REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SAN MIGUEL PAPER PACKAGING CORPORATION, Petitioner,	CTA Case No. 9288
	Members:
-versus-	FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 0 2 2019 11:11 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

On November 14, 2018,[1] the Court rendered a Decision, disposing the case in the following fashion:

> **WHEREFORE**, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱3,631,519.37, representing illegally assessed and collected interest, surcharge, and compromise penalty for taxable year 2009, broken down as follows:

Surcharge	₱ 828,850.00
Interest	2,777,669.37
Compromise	25,000.00
Total	**₱ 3,631,519.37**

> **SO ORDERED.**

[1] Docket, pp. 771-797.

Both unconvinced, petitioner and respondent separately filed their Motions for Partial Reconsideration respectively dated December 3, 2018[2] and December 4, 2018.[3]

Petitioner's Motion for Partial Reconsideration:

Petitioner's questions the application to its case of the principle laid down in *Accenture, Inc. vs. Commissioner of Internal Revenue,*[4] specifically, the retroactive application of the interpretation of the statute to the date of its enactment as it merely demonstrates contemporaneous legislative intent of the law thus interpreted. For petitioner, the ruling in *Co vs. Court of Appeals*[5] (*Co* case), holding that judicial decisions are to be applied prospectively should instead govern the present controversy as the facts and issues of the present case is substantially similar to the *Co* case. On that account, the principle set forth in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[6] *(Filinvest* case*)* promulgated on July 19, 2011, i.e., inter-company advances granted by affiliates are subject to DST, may not be applied on the advances extended to it by related parties in 2009.

Granting that the ruling in the *Filinvest* case may be applied retroactively, the same should not operate to the prejudice of petitioner who merely relied in good faith on the doctrines laid down by the Court of Appeals (CA),[7] Court of Tax Appeals (CTA),[8] and the interpretation made by the Bureau of Internal Revenue (BIR)[9] at the time the subject transaction occurred that inter-office memos were not inter-loan agreements that may be subjected to DST, which the Supreme Court subsequently reversed in *Filinvest* case.

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[2] Ibid. at pp. 798-817.
[3] Id. at pp. 822-832.
[4] G.R. No. 190102, July 11, 2012.
[5] G.R. No. 10076, October 28, 1993.
[6] G.R. Nos. 163653 and 167689, July 19, 2011.
[7] *Commissioner of Internal Revenue vs. APC Group, Inc.,* CA-GR No. 69869, November 29, 2002.
[8] *Commissioner of Internal Revenue vs. Belle Corporation,* CTA EB No. 147, October 13, 2006.
[9] BIR Ruling [DA (C-035) 127-08] dated August 8, 2008.

Petitioner further insists that the Supreme Court's Minute Resolution dated May 17, 2004 in the *Commissioner of Internal Revenue vs. APC Group, Inc.*, affirming the CA's ruling that memos and vouchers evidencing inter-corporate advances are not subject to DST should be applied to the present case since it is in effect a final disposition on the merits of said case.

Also, petitioner opines that the Note/s to an Audited Financial Statement (AFS) are neither documents nor debt instruments within the purview of Section 179 of the NIRC, as amended, thus, the advances extended to it by related parties as appearing in Note 18 of its 2009 AFS are not subject to DST.

Finally, it cannot be faulted for non-filing of DST Return as the subject advances in its favor by affiliates are not subject to DST at the time the transactions transpired. Without any legal obligation to file a DST Return with the BIR, the three (3)-year ordinary prescriptive period in Section 203 of the NIRC, as amended, not the ten (10)-year extraordinary period to assess under Section 222 of the same Code should be applied. With the commencement of the computation of interest on January 5, 2010, the last day for respondent to assess petitioner fell on January 5, 2013. Thus, the FLD/FAN it received on February 26, 2014 is already barred by prescription.

On the contrary says respondent,[10] the *Filinvest* case as well as Revenue Memorandum Circular (RMC) No. 48-2011 may be applied retroactively, citing *San Miguel Holdings Corporation vs. Commissioner of Internal Revenue*[11] as his authority. In the *Filinvest* case, and under RMC No. 48-2011, instructional letters, journal and cash vouchers evidencing advances extended to affiliates are loan agreements subject to DST. Hence, the advances extended by related parties to petitioner as appearing in Note 18 of the latter's 2009 AFS are without doubt subject to DST.

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[10] Respondent's *Opposition (Re: Motion for Reconsideration)*, docket, pp. 842-852.
[11] CTA Case No. 9401, June 5, 2018.

Respondent's Motion for Partial Reconsideration:

Respondent maintains that petitioner may not be refunded of statutory increments on the ground of good faith as no specific ruling was issued in petitioner's favor absolving it from surcharge, interest and compromise penalty. Further, BIR Ruling 108-99 dated July 15, 1999 confirms the principle that inter-office memos evidencing loan extended by a corporation to its affiliates are subject to DST. Respondent also points out that the taxpayer in the *Filinvest* case was not spared from surcharge, interests and compromise penalty of the deficiency DST assessment notwithstanding the latter's invocation of good faith.

Further, petitioner may not conveniently implore good faith to elude liability from deficiency and delinquency interest. Under Sections 247(a) and 249(B) of the NIRC, as amended, once a tax remained unpaid, the imposition of the twin interest must ensue without any exception. Also, the imposition of compromise penalties was also valid since petitioner failed to pay the correct amount of tax pursuant to RMO No. 19-2007. In closing, respondent states that petitioner's refund claim should be rejected in its entirety.

In its *Opposition* dated January 25, 2019,[12] petitioner counters that in one case decided by this Court,[13] its refund of surcharge, interests and compromise penalties on the ground of reliance in good faith was allowed. Further, it did not singularly invoke BIR Ruling [DA (C-035)127-08] dated August 8, 2008 as basis for its invocation of good faith for it also relied on the *APC case,*[14] as well as the *Belle*[15] case in support of its position. In addition, BIR Ruling [DA (C-035)127-08] dated August 8, 2008 was valid until its reversal in the *Filinvest* case on July 19, 2011. Petitioner also claims that good faith as basis for deletion of surcharge, interests and penalties was not discussed by the High Tribunal in the *Filinvest* case, hence, it may not be a binding precedent. Finally, in various decisions, the Supreme Court allegedly adopted the view that good faith is sufficient

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[12] Docket, pp. 856-867.
[13] *Brewery Properties, Inc. vs. Commissioner of Internal Revenue,* CTA Case No. 8892, September 30, 2016.
[14] See Note 6.
[15] See Note 7.

ground to obliterate imposition of surcharge, interests and penalties.

THE RULING OF THE COURT

The Motions for Partial Reconsideration filed by petitioner and respondent are devoid of merit.

Petitioner's Motion for Partial Reconsideration:

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.[16]

Significantly, in the *Filinvest* case, the Supreme Court categorically ruled that inter-office memo covering the advances granted by an affiliate company is subject to documentary stamp tax, thus:

> 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.
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> 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.

As applied to this case, the interpretation placed upon by the Supreme Court in the *Filinvest* case that inter-office memo covering the advances granted by an affiliate company are proper objects of DST retroacts from the precise moment the NIRC, as amended took effect on 1998.

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[16] *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue,* G.R. No. 197525, June 4, 2014.

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As such, the advances extended to petitioner by related parties evidenced by Note 18 of its 2009 AFS were loan agreements subject to DST.

On petitioner's contention that the ruling in the *Co* case should apply to the present case, suffice it to say that *Co* case is a criminal case. In contrast, the case at bench solely pertains to the construction or interpretation of tax statutes which undoubtedly is *civil* in character. Given the disparity of the facts, issues, as well as the subject matter between the *Co* case and the present case, it is safe to conclude that both cases cannot be treated, much more, be ruled alike.

It has also been consistently ruled that judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of [Supreme] 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.[17]

In this case, the CA and CTA decisions from which petitioner's invocation of good faith is predicated are not "doctrines" in the context of jurisprudence. Decisions of lower and collegiate courts are not accorded an equal level of recognition as that of Supreme Court decisions. They only bind the parties to specific cases alone, unlike [Supreme Court] judgments which are universal in their scope and application, and equally mandatory in character.[18] Simply put, only decisions of [the Supreme] Court constitute binding precedents, forming part of the Philippine legal system.[19]

Neither will BIR Ruling [DA(C-035) 127-08], stating that inter-office memos were not inter-loan agreements that may be subjected to DST exonerate petitioner from tax liability as such opinion is repugnant to the pronouncement

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[17] See *Office of the Ombudsman vs. Mayor Julius Cesar Vergara,* G.R. No. 216871, December 6, 2017; *Philippine International Trading Corporation vs. Commission on Audit,* G.R. No. 205837, November 21, 2017; *Columbia Pictures, Inc. vs. Court of Appeals,* G.R. No. 110318, August 28, 1996.

[18] See *The Philippine Veterans Affairs Office vs. Segundo,* G.R. No. L-51570, August 15, 1988.

[19] See *Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue,* G.R. No. 196907, March 13, 2013, words in brackets supplied.

of the Supreme Court in the *Filinvest* case. It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[20]

Further, the Minute Resolution dated May 17, 2004 issued by the Supreme Court in the *APC Group* case, which effectively affirmed the CA's finding that memos and vouchers evidencing inter-corporate advances are not subject to DST for "failure of petitioner therein to show that a reversible error had been committed by the appellate court" is a binding precedent limited only to the parties involved in that case.

In the case of *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue,*[21] cited by petitioner, the Supreme Court ruled that while a minute resolution is in effect a disposition on the merits of a case, it is a binding precedent insofar as to the parties therein relating to the same issue and subject matter are concerned. Conversely, it may not constitute a binding precedent if besought by a non-party to such minute resolution, to wit:

> 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?
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> With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. <u>However, if other parties or another subject</u>

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[20] *University Physicians Services Inc. – Management, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 205955, March 7, 2018.

[21] G.R. No. 167330, September 18, 2009 (Resolution on Motion for Reconsideration and Supplemental Motion for Reconsideration).

> matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. xxx

Consistent with the above tenet, the subject Minute Resolution of May 17, 2004, affirming the factual and legal conclusion of the CA would only bind the parties involved in that case, namely, the Commissioner of Internal Revenue and APC Group, Inc. It may neither be applied in equal force, nor be treated as a binding precedent insofar as petitioner and respondent of this case are concerned.

Equally unavailing is petitioner's posture that a document or a debt instrument is indispensible for imposition of DST to prosper.

Note that DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law.[22] It 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.[23] Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document.[24]

Guided by the above jurisprudential teachings, the transactions entered into by petitioner with related parties need not be embodied in a document or debt instrument for them to be subjected to DST since the taxable transactions between them were satisfactorily shown in Note 18 of its 2009 AFS.

Finally, as to petitioner's argument that the assessment had prescribed, as discussed in pages 24-25 of the assailed Decision, since no DST Return relative to advances extended to it by related parties was filed, respondent has ten (10) years from discovery thereof on January 6, 2010, or until

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[22] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 164155 & 175543, February 25, 2013.

[23] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 190465, June 20, 2016; and *Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc.,* 607 Phil. 227 (2009).

[24] See *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008.

January 6, 2020 to issue a corresponding assessment, precisely the FAN/FLD was seasonably issued to, and received by petitioner on February 26, 2014.

Respondent's Motion for Partial Reconsideration:

Well-entrenched is the principle that mistake upon a doubtful or difficult question of law may be the basis of good faith.[25] Thus, 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.[26]

In a myriad of cases, the Supreme Court deleted the imposition of surcharges and interests on ground of taxpayer's good faith and honest belief on previous interpretations of the BIR, the government agency tasked to interpret and implement the tax laws, constitute sufficient justification therefor. In these cases, the taxpayers pointed to a specific ruling issued by the BIR declaring that they are exempt from the payment of the assessed deficiency tax.[27]

As discussed in page 25 of the assailed Decision, since petitioner relied in good faith on BIR Ruling [DA(C-035) 127-08] dated August 8, 2008 that inter-company loans and advances covered by inter-office memoranda are absolved from DST, such fact warrants the cancellation of surcharges and interest enforced by respondent.

Finally, the eradication of compromise penalty is as well justified given that there is no showing that petitioner consented to its imposition.[28]

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[25] See *PEN Development Corporation vs. Martinez Leyba, Inc.,* G.R. No. 211845, August 9, 2017; and Article 526 of the Civil Code.

[26] *Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 179085, January 21, 2010.

[27] See *Philippine Amusement and Gaming Corporation (PAGCOR) vs. The Commissioner of Internal Revenue, et al.,* G.R. No. 210689, November 22, 2017, citing *Commissioner of Internal Revenue vs. St. Luke's Medical Center, Inc.,* G.R. No. 195909, September 26, 2012; *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 166786, May 3, 2006; and *Tuason, Jr. vs. Lingad,* G.R. No. L-24248, July 31, 1974.

[28] Page 25 to 26 of the assailed Decision.

WHEREFORE, petitioner's Motion for Partial Reconsideration dated December 3, 2018 and respondent's Motion for Partial Reconsideration dated December 4, 2018 are **DENIED**, for lack of merit. The assailed Decision of November 14, 2018 is **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice