REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9504

Members:

DEL ROSARIO, *P.J., Chairperson,*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 14 2020 2:30 pm

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D E C I S I O N

MANAHAN, *J.:*

In this Petition for Review[1] filed on December 8, 2016, petitioner San Miguel Corporation (SMC) prays that judgment be rendered: (1) declaring petitioner entitled to a refund in the amount of Php20,066,005.00, representing erroneously and/or illegally paid documentary stamp tax (DST) for taxable year 2011; and (2) directing respondent Commissioner of Internal Revenue (CIR) to refund the said amount of Php20,066,005.00, with legal interest, or to issue a corresponding tax credit certificate (TCC) in favor of petitioner.

FACTS

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[2]

Respondent CIR is the head of the Bureau of Internal Revenue (BIR), with office address at the Office of the

[1] Docket, CTA Case No. 9504, Vol. 1, pp. 10-45.
[2] Docket, Vol. 1, Pre-Trial Order (PTO), p. 380.

Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City.[3]

On April 18, 2013, petitioner received a Letter of Authority (LOA) No. 121-2013-00000026[4] dated April 12, 2013, authorizing the examination of petitioner's books of accounts and other accounting records for all internal revenue taxes for the period starting January 1, 2011 to December 31, 2011.

On November 26, 2014, petitioner received a Preliminary Assessment Notice (PAN)[5] dated November 25, 2014, stating that after investigation, respondent found deficiency taxes for taxable year 2011, namely, deficiency DST amounting to Php20,000,085.00, inclusive of 25% surcharge, interest from January 6, 2011 to November 15, 2014, and compromise penalty of Php25,000.00, computed as follows:

Advances to:		
Bell Telecommunications Phils. Inc.	P	28,798,570.00
Clariden Holdings, Inc.		554,495,000.00
Coastal View Exploration Corp.		2,100,000.00
SMC Global Power Holdings Corp.		10,085,760.00
SMC Retirement Plan		1,577,693,940.00
Total Advances	**P**	**2,173,173,270.00**
Basic tax due (1 peso for every 200)	P	10,865,867.00
Add: 25% surcharge		2,716,467.00
Interest (1/6/2011 to 11/15/2014) 78%		6,392,751.00
Compromise		25,000.00
Total tax due	**P**	**20,000,085.00**

On December 11, 2014, petitioner paid Php20,066,005.00, representing the alleged basic deficiency DST (Php10,865,867.00), inclusive of surcharge (Php2,716,467.00), interest (Php6,458,671.00), and compromise penalty (Php25,000.00).[6]

On March 16, 2015, petitioner filed a Letter dated March 13, 2015 [Re: Preliminary Assessment Notice (PAN) issued to San Miguel Corporation],[7] stating that on December 11, 2014, it paid under protest the alleged deficiency DST for taxable year 2011 in the amount of Php20,066,005.00, inclusive of surcharge, interest up to December 11, 2014, and penalties. In

[3] Docket, Vol. 1, PTO, p. 380.
[4] BIR Records, Exhibit "R-1", p. 6.
[5] Docket, Vol. 1, Exhibit "P-1", pp. 188-193; BIR Records, Exhibit "R-2", pp. 482-492.
[6] Docket, Vol. 1, Exhibits "P-3", "P-3-a", and "P-3-b", pp. 484-487.
[7] Docket, Vol. 1, Exhibit "P-4", p. 234.

any event, it shall file an administrative claim for the refund of said amount.

On November 9, 2016, petitioner filed with respondent a Letter dated November 3, 2016 (Re: Claim for Refund – P20,066,005.00),[8] for the refund or issuance of a TCC in the amount of Php20,066,005.00, representing the alleged DST erroneously/illegally collected, allowed under Section 229 of the 1997 National Internal Revenue Code, as amended (NIRC).

Respondent, however, failed to act on petitioner's claim for refund, prompting the filing of the instant Petition for Review before the Court on December 8, 2016.

In his Answer (with Motion to Admit)[9] filed on February 23, 2017, respondent submits that petitioner failed to establish that the subject tax was erroneously or illegally collected. For respondent, petitioner erroneously relied on the legal principle of non-retroactivity of laws and rulings considering that the cited *Filinvest case*[10] merely affirmed the tax treatment of inter-company advances as loan agreements subject to DST under Section 179 of the NIRC.

Respondent also puts a premium on petitioner's payment of the assessed DST which he considers as petitioner's admission of the factual basis of the assessment. Thus, the said payment of the deficiency DST assessment cannot be deemed erroneous.

Finally, respondent argues that petitioner cannot rely on its supposed good faith and honest belief that it was not liable for DST on the loan advances to its affiliates to escape from tax liability.

After the Pre-Trial Conference on May 2, 2017, the parties were granted ten (10) days or until May 12, 2017 to submit their Joint Stipulation of Facts and Issues (JSFI) which shall include their respective lists of documentary evidence and witnesses as well as their agreed hearing dates.[11]

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[8] Docket, Vol. 1, Exhibits "P-5", "P-5-a" and "P-5-b", pp. 240-260.
[9] Docket, Vol. 1, pp. 132-139.
[10] *Commissioner of Internal Revenue v. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689, July 19, 2011.
[11] Docket, Vol. 1, Minutes of Hearing on May 2, 2017, p. 356.

However, on May 19, 2017, petitioner filed a Manifestation[12] stating that the parties would not be able to comply with the filing of the proposed JSFI as they failed to stipulate on substantial matters other than those already stated in their respective pleadings.

On June 15, 2017, the Pre-Trial Order (PTO)[13] was issued terminating the pre-trial proceeding.

During the trial, petitioner presented two witnesses: (1) Eileen P. Ratilla, and (2) Rogelio G. Lui.

Witness Eileen P. Ratilla testified[14] that as petitioner's Assistant Vice-President and Finance Manager, she attends to the financial concerns not only of petitioner but also its selected subsidiaries. She is also authorized to sign documents in the name of petitioner and other subsidiaries. As Finance Manager, she is responsible for the preparation of financial statements, submission of requirements to the BIR, and management of audit investigations conducted by the BIR.

Petitioner, through its subsidiaries, is engaged in various businesses, including beverage, food and packaging, energy, mining, fuel and oil, infrastructure, and real estate property management and development.

On April 18, 2013, petitioner received a LOA dated April 12, 2013, authorizing the examination of its books of accounts and other accounting records for the period January 1, 2011 to December 31, 2011.

In compliance with the Checklist of Requirements attached to the LOA, petitioner submitted to the BIR its 2011 Audited Financial Statements (AFS) and a Schedule of "Amounts Owed by Related Parties." Petitioner, through its Tax Adviser, Rogelio G. Lui, met with the BIR examiners.

Rogelio G. Lui informed her that from the Notes to the 2011 AFS of petitioner and its subsidiaries, BIR examiners found petitioner liable for deficiency DST.

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[12] Docket, Vol. 1, pp. 374-375.
[13] Docket, Vol. 1, pp. 379-384.
[14] Docket, Vol. 1, Exhibit "P-9" Judicial Affidavit, pp. 176-187.

Witness Ratilla further declared that on November 26, 2014, petitioner received from respondent a PAN dated November 25, 2014, for deficiency DST, income tax (IT), value-added tax (VAT), and expanded withholding tax (EWT) in the aggregate amount of Php40,005,752.00, inclusive of increments. The Details of Discrepancies attached to the said PAN indicated that the deficiency DST of Php20,000,085.00 (inclusive of interest and penalties) was imposed on the advances that petitioner extended to related parties, following the Supreme Court ruling in the *Filinvest case* that "intercompany advances to and from affiliates are subject to DST under Section 179 of the Tax Code."

Insofar as the subject advances extended by petitioner to related parties in taxable year 2011, petitioner believed that the DST under Section 179 of the NIRC may not be imposed on inter-company advances in the absence of a debt instrument evidencing such advances, per prevailing court decisions and BIR rulings. According to the witness, the advances extended by petitioner to related parties were unsecured, had no provisions for definite payment terms, and were considered payable upon demand. Besides, the said advances were not covered by debt instruments, such as certificates of indebtedness, bonds, or loan agreements.

Witness Ratilla further testified that on December 11, 2014, petitioner paid under protest the assessed deficiency DST amounting to Php20,066,005.00 in order to stop the imposition of interest and with the intention to file a claim for refund. All these were indicated in petitioner's Letter dated March 13, 2015 filed with the BIR on March 16, 2015.

On November 9, 2016, petitioner filed with the BIR a Letter/Claim for Refund dated November 3, 2015, for the amount of Php20,066,005.00, representing the DST that was erroneously and/or illegally collected by the BIR for taxable year 2011. Due to respondent's inaction, petitioner filed the instant case on December 8, 2016.

Witness Rogelio G. Lui testified[15] that he is petitioner's current Tax Adviser. As such, he provides tax advocacy, tax consultancy/advisory, tax planning and tax compliance audit for petitioner and/or any of its subsidiaries. He also monitors

[15] Docket, Vol. 1, Exhibit "P-10" Judicial Affidavit, pp. 299-306.

communications to and from the BIR which may usher issuance of assessments and coordinate with it on the matter.

As instructed by Eileen P. Ratilla, he met with the BIR examiners to discuss the LOA issued against petitioner. The BIR examiners disclosed that petitioner was liable for deficiency DST per data gathered from the Notes to the 2011 AFS of petitioner and its subsidiaries/affiliates. Such finding was hinged on the Supreme Court ruling in the *Filinvest case* as circularized through Revenue Memorandum Circular No. (RMC) 48-2011, holding that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualified as loan agreements subject to DST.

After such meeting, petitioner received from respondent a PAN for deficiency DST and other assessments.

The Court admitted all of petitioner's formally offered exhibits.[16]

Respondent, on the other hand, presented his lone witness, Group Supervisor (GS) Rona B. Marcellano,[17] who testified that she was among the revenue officers authorized to conduct the audit/examination of petitioner per LOA No. 121-2013-00000026 (SN: eLA201100007422). After their examination of petitioner's books of accounts and other accounting records, they found petitioner liable for deficiency IT, VAT, DST, and EWT for taxable year 2011. Thus, a PAN dated November 25, 2014 was issued against petitioner for deficiency tax liabilities for taxable year 2011.

DST was imposed against petitioner following the Supreme Court Decision dated July 28, 2011 stating that intercompany advances to and from affiliates are subject to DST under Section 179 of the NIRC. Petitioner's 2011 AFS revealed that it did not pay DST on advances made to its affiliates.

On October 12, 2018, respondent was deemed to have rested his case upon the admission of all his documentary exhibits.[18]

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[16] Docket, Vol. 2, Resolution dated September 28, 2017, pp. 499-500; and Resolution dated January 3, 2018, pp. 510-511.
[17] Docket, Vol. 1, Exhibit "R-4" Judicial Affidavit, pp. 341-346.
[18] Docket, Vol. 2, Resolution dated October 12, 2018, pp. 535-536.

On January 14, 2019,[19] the instant case was submitted for decision after receipt of respondent's Memorandum[20] on December 13, 2018, and petitioner's Memorandum[21] on December 17, 2018.

ISSUE

The main issue, as defined by the Court, is as follows:

Whether petitioner SMC is entitled to a refund of the amount of Php20,066,005.00 that it paid to the BIR for alleged deficiency DST.[22]

RULING OF THE COURT

On the timeliness of the filing of the present case, Sections 204(C) and 229 of the NIRC provide, to wit:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed

[19] Docket, Vol. 2, p. 615.
[20] Docket, Vol. 2, pp. 554-560.
[21] Docket, Vol. 2, pp. 562-610.
[22] Docket, Vol. 1, PTO, p. 380.

> 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.

Sections 204(C) and 229 of the NIRC govern the refund or credit of internal revenue taxes collected erroneously or illegally.[23] Note that claims for refund under the cited provisions also cover refund of erroneously or illegally collected penalties. Section 204(C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for recovery of the tax or penalty. However, both the claims for refund with the BIR and with the Court must be filed within the two-year period from the date of payment of the tax.[24]

In the instant case, petitioner paid under protest the assessed deficiency DST on December 11, 2014. Thus, petitioner had until December 11, 2016 to file the administrative claim as well as the judicial claim for refund/issuance of TCC of the alleged erroneously/illegally paid DST.

Evidence show that petitioner filed its administrative claim for refund with respondent on November 9, 2016, while its judicial claim was filed before the Court on December 8, 2016. Evidently, petitioner's administrative and judicial claims were filed within the two-year prescriptive period from the date of

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[23] *Commissioner of Internal Revenue v. Central Azucarera Don Pedro*, G.R. No. L-28467, February 28, 1973, citing *Commissioner of Internal Revenue v. Insular Lumber Co.*, G.R. No. L-24221, December 11, 1967.

[24] *CBK Power Company Limited v. Commissioner of Internal Revenue*, G.R. Nos. 193383-84, January 14, 2015, and *Commissioner of Internal Revenue v. CBK Power Company Limited*, G.R. Nos. 193407-08, January 14, 2015.

payment, vesting the Court with the required authority to hear and determine the case.

As to whether petitioner is entitled to the refund, the crux of the controversy hinges on whether the *Filinvest case*, as circularized in RMC No. 48-2011 dated October 6, 2011,[25] may be applied retroactively, and specifically to the case at bar. RMC No. 48-2011 states:

> For the information and guidance of all internal revenue officials and employees concerned, quoted hereunder is the relevant portion of the *En Banc* Supreme Court Decision in the case *Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. Nos. 163653 and 167689 dated July 19, 2011*, concerning Documentary Stamp Tax on Inter-corporate Loans:
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> > xxx xxx xxx
> >
> > On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides as follows:
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> > *SEC. 180. Stamp Tax on All Bonds, Loan Agreements, Promissory Notes, Bills of Exchange, Drafts, Instruments and Securities Issued by the Government or Any of its Instrumentalities, Deposit Substitute Debt Instruments, Certificates of Deposits Bearing Interest and Others Not Payable on Sight or Demand.* – On all bonds, loan agreements, including those signed abroad, wherein the object of the contract is located or used in the Philippines, bills of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities, deposit substitute debt instruments, certificates of deposits drawing interest, orders for the payment of any sum of money otherwise than at sight or on demand, 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 (P200), or fractional part

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[25] Circularization of the Relevant Excerpts from the *En Banc* Supreme Court Decision in the case of *Commissioner of Internal Revenue v. 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 affiliated corporation.

> 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) 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 the 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 terms shall mean:
>
> (b) "Loan agreement" – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms "Loan Agreement" under Section 180 and "Mortgage" under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.
>
> 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 or used in the

> Philippines shall be subject to the documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>
> In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code, as amended.

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 tax may be imposed.

xxx xxx xxx

Accordingly, Assessments Notices Nos. SP-DST-96-00020-2000 and SP-DST-97-00021-2000 issued for deficiency documentary stamp taxes due on the instructional letters as well as journal and cash vouchers evidencing the advances FDC extended to its affiliates are declared valid.

xxx xxx xxx

All revenue officials and employees are enjoined to give this Circular as wide publicity as possible. Accordingly, all employees engaged in the audit and review of audit cases are enjoined to assess deficiency DST, if warranted, on these kinds of transactions.

(SGD.) KIM S. JACINTO-HENARES
Commissioner of Internal Revenue

Petitioner argues that the Decision of the Supreme Court in the *Filinvest case* promulgated on July 19, 2011 and RMC No. 48-2011 dated October 6, 2011, may not be given retroactive effect so as to cover advances extended by petitioner to its affiliates prior to July 19, 2011. For petitioner, when a doctrine is overruled by the Supreme Court and a different view is adopted, the new doctrine should be applied prospectively. Petitioner submits that a previous doctrine was overruled by the Supreme Court in the *Filinvest case*. It also argues that RMC No. 48-2011 may not be used against it citing Section 246 of the NIRC.

The Court agrees with petitioner.

There is no question that the *Filinvest case* provides the current interpretation of the DST provision on loan agreements, which now includes "inter-company advances covered by inter-office memos." However, prior to the *Filinvest case* and RMC No. 48-2011, the prevailing legal milieu was that "inter-office memos" covering inter-company advances were not considered loan agreements subject to DST. This milieu was enhanced and propagated by various rulings,[26] most significant of which was the Court of Appeals (CA) decision entitled *Commissioner of Internal Revenue v. Filinvest Development Corp.*[27] These rulings were, during that time, the final judicial determination on the non-taxability of loans and advances to affiliates which are covered by inter-office memoranda. Pronouncements of the CA and CTA are at the very least persuasive.

In short, the doctrine enunciated in the *Filinvest case* was not controlling at the time herein petitioner entered into such transactions prior to July 19, 2011.

Article 8 of the Civil Code expressly provides that "judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system of the Philippines." Corollarily, Article 4[28] of the Civil Code mandates the non-retroactivity of laws, unless expressly provided. The principle of prospectivity has also been applied to judicial decisions which although in themselves not laws, are nevertheless evidence of what the laws mean.[29] The reason for this is obvious – it will be inequitable and against the principles of fair play to penalize a taxpayer who relied on the pronouncements of the respondent

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[26] *Commissioner of Internal Revenue v. APC Group, Inc.*, CA-G.R. SP No. 69869, November 29, 2002; *Commissioner of Internal Revenue v. Belle Corporation*, CTA EB Nos. 147 and 155, October 13, 2006; and BIR Ruling [DA-(C-035) 127-08] dated August 8, 2008.
[27] C.A.-G.R. SP No. 74510, January 26, 2005.
[28] Article 4. – Laws shall have no retroactive effect, unless the contrary is provided.
[29] *Albino S. Co v. Court of Appeals and People of the Philippines*, G.R. No. 100776, October 28, 1993.

who is authorized under the law to interpret tax statutes,[30] and from which taxpayers are enjoined to follow. In the absence of a definitive Supreme Court decision interpreting the provisions of the NIRC on transactions subject to DST, the higher interests of justice should compel us <u>not</u> to retroactively apply a recent (as applied to the facts of this case) Supreme Court decision to a time period where the CIR himself held and pronounced a contrary view.

Thus, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*,[31] the Supreme Court ruled:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.*
>
> The applicable law is Sec. 246 of the Tax Code which provides –
>
> xxx xxx xxx
>
> <u>Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax</u>. (*Underscoring ours*)

In the instant case, to apply the doctrine of the *Filinvest case* and the subsequent issuance of RMC No. 48-2011 would also prejudice petitioner as it is being assessed for deficiency DST.

The Supreme Court has also recognized the good faith of taxpayers who rely on previous rulings which turn out to be erroneous under recent interpretations:

> Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax

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[30] 1997 NIRC, Sec. 4. *Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.* – The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance.

[31] G.R. No. 117982, February 6, 1997.

> laws, should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulations or ruling prior to its reversal.[32]

More recently, the Supreme Court cited equity and compassionate social justice in declaring that its ruling on a BIR Revenue Memorandum Order (RMO) is to be given only prospective effect:

> As a final point, the Court cannot turn a blind eye to the adverse effects of this Decision on ordinary government employees, including petitioners herein, who relied in good faith on the belief that the appropriate taxes on all the income they receive from their respective employers are withheld and paid. Nor does the Court ignore the situation of the relevant officers of the different departments of government that had believed, in good faith, that there was no need to withhold the taxes due on the compensation received by said ordinary government employees. Thus, as a <u>measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice*, that its ruling on the validity of Sections III and IV of the assailed RMO is given only prospective effect.</u>[33] (*Underscoring ours*)

While the abovequoted decision specifically stated that its prospectivity applies only *pro hac vice*, the interests of equity and social justice are also prejudiced and must be protected in the instant case. Since the retroactive application of the *Filinvest case* as well as RMC No. 48-2011 will surely prejudice the interest of the petitioner and other taxpayers in the same situation, who have relied on the previous BIR and judicial rulings on the non-taxability of inter-office memos covering advances granted to affiliated corporations, the *Filinvest case* and RMC No. 48-2011 must perforce only be applied

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[32] *Commissioner of Internal Revenue v. San Roque Power; Taganito Mining Corp. v. Commissioner of Internal Revenue; and Philex Mining Corp. v. Commissioner of Internal Revenue*, G.R. Nos. 187485,196113 and 197156, February 12, 2013.

[33] *Confederation for Unity, Recognition and Advancement of Government Employees (COURAGE), et al. v. Commissioner, Bureau of Internal Revenue and the Secretary, Department of Finance/Judge Armanda A. Yanga and Cristina Carmela I. Japzon v. Hon. Commissioner Kim S. Jacinto-Henares*, G.R. Nos. 213446 and 213658, July 3, 2018.

prospectively, or to taxable years after the promulgation of the *Filinvest case.*

Further, if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice (that is – by applying the Supreme Court doctrine reversing the BIR ruling prospectively), reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.[34]

Petitioner also argues that DST may not be imposed in the absence of debt instruments, and that the Notes to the 2011 AFS, which are not documents, cannot be a valid basis for assessment for deficiency DST. This issue was extensively discussed in a case involving the same issues, to wit:

> 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**. As a corollary, there is no basis in the assertion that a DST is literally a tax on a document. 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.
>
> Moreover, it is noteworthy that Section 6 of Revenue REgulationis No. 9-94, which has the force of law, provides for the imposition of DST where even no formal agreements or promissory notes are executed, to wit:
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> xxx xxx xxx
>
> In this case, while it may be true that respondent merely based the DST imposition on the information

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[34] *Dissenting Opinion of Presiding Justice Roman G. Del Rosario* in *E.E. Black Ltd. – Philippine Branch v. Commissioner of Internal Revenue,* CTA EB Case No. 1611, January 22, 2019.

> 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.
>
> xxx xxx xxx
>
> Correspondingly, since it was clearly shown that said transactions exist, We find no reason not to agree with respondent in the imposition of 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 willfully suppressed would be adverse if produced.*"[35] (*Emphasis in the original, citations omitted*)

Thus, the Court finds that petitioner is entitled to a refund of the DST paid on advances only for the period prior to the promulgation of the *Filinvest case*, or from January 1, 2011 to July 18, 2011, while the advances from July 19, 2011 to December 31, 2011 are properly subject to DST.

However, petitioner failed to present evidence which would show the breakdown or enable the Court to determine the advances for the period of January 1, 2011 to July 18, 2011. The Court cannot determine the amount of DST that shall be refunded. Thus, on this instance, the claim for refund of the basic deficiency DST must be denied.

The Court finds that petitioner should be refunded the surcharge, interest and compromise penalty previously paid. 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

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[35] *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, CTA EB Case No. 1609, April 23, 2018; citing *Brewery Properties, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016.

petitioner to be spared the imposition of interest and surcharges.[36]

The surcharge, interest and compromise penalty amounts are computed as follows:

Penalties erroneously paid by petitioner	Amount
Surcharge	P 2,716,467.00
Interest	6,458,671.00
Compromise penalty	25,000.00
Total	**P 9,200,138.00**

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **Php9,200,138.00**.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(With Concurring Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

(With Concurring and Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

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

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9504

Members:

Del Rosario, *P.J., Chairperson,*
Fabon-Victorino, *and*
Manahan, *JJ.*

Promulgated:
JAN 14 2020 3:20 p.m.

x- x

CONCURRING OPINION

I concur in the *ponencia* which partially grants the Petition for Review filed by San Miguel Corporation (SMC).

I submit that SMC correctly relied on the judicial interpretation prevailing prior to the promulgation by the Supreme Court of its decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] on July 19, 2011. In *Filinvest*, the Supreme Court laid down the doctrine that instructional letters, journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which Documentary Stamp Tax (DST) may be imposed. In contrast, the prevailing judicial interpretation prior to *Filinvest* is that inter-company advances covered by mere inter-office memos were **not loan agreements subject to DST** under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

To be specific, SMC relied on the following:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002* wherein the Court of Appeals (CA) held that the interpretation of the

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

Bureau of Internal Revenue (BIR) in **BIR Ruling No. 116-98 dated July 30, 1998** that inter-office memo covering advances granted by an affiliate company is not subject to DST is in accordance with law;

(ii) *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006* wherein the Court of Tax Appeals (CTA) declared that the ruling in **BIR Ruling No. 116-98 dated July 30, 1998** i.e., that inter-company advances made by Belle to its affiliates is not subject to DST) is consistent with the provisions of the NIRC of 1997; and,

(iii) *BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008*, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to DST under Section 179 of the NIRC of 1997, as amended.

The rulings of the CA in *APC Group* and the CTA in *Belle Corporation*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on the non-taxability of loans and advances to affiliates which are covered by inter-office memoranda. Pronouncements of the CA and the CTA are at the very least persuasive.

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

> "The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.

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

> The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.
>
> **Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides**. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
>
> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part**." (Boldfacing supplied)

While the doctrine on the non-taxability of loans and advances covered by inter-office memoranda was over-ruled <u>beginning July 19, 2011</u> when the Supreme Court promulgated *Filinvest*, the same cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on the judicial interpretation laid down in *APC Group* and *Belle Corporation.* Needless to say, **if a taxpayer can rely in good faith on an <u>erroneous</u> ruling of the BIR without suffering any legal prejudice (that is - - by applying the Supreme Court doctrine reversing the BIR ruling <u>prospectively</u>), I submit that reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.**

In view of the foregoing, SMC is entitled to a refund of the **DST paid** on advances for the period January 1, 2011 to July 18, 2011, in addition to the surcharge, interest and compromise penalty previously paid which, as determined in the *ponencia*, amounts to Php9,200,138.00.

Considering, however, that SMC failed to present evidence anent the amount of the basic DST paid for the period January 1, 2011 to July 18, 2011, I concur in the *ponencia*'s findings that the claim for refund of the basic DST paid for the aforesaid period cannot be granted. Hence, the amount to be refunded to SMC shall be limited to Php9,200,138.00, representing the surcharge, interest and compromise penalty that it previously paid to the BIR.

All told, I CONCUR in the *ponencia*.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9504

Members:

DEL ROSARIO, *P.J., Chairperson*
FABON-VICTORINO, *and*
MANAHAN, *JJ.*

Promulgated:

JAN 14 2020 3:30 pm

x---x

CONCURRING AND DISSENTING OPINION

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

I concur with the partial denial of the *Petition for Review* but on different ground. More particularly, on the denial of the **basic** deficiency documentary stamp tax (DST) amounting to ₱10,865,867.00.

With due respect, I maintain my stance that the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] (*Filinvest case)* should be applied in the case at bar. Hence, this dissent.

I humbly submit the following dissenting opinion as truncated from the discussion in the draft decision that I prepared as the previously assigned *ponente*, thus:

> It must be emphasized that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it

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

was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[2]

In the *Filinvest case*, the High Court interpreted Section 180 of the NIRC, particularly on the scope of the word "loan agreements" as being subject to DST, including *"instructional letters as well as the journal and cash vouchers evidencing the advances of* [Filinvest] *extended to its affiliates"*. Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994 and it is still in our statute books up to the time the assessed DST, plus increments, were paid under protest by petitioner. 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". While Section 180 was later amended *via* the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was retained in Section 179 of the NIRC of 1997, as amended by 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 payment of the subject DST assessment.

In *People of the Philippines vs. Jabinal*,[3] the Supreme Court held:

> 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**

[2] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.*, G.R. No. 66880, August 2, 1991.
[3] G.R. No. L-30061, February 27, 1974, 55 SCRA 607.

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> **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 supplied)*

A careful reading of the foregoing ruling reveals that the prospective application of a "new" doctrine, if any, will come into play only when an "old" doctrine of the Supreme Court is overruled by the said Court itself. In other words, the general rule is that judicial interpretation of the Supreme Court becomes part of the law as of the date it was originally passed, and the exception thereto is that when a doctrine laid down by the same Court is subsequently overruled or reversed, in which case, the new doctrine will only be applied prospectively. Consequently, an interpretation or ruling by the Supreme Court will only be applied prospectively when there is a clear indication that they have reversed or overruled any of their prior ruling or decision.

In the present case, however, there is no previous doctrine of the Supreme Court that was overturned by the doctrine in the

Filinvest case. Thus, the rule on prospective application of judicial decisions will not apply.

Contrary to petitioner's stance, the rulings made by the Court of Appeals or of this Court cannot be treated as "doctrines". In *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co. Ltd., et al.,*[4] the Supreme Court declared:

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

Thus, the invocation by petitioner of decisions of Court of Appeals and of this Court to justify the non-retroactivity of the *Filinvest case* is clearly misplaced, as the rulings therein cannot be deemed as jurisprudence or doctrines on the matter.

The Court is also not convinced with petitioner's invocation of the *Minute Resolution* dated May 17, 2004, issued by the Third Division of the Supreme Court in G.R. No. 162185, entitled "*Commissioner of Internal Revenue vs. APC Group, Inc.*", where the Supreme Court allegedly "affirmed" the doctrine enunciated by the Court of Appeals in *Commissioner of*

[4] G.R. No. L-25291, 30 January 1971.

Internal Revenue vs. APC Group, Inc.,[5] regarding the non-taxability of memos and vouchers evidencing inter-company advances, when the Supreme Court stated that the "*petitioner* (*i.e.*, the Commissioner of Internal Revenue) *failed to show that a reversible error had been committed by the appellate court* (*i.e*, the Court of Appeals)".

The Supreme Court ruling in *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*,[6] is also instructive, 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 act and legal conclusions, are deemed sustained. But what is the effect on other cases?**
>
> **With respect to the same subject matter and the same issues concerning the parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is <u>not binding precedent</u>.** xxx.
>
> Besides, there are substantial, not simply formal,

[5] CA-GR No. 69869, November 29, 2002.
[6] G.R. No. 167330, September 18, 2009.

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> distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. **Indeed, <u>as a rule, this Court lays down doctrine or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice</u>.**
>
> Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor. xxx."

Based on the foregoing doctrinal pronouncements, the rulings of the Supreme Court embodied in minute resolutions are not binding precedents, and are not considered doctrines or principles of law. Thus, the ruling in the said *Minute Resolution* dated May 17, 2004 issued by the Third Division of the Supreme Court in G.R. No. 162185 cannot be treated as a

> doctrine, thus, could not have been reversed by the *Filinvest Case*. Furthermore, since petitioner is not a party in G.R. No. 162185, it cannot invoke the ruling made therein.
>
> In the same vein, the Court finds that RMC No. 48-2011 merely circularized the above-stated doctrine in the *Filinvest Case*. As can be gleaned from the said RMC, respondent merely adhered to the said doctrine, which, as the Court already stressed, constitutes part of the law as of the date it was originally passed. Similarly, Section 246 of the NIRC of 1997 finds no application in the present case since RMC No. 48-2011 did not revoke, modify, or reverse any ruling or circular promulgated by respondent.

Considering the foregoing, I find no reason not to apply the *Filinvest case* in the case at bar. Thus, I affirm respondent's imposition of DST on the advances extended by petitioner to its affiliates.

In view of the foregoing, I vote to **PARTIALLY GRANT** the instant Petition for Review.

ESPERANZA R. FABON-VICTORINO
Associate Justice