REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

E.E. BLACK LTD. – PHILIPPINE BRANCH, Petitioner,	**CTA CASE NO. 8719**
	Members:
- versus -	**BAUTISTA,** *Chairperson* **FABON- VICTORINO,** *and* **RINGPIS-LIBAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 24 2017 3:55 p.m.

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RESOLUTION

RINGPIS-LIBAN, *J.*:

For the Court's resolution is petitioner's Motion for Reconsideration (of the Decision dated 8 March 2016) filed on April 1, 2016, with respondent's Comment/Opposition (To Petitioner's Motion for Reconsideration dated April 1, 2016) posted on April 20, 2016.

Petitioner seeks reconsideration of the Decision[1] promulgated on March 8, 2016 (assailed Decision), the dispositive portion of which reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is hereby **DENIED**. The assessment covering the deficiency documentary stamp tax for taxable year 2008 is

[1] Docket, vol. I, pp. 493-510.

UPHELD. Accordingly, petitioner is hereby **ORDERED TO PAY** the following:

(a) Deficiency documentary stamp tax in the amount of **₱476,162.50**, inclusive of surcharge imposed under Section 248(A) of the 1997 NIRC, as amended, computed as follows:

Basic DST Due	₱ 380,930.00
25% Surcharge	95,232.50
Total Amount Due	**₱476,162.50**

(b) Deficiency interest at the rate of twenty percent (20%) per annum on the basic DST of ₱380,930.00, computed from January 5, 2009 until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and

(c) Delinquency interest at the rate of 20% per annum on the total amount of ₱476,162.50 and on the 20% deficiency interest which have accrued as afore-stated in (b), computed from October 31, 2013 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.[2]

In its Motion for Reconsideration, petitioner prays that the Court reconsider the assailed Decision, declare the deficiency documentary stamp tax assessment in the aggregate amount of ₱843,316.40, inclusive of increments, as invalid and/or devoid of factual or legal basis and cancel the said assessments. Petitioner maintains its previous arguments, *viz*:

1. The rule recognized and applied by respondent and the Court in 2008 was that inter-company loans not evidenced by loan agreements, promissory notes, or similar instruments are not subject to documentary stamp tax; thus the 2011 Filinvest case cannot be retroactively applied to assess deficiency documentary stamp tax against petitioner, who relied in good faith on the prevailing rule in 2008;

2. The present Section 180 of the Tax Code introduced by Republic Act No. 9243 imposes DST on loan agreements akin to debt agreements; consequently, the provision of the Revenue Regulations imposing a DST where no formal loan agreement was executed was deleted in Revenue Regulations No. 13-04;

[2] Docket, vol. I, p. 509.

3. Not applying the rule used by respondent in various BIR Rulings and in Revenue Regulations No. 13-04, which were upheld by this Honorable Court in *Commissioner of Internal Revenue v. APC Group, Inc.* would amount to unjust discrimination or classification against petitioner;

4. The assessment of deficiency documentary stamp tax on debt instruments against petitioner has no basis since it cannot borrow from nor lend to its head offices; and

5. The surcharges and interests on the assessed deficiency DST against petitioner should not be imposed because petitioner relied in good faith on the applicable regulations, rulings and court decisions in 2008 when the Inter-company Accounts were made.[3]

On the other hand, respondent seeks the denial of petitioner's Motion for Reconsideration (of the Decision dated 8 March 2016) for lack of merit.

After due consideration of the parties' arguments, the Court finds petitioner's Motion for Reconsideration (of the Decision dated 8 March 2016) bereft of merit.

The issues presented are mere rehash of petitioner's previous arguments, all of which have been thoroughly considered and threshed out in the assailed Decision.

1. The ruling of the Supreme Court in *CIR v. Filinvest Development Corporation*[4] applies to this case.

We reiterate our ruling Section 180 of the 1993 National Internal Revenue Code (NIRC) and Section 179 of the 1997 NIRC both impose a stamp tax on all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines. Hence, the holding in *Filinvest* that journal and cash vouchers evidencing advances extended to its affiliates qualified as loan agreements and subject to documentary stamp taxes applies in this case.

Further, Section 5 of Revenue Regulations (RR) No. 13-04 explains that Section 179 of the 1997 NIRC is Section 180 of the 1993 NIRC, but incorporated in one provision with Sections 174 and 176 of the 1993 NIRC. Hence, since Section 180 of the 1993 NIRC was reproduced in Section 179 of the 1997 NIRC, any interpretation of the former holds true for the latter.[5]

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[3] Docket, vol. II, pp. 512-513.
[4] Supra, note 14.
[5] *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012.

2. The cash disbursement vouchers and the journal vouchers in this case are instruments representing borrowing and lending transactions.

RR No. 13-04 has not repealed RR No. 09-94, insofar as the provisions of the latter are not inconsistent with the former. Section 6[6] of RR No. 09-94 is not inconsistent with Section 5 of RR No. 13-04. Moreover, RR No. 13-04 does not limit the definition of debt instrument to those originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor, and the list in Section 5 of RR No. 13-04[7] is not exhaustive.

Hence, we reiterate that despite there being no specific mention of cash or journal vouchers does not exclude these from the definition of debt instruments. The cash disbursement vouchers and the journal vouchers in this case are in fact instruments representing borrowing and lending transactions.

3. The minute resolution of the Supreme Court in *CIR v. APC Group, Inc.*[8] is not binding precedent.

We reiterate our holding that the minute Resolution of the Supreme Court in *APC* is not binding precedent in this case. *APC* was a minute resolution and not a decision that provides the facts and law on which it is based. Neither is it signed by the members of the Supreme Court and certified by the Chief Justice. Hence, it is not a decision in contemplation of Section 8 of the Civil Code[9] as would form part of the law of the land. As such, *res judicata* will only apply to another case having the same subject matter, issues and parties.

In fact, the petition for review on certiorari in *APC* was denied for failure of therein petitioner to comply with formal requirements, as copies of the assailed decision and resolution submitted were not duly certified.[10]

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6 Section 6. *Stamp Tax on all Loan Agreements.* x x x
In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code, as amended.

7 The same enumeration is provided in Section 179 of the 1997 NIRC:
For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions **including but not limited to** debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

8 G.R. No. 162185, May 17, 2004.

9 Section 8. Judicial decisions applying or interpreting laws or the Constitution shall form part of the legal system of the Philippines.

10 The Minute Resolution in *APC*, G.R. No. 162185, issued on May 17, 2004 forms part of petitioner's Exhibit "P-2", docket, vol. I, pp. 322-323.

4. For purposes of imposing the DST, the Philippine branch office has a separate legal personality.

The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply for purposes of imposing the DST. Consistent with *Marubeni Corporation (formerly Marubeni-Iida, Co. Ltd.) vs. Commissioner of Internal Revenue and Court of Tax Appeals*,[11] the cash advances and intercompany trade payables and receivables which were booked under "due to/from accounts"[12] are well within the purview of "debt instruments" under Section 179 of the 1997 NIRC.

5. The defense of good faith does not warrant the lifting of surcharges and interest.

Petitioner's defense of good faith is unavailing, as there is no evidence on record that petitioner requested for and relied on a BIR Ruling confirming its exemption from DST.

WHEREFORE, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, petitioner's Motion for Reconsideration (of the Decision dated 8 March 2016) is hereby **DENIED** for lack of merit.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[11] G.R. No. 76573, September 14, 1989.
[12] Page 6 of Exhibit "P-9", Judicial Affidavit of Ms. Cristina C. Paras.