Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

SAN MIGUEL HOLDINGS CORP., Petitioner,	**CTA Case No. 9401**
	Members:
-versus-	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUN 05 2018 10:50 a.m.

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DECISION

CASANOVA, *J.*:

The present case involves the Petition for Review, filed by San Miguel Holdings Corp., seeking the refund or issuance of tax credit certificate (TCC) in the amount of One Hundred Nine Million Nine Hundred Forty Three Thousand Five Hundred Twenty Three and 84/100 Pesos (₱109,943,523.84), allegedly representing deficiency documentary stamp tax (DST) erroneously and illegally collected from it by the Bureau of Internal Revenue (BIR) for taxable year 2011.

Petitioner is a holding company 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.[1]

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[1] Par. 1.01, Joint Stipulation of Facts, Documents, Issues, and Other Matters (Joint Stipulation), Docket, p. 303.

Respondent is the head of the BIR, with office address at the Office of the Commissioner of Internal Revenue, Bureau of Internal Revenue, National Office Building, Agham Road, Diliman, Quezon City, Metro Manila.[2]

On July 19, 2011, the Supreme Court rendered a decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation (Filinvest)*[3] holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest extended to its affiliates qualified as loan agreements upon which DST may be imposed.[4]

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011[5], circularizing to all internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the *Filinvest* case, and enjoining all employees engaged in the audit and review of cases "to assess deficiency DST, if warranted, on these kinds of transactions."[6]

On July 21, 2014, petitioner received an undated Preliminary Assessment Notice (PAN) issued by the BIR, assessing petitioner for the following deficiency taxes in connection with the examination of its internal revenue tax liabilities for the taxable year 2011[7]:

Tax	Basic	Surcharge	Interest (until July 31, 2014)	Compromise	Total (with penalties)
Income tax	70,732.15	-	32,401.14	12,000.00	115,133.29
VAT	34,892.86	-	17,532.47	6,000.00	58,425.33
DST	59,665,630.39	14,916,407.60	35,828,419.20	213,000.00	110,623,457.19
Total	59,771,255.40	14,916,407.60	35,878,352.81	231,000.00	110,797,015.81

Based on the Details of Discrepancy attached to the PAN, the alleged deficiency DST assessment amounting to ₱110,623,457.19 was based on two transactions, which are: (1) Advances from SMC and to

[2] Par. 1.02, Joint Stipulation, Ibid., p.303.
[3] G.R. Nos. 163653 and 167689, July 19, 2011.
[4] Par. 1.04, Joint Stipulation, Docket, p.304.
[5] Subject: Circularization of the relevant excerpts from the *En Banc* Supreme Court Decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 dated July 19, 2011, on the imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliated corporation.
[6] Par. 1.05, Joint Stipulation, Docket, p.304.
[7] Par. 1.06, Joint Stipulation, Ibid, pp. 304-305.

related parties; and (2) Other Non-Current Assets under Finance Lease, as follows:[8]

TRANSACTION DATE	ADVANCES FROM SMC TAX BASE AMOUNT	Basic Tax Divided by ₱200	Due On	Interest	Surcharge	Compromise	Total Amount Due
Beginning Balance	4,384,981,048.43						
Less: Advances from SMC – 2009 (assessed in conglo audit under ELTAD I)	952,621,000.00						
Balance – 2011	3,432,360,048.43	17,161,800.24	1/6/2011	12,243,651.46	4,290,450.06	50,000.00	33,745,901.76
January 3, 2011	420,000.00	2,100.00	2/6/2011	1,462.52	525.00	1,000.00	5,087.52
February 1, 2011	420,000.00	2,100.00	3/6/2011	1,430.30	525.00	1,000.00	5,055.30
June 9, 2011	180,000,000.00	900,000.00	7/6/2011	552,821.92	225,000.00	20,000.00	1,687,821.92
October 11, 2011	5,870,922,756.37	29,354,613.78	11/6/2011	16,052,550.44	7,338,653.45	50,000.00	52,795,817.67
December 30, 2011	1,753,600,000.00	8,768,000.00	1/6/2012	4,501,707.40	2,192,000.00	50,000.00	15,511,707.40
Advances from SMC	11,237,722,804.80	56,188,614.02	144,234.00	33,353,624.04	14,047,153.51	172,000.00	103,761,391.57
Due from Related Party	627,182,942.64	3,135,914.71	1/6/2011	2,237,238.88	783,978.68	25,000.00	6,182,132.27
Sub Total – Related Parties	11,864,905,747.44	59,324,528.74		35,590,862.92	14,831,132.18	197,000.00	109,943,523.84
Other Non-current Assets – Beg. Balance	68,220,331.23	341,101.66	2/6/2011	237,556.28	85,275.41	16,000.00	679,933.35
	11,933,126,078.67	59,665,630.39		35,828,419.20	14,916,407.60	213,000.00	110,623,457.19

The Details of Discrepancy shows that the alleged deficiency DST was based on data gathered from Note 7 in the 2011 Audited Financial Statements (AFS) of petitioner,[9] and that the deficiency DST on the advances from petitioner and to related parties was "assessed pursuant to Section 179 of the NIRC as amended and RMC No. 48-2011 and in consonance with Supreme Court Decision in the case of CIR vs. Filinvest Development Corp., in G.R. No. 163653 and 167689 promulgated on July 19, 2011 which rules that advances are subject to DST."[10]

On July 31, 2014, to stop the running of interest and with a view of filing a claim for refund, petitioner paid to the BIR through the latter's Electronic Filing and Payment System the amount of ₱110,623,457.19 (inclusive of interest up to July 31, 2014, surcharge and penalty) for the alleged deficiency DST per the PAN.[11]

However, the claim for refund subject of this Petition only involves the DST payment amounting to ₱109,943,523.84, representing the alleged deficiency DST assessment on advances from

[8] Ibid; Exhibit "P-1".
[9] Id.
[10] Id.
[11] Par. 1.07, Joint Stipulation, Id., p.306; Exhibits "P-4", "P-4-a", and "P-4-b".

SMC and to related parties. The alleged deficiency DST assessment on the "financial lease," amounting to ₱679,933.35, is not included. The alleged deficiency Income Tax and Value-Added Tax mentioned in the PAN were paid by petitioner on the same date, July 31, 2014.[12]

On August 5, 2014, petitioner informed respondent that it had paid the alleged deficiency DST assessment under protest and that it shall file the corresponding administrative claim for refund of the DST paid.[13] On the same date, petitioner filed its Reply to the undated PAN.[14]

On June 28, 2016, petitioner filed with the BIR the Letter/Claim for Refund subject of this Petition for Review, requesting the refund or issuance of a TCC in the amount of ₱109,943,523.84 allegedly representing DST erroneously and/or illegally collected from it by the BIR for the taxable year 2011, pursuant to Section 229 in relation to Section 204(C) of the National Internal Revenue Code of 1997, as amended (Tax Code).[15]

The BIR has not taken action on the aforesaid Letter/Claim for Refund.[16] Hence, petitioner filed the instant Petition for Review on July 28, 2016.

On August 31, 2016, respondent filed his Answer[17] and interposed the following special and affirmative defenses:

> "SPECIAL AND AFFIRMATIVE DEFENSES
>
> 3. Respondent adopts the abovementioned admissions and denials as part of her special and affirmative defenses.
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> 4. As discussed in Note 7 in the Audited Financial Statements, transactions with related parties mainly consist of non-interest bearing cash advances used for working capital purposes and for the acquisition of investments in shares of stocks. Analysis of petitioner's

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[12] Id.
[13] Par. 1.08, Joint Stipulation, Id., p.306; Exhibit "P-5".
[14] Ibid; Exhibit "P-6".
[15] Par. 1.09, Joint Stipulation, Id., p.307; Exhibit "P-7".
[16] Id.
[17] Id., pp. 126-137.

Summary of Transactions for 2011 showed that its beginning balance on advances from San Miguel Corporation (SMC) amounted to P4,384,981,048.43 and an ending balance of P12,190,343,804.80 or an increase in the amount of P7,805,362,756.37 for 2011. The total advances from SMC not subjected to Documentary Stamp Tax (DST) amounted to P11,237,722,804.80, net of the tax base computed in the deficiency DST assessment made in the conglomerate audit for taxable year 2009.

During the audit, petitioner was not able to show proof of payment of DST on the aforementioned accounts hence, assessed pursuant to Section 179 of the National Internal Revenue Code (NIRC), as amended and Revenue Memorandum Circular No. 48-2011, and in consonance with the Supreme Court Decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation,* which ruled that said advances are subject to DST.

5. Hence, for failure of petitioner to pay DST, it was assessed pursuant to Section 179 of the NIRC of 1997, in relation to Revenue Memorandum Circular (RMC) No. 48-2011 circularizing the En Banc Decision of the Supreme Court on the imposition of DST on inter-office memo on advances from affiliates and RMC No. 46-2014 clarifying the taxability of financial lease for purposes of DST, which provides:

> **SEC. 179. Stamp tax on All Debt Instruments.** – On every original issue of debt instruments, there shall be collected documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: Provided, That for such debt instruments with terms of less than one year, the documentary stamp tax to be collected shall be of proportional amount in accordance with the ratio of its terms in number of days to three hundred sixty days (365): Provided, further, That only one documentary stamp tax

shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term '**debt instrument**' shall mean debt instrument representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

REVENUE MEMORANDUM CIRCULAR
NO. 48-2011

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

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 of 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:

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:

'**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 Deposit 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 instrument drawing interest, orders for the payment of 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

> 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 to 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, applicant 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 taxes under Section 180, while a deed of mortgage shall be taxes 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, or 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.
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> xxx xxx xxx
>
> Accordingly, Assessments Notices Nos. SP-DST-96-00020 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.
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> xxx xxx xxx

Thus, from the provisions aforequoted, petitioner's claim cannot hold water.

6. Also, contrary to petitioner's assertion, there is no retroactive application of the Supreme Court Decision in the *Filinvest* case.

7. The basis of the deficiency DST assessment is Section 179 of the Tax Code which is the law on the imposition of DST on all debt instrument for the year under audit. The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* is an affirmation of respondent's position that intercompany loans and advances covered by mere office memo, instructional letter and/or cash and journal vouchers qualify as loan agreements that are subject to DST. Hence, there is no retroactive effect in the instant case.

8. In the case of *Diageo Philippines, Inc. vs. CIR,* the Honorable Court of Tax Appeals En Banc ruled, to wit:

> 'In refuting the application of *Aichi* Case in the instant petition, **petitioner argues that the rule enunciated in the *Aichi* Case should not be applied retroactively as its**

> **<u>vested rights would be unduly impaired. Petitioner asseverates that at the time it filed the instant Petition for Review, the controlling jurisprudence insofar as the prescriptive period for filing a judicial claim for refund under *Section 112(A) of the NIRC of 1997, as amended,* was that both the administrative and judicial claims for input VAT refund must</u> be filed within two years reckoned from the filing of the VAT return citing *<u>Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue</u>*** (the "*Atlas* Case").
>
> Petitioner's argument is misplaced.
>
> **<u>It is axiomatic that when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a stature constitutes part of that law as of the date of its original passage. It merely casts light upon the contemporaneous legislative intent of that law</u>**.

In the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue,* the Supreme Court elucidated the foregoing principle in this wise:

> 'Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application. **<u>When this Court decides a case, it does not pass a new law, but merely interprets pre-existing one</u>**. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister,* this interpretation became part of the law from the moment it became effective. **<u>It is elementary</u>**

> **that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**'
>
> Thus, contrary to petitioner's assertion, the Supreme Court's interpretation of *Section 112(C) of the NIRC of 1997, as amended,* in **the *Aichi* Case may be applied to the instant case without violating the rule against retroactive application as such interpretation constitutes part of the law as of the date of its original passage**. (Emphasis and underscoring supplied)

9. Moreover, respondent's right to assess petitioner has not yet prescribed. It must be recalled that petitioner executed Waivers of the Statute of Limitations on 7 February 2014 and 7 May 2014 which was duly accepted and signed on 13 February 2014 and 16 may *(sic)* 2014, respectively, and that copies were duly received by petitioner's accountant on 24 February 2014 and 30 May 2014. Hence, respondent's right to assess petitioner has not yet prescribed.

10. Thus, petitioner's payment is considered as full settlement of the basic deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made 'under protest."

11. Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997), categorically provides:

> **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 to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully 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. (emphasis supplied)

12. It is thus clear from the above-cited provision of law that the amount petitioner paid for the deficiency DST assessment was not illegally or erroneously collected by respondent. Hence, the said amount cannot be the proper subject of a claim for refund.

14. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998**).

15. Partaking of the nature of exemptions, claims for refund are strictly construed against the claimant and

cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

16. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211).*"

Thereafter, a Notice of Pre-Trial Conference[18] was issued by the Court on September 2, 2016, setting the case for pre-trial conference on September 29, 2016. Accordingly, respondent's Pre-Trial Brief[19] was filed on September 22, 2016, while petitioner's Pre-Trial Brief[20] was filed on September 26, 2016.

Pre-Trial ensued. The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[21] on December 2, 2016. Thereafter, a Pre-Trial Order[22] was issued on December 27, 2016 and the pre-trial was deemed terminated.

During trial, petitioner presented Mr. Virgilio S. De Guzman[23] as its witness and subsequently filed its Formal Offer of Evidence[24] on February 15, 2017. In the Resolution[25] dated March 9, 2017, the Court admitted Exhibits "P-1", "P-2", "P-2-a", "P-3", "P-3-a", "P-3-b", "P-4", "P-4-a", "P-4-b", "P-5", "P-5-a", "P-6", "P-6-a", "P-7", "P-7-a", "P-8", "P-9", "P-9-a", "P-10", and "P-10-a".

[18] Docket, pp. 138-139.
[19] Ibid., pp. 262-265.
[20] Id., pp. 272-284.
[21] Id., pp. 303-313.
[22] Id., pp. 316-320.
[23] Minutes of the Hearing dated January 23, 2017, Id., p. 326.
[24] Id., pp. 336-348.
[25] Id, pp. 358-359.

On the other hand, respondent manifested that the case has no report of investigation, and that he has no witness to present.[26]

The case was deemed submitted for decision[27] on July 5, 2017, considering respondent's Memorandum[28] filed on June 14, 2017 and Memorandum for Petitioner[29] filed on June 28, 2017.

The issue[30] in this case is whether or not petitioner is entitled to a refund in the amount of ₱109,943,523.84 that it paid for the alleged deficiency DST.

The Petition for Review is timely filed

The Court shall first determine petitioner's compliance with the procedures governing the filing of claims for refund under Sections 204 and 229 of the Tax Code, which, respectively, reads:

> "SECTION 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."

[26] Minutes of the Hearing dated May 15, 2017, Id., p. 362.
[27] Resolution dated July 5, 2017, Id., p. 431.
[28] Id., pp. 367-376.
[29] Id., pp. 378-427.
[30] Par. 3.00, Joint Stipulation, Id., p. 309.

> "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 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." *(Emphasis supplied)*

Based on the aforequoted provisions, both administrative and judicial claims must be filed within two (2) years from the date of payment of the tax. Section 204 (C) applies to administrative claims filed with the BIR, while Section 229 refers to judicial actions for the recovery of taxes erroneously or illegally collected and filed with the Court.[31]

Records show that petitioner paid the alleged deficiency DST on July 31, 2014.[32] Counting from the said date, it had until July 31, 2016 within which to file its claim for refund administratively and judicially.

Petitioner's administrative claim for refund was filed on June 28, 2016[33], while the instant Petition for Review was filed on July 28, 2016[34].

Hence, both administrative and judicial claims for refund were timely filed.

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[31] *PMFTC, Inc. v. Commissioner of Internal Revenue*, CTA Case No. 8691, July 27, 2015.
[32] Par. 1.07, Joint Stipulation, Docket, p. 306; Exhibits "P-4", "P-4-a", and "P-4-b".
[33] Par. 1.09, Joint Stipulation, Ibid, p. 307.
[34] Id., p. 10.

The decision in the *Filinvest* case can be given retroactive application

Proceeding now to the issue on whether petitioner is entitled to its claim, petitioner argues that the *Filinvest* case promulgated on July 19, 2011, as well as RMC No. 48-2011 issued on October 6, 2011, may not be applied on advances it received/extended prior to July 19, 2011 without violating the principle on non-retroactivity of laws and rulings. Petitioner claims that it relied on the rule prevailing prior to the July 19, 2011 decision in the *Filinvest* case, that inter-company advances covered by inter-office memos are not loan agreements subject to DST.

Petitioner cites the Minute Resolution dated May 17, 2004 of the Supreme Court in G.R. No. 162185 entitled *Commissioner of Internal Revenue vs. APC Group, Inc.*, which affirmed the decision of the Court of Appeals in the case of *Commissioner of Internal Revenue vs. APC Group*[35], where the lower court ruled that advances extended to affiliates and not embodied in any formal document but evidenced merely by inter-office memos such as board resolutions and cash vouchers are not subject to DST. Petitioner argues that the Supreme Court effectively affirmed the doctrine enunciated by the Court of Appeals when it stated in the Resolution that "petitioner failed to show that a reversible error had been committed by the appellate court [Court of Appeals]."

On the other hand, respondent argues that there is no retroactive application of the *Filinvest* decision since it is an affirmation of respondent's position that intercompany loans and advances covered by office memo, instructional letters and/or cash and journal vouchers qualify as loan agreements that are subject to DST.

Petitioner's arguments are bereft of merit. The *Filinvest* case and RMC 48-2011 may be applied prospectively.

In the similar case of *San Miguel Corporation vs. Commissioner of Internal Revenue*[36], this Court ruled that the interpretation of

[35] G.R. SP No. 69869, November 29, 2002.
[36] CTA Case No. 9007, April 19, 2017.

Section 180 of the Tax Code in the *Filinvest* case is deemed constituted as part of the Tax Code as of the date of its enactment, *viz*:

> "It must be stressed that the interpretation placed upon a law by the Supreme Court constitutes a part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*, as follows:
>
>> '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. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.'
>
> In the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, this Court stated that the Supreme Court's interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the *Filinvest* case constituted as part of the NIRC as of December 23, 1994, since said section was already inserted in the NIRC through the enactment of Republic Act (RA) No. 7660, to wit:
>
>> 'In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word 'loan agreements' as being subject to DST, in that it includes *'instructional letters as well as the journal and cash vouchers evidencing the advances of* [Filinvest] *extended to its*

> *affiliates.'* Said Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in the Republic Act (RA) No. 8424, otherwise known as the 'Tax Reform Act of 1997'; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.*, December 23, 1994, up to the present time.'

Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the *Filinvest* case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present time, the same may therefore be applied to this case without violating the principle on non-retroactivity of laws and rulings.

Moreover, it is worthy to note that prospective application of decisions applies only in cases where an old doctrine of the Supreme Court is overruled by a subsequent decision which adopts a new doctrine. In such situation, the new doctrine must be applied prospectively. In the present case, however, there is no previous doctrine that is overruled by the doctrine in the *Filinvest* case.

In the case of *The People of the Philippines vs. Jose Jabinal y Carmen*, the Supreme Court ruled that prospective effect applies only to decisions enunciating new doctrines.

Considering that RMC No. 48-2011 merely implements the doctrine laid down in the *Filinvest* case, the same may also be applied to this case.

Likewise, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, the Supreme Court ruled that BIR Ruling and Revenue Regulation issued even after the transaction took place are still applicable because they are issuances interpreting the same rule imposing a DST, thus:

> 'The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer: xxx'" (Underscoring supplied)

DST may be imposed on the advances based on a Note to the AFS

Petitioner contends that while the documents subject of the *Filinvest* case were instructional letters and journal and cash vouchers, in the present case, the BIR merely relied on Note 7 of petitioner's 2011 AFS. It argues that while there may have been transactions in the form of advances, these transactions were not manifested through the execution of a debt instrument as required by Section 179 of the Tax Code.

Petitioner's argument is untenable. In the afore-quoted case, this Court held that DST may be imposed on the advances on the basis of a mere Note appearing in the AFS, as follows:

> "DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. 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. <u>The DST is actually an excise tax, because it is imposed on the transaction rather than on the document. Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document. In other words, DST may be imposed even in the absence of a debt instrument, as long as the transactions are clearly established.</u>
>
> Besides, Section 6 of Revenue Regulations No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, thus:
>
>> 'SECTION 6. *Stamp Tax on all Loan Agreements*. – All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>>
>> In cases where no formal 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.'
>
> Thus, petitioner is liable to pay the subject DST on the basis of the Note appearing in its 2010 Audited Financial Statement."

Based on the foregoing, it is clear that respondent is correct in applying the rule enunciated in the *Filinvest* case to determine petitioner's deficiency DST.

Respondent's right to assess has not prescribed

Petitioner claims that the right of the government to assess petitioner for deficiency DST on advances made before July 2011 has already prescribed. Petitioner avers that, assuming that the BIR is correct in its assessment and computation, respondent only had until July 6, 2014 within which to issue an assessment on the advances made prior to July 2011. Hence, petitioner argues that the PAN which it received on July 21, 2014 is already beyond the period prescribed by law for the assessment and collection of taxes.

On the other hand, respondent alleges that petitioner executed Waivers of the Statute of Limitations on February 7 and May 7, 2014, which were duly accepted and signed on February 13 and May 16, 2014, respectively, and that copies were received by petitioner's accountant on February 24 and May 30, 2014. Hence, respondent asserts that its right to assess has not yet prescribed.

The Court notes that although the waivers are attached to the BIR Records of this case, respondent neglected to offer these waivers as evidence.

The Rules of Court is clear that evidence which has not been formally offered shall not be considered.[37] In the case of *Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs*[38], the Supreme Court ruled that no evidentiary value can be given to any documentary

[37] Sec. 34, Rule 132 of the Rules of Court.
[38] G.R. No. 195876, December 5, 2016.

evidence merely attached to the Bureau of Customs (BOC) Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA, *viz:*

> "Time and again, this Court has consistently declared that cases filed before the CTA are litigated *de novo*, party-litigants must prove *every minute aspect* of their cases. Section 8 of R.A. No. 1125, as amended by R.A. No. 9282, categorically described the CTA as a court of record. <u>Indubitably, no evidentiary value can be given to any documentary evidence merely attached to the BOC Records, as the rules on documentary evidence require that such documents must be formally offered before the CTA.</u> xxx
>
> xxx xxx xxx
>
> As a matter of fact, even if the aforesaid documentary evidence was included as part of the BOC Records submitted before the CTA in compliance with a lawful order of the court, this does not permit the trial court to consider the same in view of the fact that the Rules prohibit it. The reasoning forwarded by the CTA in Division in its Resolution dated 24 February 2009, that the apparent purpose of transmittal of the records is to enable it to appreciate and properly review the proceedings and findings before an administrative agency, is misplaced. <u>Unless any of the party formally offered in evidence said Memorandum, and accordingly, admitted by the Court *a quo*, it cannot be considered as among the legal and factual bases in resolving the controversy presented before it.</u>" *(Citations omitted and underscoring supplied)*

Similarly, documents which are merely attached to the BIR Records cannot be used in deciding the merits of the case without having been formally offered before the Court.

Nonetheless, the Court finds that respondent's right to assess has not yet prescribed. Section 222 of the Tax Code provides the exceptions to the three-year prescriptive period espoused under Section 203, as follows:

"SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –

(a) In the case of a false or fraudulent return with intent to evade tax or of failure to file a return, the tax may be assessed, or a proceeding in court for the collection of such tax may be filed without assessment, at any time within ten (10) years after the discovery of the falsity, fraud or omission: *Provided,* That in a fraud assessment which has become final and executory, the fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof. "

The above-quoted provision 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.

In the case at bar, since the record is bereft of any evidence that petitioner filed a DST return for the subject period or for the subject transactions, the ten-year prescriptive period applies. Clearly therefore, the assessment has not yet prescribed when respondent issued the PAN.

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

Lastly, petitioner asseverates that assuming that it is liable for deficiency DST, its liability is only for the basic tax of ₱59,324,528.73, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR rulings at the time the advances were made.

The Court finds merit in petitioner's contention.

In the case of *Trustmark Holdings Corporation (Trustmark) vs. Commissioner of Internal Revenue*[39], where Trustmark likewise raised BIR rulings and court decisions it relied upon in arguing against the imposition of interest and surcharge, this Court considered Trustmark's good faith in deciding to delete the imposition of the same, to wit:

[39] CTA Case No. 9072, May 19, 2017.

"From the foregoing rulings of the BIR and CTA/CA issued prior to *Filinvest* case promulgated on July 19, 2011, the taxpayer cannot be faulted if it relied on these rulings and believed in good faith that intercompany advances covered by board resolution, office memo, instructional letter and/or cash and journal vouchers or similar documents are not subject to DST.

xxx xxx xxx

In *Michel J. Lhuillier Pawnshop, Inc. vs. CIR*, the Supreme Court held that:

> 'Nevertheless, all is not lost for petitioner. **The settled rule is 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 law, are sufficient justification to delete the imposition of surcharges and interest.** In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
>
> > We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.

xxx xxx xxx

> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. **We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST**.' (Emphasis supplied)

Applying the foregoing, the Court is convinced that petitioner acted in good faith when it believed that intercompany advances are not subject to DST prior to the 2011 *Filinvest* case. After all, it was based on numerous rulings of the BIR that intercompany advances are not subject to DST. Moreover, the CA and CTA, the specialized body handling tax cases, also had similar rulings. Hence, petitioner cannot be faulted if it relied in good faith on these rulings. "

Based on the above-cited case, and considering petitioner's good faith in relying on previous court decisions and BIR rulings and its payment of the deficiency DST albeit under protest, the deletion of the imposition of surcharge and interest in the instant case is also proper.

As to the compromise penalty, the payment under protest made by petitioner signifies that there was no agreement reached between the parties, hence, the same must not be imposed as well.[40]

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 ₱50,618,995.10, representing the following:

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[40] *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016, citing *De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

Penalties erroneously paid by petitioner	Amount
Interest	₱ 35,590,862.92
Surcharge	14,831,132.18
Compromise Penalty	197,000.00
Total	**₱ 50,618,995.10**

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice