REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9374

Members:

DEL ROSARIO, *P.J., Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

OCT 18 2019 - 10:06a

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RESOLUTION

UY, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated May 3, 2019**, filed on May 27, 2019, with respondent's **Opposition (Re: Petitioner's Motion for Partial Reconsideration dated 24 May 2019)**, filed on June 28, 2019; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision dated 03 May 2019)**, filed on May 27, 2019, with petitioner's **Opposition to Respondent's "Motion for Partial Reconsideration..." dated May 24, 2019**, filed on July 3, 2019.

In their respective motions, both parties move for reconsideration of the Court's Decision dated May 3, 2019 (assailed Decision), the dispositive portion of which reads:

"**WHEREFORE**, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱15,916,794.59**, representing the following:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	**AMOUNT**
Interest	₱ 15,866,794.59
Compromise penalty	50,000.00
TOTAL	**₱15,916,794.59**

SO ORDERED."

Petitioner's Motion for Partial Reconsideration

In its motion, petitioner reiterates its previous arguments, contending that this Court should not apply the Supreme Court decision of *Commissioner of Internal Revenue (CIR) vs. Filinvest Development Corporation (Filinvest)*[1] in the imposition of Documentary Stamp Tax (DST) on petitioner with respect to advances extended to it in 2009.

Petitioner avers that in the interest of adhering to the principle of justice and fair play, this Court should not apply the *Filinvest* decision, which was promulgated on July 19, 2011, to the cash advances involved herein which were extended to the petitioner in 2009 by related parties, to the prejudice of petitioner, who relied on court decisions and Bureau of Internal Revenue (BIR) Rulings prevailing at the time holding that mere inter-office memos covering inter-company advances were not loan agreements subject to DST under the National Internal Revenue Code (NIRC).

Petitioner asserts that the decision of the Supreme Court in *Co vs. Court of Appeals*[2] should prevail over the decision of the Court of Tax Appeals (CTA) *En Banc* in *Brewery Properties, Inc. vs. CIR (Brewery Properties)*[3] for the reason that the *Brewery Properties* case deals with the matter of prospectivity and non-retrospectivity of

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[1] G.R. Nos. 163653 and 167689, July 19, 2011.
[2] G.R. No. 100776, October 28, 1993.
[3] CTA EB No. 1609 (CTA Case No. 8892), April 23, 2018.

decisions of the Supreme Court in relation to Article 4 of the Civil Code governing the non-retroactivity of laws.

Petitioner further asserts that the pronouncement of the Supreme Court in *Co vs. Court of Appeals* should be deemed as an exception to the CTA decision in *Brewery Properties*, following well-established principles that "a general law on a subject does not operate to repeal a prior special law on the same subject"; that "the general and special laws are read and constructed together"; and that "repugnancy between them is reconciled by constituting the special law as an exception to the general law".

In his opposition, respondent maintains his position that there is no retroactive application of the decision in *Filinvest* in the instant case.

Upon evaluation of petitioner's motion, the Court finds that petitioner merely reiterated the arguments raised in its previous pleadings, which the Court already passed upon and considered in the assailed Decision.

Co vs. Court of Appeals was reiterated in the case of *Columbia Pictures, Inc. vs. Court of Appeals*[4], where the Supreme Court ruled as follows:

> "Article 4 of the Civil Code provides that '(l)aws shall have no retroactive effect, unless the contrary is provided. Correlatively, Article 8 of the same Code declares that '(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines.'
>
> Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines.

[4] G.R. No. 110318, August 28, 1996.

Judicial decisions of the Supreme Court assume the same authority as the statute itself.

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.* that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. Our holding in the earlier case of *People vs. Jabinal* echoes the rationale for this judicial declaration, *viz.*:

> 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 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 the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim *'legis interpretatio legis vim obtinet'* - the interpretation placed upon the written law by a competent court has the force of law. x x x, 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.* x x x. (Stress supplied).

This was forcefully reiterated in *Spouses Benzonan vs. Court of Appeals, et al.*, where the Court expounded:

> x x x. But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that

'laws shall have no retroactive effect unless the contrary is provided.' This is expressed in the familiar legal maximum *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (Francisco v. Certeza, 3 SCRA 565 [1961]). The same consideration underlies our rulings giving only prospective effect to decisions enunciating new doctrines. x x x.

The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.

It is consequently clear that **a judicial interpretation becomes a part of the law as of the date that law was originally passed, subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith**. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication." (*Emphasis supplied*)

It is clear from the foregoing that a 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 the Supreme Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.

There is no conflict between the cases of *Co vs. Court of Appeals* and *Brewery Properties* as petitioner alleged. The two cases are analogous in its ruling that there being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 (now Section 179) of the NIRC constitutes part thereof as of the date it was originally passed.

However, petitioner further argues that there was indeed a previous doctrine that was overruled. It contends that before the promulgation by the Supreme Court of its decision in the *Filinvest* case, the rule was that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the NIRC, on which rule petitioner had relied. Such rule was embodied in the following: (a) decision of the Court of Appeals in *CIR vs. APC Group, Inc.*[5]; (b) decision of the CTA *En Banc* in *CIR vs. Belle Corporation*[6]; (c) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008; and (d) Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185 entitled *CIR vs. APC Group, Inc.*

In the case of *San Miguel Holdings Corp. vs. CIR*[7], this Court's Second Division addressed the above arguments as follows:

> "Moreover, a cursory reading of BIR Ruling [DA (C-035) 127- 08], dated August 8, 2008, shows that it is not a general interpretative rule applicable to all taxpayers. In the said ruling, SGV & Co., on behalf of its clients, sought the confirmation of the Bureau of Internal Revenue (BIR) of its opinion that inter-company loans and advances made to its clients, which are covered by inter-office memoranda, are not subject to DST imposed under Section 179 of the National Internal Revenue Code of 1997, as amended (Tax Code). **Considering that the said ruling is a response to a query made to the BIR, the Court finds that it is a specific ruling applicable only to the particular taxpayer being responded to.**

[5] CA-G.R. SP No. 69869, November 29, 2002.
[6] CTA EB No. 147, October 13, 2006.
[7] CTA Case No. 9401, Resolution, September 3, 2018.

As to the Supreme Court's minute resolution in *APC Group* mentioned by respondent, it has been ruled that minute resolutions only constitute *res judicata* if it pertains to the same subject matter and the same issues concerning the same parties. If other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. In the similar case of *Brewery Properties, Inc. vs. CIR*, which is also cited by petitioner in its opposition, this Court's First Division ruled as follows:

> 'In *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et. al. vs. The Insular Life Assurance Co., Ltd., et al.*, the Supreme Court held:
>
> > '... the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort**. We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that '**[O]nly the decisions of this Honorable Court establish <u>jurisprudence or doctrines</u> in this jurisdiction**.' xxx.' (*Emphases and underscoring supplied*)
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> **Thus, the CA decision in the *APC Group* case cannot be treated or equated as a doctrinal pronouncement.**
>
> **Neither can it be treated as a binding precedent, notwithstanding the fact that the said case was appealed to the Supreme Court via Petition for Review on *Certiorari* and that this**

Petition was denied for the failure of petitioner therein *'to show that a reversible error had been committed by the appellate court'* via the Minute Resolution dated May 17, 2004.

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held:

'It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, ***if other parties or another subject matter (even with the same parties and issues) is involved the minute resolution is not binding precedent***. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled **that the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, 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 by 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 as a rule, this Court lays down doctrines 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.' (*Italics and underscoring supplied*)

Since it is neither a doctrine, nor a binding precedent, the ruling in the *APC Group* case could not have been overruled by the *Filinvest* case. There being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 of the NIRC constitutes part thereof as of the date it was originally passed, *i.e.*, on December 23, 1994, as stated in the assailed Decision. Consequently, the *Filinvest* case cannot be applied prospectively.'" (*Emphasis supplied*)

With respect to the case of *CIR vs. Belle Corporation*[8], the CTA *En Banc* ruled that:

"From the foregoing, it is evident that the inter-company advances evidenced by inter-office memorandum, vouchers, or board resolutions are not in the nature of a promissory note. The definition is clear,

[8] CTA EB No. 147, October 13, 2006.

> and when the law speaks in clear and categorical language, there is no room for interpretation but only application. There is nothing in Section 180 that clearly and expressly declares inter-office memorandum covering inter-company advances made by BELLE to its affiliates making it subject to DST.
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> Under the above-quoted Section 180, the law speaks to impose DST on loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities or certificates of deposits drawing interest and others not payable on sight or demand. Inter-office memoranda, board resolutions and cash vouchers were not included in the list thus, they are not liable to DST."

However, the Supreme Court in the case of *CIR vs. San Roque Power Corporation*[9] explained that CTA Decisions do not constitute precedents, only decisions of the Supreme Court constitute bindings precedents, *to wit*:

> "There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. xxx"

Petitioner further claims that the Notes to Financial Statements are not the debt instruments referred to in Section 179 of the NIRC,

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[9] *Commissioner of Internal Revenue vs. San Roque Power Corporation, Taganito Mining Corporation vs. Commissioner of Internal* and *Philex Mining Corporation vs. Commissioner of Internal*, G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

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nor are they instructional letters or journal and cash vouchers subject of the decision of the *Filinvest* Case.

Petitioner insists the presence of the two (2) basic requisites must exist before DST may be imposed: (1) there must be a transaction or privilege which is exercised by persons; (2) this transaction is evidenced through the execution of specific instruments.

On this matter, respondent argues that the audit findings for deficiency DST against petitioner were based on evaluation of petitioner's documents and records. Respondent further states that the existence of a physical document is not indispensable before DST can be imposed since DST is imposed on the transaction rather than on the document.

Petitioner's arguments have already been considered and discussed in the assailed Decision, *to wit*:

> "In the same case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, the Court of Tax Appeals *En Banc* quoted with approval the ruling of the CTA First Division that DST may be imposed on advances on the basis of a mere Note appearing in the Financial Statements, to wit:
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> > '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 Regulations 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:

> '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 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 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.

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Lastly, petitioner avers that the deficiency DST assessment is barred by prescription. It states that Section 200(B) of the NIRC, which requires the filling of a DST return, provides that "the tax return prescribed in this Section shall be filled within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred". This provision cannot apply in the instant case because there is no taxable document involved.

The Court maintains that respondent's right to assess has not prescribed, because no DST return was filed by petitioner, thus:

> "Section 222 of the NIRC of 1997, as amended, states that in case of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the omission.
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> In the case at bar, since the record is bereft of evidence that petitioner filed a DST return in the subject period or for the subject transactions, the ten-year prescriptive period applies. Considering that the parties failed to adduce evidence on when the omission was discovered, the Court finds that the earliest that respondent could have discovered the omission is on May 14, 2010, the date indicated on the Letter of Authority. Counting from said date, respondent has until May 13, 2020 to issue an assessment on petitioner's deficiency DST. Clearly, the assessment has not yet prescribed when respondent issued the assessment."

Considering the foregoing, the Court finds no cogent reason to modify or reverse the assailed Decision, with respect to petitioner's motion.

Respondent's Motion for Partial Reconsideration

In his motion, respondent argues that the imposition of interest, surcharge and compromise penalty have factual and legal bases and that reliance in good faith by petitioner must be relatively applied.

Respondent avers that the Supreme Court still imposed surcharge, deficiency and delinquency interest and even compromise penalties on *Filinvest* despite its allegation of reliance on a previous BIR ruling.

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Respondent argues that petitioner cannot simply invoke good faith to escape liability of paying deficiency and delinquency interest.

Lastly, respondent states that compromise penalty is not only for settlement of criminal liability but for certain violations of the NIRC of 1997 such as but not limited to failure to pay the correct internal revenue taxes.

On the other hand, petitioner opposes respondent's motion and argues that there is no logical reason why BIR Rulings, like court decisions, cannot be cited as precedents, or relied upon by taxpayers. Furthermore, petitioner insists that the well-established jurisprudence that a taxpayer will not be liable to pay surcharge, interest and penalty if he acted in good faith is recognized in this jurisdiction as well as in American jurisprudence. Lastly, as to the compromise penalty, petitioner alleges that the Supreme Court itself has held that the same may not be imposed on a taxpayer if the payment was under protest, as in the instant case.

The Court finds respondent's arguments unmeritorious.

In the similar case of *CIR vs. San Miguel Corporation*[10], the Court *En Banc* found San Miguel Corporation not liable for surcharge, interest, and compromise penalty, and ruled as follows:

> "After careful review of the case records and the arguments presented by the parties, the Court *En Banc* agrees with the Court in Division in ruling that SMC is not liable for surcharge, interest, and compromise penalty and thus, the same should be refunded. The Court in Division correctly applied the rule that 'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest'. By law and jurisprudence, mistake upon a doubtful or difficult question of law may properly be the basis of good faith. Accordingly, while reliance on BIR Ruling DA(C-035)127-08 dated August 8, 2008, which states that intercompany loans and advances covered by inter-office memoranda are not subject to DST, may not be invoked to extricate

[10] CTA EB Nos. 1724 & 1726 (CTA Case No. 9007), October 11, 2018.

SMC from its DST liability, it may nevertheless be used as basis of good faith on the part of SMC sufficient to negate the latter's liability for surcharge and interest. Remarkably, the issue of whether instructional letters as well as journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreement subject to DST may be considered as a doubtful or difficult question of law given that it required no less than the Supreme Court to definitively settle the same in *Commissioner of Internal Revenue v. Filinvest Development Corporation*.

As regards the CIR's contention that this Court exceeded its jurisdiction when it ordered the cancellation of the interest and surcharge due since it effectively abated SMC's tax liability in essence and that under Section 204 of the 1997 NIRC, the CIR has the sole discretion to grant or deny an application for abatement, the Court *En Banc* finds the same to be patently erroneous.

In cancelling the surcharge and interest imposed, this Court merely exercised its jurisdiction under Section 7(a)(1) and 7(a)(2) of Republic Act (RA) No. 1125, as amended, which provides:

> 'Sec. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **<u>refunds of</u> internal revenue taxes, <u>fees or other charges, penalties in relation thereto</u>**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, **<u>refunds of</u> internal revenue taxes, <u>fees or other charges, penalties in</u>**

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> **<u>relation thereto</u>**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;' (*Emphasis and underscoring supplied*)

A *surcharge* is a civil penalty imposed once for late payment of a tax. The objective of its imposition is to hasten payment of taxes and to punish for evasion or neglect of duty. On the other hand, *interest* is imposed to compensate the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. Both the surcharge and interest are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

Considering the above-quoted provisions vis-à-vis the nature of surcharge and interest, it is beyond doubt that this Court has jurisdiction to cancel the surcharge and interest imposed upon SMC.

With respect to the compromise penalty, the Court *En Banc* agrees and adopts the Court in Division's ratiocination in the assailed Decision as follows:

> 'This Court further notes that compromise penalty may not be imposed upon petitioner considering that this penalty, by its nature, is mutual in essence. Therefore, the payment made under protest by petitioner could only mean that there was no agreement between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*, the Supreme Court held that:
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> xxx xxx xxx
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> Considering that petitioner disputed respondent's imposition of compromise penalty, the same cannot be imposed upon it.' (Citation omitted)

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The Court *En Banc* finds the above statements by the Court in Division as sound, accurate, and sufficient in addressing the particular matter raised by the CIR. There is no need to add to, much less modify or reverse the same."

In view of the foregoing, the Court likewise denies respondent's motion.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Partial Reconsideration of the Decision dated May 3, 2019** and respondent's **Motion for Partial Reconsideration (Re: Decision dated 03 May 2019)** are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(I reiterate my Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice