REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 1724** (CTA Case No. 9007)
- versus –	
SAN MIGUEL CORPORATION, *Respondent.*	

x---x

SAN MIGUEL CORPORATION, *Petitioner,*	**CTA EB NO. 1726** (CTA Case No. 9007)
	Present:
- versus –	Del Rosario, *P.J.*, Castañeda, Jr., Uy, Fabon-Victorino, Mindaro-Grulla, Ringpis-Liban, and Manahan, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: FEB 11 2019 3:01 p.m.

x--x

RESOLUTION

CASTAÑEDA, JR., *J.:*

For resolution of the Court *En Banc* is Commissioner of Internal Revenue's (CIR) *Motion for Reconsideration Re: Decision dated 11 October 2018*[1] filed on October 30, 2018. The CIR's *Motion* seeks reconsideration of the Decision of the Court *En Banc* promulgated on October 11, 2018,[2] (the "Assailed Decision") denying his Petition for Review docketed as CTA EB No. 1724 for lack of merit.

The CIR moves for reconsideration of the Assailed Decision based on the following ground:

> "THE HONORABLE COURT ERRED IN AFFIRMING THE DECISION OF THE COURT A QUO, ORDERING THE CANCELLATION OF THE DEFICIENCY INTEREST, SURCHARGE AND COMPROMISE PENALTY PAID BY SAN MIGUEL CORPORATION, VIOLATED ESTABLISHED JURISPRUDENCE."[3]

In support of his *Motion*, the CIR argues that the "good faith reliance" defense on the issue of whether San Miguel Corporation (SMC) should only be liable for the basic deficiency DST without the imposition of interests, surcharge, and penalty is a settled matter and, as such, inferior courts must follow the rule established by a decision of the Supreme Court.[4] Invoking the Supreme Court's decision in *Commissioner of Internal Revenue v. Filinvest Development Corporation,*[5] the CIR claims that the Supreme Court affirmed the imposition of surcharge, deficiency and delinquency interests, and compromise penalty on the deficiency DST assessment despite allegation that the taxpayer relied in good faith on a previous BIR ruling that the subject transaction is not subject to DST.[6] Additionally, the CIR also maintains that SMC cannot simply invoke good faith in order to escape liability from interests because Sections 247(a) and 249(B) of the 1997 NIRC authorize the imposition of deficiency and delinquency interests on all taxes and the same do not admit of any exemption.[7]

On the other hand, SMC, in its *Opposition to the Commissioner of Internal Revenue's Motion for Reconsideration dated October 25, 2018*[8] filed on January 11, 2019, posits that the attendant facts of *Filinvest* are different from the facts of the present case.[9] Moreover, whether good faith

[1] CTA EB No. 1724 Docket, pp. 355-366.
[2] *Id.*, pp. 312-352.
[3] *Id.*, p. 356.
[4] *Id.*
[5] G.R. Nos. 163653 & 167689, July 19, 2011, 654 SCRA 56 ("*Filinvest*").
[6] CTA EB No. 1724 Docket, pp. 357-359.
[7] *Id.*, pp. 359-361.
[8] *Id.*, pp. 375-387.
[9] *Id.*, p. 382.

on the part of taxpayer may be a basis for the non-imposition of interests, surcharge and penalty was not an issue in *Filinvest*.[10] According to SMC, there was no occasion for the Supreme Court in *Filinvest* to discuss the well-established doctrine that good faith on the part of a taxpayer is sufficient to justify the non-imposition of surcharge, interest and penalty.[11]

The Court *En Banc* resolves to deny the CIR's *Motion* for lack of merit.

At the outset, it bears noting that the CIR merely recycled the arguments he raised in his *Motion* as these matters had already been thoroughly discussed and resolved by the Court *En Banc* in the Assailed Decision. To put it bluntly, there is nothing in his *Motion* that was not sufficiently passed upon by the Court *En Banc* in the Assailed Decision. The CIR utterly failed to raise any new or substantial matter let alone any compelling reason to warrant the modification much less reversal of the Court *En Banc*'s findings.

At any rate, the Court *En Banc* takes this occasion to emphasize that it stands by its ruling that SMC is not liable for surcharge, interest, and compromise penalty because 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. This is the applicable rule here as firmly established by the Supreme Court in a number of cases.[12] The Court *En Banc* already explained in the Assailed Decision that while reliance on BIR Ruling DA(C-035)127-08 dated August 8, 2008 may not be invoked by SMC to extricate itself from DST liability, it may nevertheless be used as basis of good faith on the part of SMC sufficient to negate the latter's liability for surcharge and interests. Mistake upon a doubtful or difficult question of law may properly be the basis of good faith.[13]

In the same vein, the CIR may not invoke *Filinvest* as legal precedent for refuting the application of the above-stated doctrine in the present case because, as correctly pointed out by SMC, the issue of whether good faith on

---

[10] *Id.*
[11] *Id.*, p. 383.
[12] *Commissioner of Internal Revenue v. St. Luke's Medical Center/St. Luke's Medical Center v. Commissioner of Internal Revenue*, G.R. No. 195909 & G.R. No. 195960, September 26, 2012, 682 SCRA 66; *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786 (Resolution), September 11, 2006, 501 SCRA 450; *Antam Pawnshop Corporation v. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008, 566 SCRA 57; *Tambunting Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010, 610 SCRA 514; *Commissioner of Internal Revenue v. Republic Cement Corporation*, G.R. Nos. L-35668-72, L-35683 & L-35677, August 10, 1983, 124 SCRA 46, 62-63; *Tuazon, Jr. v. Lingad*, G.R. No. L-24248, July 31, 1974, 157 Phil. 159, 167-168; *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, G.R. No. L-15470, December 26, 1963, 119 Phil. 40, 46.
[13] *Limcoma Multi-purpose Cooperative v. Republic*, G.R. No. 167652, July 10, 2007, 527 SCRA 233; *Philippine National Bank v. Heirs of Militar*, G.R. No. 164801, June 30, 2006, 494 SCRA 308; *Development Bank of the Philippines v. The Honorable Court of Appeals*, G.R. No. 111737, October 13, 1999, 316 SCRA 650 citing Article 526, Civil Code; *Lecaroz v. Sandiganbayan*, G.R. No. 130872, March 25, 1999, 305 SCRA 396.

the part of taxpayer may be a basis for the non-imposition of interests and surcharge was not raised and hence, not passed upon by the Supreme Court in *Filinvest*.

WHEREFORE, the CIR's *Motion for Reconsideration Re: Decision dated 11 October 2018* is **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

I reiterate my Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

(On Leave)

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

With due respect, I concur with PJ Del Rosario's
Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice