REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BREWERY PROPERTIES, INC., Petitioner,	**CTA CASE NO. 8892**
	Members:
- **versus** -	**DEL ROSARIO,** Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** SEP 30 2016 : 2:49pm

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DECISION

UY, J.:

The present case involves the Petition for Review filed by Brewery Properties, Inc. on September 18, 2014 seeking the refund or issuance of tax credit certificate in the amount of ₱760,609.96, allegedly representing payment of documentary stamp tax (DST) erroneously or illegally assessed on and collected from it by the Bureau of Internal Revenue (BIR) for taxable year 2009.

THE FACTS

Petitioner Brewery Properties, Inc. is a registered domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal and registered office address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila, and engaged in owning, using, improving, developing, selling, exchanging, leasing and holding for investment or otherwise, real estate of all kinds, including buildings and other structures. It is a wholly-owned subsidiary of San Miguel Brewery Inc. (SMBI) and was previously a wholly-owned subsidiary of San Miguel Corporation (SMC) until the latter's domestic beer business was spinned off and assigned to SMBI.[1]

On the other hand, respondent is the duly authorized Commissioner of the BIR with the power and authority to perform the duties of his office, including, among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.[2]

On July 15, 2011, the BIR issued a Notice of Informal Conference to petitioner, informing the latter that in connection with the examination of its internal revenue tax liabilities for taxable year 2009, it found certain deficiency taxes due from petitioner, and inviting the latter to an informal conference.[3]

A Preliminary Assessment Notice (PAN) was thereafter issued by the BIR to petitioner on October 19, 2011, informing the latter that there were found due from it certain deficiency taxes, including DST in the amount of ₱672,953.23 (inclusive of surcharge, interest and penalty) on "Advances from Affiliates."[4]

On January 6, 2012, the BIR issued to petitioner a Formal Letter of Demand (FLD) with the corresponding Assessment Notices, which was received by the latter on January 11, 2012, for deficiency income tax, value-added tax (VAT), and DST in the aggregate amount of ₱6,291,601.67, requesting petitioner to pay the same on or before January 31, 2012.[5] The assessment is broken down as follows:[6]

TAX TYPE	TOTAL AMOUNT DUE
Income Tax	₱ 3,914.712.77
Value-added Tax	1,676,229.29
DST on Advance from Affiliates	700,659.61
Total	**₱ 6,291,601.67**

[1] Par. 2.01, Joint Stipulation of Facts, Documents, Issues, and Other Matters (JSFDIOM), Docket – Vol. I, p. 464.
[2] Par. 1.01, JSFDIOM, Docket – Vol. I, p. 462.
[3] Par. 2.02, JSFDIOM, Docket – Vol. I, p. 464.
[4] Par. 2.03, JSFDIOM, Docket – Vol. I, p. 464.
[5] Par. 2.04, JSFDIOM, Docket – Vol. I, p. 464.
[6] Par. 2.04, JSFDIOM, Docket – Vol. I, p. 465.

Petitioner then filed on February 9, 2012 with the BIR its Letter/Protest dated February 8, 2012 to the FLD.[7] On September 14, 2012, respondent issued a Final Decision on Disputed Assessment (FDDA), which was received by petitioner on September 17, 2012.[8] In the FDDA, respondent cites the following basis for the imposition of the DST, to wit:

> "As disclosed in Note 6 (Related Party Transactions) of the Audited Financial Statements (Letters b & c):
>
> b. Due to San Miguel Corporation (SMC) amounted to P 1,941,888.00 which represents advances made by SMC for payment of documentary stamp tax and SEC filing fees.
>
> c. The Company obtained non-interest bearing advances from San Miguel Brewery Inc (SMBI) amounting to P 80,217,126.00 which were used to acquire a certain parcel of land in Bacolod City."

On September 24, 2012, petitioner paid to the BIR under protest the amount of ₱760,609.96 (inclusive of surcharge and interest up to the said date) for deficiency DST per the FDDA, inclusive of surcharge and interest up to September 24, 2012. The payment was made through the BIR Electronic Filing and Payment System (EFPS), as shown by the (a) Payment Confirmation by the BIR, acknowledging that the BIR EFPS had received the payment confirmation from Union Bank; (b) Receipt of Instruction to Authorize ePayment Later, acknowledging that Union Bank had received petitioner's online instruction to Authorize ePayment Later in favor of the BIR; (c) Payment Status by Union Bank, stating that the amount of ₱760,609.96 had been debited from petitioner's account and shall be credited to the BIR; (d) BIR Filing Reference Form; and (e) BIR Payment Form.[9]

The said amount of ₱760,609.96 is composed of the following: (a) basic DST - ₱410,796.00; (b) surcharge - ₱102,699.00; (c) interest - ₱231,114.96; and compromise penalty - ₱16,000.00.[10]

On September 27, 2012, petitioner submitted to the BIR a Letter dated September 25, 2012, informing the latter that it had paid

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[7] Par. 2.05, JSFDIOM, Docket, p. 465.
[8] Par. 2.06, JSFDIOM, Docket, p. 465.
[9] Par. 2.07, JSFDIOM, Docket, p. 465.
[10] Exhibit "P-9-d", Docket, pp. 331 to 332.

under protest the amount of ₱760,609.96, the deficiency DST as per the FDDA.[11]

On June 30, 2014, petitioner filed with the BIR the Letter/Claim for Refund dated June 23, 2014 subject of the Petition for Review, requesting for refund the amount of ₱760,609.96 representing DST collected from it by the BIR for taxable year 2009, or the issuance to it a tax credit certificate in the said amount.[12]

On September 18, 2014, petitioner filed the instant Petition for Review.

Subsequently, on December 1, 2014, respondent filed an Answer,[13] interposing the following Special and Affirmative Defenses:

> "4. Respondent hereby reiterates and repleads the preceding paragraphs of this answer as part of her Special and Affirmative Defenses.
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> 5. Taxes collected are presumed to be in accordance with laws and regulations. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.
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> 6. Petitioner must prove that the aggregate amount of *Php760,609.96* allegedly representing documentary stamp tax for the taxable year 2009 is properly documented.
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> 7. Respondent respectfully maintains that this Honorable Court does not have jurisdiction over petitioner's claim for refund. To be more precise, respondent contends that petitioner's failure to thoroughly apply the administrative remedy available to it, led to the premature filing of the instant *Petition*, and ultimately prevented this Honorable Court from acquiring jurisdiction over the same.
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> 8. Respondent also respectfully adds that before this Honorable Court assumes jurisdiction over the substantive issue of whether or not petitioner is entitled to

[11] Par. 2.08, JSFDIOM, Docket – Vol. I, p. 465.
[12] Par. 2.09, JSFDIOM, Docket – Vol. I, p. 466.
[13] Docket – Vol. I, pp. 183 to 189.

its claim for tax refund, petitioner must first establish that it preliminarily complied with all the administrative requirements leading up to the filing of this action. This Honorable Court must first be convinced that petitioner indeed thoroughly pursued an administrative claim for tax refund, before it proceeds to determine petitioner's entitlement to the same under substantive law.

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

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

10. It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the *clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications* **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R. 127624, November 18, 2003).** A perusal of the provision

will emphasize that to validly substantiate a claim for refund, the taxes paid must be erroneous or illegally collected. Accordingly, the law granting tax exemption cannot rest on vague inference.

11. In the case at bench, petitioner is asking for a refund of its allegedly erroneously paid documentary stamp taxes for the fiscal year 2009 in the amount of P760,609.96.

12. However, the Supreme Court promulgated in the *En Banc* Decision of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, which was reiterated in RMC 48-2011, states that:

> On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
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> > *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 (P0.30) 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 (P250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> *Section 3. Definition of Terms. – For purposes of these Regulations, the following term shall mean:*
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> *(b) 'Loan agreement' – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.*
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> *The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and*

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> *separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.'*
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> *'Section 6. Stamp on all Loan Agreements. – All loan agreements whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.*
>
> *In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.*

> **Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.' (Emphasis supplied)**

13. Thus, based on the above Supreme Court ruling, and the subsequent Revenue Memorandum Circular, petitioner is liable to pay documentary stamp tax.

14. Petitioner, however, contends that the subject advances were extended to it by its affiliates in 2009. Since the Supreme Court ruling was promulgated only on 2011, and at that time, prevailing court decisions and BIR

issuances were to the effect that inter-company advances were not covered by loan agreements, thus it should not be subject to DST.

15. It is worthy to mention that the Assessment Notices issued for deficiency Documentary Stamp Tax declared to be valid in the said Supreme Court decision of *Commissioner of Internal Revenue vs. Filinvest Development Corp.* pertained to taxable years 1996 and 1997, **thus it can be inferred that the decision of the court was clarificatory in nature. Accordingly, petitioner's position that the above-mentioned Supreme Court decision cannot be given a retroactive application should not be given due course.**

16. The imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliated corporation, these advances from San Miguel Corp. (SMC) amounting to P1,941,888.00 and San Miguel Brewery Inc. (SMBI) amounting to P80,217,126.00 during taxable year 2009 are subject to the Documentary Stamp Tax imposed under Section 179 of the NIRC, as amended.

17. As petitioner was not able to pay the taxes as they became due, petitioner is undoubtedly liable to pay the tax surcharge and interest.

18. This is because taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** hence, the dictum that 'taxes are the lifeblood of the government.' Since tax refunds are regarded as tax exemptions and these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippines Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue G.R. 141973, June 28, 2005)**

19. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

During Pre-Trial held on March 26, 2015,[14] the parties entered into stipulation of facts, definition of issues, identification of witnesses and documentary exhibits. On April 29, 2015, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters, which was approved by the Court in the Resolution dated May 7, 2015.[15]

During trial, petitioner presented its lone witness, Eileen P. Ratilla on June 23, 2015. On the other hand, respondent's counsel manifested during the said hearing that respondent will not be presenting documentary or testimonial evidence.[16]

Thus, petitioner filed its Formal Offer of Evidence on July 7, 2015;[17] while respondent filed a Comment on July 16, 2015.[18] In the Resolution dated August 18, 2015,[19] the Court admitted Exhibits "P", "P-1", "P-1-a", "P-2", "P-3", "P-4", "P-5", "P-6", "P-8", "P-7", "P-7-a", "P-9", "P-9-a", "P-9-b", "P-9-c", "P-9-d", "P-10", "P-10-a", "P-11", "P-11-a", "P-11-b", "P-11-b-1", "P-11-c", "P-11-d", "P-11-e", "P-11-f", "P-11-g", "P-12", "P-13", and "P-13-a".

The case was submitted for decision on October 12, 2015,[20] after the filing of respondent's Memorandum on September 30, 2015[21] and of petitioner's Memorandum on October 5, 2015[22].

Hence, this Decision.

THE ISSUES

The parties stipulated on the following issues[23] for this Court's resolution, to wit:

"5.01. The main issue for resolution of this Court is:

5.01.a. Whether Petitioner is entitled to a

[14] Docket – Vol. I, pp. 444 to 447.
[15] Docket – Vol. I, p. 475.
[16] Minutes of the Hearing on June 23, 2015, Docket – Vol. I, pp. 712 to 713.
[17] Docket – Vol. II, pp. 718 to 731.
[18] Docket – Vol. II, pp. 995 to 997.
[19] Docket – Vol. II, pp. 1000 to1002.
[20] Resolution dated October 12, 2015, Docket – Vol. II, p. 1092.
[21] Docket – Vol. II, pp. 1031 to 1047.
[22] Docket – Vol. II, pp. 1049 to 1090.
[23] JSFDIOM, Docket – Vol. I, p. 468.

tax refund/credit in the amount of P760,609.96 allegedly representing erroneously and/or illegally collected Documentary Stamp Tax for the taxable year 2009, which was paid under protest by Petitioner.

5.02. The following are the corollary issues:

5.02.a. Is [petitioner] liable for the subject documentary stamp tax in the amount of P760,609.96?

5.02.b. May DST be imposed on the advances to Petitioner on the basis of a mere Note appearing in the Audited Financial Statement of the latter?

5.02.c. Are the advances subject of the instant case covered by the decision in the Filinvest case, and assuming they are, may the said decision and RMC No. 48-2011 be applied retroactively against [petitioner]?

5.02.e. Is the assessment against [petitioner] valid?

5.02.f. Assuming Petitioner is liable to pay the deficiency DST, may interest, surcharge and penalty be imposed on the basic tax?"

Petitioner's arguments:

Petitioner argues that the decision of the Supreme Court in *Commissioner of Internal Revenue vs. Filinvest Development Corporation* (*Filinvest* case),[24] which was rendered on July 19, 2011, as well as Revenue Memorandum Circular (RMC) No. 48-2011, which was issued by the BIR on October 6, 2011, may not be used by the BIR against petitioner on a 2009 assessment without violating the principle on non-retroactivity of laws and rulings. According to petitioner, even assuming that the said decision may be applied retroactively, the same will not cover the advances subject of this case.

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

Moreover, petitioner avers that under Section 179 of the NIRC, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances; and that the assessment against it is null and void.

It is likewise the contention of petitioner that it is entitled to a refund in the amount of ₱760,609.96, representing erroneous and/or illegal collection from it by the BIR of DST for calendar year 2007; and that assuming that petitioner is liable to DST under Section 179 of the NIRC, it is liable for the basic tax of ₱410.796.00 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR Rulings at the time of the extension of the advances.

Lastly, petitioner asserts that the immediate payment by it of the alleged deficiency DST is beneficial to the government; and that petitioner is not precluded from filing the instant Petition for Review and raising the above grounds, notwithstanding that it did not appeal from the decision of respondent on its administrative protest.

Respondent's counter-arguments:

Respondent argues that the instant petition should be dismissed for lack of merit; and that petitioner is liable to pay DST.

According to respondent, taxes collected are presumed to be in accordance with laws and regulations; and a claim for refund is not *ipso facto* granted because respondent still has to investigate and ascertain the validity of the claim.

Furthermore, respondent stresses that petitioner must prove that the aggregate amount of ₱760,609.96 allegedly representing documentary stamp tax for the taxable year 2009 is properly documented.

Lastly, respondent emphasizes that since tax refunds are regarded as tax exemptions, these are to be construed *strictissimi juris* against the person or entity claiming the exemption; and that following the principle that claims for refund of taxes are construed strictly against claimants for they partake of the nature of tax exemptions, petitioner's judicial claim deserves no merit and should therefore fall for failure on its part to establish clearly and convincingly that it is entitled to the claim being sought for.

THE COURT'S RULING

The instant Petition for Review is partly meritorious.

The **Filinvest** *case and RMC No. 48-2011 may be used as basis in the imposition of DST.*

Petitioner argues that the Decision of the Supreme Court in the *Filinvest* case and RMC No. 48-2011, both issued in 2011, may not be used by respondent against petitioner on a 2009 assessment without violating the principle of non-retroactivity of laws and rulings. In this connection, petitioner invokes the ruling in the case of *People of the Philippines vs. Jabinal*[25].

Petitioner's argument is untenable.

The Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[26]

In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word "loan agreements" as being subject to DST, in that it includes *"instructional letters as well as the journal and cash vouchers evidencing the advances of* [Filinvest] *extended to its affiliates".* Said Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in the 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 is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.*, December 23, 1994, up to the present time.

Furthermore, the invocation of the case of *People of the*

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[25] G.R. No. L-30061, February 27, 1974.
[26] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.*, G.R. No. 66880, August 2, 1991.

Philippines vs. Jabinal[27] is clearly misplaced, since the same confirms the aforesaid doctrine that the interpretation by the Supreme Court constitutes as part of the law as of the date the law was originally passed. Said case 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 system ... .' **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law originally passed, 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. xxx, but **when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof**. xxx." *(Emphases and underscoring supplied)*

A careful reading of the foregoing ruling would reveal that the prospective application of a "new" doctrine, if any, will come into play only when an "old" doctrine is overruled. In the present case, however, there is no previous doctrine that is overruled by the doctrine in the *Filinvest* case. Thus, the rule on prospective application of judicial decisions is not warranted in this case.

In the same vein, since RMC No. 48-2011[28] merely circularized the above-stated doctrine in the *Filinvest* case, We see no reason not to apply the same.

But even granting that RMC No. 48-2011 is not to be considered as a mere circularization of the said doctrine, it is still of

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[27] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.

[28] SUBJECT: Circularization of the relevant excerpts from the En Banc Supreme Court Decision in the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. Nos. 163653 and 167689 dated July 19, 2011, on the imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliate corporation.

no moment. In *Philacor Credit Corporation vs. Commissioner of Internal Revenue*,[29] the Supreme Court ruled that BIR Rulings issued even after the transaction took place are still applicable because they are issuances interpreting the same rule, thus:

> "**The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes**. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. xxx. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer xxx"

DST may be imposed on the advances to petitioner on the basis of the Note appearing in its Audited Financial Statement.

Petitioner insists that under Section 179 of the Tax Code, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.

We disagree.

A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because **it is imposed on the transaction rather than on the document**.[30] As a corollary, there is no basis in the assertion that a DST is literally a tax on a document.[31] Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established.

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[29] G.R. No. 169899, February 6, 2013.

[30] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016, citing *Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc.*, 607 Phil 227 (2009).

[31] *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

Moreover, it is noteworthy that Section 6 of Revenue Regulations No. 9-94, which has the force of law,[32] provides for the imposition of DST where even 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.
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> **In cases where no formal agreements or promissory notes have been executed to cover credit facilities**, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code." *(Emphasis supplied)*

In this case, while it may be true that respondent merely based the DST imposition on the information obtained from the Note to the audited financial statements of petitioner, the latter does not deny the existence of the subject transactions to which respondent imposed the DST; nor does petitioner deny that it is a party to the same transactions.

In fact, petitioner impliedly admitted at the administrative level, through its witness, Mrs. Eileen P. Ratilla, the existence of the subject transactions in its Letter/Protest dated February 8, 2012[33], since it merely argued therein that the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[34] cannot be given retroactive application; and that in invoking a 2011 issuance on a 2009 assessment against the taxpayer, the BIR contravened Section 246 of the NIRC that mandates the non-retroactivity of rulings if they are prejudicial to the taxpayer. Nothing more. This, despite the fact that said witness *"was already familiar with the nature of the transactions involved, with the assessments, and with the related documents involved in the administrative investigation by the BIR"*,

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[32] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.
[33] Exhibit "P-11-d", Docket – Vol. I, pp. 371 to 375.
[34] G.R. Nos. 163653 and 167689, July 19, 2011.

and has *"possession of the said documents"*.[35] Simply put, if petitioner was convinced that the said transactions never transpired, it would logically deny their existence; but it did not. Moreover, it is equally noteworthy that, in effect, petitioner itself declared or admitted the existence of the taxable transactions by declaring it in its financial statements. Thus, the inevitable conclusion is that the subject transactions really did happen.

Correspondingly, since it was clearly shown that said transactions exist, We find no reason not to agree with respondent in the imposition of the DST thereon on the basis of petitioner's financial statements and the Notes thereto. Otherwise, it would be relatively easy for any taxpayer to circumvent the law on DST by simply hiding the corresponding and/or supporting document or documents.

Furthermore, it is noted that while it is shown that the transactions exist, petitioner did not present the pertinent documents that brought about the reporting thereof in its financial statements and the Notes thereto. This presumption then comes to mind: *"That evidence wilfully suppressed would be adverse if produced"*.[36]

We likewise do not agree with petitioner's stance that by their very nature, advances between a corporation and its affiliates are not loans but are given as a form of financial assistance.

Article 1933 of the Civil Code of the Philippines provides the definition of a loan, to wit:

> "Article 1933. **By the contract of loan, one of the parties delivers to another,** either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or **money or other consumable thing, upon the condition that the same amount of the same kind and quality, in which case the contract is simply called a loan or mutuum**.
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> Commodatum is essentially gratuitous.
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> **Simple loan may be gratuitous or with a stipulation to pay interest**.
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> In commodatum the bailor retains the ownership of

[35] Exhibit "P-13", Docket – Vol. II, p. 736.
[36] Section 3(e), Rule 131, Rules of Court.

the thing loaned, **while in simple loan, ownership passes to the borrower**." *(Emphases supplied)*

Based on the foregoing provision, the fact that the money was given as a form of financial assistance from a corporation to its affiliates or vice versa does not take such transaction from the scope of the definition of a loan under the law. It likewise immaterial whether the grant is interest-bearing or not. Thus, petitioner's contention that the subject transactions are not loans deserves scant consideration.

The DST assessment is valid.

Petitioner contends that it was not informed in writing of the law and the facts on which the assessment was made, as required under Section 228 of the NIRC of 1997. However, an examination of the records shows that the PAN and the FAN, both with attached Details of Discrepancy issued by respondent, clearly stated the factual and legal bases for the subject assessment. Hence, the DST assessment issued by respondent is valid.

Petitioner is not liable to pay interest, surcharge, and compromise penalty.

Petitioner asserts that assuming *arguendo* that it is liable for the imposed tax, it is liable only for the basic tax in the amount of ₱410,796.00, without the imposition of surcharge, interest, and compromise penalty, since it relied on existing Court Decisions and BIR Rulings at the time the advances were made.

On this score, We rule in favor of petitioner.

Good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.[37]

In this case, petitioner's witness, Mrs. Eileen P. Ratilla, testified

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[37] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008. Refer also to *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 179085, January 21, 2010; and *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006.

that petitioner has relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008,[38] and such reliance to the said Ruling is confirmed in its Letter/Protest dated February 8, 2012.[39] Thus, the non-imposition of the surcharge and interest is justified in this case.

As regards the compromise penalty, it has been held that payment made under protest by the taxpayer could only signify that there was no agreement between the parties. In *De San Agustin vs. Commissioner of Internal Revenue*,[40] the Supreme Court ruled as follows:

> "The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. **The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties.**" *(Emphasis supplied)*

Considering that petitioner disputed the imposition of compromise penalty, the same must not be imposed upon petitioner.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **₱349,813.96**, representing the following:

Penalties erroneously paid by petitioner	Amount
Surcharge	₱ 102,699.00
Interest	231,114.96
Compromise penalty	16,000.00
Total	**₱ 349,813.96**

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[38] Exhibit "P-13" (Q&A No. 15), Docket – Vol. II, p. 737.
[39] Exhibit "P-11-d", Docket – Vol. I, pp. 374 to 375.
[40] G.R. No. 138485, September 10, 2001.

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
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
Chairperson
Presiding Justice