180 of the NIRC was carried over in RA 8424[7]. Then on February 17, 2004, Section 180 of the NIRC was amended through RA 9243[8] and renumbered as the present Section 179 of the 1997 NIRC, as amended.[9]

It is worthy to note that in this case, the claim for refund of DST is for taxable year 2011 and that on the same year 2011, *i.e.*, July 19, 2011, the Supreme Court (SC) case, *Commissioner of Internal Revenue v. Filinvest Development Corporation*[10] ("*Filinvest* case" for brevity) was promulgated.

In the *Filinvest* case, the SC *En Banc* categorically stated 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 the instant case, SMC's payment in the total amount of ₱20,066,005.00,[11] (includes basic DST for taxable year 2011, surcharge, interest, and compromise penalty), which is subject of the refund case, is based on the Preliminary Assessment Notice (PAN)[12] issued by the Bureau of Internal Revenue (BIR) containing the following,[13] among others:

	PAN	**Payment**
Advances to:		
Bell Telecommunications Phils. Inc.	₱ 28,798,570.00	
Clariden Holdings, Inc.	554,495,000.00	
Coastal View Exploration Corp.	2,100,000.00	
SMC Global Power Holdings Corp.	10,085,760.00	

[6] AN ACT RATIONALIZING FURTHER THE STRUCTURE AND ADMINISTRATION OF THE DOCUMENTARY STAMP TAX, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, ALLOCATING FUNDS FOR SPECIFIC PROGRAMS, AND FOR OTHER PURPOSES.
[7] AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES.
[8] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED, AND FOR OTHER PURPOSES.
[9] *E.E. Black Ltd.-Philippine Branch v. CIR*, CTA EB No. 1611, January 22, 2019.
[10] G.R. Nos. 163653 and 167689, July 19, 2011.
[11] Exhibit P-3, Division Docket, Vol. 1, pp. 484-487.
[12] Exhibit P-1, Division Docket, Vol. 1, pp. 188-193.
[13] Exhibit P-1, Division Docket, Vol. 1, p. 189.

SMC Retirement Plan	1,577,693,940.00	
Total Advances	₱2,173,173,270.00	
Basic tax due (1 peso for every 200)	₱ 10,865,867.00	₱ 10,865,867.00
Add: 25% surcharge	2,716,467.00	2,716,467.00
Interest (1.6.2011 to 11.15.2014)	6,392,751.00	6,458,671.00
Compromise	25,000.00	25,000.00
Total amount due	**₱ 20,000,085.00**	**₱20,066,005.00**

In various CTA *En Banc* Decisions,[14] this Court has consistently applied the ruling in the *Filinvest* case even prior to its promulgation, and that DST may be based on the notes to audited financial statements showing the advances to affiliates, and cancelled the imposition of surcharge, interest, and compromise penalty.

CTA EB NO. 2330 (filed by SMC)

On the issue of whether SMC is liable for DST, the same can be resolved upon discussion of the applicability of the subject *Filinvest* case.

In the *Filinvest* case, *supra*, the SC *En Banc* based the above-mentioned finding on Section 180[15] of the NIRC and "[w]hen read in conjunction with Section 173[16] of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the

[14] *Commissioner of Internal Revenue (CIR) v. San Miguel Corporation (SMC)*, and *SMC v. CIR*, CTA EB Nos. 2167 & 2169, September 23, 2021; *San Miguel Paper Packaging Corporation (SMPPC) v. CIR* , and *CIR v. SMPPC*, CTA EB Nos. 2099 & 2102, October 7, 2020; *Liberty Telecoms Holdings, Inc. (LTHI) v. CIR*, and *CIR v. LTHI*, CTA EB Nos. 2035 & 2041, September 24, 2020; *San Miguel Holdings Corporation (SMHC) v. CIR*, and *CIR v. SMHC*, CTA EB Nos. 1935 & 1941, June 25, 2020; *SMC v. CIR*, and *CIR v. SMC*, CTA EB Nos. 1906 & 1907, February 24, 2020; *CIR v. South Premiere Power Corporation (SPPC)*, and *SPPC v. CIR*, CTA EB Nos. 1898 & 1899, October 14, 2019; and *CIR v. SMC*, and *SMC v. CIR*, CTA EB Nos. 1724 & 1726, October 11, 2018.

[15] 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.* — On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; 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.

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

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.'"[17] Also, it was based on Section 3 (b) and Section 6 of Revenue Regulations No. 9-94, which provide as follows:

> Section 3. *Definition of Terms.* — For purposes of these Regulations, the following term shall mean:
>
> (b) 'Loan agreement' — refers to 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.
>
> The terms 'Loan Agreement" under Section 180 and "Mortgage" under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195."
>
> "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. (*Emphases Supplied.)*

Applying the foregoing discussions in the instant case, the CTA *En Banc* finds that notwithstanding the absence of a formal loan agreement, DST may be imposed on the basis of mere Notes appearing in the Audited Financial Statements.

[17] *Commissioner of Internal Revenue v. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011.

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.[18]

The CTA Division correctly stated that there is unrebutted testimony that advances were made by SMC to related parties. Likewise, the CTA 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."[19] The existence of the subject transactions were clearly shown and reported in SMC's Notes to the Audited Financial Statements for the year 2011.

In the assailed decision, the CTA Division ruled that the doctrine enunciated in the *Filinvest* case[20] must only be applied prospectively.[21] Thus, SMC is "entitled to a refund of the DST paid on advances only for the period prior to the promulgation of the *Filinvest* case, or from January 1, 2011 to July 18, 2011, while **the advances from July 19, 2011 to December 31, 2011 are properly subject to DST**."[22] However, the CTA Division found that SMC failed to present evidence which would show the breakdown to enable the Court to determine the advances for the period from January 1, 2011 to July 18, 2011, thus, the Court cannot determine the amount of DST that shall be refunded.[23] This led to the denial of the claim for refund of the basic deficiency DST.

This Court agrees with the denial of the refund claim for basic DST but on a different ground. The advances to affiliates for taxable year 2011 were properly subjected to DST.

This Court does not agree to the majority opinion of the CTA Division that the *Filinvest* case must only be applied prospectively.

The doctrine laid down by the SC in *Filinvest case, supra,* applies in the present case even prior to its promulgation.

In the case *Visayas Geothermal Power Company v. CIR,*[24] the SC emphasized that: *jr*

[18] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016, 794 SCRA 34 citing *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil. 227 (2009).

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

[20] *Commissioner of Internal Revenue v. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011.

[21] *Rollo* (CTA EB No. 2326), pp. 38-41.

[22] *Rollo* (CTA EB No. 2326), p. 42.

[23] *Rollo* (CTA EB No. 2326), p. 42.

[24] G.R. No. 197525, June 4, 2014, 725 SCRA 130, 147.

> "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."

This Court, in a similar case, in *CIR v. San Miguel Corporation*[25] ruled that:

> It is not true that the Supreme Court did not interpret Section 180 [now Section 179] of the 1997 NIRC in *Filinvest* and simply applied the said legal provision. Quite the contrary, the Supreme Court clearly engaged in the construction or interpretation of Section 180 [now Section 179] of the 1997 NIRC as **it was only in *Filinvest* where the Supreme Court, for the first time, declared that intercompany advances as evidenced by instructional letters and journal and cash vouchers are subject to documentary stamp tax based on the said legal provision.** Notably, the Supreme Court had carefully scrutinized the wording of the law and relevant regulations before it reached its conclusion regarding the taxability of intercompany advances as loan agreements subject to DST, albeit evidenced only by instructional letters and journal and cash vouchers. *(Emphasis Supplied)*

Accordingly, the SC's 2011 interpretation of Section 180 (now Section 179) in the *Filinvest* case became part of the NIRC as early as December 23, 1993, the date the statute was enacted, until the present.[26] As such, "it cannot be applied prospectively as no old doctrine was overturned."[27]

Considering that the 2011 *Filinvest* case interpretation of Section 180 of the NIRC (now Section 179) was deemed constituted as part of the NIRC since December 23, 1993 until the present, therefore, the same may be

[25] CTA EB Nos. 1724 & 1726 (CTA Case No. 9007), Oct. 11, 2018.
[26] *CIR v. San Miguel Corporation* (SMC), CTA EB No. 2167 & 2169, September 23, 2021.
[27] *Visayas Geothermal Power Company v. CIR*, G.R. No. 197525, June 4, 2014, 725 SCRA 130, 147

applied to this case without violating the principle on non-retroactivity of laws and rulings.[28]

Based on the foregoing discussions, SMC is liable to pay the entire DST paid for taxable year 2011. Thus, it is not entitled to a refund of the DST paid on advances for the period even prior to the promulgation of the *Filinvest* case, or from January 1, 2011 to July 18, 2011.

CTA EB No. 2326 (filed by the CIR)

The CTA Division ruled that SMC should be refunded the surcharge, interest and compromise penalty previously paid in consideration of its good faith.[29]

The CTA Division pointed out that good faith reliance on previous rulings by the taxpayer was neither raised as an issue nor passed upon by the SC in the *Filinvest* case. Thus, "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."

The CTA *En Banc* agrees with the cancellation of the surcharge, interest, and compromise penalty.

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 laws are sufficient justification to delete the imposition of surcharges and interest.[30] Mistake upon a doubtful or difficult question of law may properly be the basis of good faith.[31]

"A compromise, by its nature, is mutual in essence. It cannot therefore be imposed without a predicate agreement."[32]

Based on the foregoing, this Court finds that the CTA Division did not err in allowing the refund of the surcharge, interest, and compromise penalty.

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[28] *CIR v. San Miguel Corporation* (SMC), CTA EB Nos. 2167 & 2169, September 23, 2021.
[29] *Rollo* (CTA EB No. 2326), pp. 42-43.
[30] *The City of Iloilo v. Smart Communications, Inc. (SMART)*, G.R. No. 167260, February 27, 2009.
[31] *Limcoma Multi-purpose Cooperative v. Republic*, G.R. No. 167652, July 10, 2007 citing Article 526, paragraph 3 of the Civil Code.
[32] *Manila Bankers' Life Insurance Corporation (MBLIC) v. CIR, and CIR v. MBLIC, G.R. Nos. 199729-30 and G.R. Nos. 199732-33,* February 27, 2019.

WHEREFORE, premises considered, the consolidated Petitions for Review in **CTA EB Nos. 2326 and 2330** are **DENIED** for lack of merit.

Accordingly, the assailed Decision and Resolution promulgated on January 14, 2020 and on July 30, 2020, respectively, by the CTA First Division are **AFFIRMED** as to the result.

SO ORDERED.

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

WE CONCUR:

(I reiterate my Concurring Opinion on the assailed Decision.)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
(I join PJ's Concurring Opinion.)
CATHERINE T. MANAHAN
Associate Justice

(I join in the Presiding Justice's Concurring Opinion.)
JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

LANEE S. CUI-DAVID
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