REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL ENERGY CORPORATION, Petitioner, - versus - COMMISSIONER OF INTERNAL REVENUE, Respondent.	CTA EB NO. 1906 (CTA Case No. 9221)
x------------------------------------x COMMISSIONER OF INTERNAL REVENUE, Petitioner, - versus - SAN MIGUEL ENERGY CORPORATION, Respondent.	CTA EB NO. 1907 (CTA Case No. 9221) Present: DEL ROSARIO, *PJ* CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, MANAHAN, BACORRO-VILLENA, and MODESTO-SAN PEDRO, *JJ.* Promulgated: FEB 24 2020 3:18 p.m.

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DECISION

Fabon-Victorino, J.:

In these consolidated Petitions for Review, both San Miguel Energy Corporation (SMEC) and Commissioner of Internal Revenue (CIR) assail the Decision[1] dated February 2,

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[1] *En Banc* docket (CTA EB No. 1906), pp. 56-72.

2018 and Resolution[2] dated July 24, 2018, rendered by the Court in Division in CTA Case No. 9221, entitled *San Miguel Energy Corporation vs. Commissioner of Internal Revenue*. The dispositive portion of the assailed Decision and Resolution read as follows:

Assailed Decision of February 2, 2018:

> **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 ₱8,456,497.05, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 2,038,785.00
Interest	6,367,712.05
Compromise Penalty	50,000.00
TOTAL	**₱8,456,497.05**

> **SO ORDERED.**

Assailed Resolution of July 24, 2018:

> **WHEREFORE**, in light of the foregoing considerations, petitioner's Motion for Partial Reconsideration of the Decision dated February 2, 2018 and respondent's Motion for Partial Reconsideration Re: Decision dated February 2, 2018, are hereby **DENIED** for lack of merit.
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> **SO ORDERED.**

In its *Petition for Review* filed on August 28, 2018, docketed as CTA EB No. 1906, SMEC prays that in addition to the amount of ₱8,456,497.05 for refund, the amount of ₱8,155,140.00, representing its payment for the basic

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[2] *En Banc docket* (CTA EB No. 1906), pp. 49-55.

deficiency Documentary Stamp Tax (DST) assessment for taxable year (TY) 2010 must also be refunded.

On the other hand, in his *Petition for Review* filed by on August 29, 2018, docketed as CTA EB No. 1907, the CIR prays that the assailed Decision and Resolution be partially modified upholding SMEC's liability for surcharge, interest and compromise penalties for TY 2010.

The Facts and the Proceedings

SMEC is a domestic corporation, with principal office at 808 Building, Meralco Avenue, corner General Lim Street, San Antonio Village, Pasig City and current office address at 19th Floor San Miguel Properties Building, San Miguel Avenue, Mandaluyong City.

The CIR, on the other hand, is the head of the Bureau of Internal Revenue (BIR), with the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 19, 2011, the Supreme Court, in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3], ruled that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.

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

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

On December 16, 2013, the BIR issued to SMEC a Notice of Informal Conference (NIC) [4] relative to its examination of SMEC's internal revenue tax liabilities for the TY year ending December 31, 2010. The BIR indicated in the same NIC that it found certain deficiency taxes due from SMEC for TY 2010, among which was deficiency DST computed based on the advances from related parties in 2010 amounting to ₱1,631,028,000.00, as shown on the Notes to the 2010 Audited Financial Statements of SMEC and San Miguel Corporation – the related party.

On December 23, 2013, SMEC paid under protest the alleged deficiency DST in the amount of ₱16,611,637.05, inclusive of surcharge, interest and compromise penalty.

On November 12, 2015, SMEC filed with the BIR a Claim for Refund[5] or issuance of tax credit dated November 11, 2015, in the amount of ₱16,611,637.05, allegedly representing DST erroneously and/or illegally collected from it for TY 2010, pursuant to Section 229, in relation to Section 204(C) of the NIRC of 1997, as amended.

There being no action on the part of the CIR, SMEC elevated its claim for refund/TCC to the Court in Division *via* a *Petition for Review*[6] filed on December 18, 2015.

In his *Answer*[7] filed on March 30, 2016, CIR argued that SMEC was unable to establish that the amount sought for refund/TCC was erroneously or illegally collected from it. Allegedly, SMEC erroneously hinged its claim for refund/TCC on the alleged non-retroactivity of laws and rulings since the *Filinvest case* merely affirmed the tax treatment of inter-company advances as loan agreements subject to DST under Section 179 of the NIRC of 1997, as amended.

Further, SMEC's admission that the subject advances from affiliates were duly recorded in its Audited Financial Statements (AFS) confirmed that the loan advances were existing and were correctly assessed of DST. He also

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[4] Exhibit "P", docket, pp. 167-172.
[5] Exhibits "P-3", "P-3-a", and "P-3-b", docket, pp. 178-196.
[6] Division docket, pp. 10-40.
[7] Division docket, pp. 114-119.

emphasized that SMEC's "payment under protest" was grounded only on the legal issue of the non-retroactive application of the *Filinvest case.* Thus, even assuming that no debt instrument was presented, the same is no longer relevant as the factual bases of the assessment is already a non-issue.

To cap his defense, the CIR argued that SMEC could not rely on its alleged good faith and honest belief that it was not liable for DST on the loan advances from affiliates to avoid tax liability.

During the trial, only SMEC presented evidence with the manifestation on the part of respondent that he would not present any evidence for his defense.[8]

On February 2, 2018, the Court in Division rendered the assailed Decision[9] granting, *albeit* partially, SMEC's *Petition for Review*. The Court in Division ruled that the *Filinvest case* and RMC No. 48-2011 may be applied retroactively in the absence of any previous or old doctrine on the matter laid down by the Supreme Court; that DST may be imposed even without any debt instrument evidencing the transaction or even if it was not identified by the BIR, provided the transaction was clearly established, following Section 6 of Revenue Regulations (RR) No. 9-94; and that SMEC's reliance of BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that inter-company loans and advances covered by inter-office memoranda are not subject to DST.

Not satisfied, both SMEC and CIR filed their respective *Motions for Partial Reconsideration* which were denied in the equally assailed Resolution of July 24, 2018.

Hence, two (2) *Petitions for Review* were separately filed by SMEC and CIR, docketed as CTA EB No. 1906 and CTA EB No. 1907, respectively.

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[8] Minutes of the September 20, 2016 hearing, Division docket, pp. 308-309.
[9] See Note 1, *supra*.

In a *Minute Resolution* dated August 31, 2018, the two *Petitions for Review* were consolidated pursuant to Section 1, Rule 31 of the Revised Rules of Court.

In compliance with the Resolution dated December 14, 2018, the parties filed their respective memoranda, hence, the instant consolidated *Petitions for Review* were deemed submitted for decision on February 26, 2019.[10]

THE ISSUES

SMEC submits the following issues for resolution of the Court *En Banc*, to wit:

Main Issue

> WHETHER PETITIONER SAN MIGUEL ENERGY CORPORATION IS ENTITLED TO A REFUND OF THE AMOUNT OF P8,155,140.00 WHICH WAS PAID TO THE BIR FOR ALLEGED BASIC DEFICIENCY DOCUMENTARY STAMP TAX.

Corollary Issues

I. Whether SMEC is liable for the subject basic documentary stamp tax in the amount of P8,155,140.00;

II. Whether the decision in the Filinvest Case and RMC No. 48-2011 may be applied retroactively against SMEC;

III. Assuming the decision in the Filinvest Case may be applied retroactively, whether the advances subject of the instant case are covered by the aforesaid decision; and

IV. Whether DST may be imposed on the advances to Petitioner SMEC from related parties on the basis of mere

[10] *En Banc* docket (CTA EB No. 1819), pp. 142-143.

> Notes appearing in the Audited Financial Statements of SMEC and San Miguel Corporation.

On the other hand, CIR anchors his *petition* on the following grounds:

> I. THE FIRST DIVISION OF THE HONORABLE COURT OF TAX APPEALS HAS NO JURISDICTION TO ENTERTAIN ORIGINAL PETITION; and
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> II. THE IMPOSITION OF COMPROMISE PENALTY WAS IN CONSONANCE WITH LAW AND JURISPRUDENCE.

In its *petition*, SMEC questions the retroactive application of the interpretation of the statute to the date of its enactment on the ground that it merely demonstrates contemporaneous legislative intent of the law thus interpreted, as declared the by Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[11]. In taking the opposite view, SMEC posits that judicial decisions should be applied prospectively as pronounced in *Co vs. Court of Appeals*[12]. For this reason, the ruling in *Filinvest case,* which was promulgated on July 19, 2011, to the effect that inter-company advances granted by affiliates are subject to DST may not be applied on the advances extended to it in 2010 by a related party.

SMEC further argues that the Supreme Court did not actually interpret Section 180 (now Section 179) of the NIRC in the Filinvest case for it merely declared that "instructional letters and journal and cash vouchers" subject of therein controversy qualified as "loan agreements". For SMEC, the said ruling cannot be characterized as "interpretation of a statute" constituting "part of the law as of the date it was originally passed" as there is nothing therein indicative of "the contemporaneous legislative intent" that then Section 180 of the NIRC supposedly "carried into effect". In fine,

[11] G.R. No. 197525, June 4, 2014.
[12] G.R. No. 100776, October 28, 1993.

the *Filinvest case* does not and cannot fall within the ambit of the Supreme Court's decision in the *Visayas Geothermal case*.

While SMEC admits that the rulings in following cases may not be deemed as previous doctrines that were overruled by the Filinvest case, they nevertheless qualify as such, to wit: *Commissioner of Internal Revenue vs. APC Group, Inc.*, CA-GR No. 69869, November 29, 2002; (2) *Commissioner of Internal Revenue vs. Belle Corporation*, CTA EB No. 147, October 13, 2006; (3) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008; and (4) Supreme Court Resolution dated May 17, 2004 issued in *Commissioner of Internal Revenue vs. APC Group, Inc.*, G.R. No. 162185.

Petitioner likewise rejects the ruling that DST may be imposed on the advances it received from affiliate based on the Notes appended to its 2010 AFS and to that of its affiliate which extended the advances. This, according to petitioner, is inconsistent with the definition of "debt instruments" provided in Section 179 of the NIRC.

Even assuming that the subject cash advances fit the definition of debt instrument under Section 179 of the NIRC, still DST may not be imposed in the absence of any debt instruments evidencing the same as required in the same Section 179 of the NIRC. The BIR allegedly failed to specify the debt instrument covering the cash advances to justify the imposition of DST. The Notes appended to its AFS were not the "debt instruments" contemplated under Section 179 of the NIRC, which the BIR cited in the NIC, nor were they the "instructional letters" or "journal and cash vouchers" referred to in the *Filinvest case*.

On the other hand, the CIR in his *Petition for Review* maintains that the Court in Division has no jurisdiction to entertain the P*etition* for Review as the assessment has become final and unappealable. Moreover, SMEC never alleged that the assessment was of doubtful validity, but instead paid the amount assessed, *albeit* under protest.

CIR likewise contends that the Court in Division erred in holding that good faith and honest belief that one is not subject to tax are sufficient ground to cancel the imposition of surcharges and interest.

Finally, CIR asserts that the imposition of compromise penalty was in consonance with law and jurisprudence.

By way of *Comment*, SMEC submits that the CIR Petition for Review lacks merit.

SMEC starts with the jurisdiction of the Court in Division to hear and determine its Petition for Review as both its administrative and judicial claims for refund/TCC were filed within the 2-year prescriptive period from date of payment of tax, pursuant to Section 7(a) of Republic Act (RA) No. 1125, as amended by RA No. 9292.

On the CIR's contentions that the assessment is already final and unappealable, SMEC stresses that never has it claimed that the assessment was of doubtful validity. In fact, it paid the assessment, *albeit* under protest, if only to toll the running of the interest and with a view of filing a refund case later. Its Finance Manager, Ramon U. Agay, made it clear during the informal conference with the BIR examiners that SMEC was not agreeable to the retroactive application of the principle laid down in the *Filinvest case* and RMC No. 48-2011.

SMEC also submits that the application of Revenue Regulations (RR) No. 12-99 and filing of a protest/request for reconsideration were unwarranted as it did not receive a Preliminary Assessment Notice/Formal Letter of Demand from the BIR after it paid under protest the alleged deficiency DST.

Also, to sustain CIR's contention that reliance in good faith is not sufficient to relieve a taxpayer from paying penalties pertaining to deficiency taxes is to ignore the well-established tenet that a taxpayer will not be liable to pay surcharge, interest and penalty if he acted in good faith.

Lastly, SMEC submits that the Court in Division correctly cancelled the assessment for compromise penalty since it is essentially mutual in nature. The fact that SMEC paid the assessed tax under protest could only mean that there was no agreement that had effectively been reached by the parties.

The Court *En Banc's* Ruling

CTA EB No. 1906 (SMEC's Petition for Review):

Perusal of the arguments raised by SMEC shows that they have been amply discussed and passed upon by the Court in Division in the assailed Decision of February 2, 2018 and Resolution dated July 24, 2018. In any event and if only to put SMEC's mind to rest, the Court *En Banc* will discuss anew the essential points of the assailed Decision and Resolution.

The Filinvest case and RMC No. 48-2011 may be applied retroactively:

On the retroactive application of the *Filinvest case*, in accordance with the principle laid down in the *Visayas Geothermal case*, SMEC insists the principle laid down in the *Co case* should be applied instead.

The Court *En Banc* is not persuaded.

Note that in the *Co case*, the Supreme Court reiterated the doctrine laid down in *People v. Jabinal*,[13] that "*when a doctrine of this [Supreme] 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.*" While it is true that the Supreme Court refused to give retroactive application to the doctrine laid down in *Que v. People*[14] (promulgated 4 years after the commission of the alleged

[13] G.R. No. L-30061, February 27, 1974.
[14] G.R. Nos. L-75217-18, September 21, 1987.

crime in the *Co case*) to the prejudice of the petitioner who relied on the contrary doctrine as contained in the official opinion of then Minister of Justice, a more circumspect reading of the *Co case* shows that it is inapplicable to the present case as the doctrine of prospective application of the law applied by the Supreme Court in that case, which was previously enunciated in *Jabinal*, was articulated within the context of criminal prosecution where the required quantum of evidence to sustain a judgment of conviction is proof beyond reasonable doubt, and with all doubts to be resolved in favor of the accused. In fact, the Supreme Court cited Article 22 of the Revised Penal Code[15] as one of the bases for its discussion on the matter. In contrast, the present case merely involves the construction or interpretation of tax statute which is civil in nature[16] and as such, is not governed by criminal law principles.

At any rate, the Court *En Banc* joins the Court in Division in saying that there is no previous doctrine overruled by the doctrine pronounced by the Supreme Court in the *Filinvest case*. The cited decisions of the Court of Appeals and of this Court *En Banc* cannot be deemed to have enunciated a prior doctrine or one prevailing at the time the subject advances were extended that was overruled by doctrine laid down in the *Filinvest case* since only the decisions of the Supreme Court constitute binding precedents and form part of the Philippine legal system, pursuant to Article 8 of the Civil Code.[17] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike the decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[18] As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[19] to wit:

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[15] Article 22 of the Revised Penal Code states:

> "Article 22. Retroactive effect of penal laws. — Penal Laws shall have a retroactive effect insofar as they favor the persons guilty of a felony, who is not a habitual criminal, as this term is defined in Rule 5 of Article 62 of this Code, although at the time of the publication of such laws a final sentence has been pronounced and the convict is serving the same."

[16] *Commissioner of Internal Revenue v. Reyes*, G.R. Nos. 159694 & 163581, January 27, 2006, 480 SCRA 382, 394.

[17] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.

[18] *The Philippine Veteran Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.

[19] G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

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

The foregoing pronouncement may also be applied to the decisions of the Court of Appeals, a court of equal standing.

The Court *En Banc* must also reject SMEC's invocation of the *Minute Resolution* dated May 17, 2004, issued by the Third Division of the Supreme Court in G.R. No. 162185, entitled *"Commissioner of Internal Revenue vs. APC Group, Inc."*, allegedly affirming the doctrine enunciated by the Court of Appeals in *Commissioner of Internal Revenue vs. APC Group, Inc.*,[20] regarding the non-taxability of memos and vouchers evidencing inter-company advances. Jurisprudence has it that rulings of the Supreme Court embodied in minute resolutions are not binding precedents, and are not considered doctrines or principles of law. Thus, the ruling in the cited *Minute Resolution* dated May 17, 2004 could not be treated as a doctrine, thus, could not have been reversed by the *Filinvest Case*. Besides, the CIR was not a party in that case, thus, he cannot invoke the ruling made therein.

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[20] CA-GR No. 69869, November 29, 2002.

The Supreme Court clarified this issue in the case of *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*,[21] thus:

> It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. **When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of act and legal conclusions, are deemed sustained. But what is the effect on other cases?**
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> **With respect to the same subject matter and the same issues concerning the parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is <u>not binding precedent</u>.** xxx.
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> 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 the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision. **Indeed, <u>as a rule, this Court lays down doctrine or</u>**

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[21] G.R. No. 167330, September 18, 2009.

> **principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.**
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> Accordingly, since petitioner was not a party in G.R. No. 148680 and since petitioner's liability for DST on its health care agreement was not the subject matter of G.R. No. 148680, petitioner cannot successfully invoke the minute resolution in that case (which is not even binding precedent) in its favor. xxx.

There is also no merit in SMEC's assertion that the Supreme Court did not interpret Section 180 [now Section 179] of the 1997 NIRC in the *Filinvest case* and simply applied the said legal provision. On the contrary, the Supreme Court clearly engaged in the construction or interpretation of Section 180 [now Section 179] of the 1997 NIRC as it was only in the *Filinvest case* that the Supreme Court, for the first time declared that intercompany advances as evidenced by instructional letters and journal and cash vouchers are subject to documentary stamp tax per the said legal provision. In fact, the Final Arbiter had carefully scrutinized how the law was worded as well as the other relevant regulations before it reached the conclusion on the taxability of intercompany advances as loan agreements subject to DST, *albeit* evidenced only by instructional letters and journal and cash vouchers.

In fine, the Court in Division committed no error when it ruled as follows:

> Therefore, the application of the *Filinvest case* to the present case will not constitute a violation of the principle of non-retroactivity of laws and rulings because 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.

On the other hand, in arguing against the retroactive application of RMC No. 48-2011, SMEC submits that the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue,*[22] cited in the assailed Decision, cannot apply to RMC No. 48-2011 because the said RMC "did not interpret the same rule." According to SMEC, prior to the issuance of RMC No. 48-2011, the rule was different, *i.e.*, that inter-company advances covered by mere inter-office memos were **<u>not loan agreements</u>** subject to DST under the NIRC. Thus, for SMEC, RMO No. 48-2011 may not be used against it, citing Section 246 of the 1997 NIRC as legal basis which provides for non-retroactivity of rulings which are prejudicial to the taxpayer.

The Court *En Banc* is not convinced.

Note that RMC No. 48-2011 merely circularized for information and use of tax investigators/examiners and personnel the doctrine laid down in the *Filinvest case*. This intention was manifested in the use of the term '**Circularization**' in its subject matter and by quoting the 'relevant excerpts' from the *Filinvest case*. The fact that 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 does not in any way mean that the BIR made a specific ruling and has overruled or reversed a prior one, as the assessment of deficiency DST, if warranted, would merely be a necessary consequence of the ruling in the *Filinvest case.*

DST may be imposed on the advances extended to SMEC on the basis of a mere Note appearing in its 2010 Audited Financial Statements:

SMEC also faults the Court in Division in holding that DST may be imposed on the advances extended to it on the basis of the Note appearing in its 2010 AFS. SMEC contends that before DST may be imposed, two (2) basic requisites must exist, to wit: (1) there must be a transaction or privilege which is exercised by persons; and (2) this

[22] G.R. No. 169899, February 6, 2013.

transaction is evidenced through the execution of specific instruments. For SMEC, a Note to AFS may not be categorized as a document, much less as a debt instrument required under Section 179 of the 1997 NIRC since it only provides additional information to AFS to explain specific items in the AFS as well as to provide a more comprehensive assessment of a company's financial status.

The Court *En Banc* cannot agree with SMEC on this point.

As pointed out by the Court in Division, a DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, as it is imposed on the transaction rather than on the document.[23] As a corollary, there is no basis in the assertion that a DST is literally a tax on a document.[24] Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, as long as the transactions was clearly established.

Significantly, SMEC never denied the existence of the subject transactions to which the CIR imposed the DST nor did it deny being a party thereto.

Considering the existence of the subject transactions, the Court *En Banc* finds no reason not to uphold the imposition of the DST on the said transactions on the basis of SMEC's AFS and the Notes thereto. Otherwise, it would just be a walk in the park on the part of the taxpayer circumvent the law on DST by simply hiding the corresponding and/or supporting document/s.

It is also well to note that while it was sufficiently shown that the subject transactions existed, SMEC did not present the pertinent documents that brought about the

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[23] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016, 794 SCRA 34 citing *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, G.R. Nos. 172045-46, June 16, 2004, 607 Phil. 227 (2009).
[24] *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

reporting thereof in its AFS and the Notes appended thereto. Under the Rules of Court there is a presumption that "evidence willfully suppressed would be adverse if produced."[25]

Apart from the foregoing, even if no formal agreements or promissory notes were executed, DST could still be imposed pursuant to Section 6 of RR No. 9-94, which provides, 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 (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
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> **In cases where no formal agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip**, under Section 180 of the Tax Code." (*Emphasis supplied*)

<u>*CTA EB No. 1907 (CIR's Petition for Review)*</u>:

Perusal of the arguments raised by the CIR in his *Petition for Review* shows that they only mimic the very same flawed arguments he raised in his *Answer* and *Motion for Partial Reconsideration* filed with the Court in Division which had been thoroughly discussed and passed in the assailed Decision dated February 2, 2018 and Resolution

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[25] Section 3 (e), Rule 131, Rules of Court.

dated July 24, 2018. Be that as it may, and if only to reinforce the findings of the Court in Division, the salient points shall be discussed anew.

The Court in Division has jurisdiction to entertain the Petition for Review:

This case involves a claim for refund of alleged erroneously and/or illegally collected DST for TY 2010. In fact, in his Answer dated March 30, 2016, the CIR interposed as a defense that "*In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund. Petitioner must likewise show that it has complied wit the provisions of Section 229 of the Tax Code on the prescriptive period for claiming tax refund/credit*."

As pointed out by the Court in Division, to validly claim for refund or tax credit of erroneously or illegally collected tax, Sections 204(C) and 229 of the NIRC of 1997, as amended, merely require that both the administrative and judicial claims for refund must be filed within two (2) years from the date of payment of the tax. Record shows that SMEC paid under protest the alleged deficiency DST for TY 2010 of ₱16,611,637.05 on December 23, 2013. Hence, following the provisions of Sections 204(C) and 229 of the NIRC of 1997, as amended, SMEC had until December 23, 2015 within which to file both the administrative and judicial claims for refund.

As established, SMEC filed within the two-year prescriptive period its administrative claim on November 12, 2015 and its judicial claim on December 18, 2015. Thus, the Court *En Banc* cannot agree more when the Court in Division ruled, thus:

> Records show that [SMEC] filed its administrative and judicial claims on November 12, 2015 and December 18, 2015, respectively. Clearly, both the administrative and judicial claims for refund were filed within the two (2)-year

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> prescriptive period. Therefore, the assessment is not yet final and unappealable. Hence, the Court has jurisdiction to entertain the same pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

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 relieve one from the imposition of surcharges and interest:

CIR claims that BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which the Court in Division cited in holding SMEC not liable for surcharges and interest, had already been effectively revoked when he argued against it in his Answer filed on November 28, 2008 to the original case of *CIR vs. Filinvest*. Thus, CIR contends that it is impossible to have good faith reliance on a ruling that had already been nullified.

It is well to note that SMEC did not only rely on BIR Ruling [DA (C-035) 127-08] but also on the decision of the Court of Appeals in the case of *Commissioner of Internal Revenue vs. APC Group, Inc.* and on this Court's decision in *Commissioner of Internal Revenue vs. Belle Corporation*.

While BIR rulings are not conclusive in the interpretation of tax laws, still, the interpretation placed upon a tax statute by the BIR, the administrative agency tasked to enforce, is entitled to great respect.

As to decisions of the Court of Tax Appeals/Court of Appeals, 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.

In fine, SMEC cannot be faulted in relying on the rulings of the BIR, the Court of Tax appeals, and the Court of Appeals issued prior to *Filinvest case* and believing 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.

In a myriad of cases[26], the Supreme Court declared that good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to relieve one from the imposition of surcharges and interest.

In the absence of an agreement between SMEC and the CIR, compromise penalties may not be imposed:

It has been held that compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised. The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[27] Also, this Court was sustained by no less than the Supreme Court when it ruled that the compromise penalty could not be imposed on the taxpayer, a compromise being, by its nature, mutual in essence. The payment made under protest by the taxpayer could only signify that there was no agreement that had effectively been reached between the parties.[28] There being no consent of the part of SMEC, it cannot be held liable to pay the compromise penalty imposed by the CIR.

Thus, the Court *En Banc* agrees with the Court in Division in holding that:

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

[27] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc., et al.*, G.R. No. L-35266, January 21, 1991.

[28] *Dr. Felisa L. Vda. De San Agustin, In Substitution of Jose Y. Feria, In His Capacity as Executor of the Estate of Jose San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

Petitioner is also not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by petitioner could only mean that there was no agreement that had effectively been reached between the parties. In the case of De San Agustin vs. Commissioner of Internal Revenue, 33 the Supreme Court held that:

> "The Court of Tax Appeals correctly held that the compromise penalty of P20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

Considering that petitioner disputed respondent's assessment of compromise penalty, the said penalty cannot therefore be imposed upon it.

WHEREFORE, the *Petition for Review* filed by San Miguel Energy Corporation in CTA EB No. 1906, as well as, the *Petition for Review* filed by the Commissioner of Internal Revenue in CTA EB No. 1907, are hereby **DENIED** for lack of merit. Accordingly, the assailed Decision and Resolution dated February 2, 2018 and July 24, 2018, respectively, are **AFFIRMED**.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

With Concurring and Dissenting Opinion
ROMAN G. DEL ROSARIO
Presiding Justice

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

Ma. Belen S
MA. BELEN RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
With Concurring and Dissenting Opinion
CATHERINE T. MANAHAN
Associate Justice

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

SAN MIGUEL ENERGY CORPORATION, *Petitioner,* -versus- **COMMISSIONER OF INTERNAL REVENUE,** *Respondent,*	**CTA EB NO. 1906** (CTA Case No. 9221)
COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* -versus- **SAN MIGUEL ENERGY CORPORATION,** *Respondent.*	**CTA EB NO. 1907** (CTA Case No. 9221) Present: **DEL ROSARIO**, ***P.J.***, **CASTANEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, **MANAHAN**, **BACORRO-VILLENA**, and **MODESTO-SAN PEDRO**, *JJ.* Promulgated: FEB 24 2020 3:18 p.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 1907 for lack of merit.

With due respect, I am constrained to withhold my assent on the denial of the Petition for Review filed by San Miguel Energy Corporation (SMEC) in CTA EB No. 1906.

While I concurred in the Court in Division's assailed Decision dated February 2, 2018 and assailed Resolution dated July 24, 2018, I am constrained to depart therefrom after revisiting the issue involving the retroactive application of the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1].

Similar to the position I have taken ***subsequent*** to the assailed Decision and Resolution,[2] I submit that the doctrine laid down in *Filinvest* cannot be applied retroactively to the prejudice of taxpayers who relied thereon in good faith.

In the present case, there is no denying that SMEC relied in good faith on *BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008*, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to Documentary Stamp Tax (DST) under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

But more than that, SMEC also relied in good faith on the judicial interpretation then prevailing prior to the promulgation by the Supreme Court of its decision in *Filinvest* on July 19, 2011. In *Filinvest*, the Supreme Court laid down the doctrine that instructional letters, journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which DST may be imposed. In contrast, the prevailing judicial interpretation prior to *Filinvest* is that inter-company advances covered by mere inter-office memos were **not loan agreements subject to DST** under Section 179 of the NIRC of 1997, as amended.

To be specific, SMEC relied on the following:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002,* wherein the Court of Appeals (CA) held that the interpretation of the Bureau of Internal Revenue (BIR) in **BIR Ruling No. 116-**

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

[2] Commissioner of Internal Revenue vs. San Miguel Corporation / San Miguel Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 1724 and 1726, October 11, 2018; E. E. Black Ltd. – Philippine Branch vs. The Commissioner of Internal Revenue, CTA EB No. 1611, January 22, 2019; Asia United Leasing and Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 8735, February 12, 2019; San Miguel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9374, May 3, 2019; Commissioner of Internal Revenue vs. South Premiere Power Corp. / South Premiere Power Corp. vs. Commissioner of Internal Revenue, CTA EB Nos. 1898 and 1899, October 14, 2019; San Miguel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 9504, January 14, 2020.

98 dated July 30, 1998 (i.e., that inter-office memo covering advances granted by an affiliate company is not subject to DST) is in accordance with law; and,

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

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

Specifically, on the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals / Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*[3] is enlightening:

> "**Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides.** It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.
>
> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part.**" (Boldfacing supplied)

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

While the doctrine laid down by the CA in ***APC Group*** and the CTA in ***Belle Corporation***, respectively, was effectively over-ruled on July 19, 2011 when the Supreme Court promulgated *Filinvest*, the same cannot be applied retroactively to the prejudice of taxpayers who relied thereon in good faith. Note that, jurisprudentially, a Supreme Court pronouncement reversing a BIR Ruling favorable to a taxpayer would not as a rule cause any prejudice to the latter.

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[4] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[5] *and Philex Mining Corporation vs. Commissioner of Internal Revenue,*[6] the Supreme Court, citing the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,[7] held that the reversal of a general interpretative rule should be applied prospectively, thus:

> "Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively. As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:
>
> > In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
> >
> > This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg.*

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[4] G.R. No. 187485, February 12, 2013, 690 SCRA 336 (2013).
[5] G.R. No. 196113, February 12, 2013, 690 SCRA 336, (2013).
[6] G.R. No. 197156, February 12, 2013, 690 SCRA 336, (2013).
[7] G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

> *Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.), Inc., and Commissioner of Internal Revenue v. Court of Appeals.* **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**
>
> More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer." (Boldfacing supplied)

If a taxpayer can rely in good faith on an <u>erroneous</u> "favorable" ruling of the BIR without suffering any legal prejudice (that is - - by applying a new ruling reversing a previous favorable BIR ruling <u>prospectively</u>), I submit that reliance in good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.

In view of the foregoing, SMEC is entitled to a refund of the basic **DST paid** on advances for the period January 1, 2010 to December 31, 2010 in the amount of Php8,155,140.00, in addition to the surcharge, interest and compromise penalty previously paid in the amount of Php8,456,497.05.

All told, I VOTE to: (i) GRANT the Petition for Review filed by San Miguel Energy Corporation in CTA EB No. 1906; (ii) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 1907; and, (iii) ORDER the Commissioner of Internal Revenue to refund to San Miguel Energy Corporation the basic Documentary Stamp Tax paid by it for the period January 1, 2010 to December 31, 2010 in the amount of Php8,155,140.00, plus surcharge, interest and compromise penalty in the amount of Php8,456,497.05.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SAN MIGUEL ENERGY CORPORATION,
Petitioner,

CTA *EB* NO. 1906
(CTA Case No. 9221)

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

x-------------------------------------x

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 1907
(CTA Case No. 9221)

-versus-

Present:

DEL ROSARIO, *P.J.,*
CASTAÑEDA, JR.,
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

SAN MIGUEL ENERGY CORPORATION,
Respondent.

Promulgated:

FEB 24 2020 3:18 p.m.

x- x

CONCURRING AND DISSENTING OPINION

MANAHAN, *J.:*

I concur with the position of my esteemed colleague, Justice Ezperanza R. Fabon-Victorino, on (1) the applicability of documentary stamp tax (DST) on the advances by San Miguel Energy Corporation (SMEC) from its affiliates/related parties), (2) the jurisdiction of this Court on

SMEC's petition, and (3) the discharge of surcharges and penalties.

However, with due respect, and consistent with my position on the same issue in the earlier cases of *First Philippine Electric Corp. v. Commissioner of Internal Revenue* (CTA Case No. 9199) and First *Philippine Utilities Corp. v. Commissioner of Internal Revenue* (CTA Case No. 8993), I respectfully disagree with the disquisition that a Supreme Court ruling decided in 2011 should retroactively apply to transactions which occurred in 2010, thus, holding petitioner liable for deficiency DST and cancelling only the assessments for the portion on surcharge and interests.

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1], the Supreme Court ruled in this wise:

> When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to "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.
>
> xx xxx xxx
>
> 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 taxes may be imposed.

The *ponencia* rationalizes that the *Filinvest* decision merely interpreted and applied Section 179 of the 1997 National Internal Revenue Code (NIRC), effectively forming part of the law as of the date of its enactment. Hence, the majority ruled that *Filinvest* is deemed effective from the time of enactment of the NIRC, and covers transactions even prior to 2011 when *Filinvest* was promulgated.

It is from this legal conclusion that I respectfully dissent, and proffer, instead, the view that the power to tax must be

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[1] G.R. Nos. 163653 and 167680, July 19, 2011.

construed strictly against the government,[2] and any retroactive application of the *Filinvest* doctrine violates the taxpayer's constitutional rights to equity and due process.

There is no question that *Filinvest* provides the current interpretation of the DST provision on loan agreements, which now includes "inter-company advances covered by inter-office memos".

However, prior to the afore-quoted decision of the Supreme Court, the prevailing legal milieu was that "inter-office memos" covering intercompany advances were not considered loan agreements subject to the documentary stamp tax (DST) based on various BIR Rulings issued by the respondent, decisions of this Court and more significantly the decision of the Court of Appeals (CA) in the case entitled *Commissioner of Internal Revenue vs. Filinvest Development Corp.*[3] In short, the doctrine enunciated by the Supreme Court in the *Filinvest* case was not controlling at the time herein petitioner SMEC entered into such transactions in 2010. In fact, petitioner faithfully relied on the pronouncements made by the respondent and the CA on a similar matter, thus prompting non-payment of said DST.

Article 8 of the Civil Code[4] expressly provides that judicial decisions applying or interpreting the laws shall form part of the legal system of the Philippines. Corollarily, Article 4 of the Civil Code[5] mandates the non-retroactivity of laws, unless expressly provided. The principle of prospectivity has also been applied to judicial decisions which although in themselves not laws, are nevertheless evidence of what the laws mean.[6]

The reason for this is obvious – it will be inequitable and against the principles of fair play to penalize a taxpayer who relied on the pronouncements of the respondent who is authorized under the law to interpret tax statutes,[7] and from

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[2] *Republic of the Philippines vs. Intermediate Appellate Court and Sps. Antonio and Clara Pastor*, G.R. No. L-69344, April 26, 1991.

[3] C.A. -G.R. SP No. 74510, January 26, 2005.

[4] "Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

[5] "Article 4. – Laws shall have no retroactive effect, unless the contrary is provided."

[6] Albino S. Co vs. Court of Appeals and People of the Philippines, G.R. 100776, October 28, 1993.

[7] Section 4 of the 1997 NIRC.

"*Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.*- The power to interpret the provisions of this Code and other tax laws shall be under the which taxpayers are enjoined to follow. In the absence of a definitive Supreme Court decision interpreting the often vague provisions of the 1997 NIRC on transactions which are subject to DST, the higher interests of justice should compel us not to apply a (fairly) recent Supreme Court decision retroactively to a time period where the CIR himself held and pronounced a contrary view.

The character of BIR Rulings, CTA decisions and the aforementioned decision of the CA all issued prior to the 2011 *Filinvest* case adhered to the theory that "inter-office memos" covering intercompany advances were not loan agreements subject to DST.

In the assailed decision, aside from the *Filinvest case,* Revenue Memorandum Circular (RMC) No. 48-2011 was included in the ruling that may be applied retroactively. It should be noted that the said rules and regulations were only issued on October 6, 2011.

Section 246 of the NIRC provides:

> SEC. 246. ***Non- Retroactivity of Rulings***. - Any revocation, modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or **any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application** if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:
>
> (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
>
> (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
>
> (c) Where the taxpayer acted in bad faith. (*Emphasis supplied*)

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exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

xxx xxx xxx

In *ABS-CBN Broadcasting Corporation v. Court of Tax Appeals and Commissioner of Internal Revenue*[8], the Supreme Court sustained the non-retroactivity provision of the previous tax law which is now Section 246 of NIRC as to respondent's rulings or circulars, *viz*:

> In point is Sec. 338-A (now Sec. 327) of the Tax Code. As inserted by Republic Act No. 6110 on August 9, 1969, it provides:
>
> > Sec. 338-A. *Non-retroactivity of rulings.* — Any revocation, modification, or reversal of and of the rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue *shall not be given retroactive application if the relocation, modification, or reversal will be prejudicial to the taxpayers*, except in the following cases: (a) where the taxpayer deliberately mis-states or omits material facts from his return or any document required of him by the Bureau of Internal Revenue: (b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or (c) where the taxpayer acted in bad faith. (*italics for emphasis*)
>
> **It is clear from the foregoing that rulings or circulars promulgated by the Commissioner of Internal Revenue have no retroactive application where to so apply them would be prejudicial to taxpayers**. <u>The prejudice to petitioner of the retroactive application of Memorandum Circular No. 4-71 is beyond question. It was issued only in 1971, or three years after 1968, the last year that petitioner had withheld taxes under General Circular No. V-334</u>. The assessment and demand on petitioner to pay deficiency withholding income tax was also made three years after 1968 for a period of time commencing in 1965. Petitioner was no longer in a position to withhold taxes due from foreign corporations because it had already remitted all film rentals and no longer had any control over them when the new Circular was issued. And in so far as the enumerated exceptions are concerned, admittedly,

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[8] G.R. No. L-52306, October 12, 1981.

> petitioner does not fall under any of them. (*Emphasis and underscoring ours*)

Also, in *Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Alhambra Industries, Inc.*[9], it was ruled that:

> However, well-entrenched is the rule that *rulings and circulars, rules and regulations promulgated by the Commissioner of Internal Revenue would have no retroactive application if to so apply them would be prejudicial to the taxpayers.*
>
> The applicable law is Sec. 246 of the Tax Code which provides -
>
>> Sec. 246. *Non-retroactivity of rulings.*- Any revocation, modification, or reversal of any rules and regulations promulgated in accordance with the preceding section or any of the rulings or circulars promulgated by the Commissioner of Internal Revenue shall not be given retroactive application if the revocation, modification, or reversal will be prejudicial to the taxpayers except in the following cases: a) where the taxpayer deliberately misstates or omits material facts from his return or in any document required of him by the Bureau of Internal Revenue; b) where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or c) where the taxpayer acted in bad faith.
>
> <u>Without doubt, private respondent would be prejudiced by the retroactive application of the revocation as it would be assessed deficiency excise tax</u>. *(Underscoring ours)*

In the consolidated cases of *CIR vs. San Roque Power, Taganito Mining Corp vs. CIR and Philex Mining Corp vs. CIR* [10], the Supreme Court recognized the good faith of the taxpayers who relied on previous rulings which turn out to be erroneous under a recent interpretation:

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

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[9] G.R. No. 117982, February 6, 1997.
[10] G.R. Nos. 187485,196113 and 197156, February 12, 2013.

> general interpretative rules of the Commissioner interpreting tax laws, **should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court**. Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal. (emphasis supplied)

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

> As a final point, the Court cannot turn a blind eye to the adverse effects of this Decision on ordinary government employees, including petitioners herein, who relied in good faith on the belief that the appropriate taxes on all the income they receive from their respective employers are withheld and paid. Nor does the Court ignore the situation of the relevant officers of the different departments of government that had believed, in good faith, that there was no need to withhold the taxes due on the compensation received by said ordinary government employees. Thus, as a <u>measure of equity and compassionate social justice, the Court deems it proper to clarify and declare, *pro hac vice*, that its ruling on the validity of Sections III and IV of the assailed RMO is given only prospective effect</u>.[11]

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

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

WHEREFORE, I vote to grant the Petition for Review filed by petitioner SMEC under CTA EB NO. 1906 and deny petitioner Commissioner of Internal Revenue's Petition for Review under CTA EB NO. 1907.

Accordingly, the claim for refund of the basic DST for taxable year 2010 amounting to ₱8,155,140.00 should be REFUNDED, in addition to the refund of surcharges, interest, and penalties amounting to ₱8,456,497.05.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice