REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

E.E. BLACK LTD.- PHILIPPINE BRANCH,	**CTA CASE NO. 8526**
Petitioner,	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE,	
Respondent.	**Promulgated:** APR 10 2014 10:50 a.m.

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DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF THE CASE

This is a Petition for Review filed on August 10, 2012 by E.E. Black Ltd.-Philippine Branch (petitioner), pursuant to Section 7 of Republic Act No. 1125, as amended by Republic Act 9282, due to the inaction of the respondent on its letter of protest[1] filed on January 12, 2012 against the Formal Assessment Notices Part I and II[2] and Assessment Notices[3], all dated December 23, 2011, representing alleged deficiency documentary stamp tax (DST) inclusive of surcharge and interest, and Compromise penalty in the aggregate amount of ₱2,775,759.62, covering taxable year 2007.

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[1] Exhibit "B", Protest Letter dated August 9, 2012, Docket, pp. 274-286.

[2] Exhibit "A" and "A-1", Docket, pp. 268 and 271.

[3] Docket, pp. 272 and 273.

STATEMENT OF FACTS

E.E. Black Ltd.-Philippine Branch (petitioner) is a corporation organized and existing under and by virtue of the laws of the State of Hawaii, United States of America and is duly licensed by the Securities and Exchange Commission to establish a branch office and do business as a general contractor in the Philippines. Petitioner holds office at 53 Paseo de Roxas Avenue, Urdaneta Village, Makati City.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of her office, including among others, the power to decide disputed assessments, and such other matters vested in her in the National Internal Revenue Code (NIRC) and other special laws, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.

On December 23, 2011, respondent issued a Formal Assessment Notice Part I, Formal Assessment Notice Part II, Assessment Notice No. DS-LA36895-07-11-0976 and Assessment Notice No. MC-LA36895-07-11-0976, all dated December 23, 2011, copies of which were received by petitioner on December 27, 2011, assessing petitioner for deficiency DST and compromise penalty for taxable year ended December 31, 2007.[5]

The deficiency DST was computed by respondent as follows:[6]

I. <u>DOCUMENTARY STAMP TAX</u>

Basic Tax Due (Schedule 1)			₱ 1,332,927.00
Add : Surcharge (25%)		₱ 33,231.75	
Interest (1.6.08 to 1.30.12)	1,084,600.87	1,417,832.62	
Total Amount Due			**₱ 2,750,759.62**

[4] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 239.
[5] Par. 3, I. Summary of Admitted Facts, JSFI, Docket, pp. 239- 240; Exhibits "A" to "A-3", Docket, pp. 268-273.
[6] Par. 4, I. Summary of Admitted Facts, JSFI, Docket, p. 240.

Also, Schedule 1 (Details of Discrepancies) of the Formal Assessment Notice Part I breaks down the basic DST Assessments as follows:[7]

DEBT INSTRUMENTS		
Due from Head Office and Parent Company		₱ 220,973,058.00
Due to Parent Company and Affiliates		44,877,778.00
Total Borrowings/Advances		265,850,836.00
Documentary Stamp Tax (P265,850,836.00/200*P1.00)		₱ 1,329,255.00
LEASE CONTRACTS		
Rental Expense per FS	₱3,670,505.00	
Documentary Stamp Tax:		
First P2,000.00	₱ 3.00	
P1.00/P1,000 in excess of first P2,000.00	3,669.00	3,672.00
Total Documentary Stamp Tax		**₱ 1,332,927.00**

On January 12, 2012, petitioner filed with respondent through Regional Director Nestor S. Valeroso, BIR Revenue Region No. 8, Makati City, its letter dated January 9, 2012, protesting the said assessments and submitted all the documents in support of its protest.[8]

On February 17, 2012, petitioner received from respondent's Regional Director for Revenue Region No. 8-Makati City a letter dated February 15, 2012 acknowledging receipt of the protest letter and informing petitioner that the entire tax docket with the protest letter would be forwarded to the Legal Division for resolution of the legal issues raised in the protest letter.[9]

On July 10, 2012, the 180-day period under Section 228 of the National Internal Revenue Code of 1997, as amended, lapsed, hence, on August 10, 2012 petitioner filed the instant Petition for Review.[10] Petitioner prays that the assessment of its deficiency DST and compromise penalty, including increments, in the aggregate amount of ₱2,775,759.62 be declared as invalid and/or devoid of factual or legal basis; and that the said assessments be cancelled.

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[7] Par. 5, I. Summary of Admitted Facts, JSFI, Docket, p. 240; Annex A of Exhibit "A", Docket, p. 269.

[8] Par. 6, I. Summary of Admitted Facts, JSFI, Docket, p. 240; Exhibit B, Docket, pp. 274- 286.

[9] Par. 7, I. Summary of Admitted Facts, JSFI, Docket, p. 240.

[10] Par. 8, I. Summary of Admitted Facts, JSFI, Docket, p. 241.

On September 21, 2012, respondent filed her Answer with Motion to Dismiss[11] interposing the following Special and Affirmative Defenses:

> "4. She reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses;
>
> 5. This Honorable Court has no jurisdiction to act on the instant petition. Under ***Section 228 of the 1997 Tax Code***, it is clearly provided that:
>
> > '**SEC. 228. Protesting of Assessment**. –
> >
> > xxx xxx xxx
> >
> > Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
> >
> > **<u>If the protest is denied in whole or in part</u>**, or is not acted upon within one hundred eighty (180) days from submission of documents, **<u>the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision</u>**, or from the lapse of the one hundred eighty (180)-day period; **<u>otherwise, the decision shall become final, executory and demandable</u>**.'

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[11] Docket, pp. 84-91. (Italics, emphasis, and underline in the original.)

In relation thereto, under Section 3 A(2), Rule 4 of the Revised Rules of the Court of Tax Appeals, it clearly provides that:

> ***SEC. 3. Cases within the jurisdiction of the Court in Divisions. – The Court in Divisions shall exercise***:
>
> ***(a) Exclusive original or appellate jurisdiction to review by appeal the following:***
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) ***Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments***, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: ***Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal revenue Code shall be deemed a denial for purposes of allowing the***

> ***taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case***; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code;

In the recent case of ***LASCONA LAND CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. No. 171251, March 5, 2012***, citing the ruling in the case of ***RCBC v. CIR, G.R. No. 168498, April 24, 2007, 522 SCRA 144***, the Supreme Court consistently held that:

> 'In case the Commissioner of Internal Revenue failed to act on the disputed assessment within the 180-day period from date of submission of documents, a taxpayer has two options, either: (1) file a petition for review with the CTA within 30 days after the expiration of the 180-day period; or (2) await the final decision of the Commissioner on the disputed assessment and appeal such final decision to the CTA within 30 days after the receipt of a copy of such decision, ***these options are mutually exclusive and resort to one bars the application of the other***.'

At the outset, it is worth emphasizing the following admitted facts by respondent, to wit: that on ***December 27, 2011***, petitioner received the BIR Formal Assessment Notices (FAN) with Letter of Demand dated December 23, 2011, involving its deficiency documentary stamp tax and compromise penalty for taxable year 2007; that on ***January 12, 2012***, petitioner in a Letter dated January 9, 2012 filed an Administrative Protest against the subject deficiency tax assessments and submitted all the documents in support of its protest with the Assessment Division, BIR RR8 Makati City on the same date; that when respondent CIR failed to act on its disputed assessment within the 180-day period from the date of submission of all its supporting documents on January 12, 2012, petitioner opted to file an appeal by way of Petition for Review with this Honorable Court in the above-captioned case on ***August 10, 2012***.

Obviously, petitioner violated the mandatory requirements under Section 228 of the 1997 Tax Code, in cases when the Commissioner of Internal Revenue failed to act on the disputed assessment within the 180-day period from date of submission of documents and the taxpayer opted to file an appeal unto this Hon. Court within 30 days from the lapse of the 180 days period.

To reiterate, on ***January 12, 2012***, petitioner filed an Administrative Protest against the subject deficiency tax assessments and submitted all the documents in support of its protest with the Assessment Division, BIR RR8 Makati City on the same date. ***Counting from January 12, 2012, respondent CIR has a period of 180 days to act on its protest, or until July 10, 2012***. Since petitioner opted to file a Petition for Review with this Honorable Court due to the failure of respondent CIR to act on its disputed assessment within the 180-day period from the date of submission of documents on January 12, 2012, therefore, ***petitioner has a period of 30 days reckoned from July 10, 2012 or, until August 9, 2012, within which to file an appeal unto this Honorable Court***. However, petitioner filed its Petition for Review with this Honorable Court ***only on August 10, 2012, which is one (1) day late and way beyond the 30 day***

reglementary period prescribed under Section 228 of the 1997 Tax Code.

Consequently, petitioner's judicial appeal unto this Honorable Court has already prescribed. As such, the subject BIR Formal Assessment Notices (FAN) with Letter of Demand dated December 23, 2011, involving petitioner's deficiency documentary stamp tax and compromise penalty for taxable year 2007 has already become final, executory and demandable, pursuant to Section 228 of the 1997 Tax Code. Hence, this Honorable Court has no jurisdiction to act on the instant petition.

6. In the case of ***Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue',*** **G.R. No. 168498, June 16, 2006**, which settled the issue squarely similar to the above-captioned case, the Supreme Court consistently ruled that:

> As provided in Section 228, *the failure of a taxpayer to appeal from an assessment on time rendered the assessment final, executory and demandable. Consequently, petitioner is precluded from disputing the correctness of the assessment*.
>
> In ***Ker & Company, Ltd. v. Court of Tax Appeals, G.R. No. L-12396, January 31, 1962, 4 SCRA 160***, the Court held that while the right to appeal a decision of the Commissioner to the Court of Tax Appeals is merely a statutory remedy, nevertheless the requirement that it must be brought within 30 days is jurisdictional. If a statutory remedy provides as a condition precedent that the action to enforce it must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss.
>
> In fine, *the failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the*

> *assessment*. ***[Commissioner of Internal Revenue v. Western Pacific Corporation, 121 Phil. 889, 893 (1965)].'***

7. Well-settled is the rule that if the court has no jurisdiction over the nature of an action, its only jurisdiction is to dismiss the case. The court could not decide the case on the merits (***De Guzman, et al., vs. Escalona, et al., G.R. No. L-51773, May 16, 1980***). The Court of Tax Appeals, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction (***Allied Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 175097, February 5, 2010 citing Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue, G.R. No. 168498, 522 SCRA 144, 150)***.

8. Further, the Supreme Court in the case of **Ker & Company, Ltd. vs. CTA, et al., L-12396, January 31, 1962** and **Commissioner of Internal Revenue vs. Joseph, et al., L-14034, August 30,1962**, consistently ruled that:

> ***'If a statutory remedy provides as condition precedent that the action to enforce must be commenced within a prescribed time, such requirement is jurisdictional and failure to comply therewith may be raised in a motion to dismiss'***.

9. Moreover, in the case of ***Yao vs. Court of Appeals, et al., G.R. No. 132428, October 24, 2000***, the Supreme Court held and we quote:

> '***The right to appeal is not a constitutional, natural or inherent right***. It is a statutory privilege of statutory origin and, therefore available only if granted or provided by statute. Since the right to appeal is not a natural

> right nor part of due process, ***it may be exercised only in the manner and in accordance with the provisions of law. Corollarily, its requirements must be strictly complied with***.
>
> ***That an appeal must be perfected in the manner and within the period fixed by law is not only mandatory but jurisdictional***. Non-compliance with such legal requirements is fatal, for its renders the decision sought to be appealed final and executory, with the end result that no court can exercise appellate jurisdiction to review the decision.'

Thus, it must be emphasized that jurisdiction over the subject matter or nature of an action is fundamental for the court to act on a given controversy (***Commissioner of Internal Revenue vs. Villa, et al., G.R. No. L-23988, January 2, 1968***), and is conferred only by law and not by the consent or waiver upon the court which, otherwise, would have no jurisdiction over the subject matter or nature of an action. Lack of jurisdiction of the court over an action or the subject matter of an action cannot be cured by the silence, acquiescence, or even by express consent of the parties (***Laresma vs. Abellana, G.R. No. 140973, November 11, 2004***).

10. On the other hand, assuming without admitting that this Honorable Court has jurisdiction to act on the instant petition, petitioner was assessed for deficiency documentary stamp tax (DST) in the amount of ₱1,332,927.00 for taxable year 2007, pursuant to section 179 and 194 of the 1997 Tax Code, in relation to Revenue Regulations No. 13-2004, as amended, for its failure to pay the DST due on its advances/borrowings and lease contract in the value of ₱125,000.00 and ₱2,300,000.00.

11. Moreover, petitioner was assessed for compromise penalty due to its failure to file and/or pay the required DST

return, pursuant to Section 179 and 194 of the 1997 Tax Code, in relation to Section 255 of the same Code.

12. Respondent fully complied with the due process requirement mandated under Section 228 of the 1997 Tax Code, as implemented by Revenue Regulations No. 12-99, when the disputed Preliminary Assessment Notice (PAN) dated December 6, 2011 and Formal Assessment Notices (FAN) dated December 23, 2011 were issued to herein petitioner. Records clearly show that petitioner was duly afforded an opportunity to convert the initial findings of the respondent involving its deficiency taxes for taxable year 2007 through the issuance of a Notice for Informal Conference and Preliminary Assessment Notice (PAN) dated December 6, 2011. Likewise, petitioner was duly appraised by the respondent of the factual and legal basis on how and why he (respondent) arrived such a deficiency documentary stamp tax (DST) and compromise penalty, respectively for taxable year 2007, through the issuance of the Details of Discrepancies attached to the Formal Assessment Notices (FAN) dated December 23, 2011, the Preliminary Assessment Notice (PAN) dated December 6, 2011, as well as BIR Letter Reply and other BIR Correspondence duly received by petitioner which are found in the BIR records of this case.

13. The Supreme Court decision in the case of ***Commissioner of Internal Revenue vs. Filinvest Development Corp., G.R. No. 16353/167687, July 19, 2011***, in relation to ***Revenue Memorandum Circular No. 48-2011 dated October 6, 2011*** is applicable to the assessed deficiency documentary stamp tax (DST) and compromise penalty of petitioner for taxable year 2007.

14. It has already been settled that judicial interpretation 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. (***Eagle Realty vs. Republic of the Philippines, G.R. No. 151424, July 31, 2009***)." ℊ

15. Petitioner was assessed by the respondent CIR for deficiency documentary stamp tax for taxable year 2007, within the ten (10) year prescriptive period pursuant to Section 222(a) of the 1997 Tax Code, in view of the fact that petitioner failed to file the required DST Return in violation of Section 179 and 194 of the NIRC in relation to RR13-04, as amended.

16. The assessments issued against petitioner for deficiency documentary stamp tax and compromise penalty for taxable year 2007 was made in accordance with law and regulations.

17. Assessments are prima facie presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Hence, all presumptions are in favor of the correctness of the subject tax assessment issued by the respondent. (*Interprovincial Autobus Co., Inc. vs. Collector of Internal Revenue, 98 Phil. 290; Sy Po vs. CTA, G.R. 81446, August 18, 1988; Dayrit vs. Cruz, L-39910, September 26, 1988; Cagayan Robina Sugar Milling Co., vs. CA, G.R. 122451, October 12, 2000*). *Failure to present proof of error in the assessment will justify judicial affirmation of said assessment (Delta Motors Co., vs. CIR, CAT Case No. 3782, May 21, 1986; CIR vs. CA G.R. Nos. 104151 and 105563, March 10, 1995)."*

On October 1, 2012, in reply to respondent's motion to dismiss incorporated in her Answer, petitioner filed its Opposition (to Motion to Dismiss) and argue that the Petition was timely filed on August 10, 2012 because the Supreme Court suspended work in all Courts in the National Capital Region on August 9, 2012 due to bad weather and flooding. Therefore, the last day for filing of the Petition for Review was on August 10, 2012 or the next day of August 9, 2012.

On October 22, 2012, this Court issued a Resolution denying respondent's Motion to Dismiss for lack of merit. On November 8, 2012 respondent filed her Motion for Reconsideration through registered mail and received by this Court on November 15, 2012, while on November 22, 2012, petitioner filed its Opposition (to Respondent's Motion for Reconsideration). On December 19, 2012, this Court issued a Resolution denying respondent's Motion for Reconsideration for lack of merit.

During trial, petitioner presented its sole witness Cristina C. Paras,[12] petitioner's Accounting Manager. Thereafter, on March 22, 2013, petitioner filed its Formal Offer of Evidence,[13] submitting Exhibits "A" to "K-1", inclusive of sub-markings; which were admitted in the Resolution[14] dated May 8, 2013.

On the other hand, on May 8, 2013, respondent presented her sole witness Joey R. Fragante.[15]

Thereafter, on June 6, 2013, respondent filed her Formal Offer of Evidence[16], submitting Exhibits "1" to "13", inclusive of their sub-markings, which this Court admitted in the Resolution dated July 4, 2013[17].

On September 10, 2013, the case was submitted for decision taking into consideration petitioner's Memorandum filed on August 7, 2013 and respondent's "Manifestation and Motion" filed through registered mail on August 23, 2013 and received by this Court on September 4, 2013.[18]

ISSUES

The following are the parties' jointly stipulated issues[19] submitted for this Court's resolution:

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[12] Minutes of Hearing dated March 20, 2013, Docket, p. 250.
[13] Docket, pp. 251- 256.
[14] Docket, pp. 334 and 335.
[15] Minutes of Hearing dated May 8, 2013, Docket, p. 337.
[16] Docket, pp. 340-345.
[17] Docket, pp. 363-364.
[18] Docket, p. 402.
[19] II. Stipulation of Issues, JSFI, Docket, pp. 244 -245.

1. Whether or not the balances of petitioner's inter-company accounts as of December 31, 2007 are subject to the documentary stamp tax on debt instruments imposed under Section 179 of the National Internal Revenue Code of 1997 as amended by Republic Act No. 9243[20] and implemented by Revenue Regulation No. 13-04[21];

2. Whether or not the balances of petitioner's inter-company accounts as of 31 December 2007 are subject to the documentary stamp tax based on the Supreme Court decision in *Commissioner of Internal Revenue v. Filinvest Development Corporation* (G.R. Nos. 163653 and 167687, 19 July 2011);

3. Assuming that petitioner is liable for the assessed basic deficiency DST on debt instruments, whether or not petitioner is liable to pay surcharge and interest thereon;

4. Whether or not petitioner is liable to pay the assessed deficiency DST on the Lease Contract; and

5. Whether or not petitioner is liable for the assessed compromise penalty for non-filing and/or non-payment of DST.

In sum, the issue is whether or not petitioner is liable to pay the aggregate amount of ₱2,775,759.62 representing alleged deficiency documentary stamp tax (DST) inclusive of surcharge and interest, and Compromise penalty covering taxable year 2007.

THIS COURT'S RULING

The petition is partly meritorious.

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[20] AN ACT RATIONALIZING THE PROVISIONS ON THE DOCUMENTARY STAMP TAX OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, AS AMENDED. AND FOR OTHER PURPOSES.

[21] Subject: Implementing the Provisions of Republic Act No. 9243, An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as Amended, and for Other Purposes.

Respondent assessed petitioner of deficiency DST for taxable year 2007 in the amount of ₱1,332,927.00, computed as follows:[22]

DEBT INSTRUMENTS		
Due from Head Office and Parent Company		₱ 220,973,058.00
Due to Parent Company and Affiliates		44,877,778.00
Total Borrowings/Advances		265,850,836.00
Documentary Stamp Tax (P265,850,836.00/200*P1.00)		₱ 1,329,255.00
LEASE CONTRACTS		
Rental Expense per FS	₱3,670,505.00	
Documentary Stamp Tax:		
First P2,000.00	₱ 3.00	
P1.00/P1,000 in excess of first P2,000.00	3,669.00	3,672.00
Total Documentary Stamp Tax		**₱ 1,332,927.00**

Cash and Journal Vouchers Evidencing Intercompany Loans Or Advances are subject to DST

Petitioner avers that the cash and journal vouchers evidencing the Intercompany Advances are not subject to DST under the National Internal Revenue Code (NIRC) of 1997, as amended by Republic Act (RA) No. 9243, and implemented by Revenue Regulations (RR) No. 13-04. Petitioner claims that cash or journal vouchers evidencing intercompany loans or advances are not debt instruments defined under Section 179 of the NIRC of 1997, as amended, and Section 5 of RR No. 13-04. Petitioner asserts that an instrument to be considered as debt instrument under Section 179 of the NIRC of 1997, as amended, and Section 5 of RR No. 13-04 must not only represent "borrowing and lending transactions" but must also be originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor. Petitioner posits that the cash receipts or disbursement vouchers or journal vouchers are internal accounting documents which are not signed by or issued to the affiliates with whom it transacted in 2007, hence, the DST Assessment on debt instrument must be cancelled for lack of legal basis.

Moreover, petitioner argues that it cannot issue a debt instrument to its head office because being a branch office it does

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[22] *Supra.*, Note 7.

not have a separate legal personality from its head office. Petitioner further argues that the ruling in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* (*Filinvest case*)[23] does not apply to the instant Petition because it interprets the old Section 180 of the NIRC (prior to its amendment by RA No. 9243) and Section 6 of RR No. 09-94; and that it should not apply to the inter-company advances in 2007 in this case which is governed by the present Section 179 of the NIRC of 1997, as amended which was implemented by RR 13-04, and not by the old Section 180 as implemented by RR 09-94.

Finally, petitioner avers that even if it were to be assumed that it is liable for the assessed DST on debt instrument, any deficiency DST should not be subject to surcharge and interest, since 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 surcharge and interest, citing *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*[24].

On the other hand, respondent in her Answer counters that petitioner was assessed for deficiency documentary stamp tax (DST) in the amount of ₱1,332,927.00 for taxable year 2007, pursuant to Section 179 and 194 of the 1997 Tax Code, in relation to RR No. 13-2004, as amended, for its failure to pay the DST due on its advances/borrowings and lease contract in the value of ₱125,000.00 and ₱2,300,000.00. Further, respondent contends that Supreme Court decision in the case of ***Commissioner of Internal Revenue vs. Filinvest Development Corp., G.R. No. 16353/167687, July 19, 2011***, in relation to ***Revenue Memorandum Circular No. 48-2011 dated October 6, 2011*** is applicable to the assessed deficiency documentary stamp tax (DST).

This Court finds for respondent.

Contrary to petitioner's assertion, *Commissioner of Internal Revenue vs. Filinvest Development Corporation, G. R. Nos. 163653 and 167689, July 19, 2011 ("Filinvest case")* is squarely applicable.

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[23] G.R. No. 163653 and 167689, July 19, 2011, 654 SCRA 56.
[24] G.R. No. 166786, September 11, 2006, 501 SCRA 450.

Although what was interpreted in *Filinvest case* is Section 180 of the 1993 NIRC, which then governed the imposition of DST on, among others, loan agreements, by and between affiliates and/or related interests, the provision is well carried on and further reinforced under the present Section 179 of the 1997 NIRC, as amended.

Section 180 of the 1993 NIRC, as interpreted in the *Filinvest case* reads:

> "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. (Underscoring Supplied.)

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"[25] and covers other evidence of advances such as "instructional letters as well as the journal and cash vouchers".[26]

The Supreme Court in the *Filinvest case* held in this wise:

> "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. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. In said ruling, the CIR opined that documents like those evidencing the advances FDC extended to its affiliates are not subject to documentary stamp tax, to wit:
>
> > 'On the matter of whether or not the inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, it is informed that nothing in Regulations No. 26 (Documentary Stamp Tax Regulations) and Revenue Regulations No. 9-94 states that the same is subject to documentary stamp tax. Such being the case, said inter-office memo evidencing the lendings or borrowings which is neither a form of promissory note nor a certificate of indebtedness issued by the corporation-affiliate or a certificate of obligation, which are, more or less, categorized as 'securities', is not subject to documentary stamp tax

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[25] *Commissioner of Internal Revenue vs. Filinvest Development Corporation, G. R. Nos. 163653 and 167689, July 19, 2011, supra.*
[26] *Ibid.*

> imposed under Section 180, 174 and 175 of the Tax Code of 1997, respectively. Rather, the inter-office memo is being prepared for accounting purposes only in order to avoid the co-mingling of funds of the corporate affiliates.'

> In its appeal before the CA, the CIR argued that the foregoing ruling was later modified in BIR Ruling No. 108-99 dated 15 July 1999, which opined that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes, hence, subject to documentary stamp taxes. In brushing aside the foregoing argument, however, the CA applied Section 246 of the 1993 NIRC from which proceeds the settled principle that rulings, circulars, rules and regulations promulgated by the BIR have no retroactive application if to so apply them would be prejudicial to the taxpayers. Admittedly, this rule does not apply: (a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. Not being the taxpayer who, in the first instance, sought a ruling from the CIR, however, FDC cannot invoke the foregoing principle on non-retroactivity of BIR rulings.

> Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for the deficiency documentary stamp taxes due on the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997."

This interpretation by the Supreme Court of Section 180 of the 1993 NIRC could also well be applied in the interpretation of Section 179 of the 1997 NIRC, as amended, given that "Section 179 used to be Section 180 of the Code, and, as amended, it now covers all instruments representing borrowing and lending transaction under a single heading, i.e, 'All Debt Instruments' and applying a unitary tax rate thereon".[27]

As a matter of fact, Section 179 of the 1997 NIRC imposes DST on, among others, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, a phrase apparently lifted in part from Section 180 of the 1993 NIRC. Section 179 of the 1997 NIRC, as amended by RA No. 9243, reads:

> "SEC. 179. ***Stamp Tax on All Debt Instruments***. - On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided*, *further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.
>
> For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation." (Underscoring Supplied.)

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[27] Section 5 of Revenue Regulation No. 13-04.

In the instant case, except in questioning the legal basis for the DST assessment, petitioner did not attempt to dispute the substantial merit of the amount or computation of such assessment by respondent. Instead, petitioner solely relied on advancing its legal theories and did not anymore present any evidence or witness to provide details of the transaction/s which resulted in DST assessment. Hence, respondent's DST assessment of ₱1,329,255.00 is afforded the presumption of regularity.

Anent petitioner's argument that it cannot issue a debt instrument to its head office because being a branch office, it does not have a separate legal personality from its head office, the Supreme Court, in *Marubeni Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals, G.R. No. 76573, September 14, 1989*, had occasion to address this argument, to wit:

> "Under the Tax Code, a resident foreign corporation is one that is 'engaged in trade or business' within the Philippines. Petitioner contends that precisely because it is engaged in business in the Philippines through its Philippine branch that it must be considered as a resident foreign corporation. Petitioner reasons that since the Philippine branch and the Tokyo head office are one and the same entity, whoever made the investment in AG&P, Manila does not matter at all. A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.
>
> The Solicitor General has adequately refuted petitioner's arguments in this wise:
>
> 'The general rule that a foreign corporation is the same juridical entity as its branch office in the

> Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.
>
> 'Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation.'"

In the same vein, the general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here for purposes of imposing the DST; the cash advances and intercompany trade payables and receivables which were booked under "due to/from accounts"[28] are well within the purview of 'debt instruments' under Section 179 of the 1997 NIRC, as amended.

DST on Lease Contract was already paid

Petitioner avers that it is not liable for DST on lease contract for the year 2007 because it already paid on October 21, 2011 for DST on the entire lease contract covering January 1, 2006 up to December 31, 2010. The contention is meritorious.

In this case, petitioner presented BIR Payment Form[29], Bank of the Philippine Islands BTR-BIR Deposit/Payment Slip dated 21 October 2011[30], Computation of deficiency DST on lease contract for January 2006 to December 2010[31], and BIR Revenue Accounting

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[28] Page 7 of Exhibit "J", Judicial Affidavit of Ms. Cristina C. Paras.
[29] Exhibit "C".
[30] Exhibit "C-1".
[31] Exhibit "C-2".

Division (RAD) Certification confirming the payment of deficiency DST[32].

A careful examination of the aforementioned exhibits reveal that petitioner has sufficiently proven that it paid on October 21, 2011 before respondent the aggregate amount of ₱46,852.67, representing DST inclusive of surcharge, interest and compromise penalty on lease contracts for the period January 2006 to December 31, 2010. The said DST payment necessarily covers the DST on lease contract for the subject assessment period of year 2007. Hence, the said assessment in amount of ₱3,672.00 must be cancelled and withdrawn on account of said payment.

Liable for Surcharges and Interest

Anent the issue of good faith invoked by petitioner to warrant the lifting of surcharges and interest, suffice it to say that petitioner failed to request a BIR Ruling in its favor presenting facts and the law applicable to it. In fact, no BIR Ruling had been issued by respondent addressed to petitioner confirming that it is exempt from the DST which petitioner would have relied upon. It cannot rely on BIR Rulings which were requested by other entities and not addressed to petitioner. By failing to do so, petitioner's defense of good faith must fail.

No basis to impose
Compromise Penalty

Finally, the compromise penalty imposed by respondent in the amount of ₱25,000.00[33] cannot be sustained. Under Revenue Memorandum Order No. 01-90, 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. It is well-settled that the Court has no jurisdiction to compel a taxpayer to pay the compromise penalty because by its very nature, it implies a mutual agreement between the parties in respect to the thing or subject matter that is so compromised, and the choice of paying or not paying it distinctly

[32] Exhibit "D".
[33] Exhibits "A-1" and "A-3".

belongs to the taxpayer.[34] Absent a showing that herein petitioner consented to the compromise penalty, its imposition should be deleted. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[35]

In fine, petitioner is liable to pay basic deficiency DST on debt instruments for taxable year 2007 in the amount of ₱1,329,255.00, computed as follows:

DST Due on Debt Instruments:	
Due from Head Office and Parent Company	₱ 220,973,058.00
Due to Parent Company and Affiliates	44,877,778.00
Total Borrowings/Advances	₱ 265,850,836.00
Basic Deficiency DST Due (₱265,850,836.00 /200 x ₱1.00)	**₱ 1,329,255.00**

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, the assessment for compromise penalty for non-filing and/or payment of documentary stamp tax for taxable year 2007 in the amount of ₱25,000.00 is hereby **CANCELLED**.

However, the assessment for deficiency documentary stamp tax issued by respondent against petitioner for taxable year 2007 is hereby **UPHELD** in part. Accordingly, petitioner is hereby **ORDERED to PAY** respondent the amount of **ONE MILLION SIX HUNDRED SIXTY ONE THOUSAND FIVE HUNDRED SIXTY EIGHT PESOS & 75/100 (₱1,661,568.75),** inclusive of the 25% surcharge imposed under Section 248(A)(3) of the NIRC of 1997, as amended, computed as follows:

Basic Deficiency DST on Debt Instruments	₱ 1,329,255.00
Add: 25% Surcharge	332,313.75
Total	**₱ 1,661,568.75**

[34] *Phil. International Fair, Inc.* vs. *The Collector of Internal Revenue*, G.R. Nos. L-12928 and L-12932, March 31, 1962, 4 SCRA 781.

[35] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc.*, G.R. No. 35266, January 21, 1991, 193 SCRA 86, 92-93.

In addition petitioner is likewise **ORDERED to PAY** respondent (a) deficiency interest at the rate of twenty percent (20%) per annum on the basic deficiency DST of ₱1,329,255.00 computed from January 5, 2008 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997, as amended; and (b) delinquency interest at the rate of twenty percent (20%) per annum on the total amount of ₱1,661,568.75 and on the deficiency interest which have accrued as aforestated in (a) computed from January 23, 2012[36] until full payment thereof pursuant to Section 249(C) of the NIRC of 1997, as amended.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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.
Associate Justice
Chairperson

[36] As stated in the Assessment Notice.

CERTIFICATION

Pursuant to Article VIII, Section 13 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.

ROMAN G. DEL ROSARIO
Presiding Justice