REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SAN MIGUEL HOLDINGS CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9401

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, *and*
MANAHAN, *JJ.*

Promulgated:
SEP 03 2018 3:00 pm

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RESOLUTION

CASANOVA, *J.*:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated June 5, 2018**, filed on June 19, 2018, with respondent's **Opposition (Re: Motion for Reconsideration)**, filed on July 12, 2018; and

2. respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 June 2018)**, filed on June 21, 2018, with petitioner's **Opposition to Respondent's "Motion for Partial Reconsideration....." dated June 21, 2018**, filed on July 25, 2018.

The parties move for reconsideration of the Court's Decision dated June 5, 2018 (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 ₱50,618,995.10, representing the following:

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**."

Petitioner's Motion for Partial Reconsideration

In its motion, petitioner avers that the Decision of the Supreme Court in the case of *Co vs. Court of Appeals, et. al.,*[1] should be applied in this case, and not its decision in *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue (CIR)*[2], and the Decisions of this Court's First and Third Divisions in *Brewery Properties, Inc. vs. CIR*[3] and *San Miguel Corporation vs. CIR*[4], respectively.

Petitioner asserts that before the promulgation by the Supreme Court of its Decision in *CIR vs. Filinvest Development Corporation*,[5] the rule was that inter-Company advances covered by mere inter-office memos were not loan agreements subject to DST under the Tax Code, on which rule petitioner had relied. Such rule was embodied in the following: (a) Decision of the Court of Appeals (CA) in *CIR vs. APC Group, Inc.*[6]; (b) Decision of the Court of Tax Appeals

[1] G.R. No. 100776, October 28, 1993.
[2] G.R. No. 197525, June 4, 2014.
[3] CTA Case No. 8892, September 30, 2016.
[4] CTA Case No. 9007, April 19, 2017.
[5] G.R. No. 163653, July 19, 2011.
[6] CA-GR No. 69869, November 29, 2002.

(CTA) *En Banc* in *CIR vs. Belle Corporation*[7]; (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.*

Petitioner argues that the case of *Philacor Credit Corporation vs. CIR*[8] cannot apply to Revenue Memorandum Circular (RMC) No. 48-2011 because the said RMC did not "interpret the same rule," as prior to its issuance. Accordingly, the rule was different, to wit: that intercompany advances covered by mere inter-office memos were not loan agreements subject to DST under the Tax Code. Moreover, petitioner avers that RMC No. 48-2011 did not merely circularize the *Filinvest* Decision but enjoined all employees of the BIR engaged in the audit and review of cases to assess deficiency documentary stamp tax (DST), if warranted.

In its opposition, respondent states that this Court has already categorically ruled that the *Filinvest* case and RMC No. 48-2011 may be applied prospectively.

Petitioner's arguments are bereft of merit.

There is no conflict in the cases of *Co* and *Visayas* as respondent alleged. The two cases are analogous in its ruling that judicial decisions applying or interpreting the law form part of the legal system as of the date that law was originally passed, and it is only when a doctrine of the Court is overruled, and a different view adopted, that the new doctrine should be applied prospectively.

Co was reiterated in the case of *Columbia Pictures, Inc. vs. Court of Appeals*[9] 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.'

[7] CTA EB No. 147, October 13, 2006.
[8] G.R. No. 169899, February 6, 2013.
[9] G.R. No. 110318, August 28, 1996.

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. 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 interpretation legis vim obtinet*' - the interpretation placed upon the written law by a competent court has the force of law.... <u>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*</u>.... (Stress supplied).

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

> .... 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....'

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 ruling since the Court's construction merely establish 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, <u>subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted</u>, and more so when there is a reversal thereof, <u>the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.</u> 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." *(Underscoring supplied)*

In this case, however, there is no previous doctrine or ruling that was overruled by *Filinvest.* The BIR Ruling and cases cited by petitioner do not constitute binding precedent.

First, CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of the Supreme Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents.[10]

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.

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.[11] In the similar case of *Brewery Properties, Inc. vs. CIR*[12], 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

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[10] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013; *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113, October 8, 2013; *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, October 8, 2013.

[11] *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.

[12] CTA Case No. 8892 Resolution dated February 27, 2017.

> uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that **'[O]nly the decisions of this Honorable Court establish <u>jurisprudence or doctrines</u> in this jurisdiction.'** xxx.' *(Emphases and underscoring supplied)*

Thus, the 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, <u>*if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.*</u> 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."

The same case also ruled that RMC No. 48-2011 merely circularizes the *Filinvest* case, to wit:

> "In the same vein, there is no merit in petitioner's contention that RMC No. 48-2011 did not merely circularize the decision in the *Filinvest* case, so as to exclude the same to the ruling in *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, as cited in the assailed Decision. This is so because it is clearly apparent, upon a cursory reading of the said RMC, that it uses the term '*Circularization*' in its subject matter and it merely quotes the '*relevant excerpts*' from the *Filinvest* case. The fact that the said RMC No. 48-2011 enjoined all employees of the BIR engaged in the audit and review of cases '*to assess deficiency DST, if warranted, on these kinds of transactions*' is not an indication that it has made a specific ruling and has overruled or reversed a prior one, because the assessment of deficiency DST, if warranted, will be merely a necessary consequence of what has been ruled in the same *Filinvest* case, as quoted therein."

Petitioner further contends that the BIR did not base its DST assessment on any "credit/debit memo, advice or drawings by any form of check or withdrawal slip," contrary to Section 6 of Revenue Regulation (RR) No. 9-94, but on a mere Note to the 2011 Audited Financial Statements of petitioner. Petitioner posits that Section 179 of the Tax Code requires a debt instrument, and that the form of the document is material for the imposition of DST in view of the specific definition of "debt instruments" provided by the said section. Petitioner also claims that the case of *Philippine Home Assurance Corporation, et al. vs. Court of Appeals*[13] requires that the transaction is evidenced through the execution of specific instruments.

On this matter, respondent explains that, based on petitioner's Audited Financial Statements, the total advances from SMC not subjected to DST amounted to ₱11,237,722,804.80 and, since petitioner was not able to show proof of DST payment, it was assessed pursuant to Section 179 of the Tax Code and RMC No. 48-2011.

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

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[13] G.R. No. 119446, January 21, 1999.

"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."

The ruling in *Philippine Home Assurance* cannot be applied to the present case on the ground that the issue raised therein is different. Petitioners therein contended that since premiums on the subject life and non-life insurance policies were not paid, the same are considered as never to have taken effect, and therefore, no DST were due thereon. The Supreme Court then ruled that DST must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. The fact that the policies have not become effective for non-payment of premiums cannot affect petitioners' liability for payment of DST..

Petitioner also argues that respondent's right to assess has prescribed since the exception in Section 222 of the Tax Code does not apply in the present case. Petitioner avers that what is applicable instead is Section 203 of the Tax Code in view of the admission of respondent in the Preliminary Assessment Notice that the alleged deficiency DST on the advances of petitioner made prior to July 2011 was reckoned by the BIR, at the latest, from July 6, 2011.

As elucidated by this Court in the assailed Decision, the ten-year prescriptive period applies because no DST return was filed by petitioner, thus:

> "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."

In view of all the foregoing, the Court finds petitioner's motion for partial reconsideration bereft of merit.

Respondent's Motion for Partial Reconsideration

Respondent, in his motion, argues that petitioner cannot simply invoke good faith in order to escape liability from deficiency interest. According to respondent, Section 247(a) in relation to Section 249(B) and (C) of the Tax Code authorizes the imposition of deficiency and delinquency interest on all taxes under the Tax Code and does not admit of an exemption. Respondent avers that in the case of *Filinvest,* the Supreme Court affirmed the imposition of surcharge, deficiency and delinquency interest and even compromise penalties imposed on the deficiency assessment for DST despite *Filinvest's* allegation that it relied on a previous BIR ruling that the subject transaction is not subject to DST. Respondent also contends that the imposition of compromise penalties is valid pursuant to Revenue Memorandum Order (RMO) No. 19-2007, and that the imposition is not only for settlement of criminal liability but for certain violations of the Tax Code as well, such as the failure to pay correct internal revenue taxes.

In its opposition, petitioner avers that the issue of whether good faith on the part of the taxpayer is sufficient basis for the non-imposition of interest, surcharge and penalty was not an issue in the *Filinvest* case, and hence, there was no occasion for the Supreme Court in the *Filinvest* case to discuss the same.

Petitioner is correct. The taxpayer's good faith was not raised as an issue in the *Filinvest* case. Well-settled is the rule that good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.[14]

Furthermore, respondent failed to convince the Court that the imposition of compromise penalties was valid pursuant to RMO No. 19-2007. As held in the assailed Decision, payment made under protest could only signify that there was no agreement reached between the parties, and hence, a compromise penalty cannot be imposed.

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[14] *Michel J. Lhuillier Pawnshop vs. Commissioner of Internal Revenue,* G.R. No. 166786, September 11, 2006, citing *Connell Bros. Co. (Phil.) vs. Collector of Internal Revenue,* 119 Phil. 40 (1963); *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue,* G.R. No. 167962, September 19, 2008, *H. Tambunting Pawnshop, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 171138, April 7, 2009.

WHEREFORE, finding no cogent reason to reverse the ruling in the assailed Decision, petitioner's **Motion for Partial Reconsideration of the Decision dated June 5, 2018** and respondent's **Motion for Partial Reconsideration (Re: Decision promulgated 5 June 2018)** are **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

CATHERINE T. MANAHAN
Associate Justice