REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**SAN MIGUEL CORPORATION,**
Respondent.

**CTA EB NO. 2167**
(CTA Case No. 9374)

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**SAN MIGUEL CORPORATION,**
Petitioner,

- versus -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA EB NO. 2169**
(CTA Case No. 9374)

Present:
**DEL ROSARIO,** *P.J.,*
**CASTAÑEDA, JR.,**
**UY,**
**RINGPIS-LIBAN,**
**MANAHAN,**
**BACORRO-VILLENA,**
**MODESTO-SAN PEDRO,** *and*
**REYES-FAJARDO,** *JJ.*

Promulgated:
SEP 2 3 2021 2:55 p.m.

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# DECISION

**RINGPIS-LIBAN, *J.*:**

## The Case

Before the Court of Tax Appeals *En Banc* are the consolidated Petitions for Review filed by the Commissioner of Internal Revenue ("CIR") and San

Miguel Corporation ("San Miguel") assailing the Decision[1] ("Assailed Decision") dated May 03, 2019 and the Resolution[2] ("Assailed Resolution") dated October 18, 2019 both promulgated by the Special First Division of this Court ("Court in Division") in CTA Case No. 9374.

The dispositive portions of the assailed Decision and Resolution are quoted hereunder:

Decision dated May 03, 2019

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, [the CIR] is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of [San Miguel] in the amount of **[Php]15,916,794.59**, representing the following:

| PENALTIES ERRONEOUSLY PAID BY PETITIONER | AMOUNT |
|---|---|
| Interest | [Php]15,866,794.59 |
| Compromise Penalty | 50,000.00 |
| **TOTAL** | **[Php]15,916,794.59** |

> **SO ORDERED.**"[3]

Resolution dated October 18, 2019

> "**WHEREFORE**, finding no cogent reason to reverse the ruling in the assailed Decision, [San Miguel's] **Motion for Partial Reconsideration of the Decision dated May 3, 2019** and [the CIR's] **Motion for Partial Reconsideration (Re: Decision dated 03 May 2019)** are **DENIED** for lack of merit.

> **SO ORDERED.**"[4]

1 Docket, pp. 666-695. Penned by Justice Erlinda P. Uy, with Justice Cielito N. Mindaro-Grulla concurring, and Presiding Justice Roman G. del Rosario with Dissenting Opinion.
2 *Id.*, pp. 830-846
3 *Id.*, pp. 690-691.
4 *Id.*, p. 846.

## The Parties

San Miguel 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.[5]

On the other hand, CIR is the duly appointed Commissioner of the Bureau of Internal Revenue ("BIR") who has the power to decide on disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code ("NIRC") of 1997, as amended, or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[6]

## The Facts

The antecedent facts leading up to the promulgation of the assailed Decision and Resolution, are lifted from the narration of facts by the Court in Division, as follows:

> "On July 19, 2011, the Supreme Court rendered a decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation* ('Filinvest case' for brevity), holding, among others, that the instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which DST may be imposed.
>
> Subsequently, on October 6, 2011, Revenue Memorandum Circular (RMC) No. 48-2011 was issued by the BIR, 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 May 14, 2014, [San Miguel] received a Preliminary Assessment Notice (PAN) issued by the BIR on May 12, 2014, informing the former that in connection with the examination of its internal revenue tax liabilities for taxable year 2009, the latter found certain deficiency taxes due from [San Miguel].
>
> As indicated in the PAN, [San Miguel] was assessed for deficiency income tax, value-added tax (VAT), withholding tax on

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[5] *Id.*, Decision dated May 03, 2019, p. 666.
[6] *Id.* p. 667.

compensation (WTC), expanced withholding tax (EWT), final tax, withholding of VAT (WVAT), and DST in the aggregate amount of P3,310,612,351.45 (inclusive of penalties and interest up to May 31, 2014), broken down as follows:

xxx xxx xxx

The PAN made reference to [San Miguel's] advances to related parties in the alleged amount of [Php]2,901,493,003.15, which were made subject to deficiency DST by the BIR, citing Section 179 of the National Internal Revenue Code of 1997, as amended.

The alleged deficiency DST was computed as follows:

| | | |
|---|---|---|
| Total Intercompany Advances Subject to DST | | [Php]P2,901,493,003.15 |
| Tax Rate | | [Php]1.00/[Php]200 |
| Basic Tax Due | | [Php]14,507,465.00 |
| 20% Interest (1-06-2009 to 5-31-2014) | [Php]15,676,011.49 | |
| Compromise Penalty | [Php]50,000.00 | [Php]15,726,011.49 |
| Total Deficiency Documentary Stamp Tax | | [Php]30,233,476.49 |

On May 29, 2014, [San Miguel] filed its Reply to the PAN alleging, with respect to deficiency DST, that its advances to related parties do not contemplate the nature of a loan, and that the BIR has no right to assess since the Filinvest decision cannot be given a retroactive application because doing so will be prejudicial or unfair for taxpayers.

On June 24, 2014, [San Miguel] paid the aggregate amount of [Php]30,424,259.59 to the BIR.

On April 20, 2016, [San Miguel] filed its claim for refund with the BIR in the amount of [Php]30,424,259.59.

As the claim for refund has not been acted upon by the BIR, [San Miguel] filed the instant Petition for Review on June 22, 2016."[7]

## *The Ruling of the Special First Division*

The Court in Division promulgated a Decision on May 03, 2019 in CTA Case No. 9374 partially granting San Miguel's claim for refund in the amount of

[7] *Id.*, pp. 667-669.

Php15,916,794.59 representing penalties paid by San Miguel. The Court, however denied the claim for refund in the amount of Php14,507,465.00 pertaining to the basic Documentary Stamp Tax ("DST") as it was ruled that the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation*[8] ("*CIR v. Filinvest*") is applicable to the advances made by San Miguel in taxable year 2009. The Court in Division in granting the refund pertaining to the interest and surcharge considered San Miguel's good faith and honest belief on the basis of a previous interpretation of a government agency such as the BIR on the non-loan character of inter-office memos, journals, vouchers and the like.

Not satisfied with the decision of the Court in Division, the CIR filed a "Motion for Partial Reconsideration (Re: Decision dated 03 May 2019)"[9] on May 27, 2019 while San Miguel likewise filed a "Motion for Partial Reconsideration of the Decision dated May 3, 2019"[10] also on May 27, 2019.

A Resolution was issued by the Court in Division on October 18, 2019 denying both Motions for Partial Reconsideration by the CIR and San Miguel.

On October 31, 2019, the CIR received the assailed Resolution denying his Motion for Partial Reconsideration.[11]

## *The Proceedings in the Court of Tax Appeals En Banc*

On November 07, 2019, the CIR filed a "Motion for Extension of Time to File Petition for Review"[12] requesting for a fifteen (15)-day extension from November 15, 2019 or until November 30, 2019 within which to file his Petition for Review.

This motion was granted by the Court in a Minute Resolution[13] dated November 11, 2019.

On December 02, 2019, the CIR filed his "Petition for Review"[14] with the Court *En Banc* docketed as CTA *EB* No. 2167 entitled *Commissioner of Internal Revenue v. San Miguel Corporation.*

On the other hand, San Miguel received a copy of the assailed Resolution denying its "Motion for Partial Reconsideration" on November 04, 2019[15] and

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8 G.R. Nos. 163653 and 167689, July 19, 2011.
9 Docket, pp. 696-707.
10 *Id.*, pp. 708-727.
11 *Id.*, Notice of Resolution dated October 30, 2019, p. 828.
12 Rollo, CTA EB No. 2167, pp. 1-4.
13 *Id.*, p. 5.
14 *Id.*, pp. 6-18.
15 Docket, Notice of Resolution dated October 30, 2019, p. 829.

filed a "Motion for Extension of Time to File Petition for Review"[16] on November 14, 2019 requesting for an extension of fifteen (15) days from November 19, 2019 or until December 04, 2019 within which to file its Petition for Review.

This motion was granted by the Court in a Minute Resolution[17] dated November 18, 2019.

On December 02, 2019, San Miguel filed its "Petition for Review"[18] with the Court *En Banc* docketed as CTA *EB* No. 2169 entitled *San Miguel Corporation v. Commissioner of Internal Revenue.*

On December 04, 2019, the Court issued a Minute Resolution[19] consolidating both Petitions for Review considering that these cases are appeals from the same Decision dated May 03, 2019 rendered by the Court in Division.

On February 07, 2020, the Court issued a Resolution[20] ordering both parties to file their respective Comments to the Petitions for Review, within ten (10) days from notice.

On February 24, 2020, the CIR filed his "Comment on the Petition for Review"[21] in CTA *EB* No. 2169.

On March 05, 2020, San Miguel filed its "Comment on the Petition for Review in CTA EB No. 2167"[22].

In a Resolution[23] dated June 30, 2020, the consolidated cases were deemed submitted for decision.

## Assignment of Errors

The sole ground raised by the CIR in his "Petition for Review" is quoted as follows:

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[16] Rollo, pp. CTA EB No. 2169, pp. 1-7.
[17] *Id.*, p. 8.
[18] *Id.*, pp. 9-59.
[19] Rollo, pp. CTA EB No. 2167, p. 71.
[20] *Id.*, pp. 73-74.
[21] *Id.*, pp. 75-85.
[22] *Id.*, pp. 90-109.
[23] *Id.*, pp. 166-167.

"With all due respect, the First Division erred when it held that the respondent is entitled to *(sic)* refund or tax credit certificate in the amount of P15,916,794.59."[24]

Meanwhile, San Miguel raises the following assignment of errors in its "Petition for Review", and we quote:

"A.

The Honorable First Division erred in holding that the decision of the Supreme Court in "Commissioner of Internal Revenue vs. Filinvest Development Corporation", G.R. Nos. 1163653 and 167689, July 19, 2011, and Revenue Memorandum Circular No. 48-2011 may be applied retroactively to the cash advances subject of the instant case.

B.

The Honorable First Division erred in holding that documentary stamp tax may be imposed on the subject advances extended by SMC on the basis of mere notes appearing in the 2009 audited financial statements of SMC and/or those of its affiliates.

C.

The Honorable First Division erred in holding that the right of the government to assess SMC for deficiency DST on the advances made in 2009 has not prescribed.

D.

The Honorable First Division erred in not granting to the petitioner the refund of the amount of P14,507,465.00 representing erroneously and/or illegally collected basic deficiency documentary stamp tax for the taxable year 2009."[25]

## <u>The Arguments of Parties</u>

### CTA *EB* No. 2167

The CIR argues that the assessment for deficiency DST issued against San Miguel was neither illegal nor erroneous, hence its remedy of refund under the provisions of Section 229 of the NIRC of 1997, as amended, cannot be legally sustained. According to the CIR, only erroneously paid or illegally collected taxes can be the proper subject of a refund under the said Section 229, otherwise the Court cannot take cognizance of the case. The CIR maintains that documents clearly show that San Miguel failed to pay DST on its advances to related parties

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[24] *Id.*, Petition for Review dated November 20, 2018 *[sic]*, p. 8.
[25] Rollo, pp. CTA EB No. 2169, Petition for Review dated November 25, 2019, p. 21.

in taxable year 2009 and that it was assessed on the basis of Section 179 of the 1997 NIRC, as amended, which clearly provides that DST shall be imposed on all debt instruments.

The CIR cites *CIR v. Filinvest* which affirmed that intercompany loans and advances covered by mere office memo, instructional letters and/or cash and journal vouchers qualify as loan agreements that are subject to DST under Section 179 and Section 180 of the NIRC of 1997, as amended . To further bolster his arguments, the CIR mentions Revenue Memorandum Circular ("RMC") No. 48-2011 dated October 06, 2011 which circularized *CIR v. Filinvest* on the imposition of DST on inter-office memo on advances from affiliates and the subsequent issuance of RMC No. 46-2014 dated April 25, 2014 clarifying the taxability of financial lease for purposes of DST.

The CIR refutes the argument of San Miguel as regards the non-retroactivity of *CIR v. Filinvest* to transactions which transpired prior to its promulgation in 2011 by alleging that there is no retroactive application of *CIR v. Filinvest* to the instant case because the former merely affirmed his position that indeed, intercompany loans and advances covered by mere office memo, instuctional letters and/or cash and journal vouchers qualify as loan agreements subject to DST. It cites a case decided by the Court *En Banc*[26] where it quoted a Supreme Court decision which ruled that "when a Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a statute constitutes part of that law as of the date of its original issuance."

The CIR also contravenes the claim of San Miguel that no DST shall be imposable against its advances to related parties since there was no debt instrument identified by the revenue examiners in the conduct of the audit. The CIR maintains that San Miguel even admitted the existence of cash vouchers and board resolutions evidencing such advances to related parties in its Reply to the PAN. Also, the CIR avers that there is no prerequisite that a formal debt instrument should exist before DST may be imposed because a mere journal or cash voucher evidencing such advances are sufficient for such imposition.

In its "Comment on the Petition for Review in CTA *EB* No. 2167", San Miguel asserts that the CIR is precluded from filing the instant Petition for Review on the portion of the assailed Decision which granted its refund in the amount of Php15,916,794.59 representing interest and compromise penalty for taxable year 2009. It cites a Court of Tax Appeals ("CTA") decision in the case of *Brewery Properties, Inc. v. CIR* where the Court granted a similar refund of surcharge, interest and compromise penalty on the ground that the taxpayer acted in good faith in relying on court decisions and BIR Rulings. In this particular case, the CIR did not appeal the decision until it became final and executory. San Miguel posits the theory that the final executory decision in that

[26] Diageo Philippines, Inc. v. CIR, CTA EB No. 190102, July 11, 2012.

case operates as a binding judicial precedent on the CIR in this instant Petition for Review.

San Miguel further maintains that the Court in Division correctly held that it is not liable to pay interest and penalty in the amount of Php15,915,794.59 because it followed the well established jurisprudence that a "taxpayer will not be liable to pay surcharge, interest and penalty if he acted in good faith."[27]

San Miguel also challenged the merits of the arguments of the CIR in his Petition for Review when he claimed that there is no retroactive application of *CIR v. Filinvest* to the instant case. San Miguel disagrees and maintains that there was obvious retroactive application and mentions that the cash vouchers and board resolutions refer to subject advances extended to its related parties in the year 2009 or long before the promulgation of *CIR v. Filinvest* on July 19, 2011. It stresses that *CIR v. Filinvest* may not be applied to the advances of the instant case without violating the principle of non-retroactivity of court decisions. In any case, San Miguel avers that no DST is imposable upon the subject transactions because under Section 179 of the NIRC of 1997, as amended, the existence of a debt instrument is essential for the imposition of DST in view of the specific definition of "debt instruments" in said section. San Miguel expressed its belief that the CIR has not shown that the said transactions were manifested through the execution of specific instruments but relied merely on Notes in its 2009 Audited Financial Statements ("AFS") and/or those of its affiliates. San Miguel adds that Section 179 of the NIRC of 1997, as amended, contemplates commercial or banking borrowing and lending transactions and not simple cash advances.

**CTA *EB* No. 2169**

San Miguel dissects the assailed Decision of the Court in Division and primarily hits upon the proposition enunciated by the Court that the interpretation of a statute by the Supreme Court forms part of that law from the date it was originally passed. San Miguel submits that the Court in Division should have instead applied the decision of the Supreme Court in the case of *Co v. Court of Appeals*[28], which involves a violation of the Bouncing Checks Law and where the Supreme Court supposedly held that "at the time he issued the check subject of the case, the prevailing rule was that delivery of a bouncing check as guarantee for an obligation was not considered a punishable offense based on an official pronouncement made in a Circular of the Ministry of Justice."

San Miguel also cites several decisions of the Supreme Court which ruled that the principle of prospectivity of laws under Article 4 of the New Civil Code (NCC) has also been applied to judicial decisions and maintains that *CIR v.*

[27] Tambunting Pawnshop, Inc vs. CIR, G.R. No. 179085, January 21, 2010; Antam Pawnshop Corporation vs. CIR. Chamber of Pawnbrokers of the Philippines, Inc., Petitioner-in-Intervention, G.R. No. 167962, September 19, 2008.
[28] G.R. No. 100776, October 28, 1993.

*Filinvest* cannot likewise be given a retroactive application against the instant case of San Miguel. San Miguel calls upon the Court not to apply *CIR v. Filinvest* as it is against the principles of justice and fair play. According to San Miguel, *CIR v. Filinvest* which was promulgated on July 19, 2011 cannot be applied to cash advances extended to its related parties in taxable year 2009 because at that time the prevailing court decisions and BIR Rulings clearly provided that mere inter-office memos covering inter-company advances were not considered as loan agreements subject to DST under the NIRC of 1997, as amended. San Miguel avers that a close look at *CIR v. Filinvest* would reveal that the Supreme Court simply applied Section 179 of the NIRC of 1997, as amended to the "instructional letters and journal and cash vouchers qualified as loan agreements" without ascertaining the legislative intent behind Section 179 of the NIRC of 1997, as amended.

San Miguel disagrees with the Court in Division's ruling that there having been no jurisprudence being overruled, the interpretation of the Supreme Court in *CIR v. Filinvest* is part of the law as of the date it was originally passed. San Miguel counters that an existing doctrine was indeed overturned because prior to the promulgation of *CIR v. Filinvest*, the BIR had not imposed any DST on inter-company cash advances, such as those subject of the instant case.

On the nature of the DST imposed under Section 179 of the NIRC of 1997, as amended, San Miguel insists that a debt instrument is essential and material in the imposition of DST in view of the specific definition of "debt instruments" provided in said section. Following this line of reasoning, San Miguel theorizes that there are two basic requisites before DST may be imposed under Section 179 of the NIRC of 1997, as amended; (1) there must be a transaction or privilege which is exercised by persons; and, (2) that this transaction is evidenced by the execution of specific instruments. Hence, if there is no document that is considered as a debt instrument, Section 179 of the NIRC of 1997,as amended, shall not apply.

San Miguel also invokes prescription of the right of the government to assess deficiency DST on advances which it made in 2009. San Miguel believes that the extraordinary ten (10)-year period applied by the Court in Division for its failure to file a DST return is erroneous because there is no taxable document involved in the instant case hence there was no DST liablity to begin and no consequent obligation to file a DST return. San Miguel contends that the three (3)-year period to assess under Section 203 of the NIRC of 1997, as amended, should have been applied by the Court in Division leading to the conclusion that the subject DST assessment is already barred by prescription.

Lastly, San Miguel argues that its claim for refund of DST in the amount of Php14,507,465.00 should have been granted by the Court in Division because it is clear from the above disquisitions that DST was erroneously and/or illegally collected by the government. It also claims that it complied with the provisions of Section 229 in relation to Section 204 of the NIRC of 1997, as amended, as to the factual bases and the period within which the claim for refund was filed with the BIR and subsequently instituted with the CTA.

In his "Comment to the Petition for Review filed by San Miguel", the CIR echoes all the arguments propounded in his own "Petition for Review" with the Court *En Banc* in CTA *EB* No. 2167 and primarily asserts that there was no erroneous or illegal collection of DST in the instant case, hence the claim for refund of San Miguel has no firm legal basis under Section 229 of the NIRC of 1997, as amended which is anchored on an erroneous and/or illegal collection of taxes. The CIR firmly holds the position that San Miguel was liable to pay DST on the advances made to related parties in 2009 but failed to pay the same as shown clearly by the records of the case. For failure to pay the DST, the CIR contends that San Miguel was properly assessed based on the provisions of Section 179 of the NIRC of 1997, as amended, and as correctly interpreted by the Supreme Court in *CIR v. Filinvest* and circularized in RMC 48-2011. Having no firm legal basis to support its claim for refund, the CIR posits that the Court in Division had no jurisdiction to act on San Miguel's Petition for Review.

The CIR belittles San Miguel's argument on the application of the non-retroactivity doctrine because when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation constitutes as part of the law as of the date of its original passage, quoting the Supreme Court decision in the case of *Accenture v. CIR.*[29]

The CIR also maintains that the government's right to assess San Miguel's liability to pay DST for advances made in 2009 has not yet prescribed in view of the fact that respondent executed several waivers in relation to the audit assessment extending the period to assess until June 30, 2015.

## The Ruling of the Court

### *Timeliness of Petitions*

A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may file a petition for review with the Court *En Banc* within fifteen (15) days from receipt of the questioned decision or resolution.[30]

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[29] G.R. No. 190102, July 11, 2012.

[30] Republic Act (RA) 1125, as amended by RA 9282

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Section 18. *Appeal to the Court of Tax Appeals En Banc.* No civil proceeding involving matters arising under the NIRC, the Tariff and Customs Code and the Local Government Code shall be maintained, except as herein provided, until and unless an appeal has been previously filed with the CTA and disposed of in accordance with the provisions of this Act.

Records show that the assailed Resolution dated October 18, 2019 denying both Motions for Partial Reconsideration by the CIR and San Miguel, was received by the CIR on October 31, 2019. On November 07, 2019, the CIR filed a Motion for Extension of Time to File Petition for Review requesting for a fifteen (15) day extension from November 15, 2019 or until November 30, 2019 within which to file his Petition for Review.

This motion was granted by the Court in a Minute Resolution dated November 11, 2019.

Consequently, the CIR filed a Petition for Review on December 02, 2019.

On November 04, 2019, San Miguel received a copy of the assailed Resolution denying its Motion for Partial Reconsideration and subsequently filed a Motion for Extension of Time to File Petition for Review on November 14, 2019 requesting for an extension of fifteen (15) days from November 19, 2019 or until December 04, 2019 within which to file its Petition for Review. This motion was granted by the Court in a Minute Resolution dated November 18, 2019.

On December 02, 2019, San Miguel filed its Petition for Review with the Court *En Banc*.

Based on the above, the Petitions for Review by the CIR and San Miguel were both timely filed.

We now proceed to the merits of the case.

At the outset, it must be emphasized that the issues raised by San Miguel and the CIR in their petitions are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the Special First Division in the Assailed Decision and Assailed Resolution. Nevertheless, We shall discuss the issues anew if only to reinforce the earlier disquisition of the Court in Division.

***<u>CTA EB No. 2167</u>***

**The Special First Division correctly held that San Miguel is not liable to pay interest and**

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A party adversely affected by a Resolution of a Division of the CTA on a motion for reconsideration or new trial, may file a petition for review with the CTA *En Banc*.

**compromise penalty in the amount of Php15,915,794.59**

The CIR basically intimates that since the court in Division did not grant San Miguel's refund of the basic DST assessment, it should not have also granted the refund of the interest and compromise penalty paid.

The CIR is mistaken.

In *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*[31], the Supreme Court had already ruled 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." Mistake upon a doubtful or difficult question of law may properly be the basis of good faith.[32]

In the case at bar, reliance on previous BIR issuances and opinion that intercompany loans and advances covered by inter-office memoranda are not subject to DST, supports good faith on the part of San Miguel sufficient to negate its liability for surcharge and interest. In other words, previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. Indeed, the issue of whether instructional letters as well as journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreement subject to DST may be considered as a doubtful or difficult question of law given that it required no less than the Supreme Court to definitively settle the same in *CIR v. Filinvest.*

As for the compromise penalty, this penalty is by its nature, mutual in essence. Since San Miguel disputed the assessment of compromise penalty, the same cannot be imposed upon it. Moreover, compromise penalty are amounts suggested in settlement of criminal liability which may not therefore be imposed or exacted on the taxpayer. Since the instant case does not involve criminal violations of the Tax Code, and that San Miguel did not agree to settle its tax liability, the compromise penalty assessed should not have been imposed and collected. Thus, the same was properly refunded to San Miguel.

All in all, We find no sufficient basis for the CIR's Petition for Review.

***CTA EB No. 2169***

**The Special First Division did not err in denying San**

[31] G.R. Nos. 195909 and 195960, September 26, 2012.
[32] Civil Code, Article 526, par. 3.

**Miguel's claim for refund in the amount of Php14,507,465.00**

We do not subscribe to San Miguel's argument that the doctrine in *CIR v. Filinvest* does not apply in the present case.

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.[33]

Considering that the interpretation of Section 180 of the NIRC of 1997, as amended, (now Section 179[34] of the NIRC of 1997, as amended) in *CIR v. Filinvest* was deemed part of the NIRC of 1997 as of December 23, 1993 up to the present time, the same may therefore be applied to this case without violating the principle of non-retroactivity of laws and rulings.

Simply put, the Supreme Court's 2011 interpretation of this provision of law in *CIR v. Filinvest* became part of the Tax Code and constitutes part of it as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law.

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[33] Visayas Geothermal Power Company v. Commissioner of Internal Revenue, G.R. No. 197525, June 04, 2014.

[34] **SEC. 179.** *Stamp Tax on All Debt Instruments.* - On every original issue of debt instruments, there shall be collected documentary stamp tax of One peso and fifty centavos (P1.50) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of proportional amount in accordance with the ratio of its terms in number of days to three hundred sixty days (365): 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 debt instrument 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.

Notably, the CTA *En Banc* has already laid down the same ruling in two (2) similar cases – *CIR v. San Miguel Corporation*[35] and *CIR v. South Premiere Corporation*[36].

More importantly, the decisions above unequivocally pronounced that DST may be imposed on the advances based on the Notes to the AFS. DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[37] Thus, even while there is no debt instrument identified by the BIR, DST may still be imposed, so long as the transactions are clearly established. Additionally, Section 6[38] of Revenue Regulations No. 09-94[39] provides for the imposition of DST where even no formal agreements or promissory notes are executed.

As such, San Miguel's claim for refund in the amount of Php14,507,465.00 has no basis in fact and in law.

**WHEREFORE**, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Decision dated May 03, 2019 and Resolution dated October 18, 2019 of the Special First Division in CTA Case No. 9374 are **AFFIRMED**.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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35 CTA EB Nos. 1724 & 1726 (CTA Case No. 9007), October 11, 2018.
36 CTA EB Nos. 1898 & 1899, October 14, 2019.
37 Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 194065, June 20, 2016.
38 SECTION 6. Stamp Tax 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 or used 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 loan 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, as amended.
39 Republic Act No. 7660, 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, March 08, 1994.

Notably, the CTA *En Banc* has already laid down the same ruling in two (2) similar cases – *CIR v. San Miguel Corporation*[35] and *CIR v. South Premiere Corporation*[36].

More importantly, the decisions above unequivocally pronounced that DST may be imposed on the advances based on the Notes to the AFS. DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[37] Thus, even while there is no debt instrument identified by the BIR, DST may still be imposed, so long as the transactions are clearly established. Additionally, Section 6[38] of Revenue Regulations No. 09-94[39] provides for the imposition of DST where even no formal agreements or promissory notes are executed.

As such, San Miguel's claim for refund in the amount of Php14,507,465.00 has no basis in fact and in law.

**WHEREFORE**, premises considered, the Court **DENIES** the instant Petitions for Review for lack of merit. The Decision dated May 03, 2019 and Resolution dated October 18, 2019 of the Special First Division in CTA Case No. 9374 are **AFFIRMED**.

**SO ORDERED.**

**MA. BELEN M. RINGPIS-LIBAN**
Associate Justice

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[35] CTA EB Nos. 1724 & 1726 (CTA Case No. 9007), October 11, 2018.
[36] CTA EB Nos. 1898 & 1899, October 14, 2019.
[37] Philippine Bank of Communications v. Commissioner of Internal Revenue, G.R. No. 194065, June 20, 2016.
[38] SECTION 6. Stamp Tax 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 or used 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.

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[39] Republic Act No. 7660, 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, March 08, 1994.

**WE CONCUR:**

*(With due respect, see Concurring and Dissenting Opinion)*
**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

*(With due respect, please see my Dissenting Opinion)*
**CATHERINE T. MANAHAN**
Associate Justice

*(With due respect, I join the Dissenting Opinion of Associate Justice Catherine T. Manahan)*
**JEAN MARIE A. BACORRO-VILLENA**
Associate Justice

**MARIA ROWENA MODESTO-SAN PEDRO**
Associate Justice

*(took no part)*
**MARIAN IVY FERRER REYES-FAJARDO**
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 consolidated 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***

| | |
|---|---|
| **COMMISSIONER OF INTERNAL REVENUE**, Petitioner, | **CTA EB NO. 2167** (CTA CASE NO. 9374) |
| - versus - | |
| **SAN MIGUEL CORPORATION**, Respondent. | |

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|---|---|
| **SAN MIGUEL CORPORATION,** Petitioner, | **CTA EB NO. 2169** (CTA CASE NO. 9374) |
| | Present: |
| - versus - | DEL ROSARIO, *P.J.*, CASTAÑEDA, JR., UY, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, MODESTO-SAN PEDRO, and REYES-FAJARDO, *JJ.* |
| **COMMISSIONER OF INTERNAL REVENUE,** Respondent. | Promulgated: SEP 2 3 2021 2:55 p.m. |

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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. 2167 for lack of merit.

With due respect, however, I am constrained to withhold my assent on the denial of the Petition for Review filed by San Miguel Corporation (SMC) in CTA EB No. 2169 for lack of merit.

At the core of the consolidated Petitions for Review is the legal consequence of the reliance of SMC on the judicial interpretation prevailing in 2009 that inter-company advances covered by mere inter-office memos are not loan agreements subject to Documentary Stamp Tax (DST) under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, on the tax treatment of the advances it extended to its affiliates/subsidiaries in 2009 evidenced by the notes in its Audited Financial Statements and its affiliates/subsidiaries, considering that in 2011, the Supreme Court ruled otherwise in *Commissioner of Internal Revenue vs. Filinvest Development Corporation.*[1]

I wish to reiterate my position that SMC correctly relied on the judicial interpretation prevailing in 2009 that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST, which I previously elucidated in my Dissenting Opinion on the appealed May 3, 2019 Decision of the Court in Division in CTA Case No. 9374, *viz.*:

> "I submit that SMC correctly relied on the judicial interpretation prevailing in the year 2009 that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under Section 179 of the National Internal Revenue Code ("NIRC") of 1997, as amended.
>
> To be specific, SMC relied on the following:
>
> (i) *Commissioner of Internal Revenue vs. APC Group, Inc., CAG.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** that inter-office memo covering advances granted by an affiliate company is not subject to DST is in accordance with law;
>
> (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") ruled that the ruling in **BIR Ruling No. 116-98 dated July 30, 1998** that the intercompany advances made by Belle to its affiliates is not subject to DST is consistent with the provisions of the NIRC of 1997; and,

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

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(iii) *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 Pic to member companies of Star Group, which are covered by inter-office memoranda, are not subject to DST under Section 179 of the NIRC of 1997, as amended.

Clearly, the existing interpretation at the time of the transaction **(year 2009)** was that loans and advances to affiliates covered by interoffice memoranda are not subject to DST. **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 the non-taxability of 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:

> 'The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.
>
> The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.
>
> **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

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[2] G.R. Nos. 104151 and 105563, March 10, 1995.

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> 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.
>
> **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.**'
>
> While the doctrine on the non-taxability of loans and advances covered by inter-office memoranda was over-ruled in **year 2011** when the Supreme Court promulgated *Filinvest*, the same **cannot** be applied retroactively to the prejudice of taxpayers who relied in good faith on the judicial interpretation laid down in *APC Group* and *Belle Corporation.* Needless to say, **if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice (that is -- by applying the Supreme Court doctrine reversing the BIR ruling prospectively), 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.**" *(Additional boldfacing supplied)*

In fine, I submit that SMC may not be held liable for DST on its transactions in 2009 since the prevailing doctrine at the time was the exemption of inter- company advances from DST.

All told, I **VOTE** to: *(i)* **DENY** the Petition for Review in CTA EB No. 2167 filed by the Commissioner of Internal Revenue, and *(ii)* **GRANT** the Petition for Review in CTA EB No. 2169 filed by San Miguel Corporation and **ORDER** the **REFUND or ISSUANCE of TAX CREDIT CERTIFICATE** in favor of San Miguel Corporation, in the amount of ₱30,424,259.59, representing erroneously and/or illegally collected DST for taxable year 2009.

ROMAN G. DEL ROSARIO
Presiding Justice

**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

**COMMISSIONER OF INTERNAL REVENUE,**
*Petitioner,*

**CTA *EB* NO. 2167**
(CTA Case No.9374)

*-versus-*

**SAN MIGUEL CORPORATION,**
*Respondent.*

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**SAN MIGUEL CORPORATION,**
*Petitioner,*

**CTA *EB* NO. 2169**
(CTA Case No.9374)

*-versus-*

**COMMISSIONER OF INTERNAL REVENUE,**
*Respondent.*

Present:

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

Promulgated:

SEP 2 3 2021 2:55 p.m.

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## DISSENTING OPINION

***MANAHAN, J.:***

I respectfully express my dissent to the majority opinion and vote to grant the claim for refund of San Miguel Corporation (San Miguel).

Majority of my esteemed colleagues rejected the claim for refund of San Miguel on the ground that the documentary stamp taxes (DST) was rightfully collected from San Miguel on the basis of the decision of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation (Filinvest* decision).[1]

San Miguel anchors its contentions on the pronouncements of the then prevailing court decisions and BIR rulings that declared that board resolutions, inter-office memos etc., evidencing intercompany advances cannot be categorized as loan agreements subject to DST. San Miguel further argues that the *Filinvest* decision promulgated on July 19, 2011 which effectively reversed previous court decisions and rulings of the BIR should not have applied to transactions or documents issued prior to its promulgation as this will go against the principle that rulings should not be given retroactive application if this will be prejudicial to the taxpayers.

San Miguel emphasizes that at the time the transactions or advances were made in 2009, the prevailing court decisions and rulings of the BIR have pronounced that board resolutions, inter-office memos etc., evidencing intercompany advances cannot be categorized as loan agreements subject to DST. It was only on July 19, 2011, that these pronouncements were reversed by virtue of the *Filinvest* decision.

I humbly believe that the above arguments of San Miguel should be upheld.

It must be made clear that the *Filinvest* decision was promulgated by the Supreme Court on July 19, 2011. I quote portions of the dispositive part of the *Filinvest* decision, to wit:

> **"WHEREFORE,** premises considered, the CIR's petition for review on certiorari in G.R. No. 163653 is **DENIED** for lack of merit and the CA's 16 December 2003 Decision in G.R. No. 72992 is **AFFIRMED** *in toto*. The CIR's petition in G.R. No. 167689 is **PARTIALLY GRANTED** and the CA's 26 January 2005 Decision in CA-G.R. SP No. 74510 is **MODIFIED."**

xxx xxx xxx

[1] G.R. Nos. 163653 and 167689, July 15, 2011.

Records of this case disclose that the assessment for deficiency DST issued by the BIR against petitioner was based on information gathered from its 2009 audited financial statements (AFS) which was eventually paid by petitioner under protest.

In the consolidated cases of *CIR vs. San Roque Power, Taganito Mining Corp vs. CIR and Philex Mining Corp vs. CIR* [2], the Supreme Court recognized the good faith of the taxpayers who relied on previous rulings which turn out to be erroneous under a recent interpretation, and we quote:

> "Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, **should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court**. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal." (emphasis supplied)

In the case of *Landbank of the Philippines vs. Arlene de Leon,*[3] the Supreme Court categorically ruled in this wise, and we quote:

> "xxx xxx xxx It would be unjust to apply a new doctrine to a pending case involving a party who already invoked a contrary view and who acted in good faith thereon prior to the issuance of said doctrine."

It is obvious that the legal and doctrinal milieu prevailing during the period of assessment (2009) suggested that the DST may not be imposed on mere "Notes" appearing in the AFS of petitioner. The decision of the Court of Appeals in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[4] and various BIR Rulings prior to the *Filinvest* decision provide that "Memos" are not subject to DST.

It is against the principle of justice, equity and fair play to subject a taxpayer to payment of taxes as a result of a court interpretation promulgated *after* a particular taxable period

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[2] G.R. Nos. 187485,196113 and 197156, February 12, 2013.
[3] G.R. No. 143275, March 20, 2003.
[4] C.A.-G.R. SP No. 74510, January 26, 2005.

where prevailing court decisions and BIR rulings prior to such court promulgation, ruled otherwise.

If laws are declared to have no retroactive effect under Article 4 of the New Civil Code, then with more reason that jurisprudence or judicial decisions which constitute interpretation of statutes should likewise be governed by this principle. If a subsequent law repealing or inconsistent with a prior one would be applied to an act made in pursuance of or under the former law, the law itself would be inconsistent, injustice would be committed, and the people would never know what law to follow.[5]

A taxpayer relying on the official interpretation of the provisions of the 1997 NIRC, as amended, by the Commissioner of Internal Revenue (CIR) who, by law, is vested with the power to interpret tax laws,[6] must be amply protected by law. There is no doubt that judicial decisions of the Supreme Court interpreting statutory and constitutional provisions form part of the law of the land. Article 8 of the New Civil Code[7] expressly provides that judicial decisions applying or interpreting the laws shall form part of the legal system of the Philippines. Corollarily, Article 4 of the Civil Code[8] mandates the non-retroactivity of laws, unless expressly provided. The principle of prospectivity has also been applied to judicial decisions which although by themselves are not laws, *per se*, are nevertheless evidence of what the laws mean.[9] In the absence of a definitive Supreme Court decision interpreting Sec. 179 of the 1997 NIRC, as amended, at the time that the subject transactions of this instant case took place, equity and justice dictate that no retroactive application of a Supreme Court decision which overrules the CIR's pronouncements must be made to the instant case.

Considering the foregoing disquisitions, I believe that the claim for refund of San Miguel in the amount of

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[5] Tolentino, Civil Code of the Philippines, Vo. 1, pp. 21-22.
[6] Section 4 of the 1997 NIRC, as amended.
[7]"Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."
[8] "Article 4. – Laws shall have no retroactive effect, unless the contrary is provided."
[9] *Albino S. Co vs. Court of Appeals and People of the Philippines*, G.R. 100776, October 28, 1993.

Php30,424,259.59 representing erroneously and/or illegally collected DST for taxable year 2009 should be granted.

In view of the foregoing, I respectfully register my dissent and accordingly vote to grant San Miguel's Petition for Review in CTA *EB* No. 2169.

**CATHERINE T. MANAHAN**
Associate Justice