REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

****

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	**CTA EB No. 2286** (CTA Case No. 9637)
	Present:
- versus -	**DEL ROSARIO,** P.J., **CASTAÑEDA, JR.,** **UY,** **RINGPIS-LIBAN,** **MANAHAN,** **BACORRO-VILLENA,** **MODESTO-SAN PEDRO,** *and* **REYES-FAJARDO,** JJ.
EAGLE II HOLDCO, INC., Respondent.	***Promulgated:*** NOV 10 2021

x - 2:18 p.m. x

DECISION

UY, J.:

This is a *Petition for Review*[1] filed on July 17, 2020 by petitioner, Commissioner of Internal Revenue (CIR) against respondent, Eagle II Holdco, Inc., praying that the *Decision* promulgated on September 10, 2019, as well as, the *Amended Decision* promulgated on January 2, 2020, and the *Resolution* promulgated on June 10, 2020, in CTA Case No. 9637, entitled *"Eagle II Holdco Inc., petitioner v. Commissioner of Internal Revenue, respondent",* be reversed and set aside, and that another one be rendered denying the claim for refund filed by Eagle II Holdco Inc. in CTA Case No. 9637. The dispositive portions thereof, respectively read as follows:

[1] EB Docket, pp. 6 to 15.

Decision **dated September 10, 2019:**

"**WHEREFORE,** in light of the foregoing considerations the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **P68,576,280.31**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge 50%	P19,724,463.50
Interest	48,851,816.81
TOTAL	**P68 ,576,280.31**

SO ORDERED."

Amended Decision **dated January 2, 2020:**

"**WHEREFORE,** premises considered, petitioner's Motion for Partial Reconsideration *(of the Decision dated 10 September 2019)* is **GRANTED,** while respondent's Motion for Reconsideration is **DENIED** for lack of merit. Accordingly, the dispositive portion of the Decision dated September 10, 2019, is amended to read as follows:

'**WHEREFORE,** premises considered, the instant Petition for Review is **GRANTED**. Accordingly, the respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱108,025,207.31**, inclusive of fifty (50%) surcharge and interest, representing erroneously or illegally collected deficiency documentary stamp tax.

SO ORDERED.'

SO ORDERED."

***<u>Resolution</u>* <u>dated June 10, 2020:</u>**

> "**WHEREFORE**, premises considered, respondent's Motion for Reconsideration and/or New Trial is **DENIED** for lack of merit.
>
> **SO ORDERED**."

THE FACTS

Petitioner is the duly appointed CIR tasked to implement the National Internal Revenue Code (NIRC) including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes, as provided by law. Petitioner is being represented in this case by the legal officers of the Legal Division, Revenue Region 8B, Makati City, with office address at the 2nd Floor Legal Division, BIR Building, No. 313 Gil Puyat Ave., Makati City.

Respondent is a corporation duly organized and existing under the laws of the Republic of the Philippines, with registered address at Manila Bay Resort, Temporary Facilities Office, Atlantic Drive, Asiaworld City Boulevard 2000, Parañaque City, 1703, Metro Manila, Philippines.

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation*[2] *(Filinvest)* holding, among others, that instructional letters and journal and cash vouchers evidencing advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes (DST) may be imposed.

On October 6, 2011, the Bureau of Internal Revenue (BIR) issued Revenue Memorandum Circular No. 48-2011, circularizing to all concerned 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 audit cases "to assess deficiency DST, if warranted, on these kinds of transactions".

---

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

On December 29, 2014, respondent received *Formal Assessment Notice* (FAN) with Assessment Notice No. DS-ELA55300-12-14-1238 and Details of Discrepancies from the BIR assessing respondent of deficiency DST, interest and fifty percent (50%) surcharge amounting to ₱99,581,993.21 on advances from affiliates and related parties pursuant to Section 179 of the NIRC, as amended, as established in the *Filinvest* case.

Respondent protested the above assessment in a letter protest to the FAN dated January 27, 2015.

While the letter protest was pending, respondent, without admitting liability, voluntarily paid the deficiency DST including the interest and fifty percent (50%) surcharge. Respondent made a total of six installment payments of ₱10,000,000.00; ₱5,000,000.00; ₱15,000,000.00; ₱25,000,000.00; ₱25,000,000.00; and ₱28,025,207.31 for the alleged deficiency assessment on December 29, 2014; March 20, 2015; May 22, 2015; May 29, 2015; June 30, 2015; and July 31, 2015, respectively.

On May 19, 2017, respondent filed an administrative claim for refund or tax credit addressed to Revenue District Officer Federico Q. Pilarca (Pilarca) of the Revenue District Office (RDO) No. 52 of the BIR, seeking recovery of one installment payment for deficiency DST, interest and fifty percent (50%) surcharge paid on May 22, 2015.

On July 14, 2017, respondent submitted a letter to Revenue District Officer Pilarca, requesting the withdrawal of its administrative claim for refund for the reason that it will be incorporated in one administrative claim.

On July 27, 2017, respondent filed its administrative claim for refund or tax credit with RDO No. 52 of the BIR, seeking the recovery of the total amount of ₱108,025,207.31, representing deficiency DST, interest, and fifty percent (50%) surcharge paid in six installments, the last and final installment of which was made on July 31, 2015.

Due to the failure of petitioner to resolve the administrative claim for refund, respondent filed a *Petition for Review* on July 31, 2017 docketed as CTA Case No. 9637 entitled *"Eagle II Holdco, Inc. v. Commissioner of Internal Revenue"*. The case was initially raffled to the First Division of this Court.

On October 2, 2017, petitioner filed his *Answer* in CTA Case No. 9637 interposing, among others, the following special and affirmative defenses, *to wit*:

> (a) That respondent is liable to pay deficiency DST on transactions or advances made in its favor from related companies covering taxable years 2008 to 2011, in consonance with the *Filinvest* case;
>
> (b) That the petition must be dismissed based on Section 1 (g), Rule 16 of the Rules of Court because respondent is not entitled to the claim for refund and petitioner did not commit any act or omission constituting a breach of the obligation for which respondent may maintain an action for recovery of damages;
>
> (c) That the imposition of deficiency interest under Section 249 (B) of the NIRC, as amended, applies to all internal revenue taxes imposed by the NIRC;
>
> (d) That the penalty of fifty percent (50%) has been imposed pursuant to Section 248 (A) of the NIRC, as amended, for willful neglect on the part of respondent to file return and pay the tax due thereon; and
>
> (e) That claims for refund are construed strictly against respondent since the same partakes the nature of exemption from taxation.

After the pre-trial conference held on February 1, 2018, the parties filed their *Joint Stipulation of Facts and Issues* on February 13, 2018. Thereafter, the First Division issued a *Pre-Trial Order* on March 14, 2018.

To prove its case, respondent presented as witnesses, Atty. Jose Lis C. Leagogo, respondent's former President and counsel in the instant case, and Minerva A. Tablan, Senior Accountant of Tiger Resort Leisure & Entertainment, Inc., which has an existing service agreement with respondent. On June 18, 2018, respondent filed its *Formal Offer of Evidence*.

Meanwhile, in the *Order* dated September 28, 2018, CTA Case No. 9637 was transferred to the Second Division (Court in Division) pursuant to CTA Administrative Circular No. 02-2018.[3]

[3] *"Reorganizing the Three Divisions of the Court"* issued on September 18, 2018.

Thereafter, the Second Division admitted all of respondent's evidence on October 8, 2018.

For his part, petitioner, through counsel, manifested that he will no longer be presenting any evidence/witnesses.

CTA Case No. 9637 was submitted for decision on December 4, 2018 after the filing of petitioner's *Memorandum* on October 25, 2018, and respondent's *Memorandum* on November 14, 2018.

On September 10, 2019, the Court in Division rendered the assailed *Decision*[4] partially granting the *Petition for Review* in CTA Case No. 9637, ordering petitioner to refund or issue a tax credit certificate in the amount of ₱68,576,280.31.

Aggrieved, respondent filed a *Motion for Partial Reconsideration (of the Decision dated 10 September 2019)*[5] on September 26, 2019, without petitioner's comment;[6] while petitioner filed a *Motion for Reconsideration*[7] on September 26, 2019.

On January 2, 2020, the Court in Division rendered the *Amended Decision*[8] granting respondent's *Motion for Partial Reconsideration (of the Decision dated 10 September 2019)* and denying petitioner's *Motion for Reconsideration*. The *Decision* dated September 10, 2019 was amended, whereby the *Petition for Review* in CTA Case No. 9637 was granted, and petitioner was ordered to refund or issue a tax credit certificate in the amount of ₱108,025,207.31.

On January 20, 2020, petitioner filed a *Motion for Reconsideration and/or New Trial*.[9] In the assailed *Resolution* promulgated on June 10, 2020,[10] the Court in Division denied petitioner's *Motion for Reconsideration and/or New Trial*.

Thus, on July 2, 2020, petitioner filed before the Court *En Banc* a *Motion for Extension of Time to File Petition for Review*,[11] praying

---

[4] Division Docket – Vol. II (CTA Case No. 9637), pp. 899 to 920
[5] Division Docket – Vol. II (CTA Case No. 9637), pp. 928 to 935.
[6] *Records Verification Report* dated November 12, 2019, Division Docket – Vol. II (CTA Case No. 9637), p. 963.
[7] Division Docket – Vol. II (CTA Case No. 9637), pp. 943 to 946.
[8] Division Docket – Vol. II (CTA Case No. 9637), pp. 965 to 972.
[9] Division Docket – Vol. II (CTA Case No. 9637), pp. 973 to 980.
[10] Division Docket – Vol. II (CTA Case No. 9637), pp. 1005 to 1011.
[11] EB Docket, pp. 1 to 3.

for an additional period of fifteen (15) days from July 2, 2020, or until July 17, 2020, within which to file his *Petition for Review*. The Court *En Banc* granted the same on July 13, 2020.[12] On July 17, 2020, petitioner filed his *Petition for Review*[13] before the Court *En Banc*, docketed as CTA EB No. 2286.

In the *Resolution*[14] dated September 8, 2020, the Court *En Banc* ordered respondent to file its *Comment* to the *Petition for Review.*

On October 8, 2020, respondent filed a *Motion for Additional Time (to File Comment to the Petition for Review dated 16 July 2020)*,[15] praying for an extension of time until October 20, 2020, within which to file its *Comment*. The same was granted by the Court *En Banc* on October 12, 2020.[16] On October 20, 2020, respondent filed its *Comment (to the Petition for Review dated 16 July 2020).*[17] Thereafter, the Court *En Banc* submitted the instant case for decision on November 24, 2020.[18]

Hence, this *Decision*.

ISSUES

Petitioner raises the following issues for resolution of the Court *En Banc*, *to wit*:

a) Whether the Preliminary Assessment Notice (PAN) with attached Details of Discrepancies was issued by petitioner and received by respondent.

b) Whether the imposition of surcharge and interest is proper.

Petitioner's arguments:

Petitioner argues that respondent failed to raise the issue or question the non-issuance and receipt of PAN prior to the issuance of

---

[12] *Minute Resolution* dated July 13, 2020, EB Docket, p. 5.
[13] EB Docket, pp. 6 to 15.
[14] EB Docket, pp. 78 to 79.
[15] EB Docket, pp. 80 to 82.
[16] EB Docket, p.83.
[17] EB Docket, pp. 84 to 107.
[18] *Resolution* dated November 24, 2020, EB Docket, pp. 109 to 110.

FAN in the administrative level or in its *Petition for Review* and *Pre-Trial Brief* in CTA Case No. 9637. Thus, the failure to raise the same shows that there is an implied admission on respondent's part that it received the PAN.

According to petitioner, granting respondent's claim for refund based on an undisputed issue would not only counter the basic principle of fair play but would also sanction a procedure whereby the Court in Division would determine and decide for the first time a question not raised at the administrative forum. Had it been raised by respondent in the *Petition for Review*, in the *Pre-Trial Brief*, as well as in the *Joint Stipulation of Facts and Issues* as part of the issues for the consideration of the Court in Division, petitioner will definitely present the same for stipulation to the respondent or as evidence before the Court in Division.

Petitioner further argues that records clearly reveal that a PAN with attached Details of Discrepancies was issued on November 25, 2014, and received by respondent on November 26, 2014, as mentioned and admitted on the second paragraph, page two (2) of the Letter Protest against the FAN. Petitioner asserts that a copy of the PAN with Details of Discrepancies was attached to the Letter Protest against the FAN, marked as Annex "C" of Exhibit "P-3", which was admitted by the Court in Division as part of respondent's evidence. Thus, the PAN with attached Details of Discrepancies was issued and received by respondent.

Allegedly, respondent cannot claim good faith for failure to file the required DST return based on its honest belief that the inter-company advances are not subject to DST because of this Court's and the Court of Appeals' decisions.

Lastly, petitioner contends that respondent could have at least filed the corresponding DST return without payment of corresponding DST instead of not filing and not paying the tax due which made it liable for surcharge and interest.

Respondent's counter-arguments:

Respondent counter-argues that the Court's power to look into issues not raised or taken up during the proceedings was affirmed in the case of *Commissioner of Internal Revenue v. Lancaster*

Philippines, Inc.[19] Thus, no error may be ascribed to the Court in Division for addressing the fact of non-issuance of the PAN even if the same was not raised by the parties at the administrative level or even during trial.

Moreover, respondent maintains that it was incumbent upon petitioner to prove that all the elements of a valid assessment were complied with, including the issuance of the PAN. Respondent asserts that petitioner categorically stated that it would no longer be presenting any evidence/witnesses; thus, petitioner voluntarily waived its right to present any evidence/witnesses to prove his case.

Respondent also points out that Exhibit "P-3" was offered for the specific purpose of proving that it protested the assessment through a Letter Protest. Thus, Exhibit "P-3", including the copy of the PAN attached thereto, can only be admitted for the purpose for which it was offered – that respondent protested the assessment – and not for any other purpose. Moreover, petitioner did not adopt Exhibit "P-3" as his exhibit and did not offer it to prove the valid issuance of the PAN.

Respondent likewise asserts that "willful neglect to file the return", which was the basis for the fifty percent (50%) surcharge imposed, was not proven by petitioner. Respondent argues that it did not file DST returns and did not pay DST on the advances from related companies because it believed, in good faith, that there was no liability to file such returns or pay such taxes at the time the advances were made.

THE COURT *EN BANC*'S RULING

The instant *Petition for Review* is unmeritorious.

The Court has the authority to rule upon any issue related to the case even if not raised by the parties.

According to petitioner, respondent failed to timely raise the defect on the issuance of PAN, arguing that respondent's *Petition for*

[19] G.R. No. 183408, July 12, 2017.

Review and *Pre-Trial Brief* in CTA Case No. 9637 are bereft of any statement alleging that petitioner failed to issue the PAN or that respondent did not receive the PAN prior to the issuance of the FAN. Petitioner asserts that when respondent filed its *Petition for Review* without raising the issue or questioning the non-issuance of PAN, there is an implied admission on respondent's part that it received the PAN.

Allegedly, granting the claim for refund by respondent based on the undisputed issue would sanction a procedure whereby the Court in Division would determine and decide for the first time a question not raised at the administrative forum.

We do not agree.

On the issue as to whether or not the Court in Division can determine and decide for the first time a question not raised at the administrative forum, the provisions of Section 1, Rule 14 of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[20] are instructive and We quote:

> "SECTION 1. *Rendition of judgment.* — x x x
>
> **In deciding the case, the Court may not limit itself to the issues stipulated by the parties but may also rule upon related issues necessary to achieve an orderly disposition of the case**." (*Emphasis supplied*)

Clearly, from the foregoing, this Court, whether sitting in Division *or En Banc*, is not bound by the issues specifically raised by the parties but may also rule on related issues not raised that are necessary to achieve an orderly disposition of the case.

Thus, the Court *En Banc* finds no reversible error committed by the Court in Division in considering the matter on the non-issuance of the PAN. In fact, the Court *En Banc* also finds it necessary to look into another related issue raised by respondent to achieve a thorough and orderly disposition of the instant case, *to wit*:

> "Whether or not the revenue officers who examined respondent exceeded their authority in the Letter of Authority (LOA)."

---

[20] A.M. No. 05-11-07-CTA, issued on November 22, 2005.

This issue must likewise be resolved by the Court *En Banc* to determine the validity of the subject tax assessment.

The CIR did not exceed his authority when he issued the assessment.

Respondent argues that petitioner exceeded his authority in the issuance of assessment against respondent.

Respondent points out that while LOA No. 047-2014-00000096 (subject LOA) authorized Revenue Officer Marcvermon Vileo Dela Cruz (RO Dela Cruz) and Group Supervisor Medina Lopez (GS Lopez) to examine respondent's book of accounts and other accounting records for the period January 1, 2012 to December 31, 2012, respondent was assessed for advances made in its favor from related companies covering taxable years 2008 to 2011. Thus, according to respondent, the assessment is void.[21]

Moreover, respondent invokes the ruling of the Supreme Court in *Commissioner of Internal Revenue v. Lancaster Philippines, Inc.*,[22] wherein the Supreme Court reiterated that since an audit is limited to the taxable year specified in the LOA, an assessment covering taxable year/s outside of the period specified in the LOA is void.

In the instant case, although respondent has manifested[23] that a copy of the subject LOA is attached as Annex "A"[24] to its Letter re: Application for Refund/Tax Credit of Deficiency Documentary Stamp Tax Paid in the Amount of Php15,000,000.00 Inclusive of Interest and Surcharge for Taxable Years 2008-2011 dated May 19, 2017,[25] We are unable to uphold respondent's assertion that the revenue officers went beyond the scope of their authority in assessing respondent for transactions made during taxable years not covered by the subject LOA. While the subject LOA was attached as Annex "A" to respondent's administrative claim for refund, respondent, however, failed to formally offer the same as part of its evidence.

---

[21] Respondent's *Manifestation* dated March 18, 2021, EB Docket, pp. 120 to 125.
[22] G.R. No. 183408, July 12, 2017.
[23] Paragraph 4 of respondent's *Manifestation*, EB Docket, p. 120.
[24] Division Docket – Vol. I (CTA Case No. 9637), p. 416.
[25] Exhibit "P-12", Division Docket – Vol. I (CTA Case No. 9637), pp. 401 to 415.

Section 34, Rule 132 of the Revised Rules on Evidence is clear that evidence must be formally offered for it to be considered by the courts, *to wit*:

> "SEC. 34. *Offer of evidence.* — The court shall consider no evidence which has not been formally offered. The purpose for which the evidence is offered must be specified."

Formal offer was explained in *Federico Sabay v. People of the Philippines,*[26] thus:

> "Section 34 of Rule 132 of our Rules on Evidence provides that **the court cannot consider any evidence that has not been formally offered**. Formal offer means that the offering party shall inform the court of the purpose of introducing its exhibits into evidence, to assist the court in ruling on their admissibility in case the adverse party objects.[27] **Without a formal offer of evidence, courts cannot take notice of this evidence even if this has been previously marked and identified**.
>
> This rule however, admits of an exception. The Court, in the appropriate cases, has relaxed the formal-offer rule and allowed evidence not formally offered to be admitted.
>
> The cases of *People v. Napat-a,*[28] *People v. Mate,*[29] and *The Heirs of Romana Saves, et al. v. The Heirs of Escolastico Saves, et al.,*[30] to cite a few, enumerated the **requirements so that evidence, not previously offered, can be admitted, namely: first, the evidence must have been duly identified by testimony duly recorded and, second, the evidence must have been incorporated in the records of the case.**" *(Emphasis supplied)*

The rule is that a document, or any article for that matter, is not evidence when it is simply marked for identification; it must be formally offered and the opposing counsel given an opportunity to

---

[26] G.R. No. 192150, October 1, 2014.
[27] *Star Two (SPV-AMC), Inc. v. Ko*, G.R. No. 185454, March 23, 2011.
[28] 258-A Phil. 994 (1989).
[29] 191 Phil. 72 (1981).
[30] G.R. No. 152866, October 6, 2010, 632 SCRA 236.

object to it or cross-examine the witness called upon to prove or identify it.[31]

Thus, although respondent's Letter re: Application for Refund/Tax Credit of Deficiency Documentary Stamp Tax Paid in the Amount of Php15,000,000.00 Inclusive of Interest and Surcharge for Taxable Years 2008-2011 dated May 19, 2017 was formally offered and admitted by the Court in Division, We are constrained to disregard the attached subject LOA marked as Annex "A" thereof, for being a mere photocopy, and for respondent's failure to formally offer the same. At most, what can be considered by this Court is the existence of the subject LOA but not the contents thereof. Hence, the assessment cannot be invalidated on the ground that the CIR exceeded his authority when he issued the assessment.

Petitioner failed to prove that it issued the PAN prior to the FAN in violation of respondent's right to due process.

Petitioner argues that the PAN with attached Details of Discrepancies was issued and received by respondent.

According to petitioner, respondent alleged and admitted[32] in its Letter Protest against the FAN[33] that petitioner issued the PAN with attached Details of Discrepancies on November 24, 2014 and the same was received on November 26, 2014. Further, petitioner contends that the copy of the PAN with Details of Discrepancies was attached to the Letter Protest against the FAN, marked as Annex "C" of Exhibit "P-3", which was admitted by the Court in Division as part of respondent's evidence.

Petitioner's arguments are untenable.

Again, Section 34, Rule 132 of the Revised Rules on Evidence and the case of *Sabay*, both cited above, are clear that evidence must be formally offered for it to be considered by the courts.

---

[31] *Heirs of Serapio Mabborang, et al. v. Hermogenes Mabborang and Benjamin Mabborang*, G.R. No. 182805, April 22, 2015.
[32] Paragraph 3 of Exhibit "P-3", Division Docket – Vol. I (CTA Case No. 9637), p. 352.
[33] Exhibit "P-3", Division Docket – Vol. I (CTA Case No. 9637), pp. 351 to 367.

In this case, We agree with the findings of the Court in Division that the records of this case reveal that the PAN was not offered and admitted as an exhibit by both parties. Exhibit "P-3" cannot be used in favor of petitioner because petitioner did not adopt Exhibit "P-3" as his exhibit and did not also offer it as proof of valid issuance of the PAN. Notably, petitioner, during the trial of CTA Case No. 9637, manifested that he will no longer be presenting any evidence/witnesses.[34] Thus, although the PAN had been incorporated in the records of the case, petitioner did not identify the PAN by testimony duly recorded, which is the other requirement in order for evidence not previously offered to be admitted.

It bears stressing that evidence not formally offered during trial cannot be used for or against a party litigant. Neither may it be taken into account of appeal.[35]

Clearly, petitioner failed to present evidence to defend the validity of the assessment. A void assessment bears no valid fruit.[36]

While the invalidity of the assessment is sufficient to deny the instant *Petition for Review*, We find it necessary to discuss the remaining issue raised by petitioner with respect to interest and surcharge.

Respondent is not liable to pay interest and surcharge.

As regards to petitioner's argument on the imposition of surcharge and interest, We quote with approval the Court in Division's ruling in the *Decision* dated September 10, 2019, that respondent is not liable to pay interest and surcharge, to wit:

> "In *Commissioner of Internal Revenue vs. St. Luke's Medical Center Inc.*, the Supreme Court held 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.

---

[34] *Order* dated September 6, 2018, Division Docket – Vol. II (CTA Case No. 9637) pp. 854-855.
[35] *Spouses Renato S. Ong v. Court of Appeals*, G.R. No. 117103, January 21, 1999.
[36] *Commissioner of Internal Revenue v. Azucena T. Reyes, Azucena T. Reyes v. Commissioner of Internal Revenue*, G.R. Nos. 159694 and 163581, January 27, 2006.

An examination of petitioner's claim for refund shows that at the time the advances were made from 2008 to 2011, petitioner relied on prevailing court decisions to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of *Filinvest Development Corporation, et al. vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. Filinvest Development Corporation, et al.* 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.

Accordingly, petitioner's reliance on the said cases justifies the non-imposition of surcharge and interest."

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is hereby **DENIED** for lack of merit. Accordingly, the *Amended Decision* promulgated on January 2, 2020, and the *Resolution* promulgated on June 10, 2020 by the Second Division of this Court in CTA Case No. 9637 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

MARIAN IVY F. REYES-FAJARDO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice