REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

LIBERTY TELECOMS HOLDINGS INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 2035
(CTA Case No. 9311)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

LIBERTY TELECOMS HOLDINGS INC,
Respondent.

CTA EB NO. 2041
(CTA Case No. 9311)

Present:

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

Promulgated:
SEP 24 2020 4:21 p.m.

x - x

DECISION

UY, J.:

Before the Court *En Banc* are two (2) consolidated *Petitions for Review*, CTA EB No. 2035 and CTA EB No. 2041, filed before the Court *En Banc* on April 12, 2019 and April 16, 2019, respectively, assailing the Decision dated October 18, 2018[1] and Resolution dated March 12, 2019[2], both rendered by the Special Second Division of this Court (Court in Division) in CTA Case No. 9311 entitled "*Liberty Telecoms Holdings, Inc., Petitioner, vs. Commissioner of Internal Revenue, Respondent*", the dispositive portions of which respectively read:

Decision dated October 18, 2018:

> "**WHEREFORE,** premises considered, the instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱10,636,547.70, representing the following:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Interest	₱ 8,164,528.20
Surcharge	2,422,019.50
Compromise Penalty	50,000.00
TOTAL	**₱ 10,636,547.70**

> **SO ORDERED.**"

Resolution dated March 12, 2019:

> "**WHEREFORE,** finding no reversible error in the assailed Decision to warrant its reconsideration, petitioner's **Motion for Partial Reconsideration of the Decision dated October 18, 2018** and respondent's **Motion for Partial Reconsideration Re: Decision promulgated on October 18, 2018** are both **DENIED** for lack of merit.

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., and concurred by retired Associate Justice Cielito N. Mindaro-Grulla; Associate Justice Catherine T. Manahan entered a Concurring and Dissenting Opinion; EB Docket (CTA EB No. 2035), pp. 63 to 102; (CTA EB No. 2041), pp. 26 to 65.

[2] Penned by Associate Juanito C. Castañeda, Jr., and concurred by retired Associate Justice Cielito N. Mindaro-Grulla; Associate Justice Catherine T. Manahan maintained her Concurring and Dissenting Opinion, EB Docket (CTA EB No. 2035), pp. 103 to 118; EB Docket (CTA EB No. 2041), pp. 71 to 86.

SO ORDERED."

The Petitions Before the Court En Banc

CTA EB No. 2035 entitled ***"Liberty Telecoms Holdings, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent"*** is the *Petition for Review* filed on April 12, 2019[3] by Liberty Telecoms Holdings Inc. (or "LTHI"), against the Commissioner of Internal Revenue (or CIR) praying that the assailed Decision and Resolution be partially reconsidered, and that the Court grant the additional refund of ₱9,688,078.00, representing its payment of basic deficiency documentary stamp tax (DST) for taxable year 2009.

CTA EB No. 2041 entitled ***"Commissioner of Internal Revenue, Respondent v. Liberty Telecoms Holdings, Inc., Respondent"*** is the *Petition for Review* filed on April 16, 2019[4] by the CIR against LTHI praying that the assailed Decision and Resolution be partially reversed and set aside; and a new one be entered denying the entire claim for refund.

THE FACTS

LTHI is a corporation duly organized and existing under the laws of the Republic of the Philippines. Its office address is at Technology Center Bldg., 2298 Pasong Tamo Extension, Makati City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide 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) or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Letter of Authority (LOA) No. LOA-121-2010-00000016 dated May 14, 2010 was issued by the BIR through the Large Taxpayers Service Excise Audit Division 1, authorizing Revenue Officers (ROs) Arthur Ramos, Arnaldo Ancheta, Mariesol Girang, Dalisay Umlas, Ranilo Sy, and Group Supervisor (GS) Roberto Castro of the BIR LT

[3] EB Docket (CTA EB No. 2035), pp. 9 to 59.
[4] EB Docket (CTA EB No. 2041), pp. 6 to 25.

Excise Audit Division 1 to examine LTHI's books of accounts and other accounting records from January 1, 2009 to December 31, 2009.

On October 25, 2012, LTHI received from the BIR a *Preliminary Assessment Notice* (PAN) dated July 12, 2012, assessing the former for alleged deficiency DST and expanded withholding tax (EWT) in the aggregate amount of ₱17,729,439.97. On November 9, 2012, LTHI responded to the PAN, refuting the BIR's findings and requesting for reconsideration of the assessment.

On October 23, 2013, LTHI received from the BIR a *Formal Letter of Demand* (FLD) and *Assessment Notices* dated October 21, 2013, assessing it for alleged deficiency DST and EWT for calendar year 2009, in the aggregate amount of ₱19,913,497.55 including increments (as of September 30, 2013), broken down as follows: (a) ₱517,865.63, representing alleged deficiency EWT; and (b) ₱19,395,631.92, representing alleged deficiency DST.

As regards to the deficiency DST assessment, the same was computed as follows[5]:

	Advances to subsidiaries	**Advances from related parties**	**TOTAL**
End of Balance 2009	₱ 4,507,928.679.00	₱459,746,532.00	₱4,967,675,211.00
End of Balance 2008	2,807,991,529.00	222,068,206.00	3,030,059,735.00
Additions in 2009	1,699,937,150.00	237,678,326.00	1,937,615,476.00
Basic DST rate: ₱1 per ₱200 & fraction	8,499,685.75	1,188,391.63	9,688,077.38
Add: 25% surcharge	2,124,921.44	297,097.91	2,422,019.35
Interest from 1-6-2010 to 9-30-2013 (74.69%)	6,347,985.72	887,549.47	7,235,535.20
Compromise penalty			50,000.00
Total amount due	**₱ 16,972,592.91**	**₱ 2,373,039.01**	**₱ 19,395,631.92**

Subsequently, on November 22, 2013, LTHI filed with the BIR its protest to the FLD. On March 26, 2014, LTHI paid under protest the amount of ₱20,324,625.70 representing the deficiency DST, interest, surcharge and penalties. Thereafter, on March 16, 2016, LTHI filed an application for refund or issuance of TCC for the deficiency DST paid under protest for taxable year 2009.

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[5] BIR Records, p. 164.

On April 21, 2016, LTHI received the CIR's response to its application for refund. In said letter, the CIR denied the request for refund, and informed LTHI that its payment was considered as full settlement of the deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made "under protest."

Hence, on March 22, 2016, LTHI filed a *Petition for Review* before the Court in Division docketed as CTA Case No. 9311 entitled ***"Liberty Telecoms Holdings, Inc., Petitioner, v. Commissioner of Internal Revenue, Respondent"***[6].

Subsequently, LTHI filed a *Motion for Leave in Filing, and for Admission of, Attached Supplemental Petition for Review* on May 20, 2016. In the Resolution June 27, 2016 the Court in Division granted LTHI's *Motion* and admitted the *Supplemental Petition for Review*.

On July 21, 2016, respondent filed his *Answer Re: Original and Supplemental Petition for Review* [7], interposing special and affirmative defenses which include, among others, the following: the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[8], merely interpreted and applied Section 179 of the NIRC of 1997, as amended; and that the ruling in the said case is an affirmation of the CIR's position that intercompany loans and advances covered by mere office memo, instructional letter and/or cash and journal vouchers qualify as loan agreements that are subject to DST. Allegedly, the waivers validly extended the period to assess LTHI; that the assessment for deficiency DST and EWT are valid and made in accordance with Section 179 of the NIRC of 1997, and as such LTHI is not entitled to the claimed refund. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the CIR is wrong, but also that the taxpayer is right; and that the taxpayer is charged with the heavy burden of proving that he has complied and satisfied all the statutory and administrative requirements to be entitled to the tax refund.

After the Pre-Trial Conference held on September 15, 2016[9], the parties filed their *Joint Stipulation of Facts, Documents, Issues,*

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[6] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 10-124
[7] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 294-310
[8] G.R. Nos. 163653 and 167689, July 19, 2011.
[9] Minutes of Hearing and Order dated September 15, 2016, Division Docket, Vol. I, (CTA Case No. 9311), pp. 494 and 495 respectively

and Other Matters on October 12, 2016[10]. Thereafter, a Pre-Trial Order was issued on November 3, 2016 and the pre-trial was deemed terminated[11].

During trial, LTHI presented its sole witness, Ryan Vincent R. Baraan. On December 15, 2016, LTHI filed its *Formal Offer of Evidence*. In the Resolution dated February 10, 2017[12], the Court in Division admitted all of LTHI's formally offered exhibits.

On the other hand, the CIR presented RO Dalisay C. Umlas as his witness. On April 3, 2017, the CIR filed a *Motion to Admit Attached Formal Offer of Evidence*[13], praying that the Court in Division admit the attached Formal Offer of Evidence so that judgment may be rendered on the basis of the merits of the case and not on mere technicalities.

In the Resolution dated April 7, 2017, the Court in Division directed the LTHI to file its Comment on the CIR's *Motion to Admit Attached Formal Offer of Evidence.* On April 18, 2017, the LTHI filed its *Comment*[14], stating that the CIR could have, at the very least, requested for an extension of time; that the CIR does not appear to have given serious attention to his obligation to comply with the Court in Division's order; and thus the CIR's *Motion to Admit Attached Formal Offer of Evidence* should be denied. In the Resolution[15] dated May 4, 2017, the Court in Division granted the CIR's *Motion to Admit Attached Formal Offer of Evidence*.

Thereafter, the Court in Division admitted all of the CIR's evidence, in the Resolution dated September 20, 2017[16].

The case was deemed submitted for decision on December 12, 2017, in view of the filing of LTHI's *Memorandum* on November 17, 2017 and the CIR's *Memorandum* on November 27, 2017[17].

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[10] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 505-513
[11] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 520-524
[12] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 557-558
[13] Division Docket – Vol. II (CTA Case No. 9311), p. 574.
[14] Division Docket – Vol. II (CTA Case No. 9311), pp. 578 to 580.
[15] Division Docket – Vol. II (CTA Case No. 9311), pp. 582 to 583.
[16] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 592-593
[17] Division Docket, Vol. I, (CTA Case No. 9311) , pp. 610-671 and pp. 675-690, respectively

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On October 18, 2018, the Court in Division issued the assailed Decision[18], partially granting LTHI's *Petition for Review* and ordering the CIR to refund or issue TCC in favor of LTHI, the amount of ₱10,636,547.70, representing interest, surcharges and compromise penalty erroneously paid.

On November 5, 2018, LTHI filed its *Motion for Partial Reconsideration of the Decision dated October 18, 2018*[19]; while the CIR filed his *Motion for Partial Reconsideration Re: Decision promulgated on October 18, 2018*[20] on November 6, 2018. On December 6, 2018, LTHI filed its *Opposition*[21]; while the CIR failed to file his comment.[22]

In the assailed Resolution[23] dated March 12, 2019, the Court in Division denied both LTHI's *Motion for Partial Reconsideration* and the CIR's *Motion for Partial Reconsideration*, for lack of merit.

Subsequently, LTHI filed its *Motion for Extension of Time to File Petition for Review*[24] on March 25, 2019; while the CIR filed his *Motion for Extension of Time to File Petition for Review*[25] on April 2, 2019, both praying for an extension of fifteen (15) days within which to file their respective Petitions for Review. Both Motions were granted by the Court *En Banc*.[26]

On April 12, 2019, LTHI filed its *Petition for Review* before the Court *En Banc*, docketed as CTA EB No. 2035[27], while the CIR filed his *Petition for Review* on April 16, 2019, docketed as CTA EB No. 2041.[28] Considering that the instant cases are appeals from the Decision dated October 18, 2018 and Resolution dated March 12, 2019, rendered by the Court in Division in CTA Case No. 9311, CTA EB No. 2041 was consolidated with CTA EB No. 2035 on April 29,

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[18] Division Docket – Vol. II (CTA Case No. 9311), pp. 697 to 736.
[19] Division Docket – Vol. II (CTA Case No. 9311), pp. 742 to 762.
[20] Division Docket – Vol. II (CTA Case No. 9311), pp. 766 to 776.
[21] Division Docket – Vol. II (CTA Case No. 9311), pp. 788 to 797.
[22] Records Verification dated December 18, 2018, Division Docket – Vol. II (CTA Case No. 9311), p. 842.
[23] Division Docket – Vol. II (CTA Case No. 9311), pp. 844 to 859.
[24] EB Docket (CTA EB No. 2035), pp 1 to 6.
[25] EB Docket (CTA EB No. 2041), pp 1 to 3.
[26] Minute Resolution dated March 27, 2019, EB Docket (CTA EB No. 2035), p. 8; Minute Resolution dated April 4, 2019, EB Docket (CTA EB No. 2041), p. 5.
[27] EB Docket (CTA EB No. 2035), pp. 9 to 57.
[28] EB Docket (CTA EB No. 2041), pp. 6 to 19.

2019.[29]

In the Resolution dated May 21, 2019,[30] the Court *En Banc* ordered both parties to file their respective *Comments*. On June 7, 2019, the CIR filed a *Motion for Additional Time to File Comment*[31], praying for an extension of ten (10) days from June 8, 2019, or until June 18, 2019 to file his comment. The same was granted by the Court *En Banc* in the Resolution[32] dated June 10, 2019.

On June 11, 2019, LTHI filed a *Motion for Extension of Time to File Comment on the Petition for Review in CTA EB No. 2041*[33], praying for an extension of ten (10) days from June 14, 2019, or until June 24, 2019 to file its comment. Said motion was also granted by the Court *En Banc* on June 14, 2019.[34]

The CIR filed an *Urgent Motion for Additional Time to File Comment*[35] on June 17, 2019, praying for an extension of five (5) days from June 18, 2019 or until June 23, 2019, within which to file his comment; while LTHI filed a *Motion for Further Extension of Time to File Comment on the Petition or Review in CTA EB No. 2041*[36], praying for a period of ten (10) days from June 24, 2019 or until July 4, 2019 to file its comment.

Meanwhile, on June 21, 2019, the CIR filed its *Opposition (Re: Petitioner's Petition for Review*[37]*;* while LTHI filed its *Comment on the Petition for Review in CTA EB No. 2041*[38] on June 24, 2019.

In the Resolution dated July 16, 2020[39], the Court granted the CIR's *Urgent Motion for Additional Time to File Comment* and LTHI's *Motion for Further Extension of Time to File Comment*; and directed both parties to file their respective consolidated memoranda.

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[29] Minute Resolution dated April 29, 2019, EB Docket (CTA EB No. 2035), p. 124.
[30] EB Docket (CTA EB No. 2035), pp. 126 to 127.
[31] EB Docket (CTA EB No. 2035), pp. 128 to 131.
[32] EB Docket (CTA EB No. 2035), p. 133.
[33] EB Docket (CTA EB No. 2035), pp. 134 to 135.
[34] Minute Resolution dated June 14, 2019; EB Docket (CTA EB No. 2035), p. 137.
[35] EB Docket (CTA EB No. 2035), pp. 138 to 141.
[36] EB Docket (CTA EB No. 2035), pp. 214 to 216.
[37] EB Docket (CTA EB No. 2035), pp. 143 to 152.
[38] EB Docket (CTA EB No. 2035), pp. 154 to 170.
[39] EB Docket (CTA EB No. 2035), pp. 218 to 220.

On August 14, 2019, LTHI filed its *Consolidated Memorandum for Liberty Telecoms Holdings, Inc.*[40]

On the other hand, the CIR filed a *Motion for Additional Time to File Memorandum*[41] on August 20, 2019, praying for an additional period of thirty (30) days from August 18, 2019 or until September 17, 2019, within which to file its memorandum. The same was granted by the Court *En Banc* on August 27, 2019.[42]

On September 17, 2019, the CIR filed his *Consolidated Memorandum*[43]. Thereafter, the instant consolidated cases were submitted for decision in the Resolution[44] dated October 2, 2019.

Hence, this Decision.

ISSUES

In **CTA EB No. 2035**, the LTHI raises the following issues, *to wit:*

> "VI.
>
> STATEMENT OF THE ISSUES
>
> 7.00. The issues for resolution of the Honorable Court *En Banc* are:
>
> 7.01. The main issue for resolution of the Court is: Whether LTHI is entitled to a refund in the amount of ₱9,668,078.00 that it paid to the BIR for alleged basic deficiency Documentary Stamp Tax.
>
> 7.02. The following are the corollary issues:
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> 7.02.a. Whether LTHI is liable for the subject basic Documentary Stamp Tax in the amount of ₱9,688,078.00.

[40] EB Docket (CTA EB No. 2035), pp. 221 to 288.
[41] EB Docket (CTA EB No. 2035), pp. 289 to 292.
[42] Minute Resolution dated August 27, 2019; EB Docket (CTA EB No. 2035), p. 294.
[43] EB Docket (CTA EB No. 2035), pp. 297 to 319.
[44] EB Docket (CTA EB No. 2035), pp. 323 to 324.

7.02.b. Whether the decision in the *Filinvest* case and RMC No. 48-2011 may be applied retroactively against LTHI with respect to advances received/extended in 2009.

7.02.c. Assuming the decision in the *Filinvest* case may be applied retroactively, whether the aforementioned advances are covered by the said decision.

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

7.02.e. Whether the right of the Government to assess LTHI for deficiency DST on advances made in 2009 has already prescribed."[45]

LTHI's arguments:

LTHI argues that the Court in Division erred in holding that the decision of the Supreme Court in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[46] ("*Filinvest* case" for brevity) and Revenue Memorandum Circular (RMC) No. 48-2011 may be applied retroactively to the cash advances subject of the instant case.

Contrary to the ruling in the assailed Decision, LTHI submits that the decision in *Albino S. Co vs. Court of Appeals and People of the Philippines*[47] ("*Co* case", for brevity) should be applied in the case at bar and not the decision in *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[48] ("*Visayas* case", for brevity) nor the decisions of the CTA Third Division in *San Miguel Corporation vs. Commissioner of Internal Revenue*[49] and of the CTA First Division in *Brewery Properties, Inc. vs. Commissioner of Internal Revenue.*[50]

According to LTHI, the application of the *Co* case is supported and justified by the rationale against retroactivity and the compelling

[45] *Petition for Review*, EB Docket (CTA EB No. 2035), p. 23.
[46] G.R. Nos. 163653 & 167689, July 19, 2011.
[47] G.R. No. 100776, October 28, 1993.
[48] G.R. No. 197525, June 4, 2014.
[49] CTA Case No. 9007, April 19, 2017.
[50] CTA Case No. 8892, September 30, 2016.

rationalization of the prospectivity principle of judicial decisions.

LTHI contends that the decision of the Supreme Court in *Filinvest case* cannot be characterized as interpretation of a statute constituting part of the law of the land as of date it was originally passed as it did not discuss and establish the contemporaneous legislative intent that the former Section 180 (now Section 179) of the NIRC of 1997, supposedly carried into effect. As such, LTHI maintains that the *Filinvest* decision does not fall within the coverage of the Supreme Court decision in the *Visayas case*.

Further, LTHI claims that aside from the fact that the *Filinvest* case may not be applied retroactively, the facts involved therein are different from those involved in the instant case. Allegedly, the documents subject of the *Filinvest* case were instructional letters and journal and cash vouchers, while in the instant case, the BIR relied on mere Notes to the 2009 Audited Financial Statements (AFS). LTHI insists that Notes to Financial Statements are not documents, much less are they debt instruments referred to in Section 179 of the NIRC.

LTHI avers that two basic requisites must exist before DST may be imposed, to wit: (1) there must be a privilege or transaction; and (2) this privilege or transaction is evidenced through the execution of specific instruments. According to LTHI, while there may have been transactions in the form of advances, the CIR has not shown that the said transactions were manifested through the execution of specific instruments.

LTHI likewise argues that the Court in Division erred in holding that the right of the government to assess LTHI for deficiency DST on advances made before July 2011 has not prescribed. According to LTHI, the waivers are not valid.

In addition, LTHI asserts that it is not liable to pay the subject DST, and there was consequently an erroneous and/or illegal collection of tax under Section 229, in relation to Section 204, of the NIRC of 1997.

The CIR's counter-arguments:

The CIR counter-argues that there is no retroactive application of the decision in *Filinvest* case in the instant case.

As regards LTHI's allegation that DST may not be imposed on advances based on Notes to AFS, the CIR argues that the existence of physical document is not indispensable before DST can be imposed.

The CIR maintains that the waivers validly extended the period to assess. Allegedly, LTHI's voluntary act of signing the waivers is tantamount to an assent or consent to extend the period of assessment

Further, the CIR contends that LTHI should be held liable for deficiency DST; and that the assessment is valid and made in accordance with Section 179 of the NIRC of 1997, and as such LTHI is not entitled to refund.

Finally, the CIR submits that the assessment has in its favor the presumption that it is correct absent any proof of irregularities in the performance of duties.

ASSIGNMENT OF ERRORS

In **CTA EB No. 2041**, the CIR assigns the following error supposedly committed by the Court in Division, *to wit*:

> "THE HONORABLE COURT SECOND DIVISION VIOLATED ESTABLISHED JURISPRUDENCE WHEN IT ORDERED THE CANCELLATION OF THE DEFICIENCY INTEREST, SURCHARGE AND COMPROMISE PENALTY PAID BY RESPONDENT AND ORDERING THE REFUND THEREOF."[51]

The CIR's arguments:

The CIR argues that the imposition of interest, surcharge and compromise penalty has factual and legal basis under the NIRC of 1997.

[51] *Petition for Review*, EB Docket (CTA EB No. 1985), p. 16.

As regards the imposition of interest, the CIR submits that good faith cannot be invoked to justify the cancellation of the deficiency and delinquency interest.

Moreover, according to the CIR, LTHI is also liable for compromise penalty and that its imposition is valid pursuant to Revenue Memorandum Order (RMO) No. 19-2007.

LTHI's counter-arguments:

LTHI counter-argues that the CIR is precluded from filing the *Petition for Review* on the portion of the assailed Decision which ordered the CIR to refund or issue a TCC in favor of LTHI the amount of ₱10,636,547.70.

In addition, LTHI avers that the Court in Division correctly held that LTHI is not liable to pay surcharge, interest and compromise penalty. Allegedly, it acted in good faith when it relied on court decisions and BIR issuances prevailing at the time the subject advances were received or extended.

LTHI stresses that it was justified in relying on BIR rulings as basis for its position that the advances extended by it to subsidiaries and received by it from related parties in 2009 are not subject to DST.

Lastly, LTHI argues that a compromise penalty may not be imposed on a taxpayer if the payment was made under protest.

THE COURT *EN BANC*'S RULING

Both *Petitions for Review* lack merit.

<u>CTA EB No. 2035</u>

The Filinvest case and RMC No. 48-2011 may be applied retroactively.

In the assailed Decision, the Court in Division applied retroactively the doctrine laid down in the *Filinvest* case which held that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements which is subject to DST.

LTHI, however, argues that the decision in the *Filinvest* case promulgated by the Supreme Court and RMC No. 48-2011 issued by the BIR should not be given any retroactive effect to cover the advances extended by LTHI to its subsidiaries and received by it from related parties in 2009.

Likewise, it submits that the *Co* case which decreed that the principle of prospectivity also applies to judicial decisions, should be applied to this case, instead of the *Visayas* case which was relied upon in the assailed Decision; and that the *Co* case should prevail over the *Visayas* case, as it specifically deals with the matter of prospectivity and non-retrospectivity of decisions of the Supreme Court in relation to Article 4 of the Civil Code, while the *Visayas* case deals with the effect of decisions of the Supreme Court in general.

The Court *En Banc* is not persuaded.

The ruling of the Supreme Court in the case of *Philippine International Trading Corporation vs. Commission of Audit*[52], is instructive, to wit:

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

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

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

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

> **doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication. (*Emphasis supplied, citations omitted.*)"

Further, in the *Visayas* case, the Supreme Court held that the interpretation placed upon a law by the Supreme Court shall form part of the law as of the date it was enacted, *to wit:*

> "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." (*Emphasis and underscoring supplied*).

Based on the foregoing jurisprudential pronouncements, it is clear that a judicial interpretation placed upon a law by the Supreme Court becomes a part of the law interpreted as of the date when the law was originally passed because it establishes the contemporaneous legislative intent of the law. The **only exception** is that when there is already a prevailing doctrine or interpretation of the Supreme Court, and the High Court overrules or reverses the said doctrine, then the new doctrine must be applied prospectively.

In view thereof, We find LTHI's reliance on the *Co* case to be without merit. In fact, the *Co* case citing the ruling of the Supreme Court in the case of *People of the Philippines vs. Jabinal*[53], states:

> "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

[53] G.R. No. L-30061, February 27, 1974.

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> system . . . .' The **interpretation upon a law by this Court constitutes, in a way, <u>a part of the law as of the date that law originally passed</u>, since this Court's construction merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate.** The settled rule supported by numerous authorities is a restatement of legal maxim "*legis interpretatio legis vim obtinet*" — the interpretation placed upon the written law by a competent court has the force of law. . . ., **but when a doctrine of this Court is <u>overruled and a different view is adopted</u>, the <u>new doctrine</u> should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** . . ." (Emphasis and underscoring supplied)

A careful reading of the foregoing ruling would reveal that the prospective application of a "new" doctrine will come into play only when an "old" doctrine is overruled.

Pertinent to the instant case is the *Filinvest case* where the Supreme Court interpreted Section 180 of the Tax Code (now Section 179) of the NIRC of 1997, particularly on the scope of the word 'loan agreements', as being subject to DST. The Supreme Court held that loan agreement includes "*instructional letters, as well as, the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates*". Section 180 was inserted in the NIRC through the enactment of RA No. 7660 on December 23, 1994. This provision is, up until now, still in our statute books.

Relative thereto, the same Section 180 was also carried over in Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243.

Thus, considering that there was no previously established doctrine or ruling that was overturned by the *Filinvest* case, the interpretation of Section 180 of the NIRC (now Section 179) of the NIRC of 1997 was deemed constituted as part of the NIRC as of December 23, 1994 up to the present time.

LTHI, however, insists that there was an existing doctrine that was overruled by the *Filinvest* case. According to LTHI, prior to the promulgation of *Filinvest* case, the prevailing rule is that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST; and that such prior rule was embodied, among others, in the following:

> (1) Decision of the Court of Appeals in *Commissioner of Internal Revenue v. APC Group, Inc.*[54];
> (2) Decision of the CTA *En Banc* in *Commissioner of Internal Revenue v. Belle Corporation*[55];
> (3) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008; and
> (4) Minute Resolution of the Supreme Court in the case of *Commissioner of Internal Revenue vs. APC Group, Inc.*[56]

According to LTHI, considering that a prior rule was overturned by the *Filinvest* case, the new doctrine laid down in the said case must only be applied prospectively.

We disagree.

As regards to BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 cited by LTHI, wherein the taxpayer therein (member companies of the Star Group) sought confirmation from the BIR that inter-company loans and advances, covered by inter-office memoranda are not subject to DST, the same has no bearing upon LTHI's tax issue. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, LTHI cannot invoke the said BIR ruling. Further, as ruled in the assailed Decision, BIR rulings do not promulgate a general interpretative rule applicable to all taxpayers. Accordingly, the said BIR ruling is not binding upon the Court.

LTHI cannot likewise find support in the Decisions of the CA and of this Court. In the case of *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd.,*[57] it was held that **only** decisions of the Supreme Court establish jurisprudence or doctrine in this jurisdiction, *to wit*:

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[54] CA-G.R. No. 69869, November 29, 2002.
[55] CTA EB No. 147, October 13, 2006
[56] G.R. No. 162185, May 17, 2004.
[57] G.R. No. L-25291, January 30, 1971.

> ". . . the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort.** We said in no uncertain terms in Miranda, et al. vs. Imperial, et al. (77 Phil. 1066) that '**[O]nly the decisions of this Honorable Court establish jurisprudence or doctrines in this jurisdiction.'** xxx." (Emphasis and underscoring supplied).

Further, in *Commissioner of Internal Revenue v. San Roque Power Corporation,*[58] the Supreme Court has declared, in no uncertain terms, that CTA decisions do not constitute as binding precedents, to wit:

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

Based on the foregoing pronouncements, only decisions of the Supreme Court and **not** the decisions of the CA or CTA, constitute as binding precedents. It bears noting that judgments of lower courts and other collegiate courts bind only the parties of specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[59] Thus, the CA and CTA Decisions relied upon by LTHI cannot be treated or equated as doctrinal pronouncement.

Neither can the Minute Resolution of the Supreme Court be treated as a binding precedent. In *Philippine Health Care Providers,*

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[58] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.
[59] *The Philippine Veteran Affairs Office vs. Segundo*, G.R. No. L-51570, August 15, 1988.

Inc. vs. Commissioner of Internal Revenue,[60] the Supreme Court held:

> "It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?
>
> With respect to the same subject matter and the same issues concerning the same parties, it *constitutes res judicata*. However, **if other parties or another subject matter (even with the same parties and issues) is involved, <u>the minute resolution is not binding precedent.</u>** Thus, in *CIR v. Baier-Nickel*,[61] the Court noted that a previous case, *CIR v. Baier-Nickel*[62] involving the **same parties and same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled **that the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years." (*Emphasis and underscoring supplied.*)

Since it is neither a doctrine, nor a binding precedent, the ruling in the APC Group case could not have been overruled by the *Filinvest case*.

There being no doctrine or jurisprudence that was overruled in the *Filinvest* case, the interpretation of the Supreme Court therein on Section 180 (now Section 179) of the NIRC constitutes part thereof as of the date it was originally passed, i.e., on December 23, 1994. Thus, the doctrine in the said case may therefore be applied to this

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[60] G.R. No. 167330, September 18, 2009.
[61] G.R. No. 153793, August 29, 2006.
[62] Extended Resolution, G.R. No. 156305, February 17, 2003.

case without violating the principle on non-retroactivity of laws and rulings.

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

DST may be imposed on the basis of mere Notes appearing in LTHI's 2009 Audited Financial Statement.

LTHI claims that aside from the fact that the *Filinvest* case may not be applied retroactively, the facts involved therein are different from the facts in the case at bar. According to LTHI, the documents subject of the *Filinvest* case were instructional letters and journal and cash vouchers evidencing the advances, while in the case at bar, the BIR relied on mere Notes to the AFS, which are not documents, much less are they debt instruments referred to in Section 179 of the NIRC of 1997. LTHI further argues that if there is no document, or if the document is not a debt instrument as defined under Section179 of the NIRC of 1997, DST may not be imposed.

The Court *En Banc* is not convinced.

DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.[63] DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[64] Thus, there is no basis in petitioner's assertion that a DST is literally a tax on the document.[65] Accordingly, DST may be imposed even in the absence of debt instrument or even if the same was not identified by the BIR, as long as the transactions are clearly established.

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[63] *Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.,* G.R. No. 119446, January 21, 1999.
[64] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.
[65] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008.

Similarly, Section 6 of Revenue Regulations No. 9-94[66] provides for the imposition of DST where **no** formal agreements or promissory notes are executed, *to wit*:

> "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 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."

Thus, We sustain the Court in Division's ruling that DST may be imposed on the advances on the basis of mere Notes appearing in LTHI's 2009 AFS.

The BIR's right to assess and collect the subject deficiency DST has not prescribed.

In the assailed Decision, the Court in Division ruled that the Waivers of the Defense of Prescription under the Statute of Limitations do not violate the procedure laid down in RMO No. 20-90[67]. Thus, the right of the government to assess the subject deficiency DST has not yet prescribed.

[66] SUBJECT: *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.*

[67] SUBJECT: *Proper Execution of the Waiver of the Statute of Limitations under the National Internal Revenue Code.*

LTHI, however, insists that the waivers are not valid and binding. According to LTHI, the 1st, 2nd, and 3rd waivers do not show that the copies thereof were received by petitioner after they were accepted by the CIR; while the 4th waiver was received after the third waiver expired.

We sustain the Court in Division.

The Supreme Court in *Commissioner of Internal Revenue vs. Kudos Metal Corporation*,[68] lays down the guidelines for the execution of a valid waiver in accordance with RMO No. 20-90 issued on April 4, 1990 and Revenue Delegation Authority Order (RDAO) No. 05-01[69] issued on August 2, 2001, to wit:

> "Section 222(b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05-01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:
>
> 1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after ____19 __', which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.
>
> 2. The waiver must be signed by the taxpayer himself or
>
>   his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by the taxpayer to a representative, such delegation should be in writing and duly notarized.
>
> 3. The waiver should be duly notarized.
>
> 4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted

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[68] G.R. No. 178087, May 5, 2010.
[69] SUBJECT: *Delegation of Authority to Sign and Accept the Waiver of the Defense of Prescription Under the Statute of Limitations.*

and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form duly notarized, and executed by the taxpayer or his duly authorized representative.

5. **Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed**.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

In the instant case, a review of the four waivers executed by LTHI and accepted by the BIR shows that these waivers have fully and adequately hurdled all the foregoing requisites.

Contrary to LTHI's claim that the waivers do not show that it received the accepted waivers, a careful examination of the certified true copies of the first[70], second[71], third[72] and fourth[73] waivers attached to the BIR Records shows that these were all received by LTHI on December 22, 2011, June 21, 2012, December 20, 2012 and on June 20, 2013, respectively.

As regards LTHI's position that it must receive a copy of the accepted waiver before the lapse of the previous period agreed upon, the same is erroneous. It must be emphasized that nowhere in RMO No. 20-90 is it provided that a copy of the accepted waiver must be received by the taxpayer before the expiration of the previous period agreed upon.

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[70] Exhibit "R-6", BIR Records, p. 121.
[71] Exhibit "R-7", BIR Records, p. 122.
[72] Exhibit "R-9", BIR Records, p. 147.
[73] Exhibit "R-10", BIR Records, p. 148.

It bears noting that in the recent case of *Asian Transmission Corporation vs. Commissioner of Internal Revenue*[74], the Supreme Court emphasized the role of taxpayer in the preparation of waivers, to wit:

> "Indeed, although RDAO 01-05 stated that the waiver should not be accepted by the concerned BIR office or official unless duly notarized, **a careful reading of RDAO 01-05 indicates that the proper preparation of the waiver was primarily the responsibility of the taxpayer or its authorized representative signing the waiver**. Such responsibility did not pertain to the BIR as the receiving party. Consequently, ATC was not correct in insisting that the act or omission giving rise to the defects of the waivers should be ascribed solely to the respondent CIR and her subordinates." (Emphasis supplied.)

It is clear from the foregoing that the proper preparation of the waiver is primarily the responsibility of the taxpayer or its authorized representative signing the waiver.

Accordingly, We find no cogent reason to deviate from the Court in Division findings that the subject waivers validly extended the period to assess and collect taxes.

<u>CTA EB No. 2041</u>

The Court in Division did not err in holding that LTHI is not liable to pay interest, surcharge and penalty.

In the assailed Decision, the Court in Division ruled that LTHI is not liable to pay interest, surcharge and compromise penalty. According to the Court in Division, LTHI relied in good faith on previous court decisions and BIR rulings.

However, the CIR argues that the Court in Division erred in cancelling the deficiency interest, surcharge and compromise penalty. According to the CIR, good faith cannot be invoked to justify the

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[74] G.R. No. 230861, September 19, 2018.

cancellation of the deficiency and delinquency interest; and that the imposition of compromise penalties was valid pursuant to RMO No. 19-2007.

We sustain the cancellation of interest, surcharge and compromise penalty.

It is settled that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest.[75]

A perusal of LTHI's claim for refund shows that it merely relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that inter-company loans and advances covered by inter-office memoranda are not subject to DST. Hence, We agree with the Court in Division that LTHI's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest.

Anent the compromise penalty, the same should not be imposed. This must be so because compromise penalties are only amounts suggested in settlement of criminal liability, and may not be imposed or exacted on the taxpayer in the event that a taxpayer refuses to pay the same.[76] In the case of *De San Agustin vs. Commissioner of Internal Revenue*,[77] the Supreme Court held that:

> "The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 could not be imposed on petitioner, a compromise being, by its nature, <u>**mutual in essence**</u>. **The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties**." (Emphasis and underscoring supplied)

It is evident from the foregoing that compromise penalties imply mutual agreement between the taxpayer, on one hand, and the CIR, on the other. The payment made under protest by petitioner could only mean that there was no agreement that had effectively been reached between the parties. Considering that LTHI disputed the

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[75] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010.
[76] Revenue Memorandum Order No. 1-90.
[77] G.R. No. 138485, September 10, 2001.

assessment of compromise penalty, the said penalty cannot therefore be imposed.

In sum, the Court *En Banc* sees no cogent reason to disturb the findings and conclusions reached by the Court in Division that LTHI is liable for deficiency DST but not for interest, surcharge and compromise penalty. Hence, the following amount of interest, surcharge and compromise penalty should be refunded to LTHI:

Interest	₱ 8,164,528.00
Surcharge	2,422,019.50
Compromise Penalty	50,000.00
TOTAL	**₱ 10,636,547.70**

WHEREFORE, in light of the foregoing considerations, the consolidated *Petitions for Review* in CTA EB Nos. 2035 and 2041, are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision dated October 18, 2018 and Resolution dated March 12, 2019, both rendered by the Court in Division in CTA Case No. 9311 are **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I maintain my Concurring and Dissenting Opinion dated October 18, 2018 under CTA Case No. 9311)
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was 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

LIBERTY TELECOMS HOLDINGS, INC., *Petitioner,*	**CTA EB NO. 2035** (CTA Case No. 9311)
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	

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COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	**CTA EB NO. 2041** (CTA Case No. 9311)
	Present:
-versus-	**DEL ROSARIO**, ***P.J.***, **CASTANEDA**, **JR.**, **UY**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, JJ.
LIBERTY TELECOMS HOLDINGS, INC., *Respondent.*	Promulgated: SEP 24 2020 4:21 p.m.

x---x

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. 2041 for lack of merit.

With due respect, I am constrained to withhold my assent on the denial of the Petition for Review filed by Liberty Telecoms Holdings, Inc. (LTHI) in CTA EB No. 2035.

I humbly submit that the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] cannot be applied retroactively to the prejudice of taxpayers who relied thereon in good faith.

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

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

To be specific, LTHI relied on the following:

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

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

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

DST) is consistent with the provisions of the NIRC of 1997.

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 prior to *Filinvest*. Pronouncements of the CA and the CTA are at the very least persuasive.

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

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

While the doctrine laid down by the CA in ***APC Group*** and the CTA in ***Belle Corporation***, respectively, was effectively over-ruled on July 19, 2011 when the Supreme Court promulgated *Filinvest*, the same should be applied retroactively to the prejudice of taxpayers who relied thereon in good faith.

Note that, jurisprudentially, a Supreme Court pronouncement reversing a BIR Ruling favorable to a taxpayer would not as a rule cause any prejudice to the latter. In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power*

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

Corporation,[3] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[4] *and Philex Mining Corporation vs. Commissioner of Internal Revenue,*[5] the Supreme Court, citing the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,[6] held that the reversal of a general interpretative rule should be applied prospectively, thus:

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

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[3] G.R. No. 187485, February 12, 2013, 690 SCRA 336 (2013).
[4] G.R. No. 196113, February 12, 2013, 690 SCRA 336, (2013).
[5] G.R. No. 197156, February 12, 2013, 690 SCRA 336, (2013).
[6] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

> suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer." *(Boldfacing supplied)*

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

In view of the foregoing, LTHI is entitled to a refund of the basic **DST paid** on advances for taxable year 2009 in the amount of Php9,688,078.00, in addition to the surcharge, interest and compromise penalty previously paid in the amount of Php10,636,547.70.

All told, I VOTE to: (i) GRANT the Petition for Review filed by Petition for Review filed by Liberty Telecoms Holdings, Inc. in CTA EB No. 2035; (ii) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2041; and, (iii) ORDER the Commissioner of Internal Revenue to refund to Liberty Telecoms Holdings, Inc. the basic Documentary Stamp Tax paid by it for the taxable year 2009 in the amount of Php9,688,078.00, plus surcharge, interest and compromise penalty in the amount of Php10,636,547.70.

ROMAN G. DEL ROSARIO
Presiding Justice