REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

EAGLE I LANDHOLDINGS, INC., *Petitioner,*	**CTA CASE NO. 9638** For: Refund
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson,* MINDARO-GRULLA, and BACORRO-VILLENA, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 12 2019

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9:11 a.m.

DECISION

MINDARO-GRULLA, J.:

Submitted for decision on December 4, 2018, is a Petition for Review filed on July 31, 2017, praying for the refund or issuance of a tax credit certificate in the amount of Php403, 121,879.05, allegedly representing petitioner's erroneously paid deficiency documentary stamp tax, inclusive of interest and fifty percent (50%) surcharge on Advances made from Related Companies for the taxable years 2008, 2009, 2010 and 2011.[1]

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office address at the Manila Bay Resort, Temporary Facilities Office, Atlantic Drive, Asiaworld City Boulevard 200, Parañaque City. Its primary purpose is "to purchase, lease, develop, exchange or otherwise acquire lands, or any interest therein and to sell, lease, sublet, mortgage, exchange, assign, transfer, convey or

[1] Summary of the Case, Pre-Trial Order, Docket vol. I, p. 389.

otherwise alienate or dispose of any lands or any interest or right therein.[2]

Petitioner is represented by its Treasurer, Mr. Jose Lis C. Leagogo. His authority to file and verify the instant petition is pursuant to a resolution of the Board of Directors of Petitioner as embodied in the Secretary's Certificate dated 19 May 2017.[3]

It may be served with summons, pleadings, notices and other processes of this Court through its counsel, Roxas de los Reyes Laurel Rosario & Leagogo, 19th Floor BDO Plaza, 8737 Paseo de Roxas, Makati City.[4]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), tasked to implement the National Internal Revenue Code (NIRC), including among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City with office address at the 2nd floor, Legal Division, Bureau of Internal Revenue (BIR) Building, No. 313 Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Court may be served.[5]

The Solicitor General is the duly appointed representative of the government of the Philippines, its agencies and instrumentalities, and its officials and agents, including respondent CIR, in any litigation, proceeding, investigation or matters requiring the services of lawyers. He may also be served with summons, pleadings, and other processes at his office at the Office of the Solicitor General at 134 Amorsolo St., Legaspi Village, Makati City.[6]

On 29 December 2014, Petitioner received Formal Assessment Notice No. DS-ELA55300-12-14-1237 (hereinafter, "FAN") from the Bureau of Internal Revenue (BIR) where Petitioner was assessed deficiency Documentary Stamp Tax (DST), interest and fifty percent (50%) surcharge amounting to Four Hundred Three Million One

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[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket vol. I, p. 378.
[3] Par. 2, JSFI, Docket vol. I, p. 379.
[4] Par. 3, JSFI, Docket vol. I, p. 379.
[5] Par. 4, JSFI, Docket vol. I, p. 379.
[6] Par. 5, JSFI, Docket vol. I, p. 379.

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Hundred Twenty One Thousand Eight Hundred Seventy Nine Pesos and 5/100 (Php403,121,879.05) on Non-Interest bearing Loans and Advances from Affiliates and Related Parties (hereinafter, "Advances made from Related Companies), for taxable years 2008 to 2011.[7]

Petitioner protested the abovementioned assessment in a Letter Protest to FAN, dated 27 January 2015.[8]

While the Letter Protest was pending and before resolution of the respondent, petitioner opted to voluntarily pay in installments the deficiency DST, and the corresponding interest and fifty percent (50%) without admitting liability, and to assist the government in its collection efforts.[9]

On 31 July 2015, petitioner paid the final installment of the deficiency DST, interest and fifty percent (50%) surcharge in the total amount of Php403, 121,879.05.[10]

In a letter dated 7 August 2015, BIR acknowledged that petitioner paid the deficiency DST liability inclusive of interest and fifty percent (50%) surcharge, to wit:[11]

Basic Tax Due				P147, 213,092.40
Add:	50% Surcharge		P73,606,546.20	
	Interest from 2.05.09 to 07.31.15		182,302,240.45	255,908,786.65
Total Amount Due				403,121,879.05
Less:				
	PARTICULARS	BANK		
	December 29, 2014	The Bank of Tokyo	P20,000,000.00	
	March 24, 2015		10,000,000.00	
	May 22, 2015		30,000,000.00	
	May 29, 2015		115,000,000.00	
	June 30, 2015		115,000,000.00	
	July 31, 2015		113,121,879.05	
Balance				-

In determining the liability of petitioner for deficiency DST, the BIR applied the case of *Commissioner of Internal Revenue vs.*

[7] Par. 6, JSFI, Docket vol. I, p. 379.
[8] Par. 7, JSFI, Docket vol. I, p. 379; Exhibit "P-3", Docket vol. II, pp. 484-502.
[9] Par. 8, JSFI, Docket vol. I, pp. 379-380.
[10] Par. 9, JSFI, Docket vol. I, p. 380.
[11] Par. 10, JSFI, Docket vol. I, p. 380; Exhibit "P-16", Docket vol. II, p. 432.

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Filinvest Development Corporation, ("2011 Filinvest Case")[12] and Revenue Memorandum Circular (RMC) No. 48-2011 dated 06 October 2011 issued by the CIR, which subjected inter-office memos covering advances granted by an affiliated corporation to DST.[13]

On 19 May 2017, petitioner filed an administrative claim for refund of tax or tax credit with the Revenue District Office (RDO) No. 52 of the BIR pursuant to Section 249(B) of the NIRC, seeking recovery of one installment payment for deficiency DST, interest, and fifty percent (50%) surcharge settled on 22 May 2015 for Advances made from Related Companies in favor of Petitioner during Taxable Years 2008, 2009, 2010, 2011.[14] However, the same was subsequently withdrawn by petitioner in a letter dated 13 July 2017[15].

On 27 July 2017, petitioner filed its administrative claim for refund or tax credit with RDO No. 52 of the BIR pursuant to Section 249(B) of the NIRC, seeking recovery of deficiency DST, interest, and fifty percent (50%) surcharge paid on 31 July 2015 made from Related Companies in favor of Petitioner during Taxable Years 2008, 2009, 2010, 2011, amounting to Php403, 121,879.05.[16]

On July 31, 2017[17], the instant petition was filed.

On September 25, 2017[18] respondent filed his Answer and raised among others the following special and affirmative defenses:

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> 10) Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
>
> 11) Petitioner must prove that the aggregate amount of Php147,213,092.40 allegedly representing documentary tax

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[12] G.R. No. 163653 & 167689, July 19, 2011.
[13] Par. 11, JSFI, Docket vol. I, p. 380.
[14] Par. 12, JSFI, Docket vol. I, p. 380; Exhibit "P-13", Docket vol. I, pp. 34-62.
[15] Exhibit "P-14", Docket vol. I, pp. 63-93.
[16] Par. 13, JSFI, Docket vol. I, pp. 380-381; Exhibit "P-15", Docket vol. I, pp. 94-114.
[17] Docket vol. I, pp. 10-33.
[18] Docket vol. I, pp. 282-297.

for taxable years 2008, 2009, 2010 and 2011 are properly documented.

12) Respondent respectfully maintains that this Honorable Court does not have jurisdiction over petitioner's claim for refund. To be more precise, respondent contends that petitioner's failure to thoroughly apply the administrative remedy available to it, led to the premature filing of the instant Petition, and ultimately prevented this Honorable Court from acquiring jurisdiction over the same.

13) Respondent also respectfully adds that before this Honorable Court assumes jurisdiction over the substantive issue of whether or not petitioner is entitled to its claim for tax refund, petitioner must first establish that it preliminarily complied with all the administrative requirements leading up to the filing of this action. This Honorable Court must first be convinced that petitioner indeed thoroughly pursued an administrative claim for tax refund, before it proceeds to determine petitioner's entitlement to the same under substantive law.

14) Section 229 of the National Internal Revenue Code is the governing provision relative to refund of internal revenue taxes. It provides:

> ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty **regardless of any supervening cause** that may arise after payment: *Provided, however,* That the Commissioner may, even

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> without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis Provided)

15) Petitioner's time to file for tax refund had already prescribed pursuant to Sec. 229 of the National Internal Revenue Code (which) provides that no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty ***regardless of any supervening cause.***

16) Since tax refunds are regarded as tax exemptions and these are to be construed *strictissimi juris* against the person or entity claiming the exemption. (Philippines Phosphate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. No. 41973, June 28, 2005).

17) It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications (BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. No. 27624, November 18, 2003). A perusal of the provision will emphasize that, to validly substantiate a claim for refund, the taxes paid must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rest on vague inference.

18) In the case at bench, petitioner is asking for a refund of its allegedly erroneously paid documentary stamp taxes for taxable years 2008, 2009, 2010 and 2011 in the amount of Php403,121,879.05.

19) Petitioner argued that its advances to its affiliates during taxable years 2008, 2009, 2010 and 2011 are not subject to Documentary Stamp Tax (DST) since during that time, the prevailing court decisions were to the effect that intercompany advances covered by inter-office memos were not loan agreements subject to DST and not the case of CIR vs. Filinvest Development Corporation[19].

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21) Respondent disagrees.

[19] G.R. No. 163563, 19 July 2011.

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22) The Honorable Supreme Court promulgated in the En Banc Decision in CIR vs. Filinvest Development Corporation, which was reiterated in RMC 48-2011, states that:

On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:

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 (₱0.30) 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 (₱250,000.00) 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.

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "(a)ll 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." Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

Section 3. Definition of Terms. For purposes of these Regulations, the following term shall mean:

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> (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."
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> "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 (₱0.30) 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.

Applying the aforesaid provisions to the case at bench, we find 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. (Emphasis supplied)

23) Thus, based on the above Supreme Court ruling, and subsequent Revenue Memorandum Circular, petitioner is liable to pay DST.

24) It is worthy to mention that the Assessment Notices issued for deficiency DST declared to be valid in the said Supreme Court decision of CIR vs. Filinvest Development Corporation pertained to taxable years 1996 and 1997, thus it can be inferred that the decision of the Court was clarificatory in nature. Accordingly, petitioner's position that the above-mentioned Supreme Court Decision cannot be given

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retroactive application, hence, should not be given due course.

25) It has already been settled that the judicial interpretation of a statute constitutes as part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. (Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009).

26) The imposition of DST on inter-office memos covering advances granted by an affiliated corporation, these advances from Eagle I Landholdings, Inc. amounting to Php403,121,879.05 during the taxable years 2008, 2009, 2010 and 2011 are subject to DST imposed under Section 179 of the NIRC, as amended.

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28) In the Filinvest Case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word *"loan agreements"* as being subject to DST, in that it includes *"instructional letters as well as the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates".* Said Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in RA 8424, otherwise known as the *"Tax Reform Act of 1997";* and while the said Section 180 was later amended via enactment of RA 9243 on February 17, 2004, the imposition of DST on loan agreement is retained in the present section 179 of NIRC of 1997, as amended by 9243. Thus, the said interpretation in the Filinvest Case constituted as part of the NIRC as of said date, i.e., December 23, 1994, up to the present time. (Brewery Properties, Inc. vs. CIR, CTA Case No. 8892, September 30, 2016).

29) As petitioner was not able to pay taxes as they become due, petitioner is undoubtedly liable to pay the tax, surcharge, and interest. This is because taxes are essential to government's very existence; (CIR vs. Solidbank Corporation, G.R. 148191, November 25, 2003) hence, the dictum that "taxes are the lifeblood of the government".

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30) In the case of E.E. Black Ltd. – Philippines vs. Commissioner of Internal Revenue, CTA Case EB No. 1196, November 11, 2015, the Court of Tax Appeals ruled that:

> "In *Filinvest*, the SC found that the imposition of deficiency interest is justified. Having found that the *Filinvest*, case is applicable to the case at bar, it also follows that the decision therein relating to interest applies."

31) Petitioner invokes good faith to warrant the lifting of surcharges and interest.

32) It cites the ruling of the (Supreme Court) in San Miguel Corporation vs. CIR (CTA Case No. 9007, April 19, 2017) 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.

33) However, in the aforementioned CTA Case of San Miguel Corporation vs. CIR, San Miguel relied on BIR Rulings. It was ruled therein that:

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

34) In effect, petitioner cited BIR Rulings obtained by other entities that may or not be similarly situated as petitioner.

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36) There is no evidence on record that petitioner requested for and relied on a BIR Ruling confirming its exemption from DST. Hence, petitioner's defense of good faith is unavailing.

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38) Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund

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indubitably exists. Well-founded doubt is fatal to the petitioner's claim.

Petitioner filed its Pre-Trial Brief on October 23, 2017[20] while respondent filed his Pre-Trial Brief *via* registered mail and private courier (LBC) on October 20, 2017 which was received by the Court on October 23, 2017.[21]

The Pre-Trial Conference was held on October 26, 2017[22], and the Pre-Trial Order[23] was issued on November 24, 2017 thereby terminating the pre-trial.

The parties submitted their Joint Stipulation of Facts and Issues[24] on November 10, 2017.

To support its material allegations, petitioner presented its witnesses namely, Atty. Jose Lis C. Leagogo[25] and Minerva A. Tablan[26], by way of their respective Judicial Affidavits.

Subsequently, petitioner filed its Formal Offer of Evidence (FOE) on May 7, 2018[27]. In a Resolution dated July 20, 2018[28] the Court admitted petitioner's Exhibits "P-1" to "P-12" and "P-16" to "P-18a", but denied the admission of Exhibits "P-13", "P-14" and "P-15".

Consequently, petitioner filed a Motion for Reconsideration of the said Resolution. On October 4, 2018[29], the Court partially reconsidered petitioner's motion and admitted Exhibits "P-13" and "P-15" but still denied the admission of Exhibit "P-14" pertaining to the "Letter to Revenue District Officer Federico Q. Pilarca of RDO No. 52 dated 14 July 2017".

The admitted documentary evidence for the petitioner are as follows:

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[20] Docket vol. I, p. 303-310.
[21] Docket vol. I, p. 358-362.
[22] Docket vol. I, p. 368.
[23] Docket vol. I, pp. 389-394.
[24] Docket vol. I, pp. 378-385.
[25] Docket vol. II, pp. 503-508.
[26] Docket vol. II, pp. 399-405.
[27] Docket vol. II, pp. 456-464.
[28] Docket vol. II, pp. 556-559.
[29] Docket vol. II, pp. 587-594.

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Exhibit:	Description:
P-1	Petitioner's Amended Articles of Incorporation
P-2	Formal Assessment Notice (FAN) ELA 55300-12-14-1237 issued against petitioner
P-3	Petitioner's Letter of Protest to the FAN DATED 27 January 2015
P-3-a	Signature of Atty. Jose Lis C. Leagogo in petitioner's Letter of Protest to the FAN dated 27 January 2015
P-4	BIR Payment Form No. 0605 for the total amount of Twenty Million Pesos (Php20,000,000.00)
P-4-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Twenty Million Pesos (Php20,000,000.00)
P-5	Expense Reimbursement Agreement between Tiger Resorts, Leisure and Entertainment, Inc. and Tiger Resorts Property Management Incorporated, Eagle I Landholdings, Inc. and Eagle II Holdco, Inc.
P-5-a	Third (3rd) Whereas Clause of the Expense Reimbursement Agreement
P-5-b	Paragraph (1.1)(D)(b) of the Expense Reimbursement Agreement
P-6	BIR Payment Form No. 0605 for the total amount of Ten Million Pesos (Php10,000,000.00)
P-6-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Ten Million Pesos (Php10,000,000.00)
P-7	BIR Payment Form No. 0605 for the total amount of Thirty Million Pesos (Php30,000,000.00)
P-7-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Thirty Million Pesos (Php30,000,000.00)
P-7-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Thirty Million Pesos (Php30,000,000.00)
P-8	BIR Payment Form No. 0605 for the total amount of One Hundred Fifteen Million Pesos (Php115,000,000.00)
P-8-a	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of One Hundred Fifteen Million Pesos (Php115,000,000.00)
P-9	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of Thirty Million Pesos (Php30,000,000.00)
P-9-a	BIR Payment Form No. 0605 for the total amount of One Hundred Fifteen Million Pesos (Php115,000,000.00)

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P-10	BTR-BIR Tax Payment Slip dated 29 December 2014 for the total amount of One Hundred Thirteen Million One Hundred Twenty One Thousand Eight Hundred Seventy Nine and 5/100 Pesos (Php113,121,879.05)
P-10-a	BIR Payment Form No. 0605 for the total amount of One Hundred Thirteen Million One Hundred Twenty One Thousand Eight Hundred Seventy Nine and 5/100 Pesos (Php113,121,879.05)
P-11	Secretary's Certificate dated 19 May 2017
P-12	Special Power of Attorney dated 27 July 2017
P-13	BIR Form No. 1914 received on 19 May 2017 with the attached Letter to Revenue District Officer Federico Q. Pilarca of Revenue District Office (RDO) No. 52 of the BIR dated 19 May 2017
P-15	BIR Form No. 1914 received on 19 May 2017 with the attached Letter to Revenue District Officer Federico Q. Pilarca of Revenue District Office No. 52 of the BIR dated 27 July 2017
P-16	Letter from the BIR acknowledging payment dated 7 August 2015
P-17	Judicial Affidavit of Atty. Jose Lis C. Leagogo
P-17-a	Signature of Atty. Jose Lis C. Leagogo in his Judicial Affidavit
P-18	Judicial Affidavit of Ms. Minerva Tablan
P-18-a	Signature of Ms. Minerva Tablan in her Judicial Affidavit

On the other hand, respondent's counsel manifested that he has no evidence to present.[30]

In view of both the petitioner and respondent's filing of their Memorandum[31] on November 14, 2018 and November 12, 2018, respectively, the case was deemed submitted for decision on December 4, 2018.[32]

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[30] Order dated May 2, 2018, Docket vol. II p, 455.
[31] Docket vol. II, pp. 595-621.
[32] Docket vol. II, p. 639.

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ISSUES[33]

The parties agreed that the issues to be resolved in this case are:

1. Whether petitioner is entitled to the refund of or issuance of Tax Credit Certificate (TCC) in the amount of Php403,121,879.05, inclusive of interest and fifty percent (50%) surcharge on Advances made from Related Companies for the taxable years 2008 to 2011.

2. Whether or not this Honorable Court has jurisdiction over Petitioner's claim for refund.

<u>Petitioner's Arguments</u>

First, petitioner avers that the BIR's retroactive application of the 2011 Filinvest Case in assessing petitioner of deficiency DST on its Advances made from Related Companies for Taxable Years 2008, 2009, 2010 and 2011 is improper.

It is argued that the 2011 Filinvest Case cannot be applied retroactively to the 2008 Advances from Related Companies made in favor of petitioner pursuant to the doctrine of *lex prospicit, non respicit*. Petitioner cites the case of Land Bank of the Philippines vs. Arlene de Leon (G.R. No. 143275, March 20, 2003), which states that the retroactive application of a law divests rights that have already become vested or impairs the obligation of contract. In this regard, petitioner submits that applying retroactively the 2011 Filinvest case to taxable year 2008 is invalid.

Further, petitioner maintains that at the time the Advances were made in 2008, the prevailing jurisprudence was the ruling of the Court of Tax Appeals in *Filinvest Development Corporation and Filinvest Alabang, Inc., vs. Commissioner of Internal Revenue*[34] wherein the CTA ruled that "nothing in Section 180 of the Tax Code provides that board resolutions, inter-office memoranda, letters of instructions, journal or cash vouchers evidencing lending/borrowing

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[33] JSFI, Docket vol. I, p. 381.

[34] Filinvest Development Corporation and Filinvest Alabang, Inc., vs. Commissioner of Internal Revenue, CTA Case No. 6182, September 10, 2002.

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are subject to DST" and the Court of Appeals' ruling in 2005[35], which also upheld the CTA ruling that documents evidencing advances from affiliates are not considered loan agreements subject to DST.

Second, petitioner states that, granting without admitting, that it is indeed liable for DST, said liability should not be subject to interest because the deficiency which is the basis for the imposition of interest exists **ONLY** in income, estate, and donor's taxes. Considering that the basis of imposing interest is the existence of 'deficiency', there should be no interest imposed on DST, because no 'deficiency' exists therein.

Petitioner argues that pursuant to Section 249(B) of the NIRC, to determine the meaning of the word "deficiency", one has to make reference of its definition elsewhere in the NIRC. The term deficiency is only found in the NIRC of 1997, as amended, under the Titles on Income (Section 56), Estate (Section 93) and Donor's Tax (Section 104). Thus, petitioner submits that the intention of the law was to make the meaning of deficiency restrictive in application. Allegedly, the assessment made against petitioner for deficiency DST was improper.

Third, petitioner asserts that no surcharge should have been imposed in as much as during the taxable years covered by the investigation, the prevailing case law was that no DST is imposable. Thus, there was no basis for the imposition of surcharge under Section 248 (B) of the NIRC. Further, petitioner avers that assuming it is liable for DST, the BIR may only impose twenty five percent (25%) surcharge against it since there was no "willful neglect" on the part of petitioner which would supposedly trigger the imposition of fifty percent (50%) surcharge. Petitioner presumably relied in good faith and honest belief that one is not subject to tax on the basis of previous interpretations of the lower courts regarding similar issues and is sufficient justification to cancel the imposition of surcharge and interest.

Lastly, petitioner submits that it has sufficiently proven the requisites for the claim for refund under Section 204 (C) and 229 of the NIRC.

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[35] Filinvest Development Corporation and Filinvest Alabang, Inc., vs. Commissioner of Internal Revenue, CA-G.R. SP No. 74510, January 26, 2005.

Respondent's Arguments

First, respondent maintains that the 2011 Filinvest Case is applicable to Taxable Years 2008, 2009, 2010 and 2011, notwithstanding the fact that it was only promulgated on July 19, 2011. Respondent asserts that the 2011 Filinvest Case pertained to taxable years 1996 and 1997, therefore, it can be inferred that the decision of the Court was clarificatory in nature. Under this premise, petitioner's position that the said decision cannot be given retroactive application has no leg to stand on.

Citing the case of *Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009*, the judicial interpretations of a statute constitute a part of the law as of the date it was originally passed since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.

Second, respondent posits that BIR Rulings contain caveats stating therein that the said rulings are being issued based on the facts represented therein. However, if upon investigation, it will be disclosed that the facts are different, then the ruling shall be considered null and void. In this case, respondent alleges that there is no evidence on record that petitioner requested for and relied on the BIR Ruling confirming its exemption from DST, thus, petitioner's defense of good faith is unavailing.

Third, petitioner must establish that it preliminary complied with all the administrative requirements leading up to the filing of this action. Respondent contends that petitioner's time to file for tax refund had already prescribed pursuant to Sec. 229 of the NIRC of 1997, as amended, (which) provides that no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause.

Fourth, respondent avers that petitioner failed to establish that it is a registered taxpayer, thus, this present petition must be denied.

Lastly, respondent argues that petitioner must not be allowed to circumvent the procedures set by law and revenue regulations to assail or protest assessment. It must be noted that this case of tax

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refund is an offshoot of Formal Assessment Notice No. ELA55300-12-14-1237 made against the petitioner. In relation thereto, petitioner voluntary paid its tax obligation without respective declaration that the FAN was erroneous or illegal. In the guise of an action for tax refund, petitioner attacks the FAN. Respondent posits that the proper remedy of the petitioner was to protest the FAN, and not a judicial claim for tax refund.

DISCUSSION/RULING

The Court has jurisdiction over the case

Respondent avers that this Court does not have jurisdiction over petitioner's claim for refund for petitioner's failure to apply the administrative remedy available to it that led to the premature filing of the instant Petition. Respondent contends that petitioner's time to file for tax refund had already prescribed pursuant to Sec. 229 of the NIRC of 1997, as amended, which provides that no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause.

We do not agree.

In claiming a tax refund of erroneously paid taxes, the pertinent provisions under the NIRC of 1997, as amended, are Sections 204(C) and 229, which read as follows:

> "SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** – The Commissioner may –
>
> XXX XXX XXX
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon

> proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Well settled is the rule that both the claim for refund with the BIR and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period from the date of payment of the tax.[36]

Further, it was held in various cases[37], that when a tax is paid in installments, the prescriptive period of two years should be

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[36] Commissioner of Internal Revenue vs. Victorias Milling Co. Inc. and The Court of Tax Appeals, G.R. No. L-24108, January 3, 1968.

[37] Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 141104 & 148763, June 8, 2007; Collector of Internal Revenue v. Antonio Prieto et. Al, G.R. No. L-11976, August 29, 1961; Commissioner of Internal Revenue v. Carlos

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counted from the date of the final payment. Where the tax account was paid on installments, the computation of the two-year prescriptive period should be from the date of the last installment.

The following are the pertinent dates relative to the subject claim for refund:

Installment Payments	Date of Payment	Amount of Payment	2-Year Prescriptive Period	Date of Admin. Claim[38]	Date of Judicial Claim
1st[39]	12/29/2014	P20,000,000.00			
2nd[40]	3/24/2015	10,000,000.00			
3rd[41]	5/22/2015	30,000,000.00	7/31/2017	7/27/2017	7/31/17
4th[42]	5/29/2015	115,000,000.00			
5th[43]	6/30/2015	115,000,000.00			
6th[44]	7/31/2015	113,121,879.05			

Based on the afore-mentioned disquisitions, the Court finds that petitioner's administrative and judicial claims for refund were timely filed.

The Court shall now determine whether petitioner is entitled to a tax refund or issuance of a tax credit certificate in the amount of Php403,121,879.05, allegedly representing petitioner's erroneously paid deficiency documentary stamp tax, inclusive of interest and fifty percent (50%) surcharge on Advances made from Related Companies for the taxable years 2008, 2009, 2010 and 2011.

The 2011 Filinvest Case is applicable since the judicial interpretations of a statute constitute a part of the law as of the date it was originally passed. Thus, petitioner is not entitled to a refund of DST.

Palanca, G.R. No. L-16626 October 29, 1966; Commissioner of Internal Revenue v. TMX Sales, Inc., G.R. No. 83736, January 15, 1992.
[38] Exhibits "15", Docket vol, I, pp. 64-194.
[39] Exhibits "P-4" and "P-4-a".
[40] Exhibits "P-6" and "P-6-a".
[41] Exhibits "P-7" and "P-7-a".
[42] Exhibits "P-8" and "P-8-a".
[43] Exhibits "P-9" and "P-9-a".
[44] Exhibits "P-10" and "P-10-a".

First, petitioner avers that the BIR's retroactive application of the 2011 Filinvest case in assessing petitioner of deficiency DST on its Advances made from Related Companies for Taxable Years 2008, 2009, 2010 and 2011 is improper.

Petitioner's argument is bereft of merit.

In the recent case of *Philippine International Trading Corporation vs. Commission on Audit*[45], the established doctrine on the matter of the effectivity of judicial interpretations of statutes was reiterated. To wit:

> Article 8 of the Civil Code declares that "[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines." While decisions of the Court are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves.
>
> Article 4 of the Civil Code, on the other hand, enunciates the rule on non-retroactivity of laws, in that "(l)aws shall have no retroactive effect, unless the contrary is provided."
>
> In respectively arguing for and against the prospective application of the Decision in G.R. No. 183517, both PITC and the COA invoke *Co v. Court of Appeals* that cited, among others, the following ruling in *People v. Jabinal*:
>
>> *Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system x x x.'* ***The***

[45] G.R. No. 205837, November 21, 2017.

> ***interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate.*** *x x x. (Emphasis supplied.)*

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It was in the 1956 case of *Senarillos v. Hermosisima* (100 Phil. 501, 1956) that the above pronouncement first came to light.

xxx xxx.

The Court declared in Senarillos:

> That the decision of the Municipal Council of Sibonga was issued before the decision in Festejo v. Mayor of Nabua was rendered, would be, at the most, proof of good faith on the part of the police committee, but cannot sustain the validity of their action. **It is elementary that the interpretation placed by this Court upon Republic Act [No.] 557 constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.** (Emphasis supplied.)

The above ruling had since become the established doctrine on the matter of the effectivity of judicial interpretations of statutes.

Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the 2011 Filinvest case was deemed constituted as part of the NIRC as of December 23, 1994 up

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to the present time, the same may therefore be applied to this case without violating the principle of non-retroactivity of laws and rulings.

Moreover, jurisprudence dictates that it is only when a prior ruling of the Supreme Court finds itself later overruled, and a different view is 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 in accordance therewith under the familiar rule of *lex prospicit, non respicit* (the law looks forward, not backward). In this case, however, there is no prior ruling that is overruled by the doctrine in the Filinvest case.

Second, petitioner contends that the deficiency DST assessment was for Advances from Related Companies made in 2008. In its Letter of Protest dated January 27, 2015[46], petitioner averred that based on its available records, the "Advances from Related Parties" made in its favor in 2008 has remained in the Balance Sheet of the company in the succeeding years of 2009, 2010, 2011 and 2012 due to non-payment of the said advances. These were, allegedly, a carry-over balance from the 2008 advances.

The Court is not convinced.

In the present case, petitioner failed to present proof of the above allegations. In *Collector of Internal Revenue vs. Bohol Land Transportation Co.*[47], the Court ruled that since no evidence was presented to substantiate the errors claimed to have been committed by the Collector in making the assessments xxx, the trial court had no other alternative than to resort to the legal truism that all presumptions are in favor of the correctness of the tax assessments. Thus, in this case, burden of proof is on the petitioner to show the contrary.

Moreover, when it comes to refund cases, basic is the rule that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. This is because tax refunds are in the nature of tax exemptions, the statutes of which are

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[46] Exhibit "P-3", Docket vol. II, pp. 484-502.
[47] G.R. Nos. L-13099 & L-13462, April 29, 1960.

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construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.

In view of the foregoing, the Court rules that petitioner is not entitled to a refund of its DST payments on its Advances made from Related Companies in the amount of Php147, 213,092.40 for Taxable Years 2008, 2009, 2010 and 2011.

The interest paid is not a proper subject of refund; *only* the over imposition of 25% surcharge

First, petitioner invokes good faith to warrant the lifting of surcharges and interest.

In the case at bar, petitioner merely relied on court decisions (*i.e.,* 2002 CTA Filinvest Case, 2005 CA Filinvest Case) and a previous BIR Ruling No. 116-98 which states that advances from affiliated companies were not subject to DST.

In this jurisdiction, only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.

The case of *Commissioner of Internal Revenue v. San Roque Power Corporation*[48], is illuminating:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state **that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of**

[48] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

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> **this Court constitute binding precedents, forming part of the Philippine legal system.**" (Emphasis supplied)

Also, BIR Rulings are merely of persuasive character and cannot be considered as conclusive interpretations of the law.

Further, like in the recently decided case of *E.E. Black LTD. – Philippine Branch vs. Commissioner of Internal Revenue*, CTA *En Banc* No. 1611 dated January 22, 2019, petitioner failed to provide proof that it requested for and relied on a BIR Ruling confirming its exemption from DST. Thus, petitioner's invocation of good faith is not sufficient to warrant the lifting of surcharges and interest.

The Court ruled:

> Lastly, as regards petitioner's invocation of 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 as defense against the imposition of surcharge and interest in the present case, the Court En Banc finds the following discussion in the Assailed Decision correctly and sufficiently addressed the above matter, to wit:
>
>> "Finally, petitioner invokes good faith to warrant the lifting of surcharges and interest. It cites the ruling of the Supreme Court in *Michel J Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue,* 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.
>>
>> However, petitioner cites BIR Rulings obtained by other entities that may or not be similarly situated as petitioner. BIR Rulings contain the following or similar caveat:

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> This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.
>
> There is no evidence on record that petitioner requested for and relied on a BIR Ruling confirming its exemption from DST. Hence, petitioner's defense of good faith is unavailing."

Anent petitioner's contention that it should not be subject to interest for the reason that the deficiency which is the basis for the imposition of interest exists only in income, estate, and donor's taxes, is untenable.

In *Paper Industries Corporation of the Philippines vs. Court of Appeals, et. al.*,[49] the Supreme Court held that Section 247(a) of the NIRC of 1977, as amended [now Section 247(a) of the NIRC of 1997, as amended], clearly covers failure to pay **ALL** taxes imposed in the Tax Code, without any regard to the Title of the Code where provisions imposing particular taxes are textually located.

"Title X

Statutory Offenses and Penalties

Chapter I

Additions to the Tax

> **Sec. 247. *General Provisions*.** — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to* ***all taxes****, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . ." (Emphasis supplied)

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[49] G.R. Nos. 106949-50 December 1, 1995.

In view of the foregoing, the interest charged by the respondent against the deficiency DST of petitioner is properly imposed. Thus, the total amount of interest paid by petitioner cannot be the subject of its claim for refund.

However, the Court agrees with petitioner on the issue that respondent may only impose twenty five percent (25%) surcharge against it since there was no "willful neglect" on its part which would supposedly trigger the imposition of fifty percent (50%) surcharge.

> **SEC. 248.** ***Civil Penalties. –***
>
> (A) There shall be imposed, in addition to the tax required to be paid, **a penalty equivalent to twenty-five percent (25%) of the amount due**, in the following cases:
>
> (1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or
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> (2) Unless otherwise authorized by the Commissioner, filing a return with an internal revenue officer other than those with whom the return is required to be filed; or
>
> (3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or
>
> (4) Failure to pay the full or part of the amount of tax shown on any return required to be filed under the provisions of this Code or rules and regulations, or the full amount of tax due for which no return is required to be filed, on or before the date prescribed for its payment.
>
> (B) **In case of willful neglect to file the return within the period prescribed by this Code or by rules and regulations,** or in case a false or fraudulent return is wilfully made, the penalty to **be imposed shall**

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be fifty percent (50%) of the tax or of the deficiency tax, xxx." *(Emphasis supplied)*

In this case, respondent failed to convince this Court that there was willful neglect on the part of petitioner in order to justify the imposition of 50% surcharge. At the most, petitioner is only liable to pay 25% surcharge pursuant to Section 248 (A)(1) of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the **Petition for Review** is **PARTIALLY GRANTED**. Accordingly, respondent CIR is **ORDERED TO REFUND** or **ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **Php36,803,273.10**, representing the 25% surcharge erroneously overpaid by petitioner.

Basic DST Due	Php147, 213,092.40
(50% - 25%) Surcharge	**36,803,273.10**

SO ORDERED.

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

WE CONCUR:

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

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
2nd Division Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice