REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL THIRD DIVISION

SAN MIGUEL PAPER PACKAGING CORPORATION, Petitioner,	CTA CASE NO. 9288
	Members:
-versus-	FABON-VICTORINO, *and* RINGPIS-LIBAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 14 2018 3:40 p.m.

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DECISION

***Fabon-Victorino, J.*:**

On March 9, 2016, petitioner San Miguel Paper Packaging Corporation filed the instant Petition for Review praying for the refund or issuance of tax credit certificate (TCC) in the amount of ₱6,946,919.37, representing its erroneously and/or illegally collected documentary stamp tax (DST) for taxable year 2009.[1]

Petitioner is a domestic corporation with business address at 8380 Dr. A Santos Ave., Sucat, Parañaque City.[2] It is registered with the Securities and Exchange Commission (SEC) as a wholly-owned subsidiary of San Miguel Corporation (SMC) and is primarily engaged in manufacturing, marketing, selling and distribution of corrugated fibreboard containers.[3]

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR) with the power to

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[1] Par. 1, Summary of the Case, Pre-Trial Order, docket, vol. 2, p. 615.
[2] Par. 2.01, Joint Stipulation of Facts, Documents, Issues, and Other Matters (JSFDI), docket, vol. 2, p. 594.
[3] Par. 2.02, JSFDI, docket, vol. 2, p. 594.

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 BIR National Office Building, Agham Road, Diliman, Quezon City.

On June 18, 2013, petitioner received from respondent an undated Notice of Informal Conference (NIC) stating that it has deficiency documentary stamp tax due on advances from related parties per Note 18 of its 2009 Audited Financial Statements (AFS).[4]

On November 11, 2013, petitioner received a Preliminary Assessment Notice (PAN) dated November 5, 2013, assessing it for deficiency taxes amounting to ₱26,406,106.69, inclusive of surcharge, interest, and compromise penalty, detailed as follows:[5]

Kind of Tax	**Amount (inclusive of penalties)**
I. Income tax (IT)	₱ 10,678,064.85
II. Value added tax (VAT)	5,214,199.62
III. Withholding tax on compensation (WTC)	249,930.73
IV. Expanded withholding tax (EWT)	1,894,118.05
V. Final withholding tax (FWT)	425,932.12
VI. Final VAT	559,650.85
VII. Documentary stamp tax (DST)	7,384,210.47
Total	₱ 26,406,106.69

Based on the said PAN, the deficiency DST assessment pertained to the advances to petitioner from related parties per Note 18 of petitioner's Audited Financial Statements for TY 2009, computed as follows:[6]

Advances from Related Parties (FS Note 18)		₱ 736,880,000.00
Documentary Stamp Tax Due (₱1/₱200)		3,684,400.00
Add: Penalties:		
Surcharge	₱ 921,100.00	
Interest (1-6-2010 to 9-30-2013)	2,753,710.47	

[4] Par. 2.03, JSFDI, docket, vol. 2, p. 595; Exhibit "P-1", docket, vol. 1, p. 342.
[5] Par. 1.04, JSFDI, docket, vol. 2, p. 592; Exhibit "P-2", docket, vol. 1, pp. 363 to 366.
[6] Par. 1.04, JSFDI, docket, vol. 2, p. 593.

Compromise Penalty	25,000.00	3,699,810.47
Total Deficiency Documentary Stamp Tax		₱ 7,384,210.47

On December 6, 2013, petitioner filed a Reply Letter to the PAN[7] dated November 26, 2013.

On February 26, 2014, petitioner received a Formal Letter of Demand (FLD)/Assessment Notices[8] dated February 26, 2014, assessing it for the following deficiency taxes in the aggregate amount of ₱14,084,851.56, inclusive of penalties up to January 31, 2014:

Kind of Tax	Assessment No.	Amount
I. Income tax (IT)	IT-2009-00003	₱ 3,175,362.21
II. Value added tax (VAT)	VT-2009-00003	2,138,858.82
III. Withholding tax on compensation (WTC)	WC-2009-00002	256,635.28
IV. Expanded withholding tax (EWT)	WE-2009-00002	623,910.54
V. Final withholding tax (FWT)	WF-2009-00001	441,444.75
VI. Final VAT	WG-2009-00001	578,020.21
VII. Documentary stamp tax (DST)	DS-2009-00001	6,870,619.75
Total		**₱ 14,084,851.56**

The deficiency DST in the amount of ₱6,870,619.75 in the FLD was based on the advances made to petitioner from related parties per Note 18 of its 2009 Audited Financial Statements amounting to ₱663,080,000.00 that were not subjected to DST, as computed below:

Advances from Related Parties (FS Note 18)		₱663,080,000.00
Documentary Stamp Tax Due (₱1/₱200)		3,315,400.00
Add: Penalties:		
Surcharge	₱ 828,850.00	
Interest (1-6-2010 to 1-31-2014)	2,701,369.75	
Compromise Penalty	25,000.00	3,555,219.75
Total Deficiency Documentary Stamp Tax		₱ 6,870,619.75

[7] Par. 2.05, JSFDI, docket, vol. 2, p. 595; Exhibit "P-3", docket, vol. 1, pp. 367 to 376.
[8] Par. 1.05, JSFDI, docket, vol. 2, p. 593; Exhibit "P-4", docket, vol. 1, pp. 403 to 406.

The amount of ₱663,080,000.00 (₱736,880,000 - ₱73,800,000) represents tax liabilities for 2009 and 2008, respectively, as indicated in the Balance Sheet of petitioner's 2009 AFS.[9]

On March 14, 2014, petitioner paid under protest the amount of ₱14,084,851.56, inclusive of penalties.[10] This payment under protest as well as its intention to later file a claim for refund[11] were made known to respondent through a Letter dated March 31, 2014, which respondent received on May 9, 2014[12].

On December 15, 2015, petitioner filed an administrative claim for refund or issuance of TCC for alleged erroneously and/or illegally collected DST for the year 2009 in the amount of ₱6,946,919.37.[13]

Due to respondent's inaction on its administrative claim for refund/tax credit, petitioner filed the instant Petition for Review[14] before this Court on March 9, 2016.

In the Answer[15], respondent avers that there is lack of basis to grant petitioner's claim for refund pursuant to Section 229 of the NIRC, as amended, which allows recovery or refund of taxes erroneously and illegally collected. However, the herein petitioner failed to timely file a protest against the assessment for deficiency DST rendering it final and executory, hence, can no longer be questioned. Since the assessment is deemed valid, the subsequent payment thereto by petitioner is likewise valid blotting out the alleged ground for refund.

Further, petitioner correctly paid taxes which it was under legal obligation to settle. Based on the case of *Commissioner of Internal Revenue vs. Filinvest Development*

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[9] Par. 1.05, JSFDI, docket, vol. 2, pp. 593 to 594; Exhibit "P-5", docket, vol. 1, p. 416.
[10] Par. 2.06, JSFDI, docket, vol. 2, p. 595 to 596; Exhibits "P-6", "P-6-a", "P-6-b", and "P-6-c", docket, vol. 2, pp. 660, 661, 662, and 663 to 664, respectively.
[11] Par. 2.07, JSFDI, docket, vol. 2, p. 596; Exhibit "P-7", docket, vol. 1, p. 425.
[12] BIR Record, p. 109.
[13] Par. 2.08, JSFDI, docket, vol. 2, p. 596; Exhibit "P-8", docket, vol. 1, pp. 431 to 447.
[14] Docket, vol. 1, pp. 12 to 45.
[15] Docket, vol. 1, pp. 271 to 280.

Corporation (Filinvest case)[16] and Revenue Memorandum Circular (RMC) No. 48-2011, loan agreements, including inter-office advances, such as those in the instant case, are subject to the imposition of DST.

Although RMC No. 48-2011 and the *Filinvest case* were promulgated in 2011, and the subject inter-office advances occurred in 2009, nevertheless RMC No. 48-2011 and the *Filinvest case* still apply since they merely clarify the relevant provision of the law, hence, they can be given retroactive application.

Finally, respondent claims that the subject tax refund is construed strictly against petitioner justifying the denial of the relief sought.

After the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[17] on October 24, 2016, the Court issued a Pre-Trial Order[18] on January 6, 2017 thereby terminating the pre-trial proceeding.

During the trial, petitioner presented its lone witness, **Alexander R. Sarinas**,[19] the former Finance and Budget Supervisor, and currently the Finance Associate of petitioner. His duties among others include the preparation of petitioner's financial reports and maintenance of financial records including those for BIR audit.

On June 18, 2013, petitioner received a NIC from respondent. He and other employees of petitioner attended the scheduled conference during which respondent informed them the assessment issued against petitioner for deficiency DST for advances from related parties based on Note 18 of its 2009 AFS.

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[16] G.R. Nos 163653 and 167689, July 19, 2011.
[17] Docket, vol. 2, pp. 591 to 604.
[18] Docket, vol. 2, pp. 615 to 626.
[19] Minutes of the hearing dated February 7, 2017, docket vol. 2, p. 633; Judicial Affidavit dated October 5, 2016, docket vol. 1, pp. 323-341; with cross-examination see TSN dated February 7, 2017 pp. 6-13.

On November 11, 2013, petitioner received a PAN dated November 5, 2013 assessing it for various deficiency taxes in the total amount of ₱26,406,106.69. Part of the said amount, i.e. ₱7,384,210.47, was for deficiency DST, penalties, surcharge, and interests.

On December 6, 2013, petitioner filed its Reply-Letter to the PAN dated November 26, 2013 assailing the imposition of the deficiency taxes, DST included.

On February 26, 2014, petitioner received a FLD of even date, assessing it for various deficiency taxes in the sum of ₱14,084,851.56, inclusive of DST in the amount of ₱6,870,619.75. The deficiency DST in both the PAN and the FLD was based on petitioner's advances from related parties as reflected in Note 18 of its 2009 AFS.

According to the witness, the cash advances were authorized by petitioner's Board of Directors through Board Resolutions and vouchers or memos. The said cash advances were done by petitioner's Treasury group, and only after the transaction had been consummated that he be furnished with the documents pertaining to them. Thus, his knowledge about the said transactions was merely based on the documents he received after the fact. He entered the transactions in petitioner's books based on the vouchers and billings he received.

On March 14, 2014, petitioner paid the amount of ₱14,244,915.71 as assessed in the FLD, inclusive of the alleged deficiency DST of ₱6,946,919.37. In a Letter dated March 31, 2014, petitioner informed respondent that the payment of deficiency DST was under protest and that a claim for refund shall subsequently be filed.

On December 15, 2015, petitioner filed with respondent a Letter/Claim for Refund dated December 14, 2015 in the amount of ₱6,946,919.37, representing DST erroneously and/or illegally collected for the year 2009, pursuant to Section 229 of the NIRC, as amended. For petitioner, DST should not be imposed on inter-company advances covered by inter-office memos or vouchers, as they are not loan agreements, per the prevailing court decisions and BIR rulings in 2009.

On March 9, 2016, petitioner filed the instant Petition for Review citing inaction on the part of respondent on its administrative claim for refund.

After admission of its formally offered exhibits[20], petitioner rested.

During the scheduled presentation of evidence for respondent, his counsel manifested that he had no evidence to present.[21]

The instant case was declared submitted for decision on December 1, 2017.[22]

STATEMENT OF ISSUES

The parties submitted the following for the Court's resolution:[23]

1. Whether petitioner is entitled to a refund of the amount of ₱6,946,919.37, representing the alleged deficiency DST that it paid under protest;

    a. Whether petitioner is liable for DST in the amount of ₱6,946,919.37;

    b. Whether DST may be imposed on the advances to petitioner from related parties on the basis of a mere Note appearing in the AFS;

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[20] Resolution, docket, vol. 2, pp. 670 to 671.
[21] Order dated September 18, 2017, docket, vol. 2, p. 677.
[22] Resolution, docket, vol. 2, p. 769.
[23] Par. 4.00, JSFDI, docket, vol. 2, p. 599.

c. Whether the decision in the *Filinvest case* and Revenue Memorandum Circular (RMC) No. 48-2011 may be applied retroactively against petitioner;

d. Assuming the decision in the *Filinvest case* may be applied retroactively, whether the subject advances to petitioner from related parties are covered by the said decision;

e. Whether the right of the government to assess petitioner for deficiency DST already prescribed; and

f. Assuming that petitioner is liable to pay the alleged deficiency DST, whether interest, surcharge, and penalty may be imposed on the basic tax.

Summing up the foregoing issues, the main issue for the Court's resolution is whether petitioner is liable to pay the assessed deficiency DST in the amount of ₱6,946,919.37 as indicated in the FLD dated February 26, 2014.

Petitioner's Arguments

Petitioner contends that it should not be assessed for DST deficiency as it merely relied on the prevailing rules at the time of the transactions or in 2009, to the effect that inter-company advances covered by mere inter-office memos are not loan agreements, hence, not subject to DST. The subsequent ruling in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* (*Filinvest case*) promulgated on July 19, 2011 to the contrary which was encapsulated in Revenue Memorandum Circular (RMC) No. 48-2011 dated October 6, 2011 should not adversely affect it since they should be prospectively applied per established jurisprudence on the matter.

Moreover, it can still invoke BIR Ruling No. 116-98 which states that documents evidencing advances extended to affiliates are not subject to DST on the ground that the pronouncement in the *Filinvest* case, i.e., that the said BIR Ruling may only be invoked by the taxpayer who requested for it, is a mere *obiter dictum*, hence, not a binding jurisprudence.

Besides, the *Filinvest* case did not interpret Section 180 (now Section 179) of the Tax Code on the imposition of DST on loan agreement.

Even assuming that the principle enunciated in the *Filinvest* case may apply retroactively, it cannot cover the present case since the two cases have different factual milieu. In the *Filinvest* case, the assessment was based on instructional letters and journal and cash vouchers while in the present case, the assessment for deficiency DST was based on Note 18 of its 2009 AFS.

While Article 8 of the Civil Code of the Philippines provides that judicial decisions shall form part of the law of the land, Article 4 of the same Code proscribes retroactive application of the law unless the contrary is provided.

Petitioner as well faults respondent for not presenting any debt instrument to establish the advances made to petitioner by its related parties. Citing Section 179, petitioner argues that two conditions must concur to impose DST, namely: (1) existence of a transaction; and (2) execution of a specific instruments evidencing the said transaction. Absent any document clearly indicating the borrowing and lending transaction, DST may not be imposed.

Petitioner likewise invokes prescription against the assessment issued by respondent. It avers that Section 203 of the NIRC, as amended, mandates that taxes be assessed within three (3) years after the last day prescribed by law for the filing of the return and payment of the taxes due. In case of non-payment of the corresponding taxes, interest will accrue thereafter.

In the assailed FLD, respondent assessed petitioner for interest on the alleged unpaid DST reckoned from January 6, 2010, which can be presumed as the last day for filing of the return and payment of the taxes due. Counting three (3) years from the said date, respondent had until January 6, 2013 to assess petitioner. However, petitioner received the assailed FLD way beyond the three (3)-year prescriptive period or on February 26, 2014.

Petitioner asserts that granting that it is liable for DST, it must only pay the amount of ₱3,315,400.00 without any surcharge, interest, and penalty as it relied in good faith on court decisions and BIR rulings prevailing at the time of the transactions.

Respondent's Arguments

Respondent first assails the jurisdiction of the Court over the case on the ground that petitioner failed to file an appeal or request for reconsideration within thirty days from receipt of the FLD on February 26, 2014 rendering it final, executory, and demandable. While petitioner disputed the imposition of the DST in its protest to the PAN, it did not register any protest against the imposition of DST as contained in the FLD. Petitioner sprinted to the Court and filed the instant petition for refund of allegedly erroneously or illegally collected tax.

Respondent claims that petitioner is not entitled to the refund sought for it failed to prove DST payments on the advances to it from related parties, as mandated under Section 179 of the NIRC of 1997, as amended, RMC No. 48-2011, and as ruled in the *Filinvest case*.

DISCUSSION/RULING

Sections 204(C) and 229 of the National Internal Revenue Code of 1997, as amended, relevantly provide:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
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> xxx xxx xxx
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
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> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment:** *Provided, however*, That the Commissioner may, even without a written

> claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. *(Emphasis supplied)*

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner.[24]

The two provisions explicitly require the taxpayer-claimant first file, within two years from the date of payment of tax, an **administrative claim** with the CIR before filing its **judicial claim** with the courts of law. Both claims must be filed within the two-year reglementary period. Timeliness of the filing of the claim is mandatory and jurisdictional. The court cannot take cognizance of a judicial claim for refund filed either prematurely or out of time.[25]

There is no question that petitioner paid under protest the deficiency DST assessment for TY 2009 in the amount of ₱6,946,919.37 on March 14, 2014. A *fortiori*, it had two (2) years from said date or until March 14, 2016, within which to file both its administrative and judicial claims for refund.

Evidence show that petitioner timely filed its administrative claim[26] on December 15, 2015 as well as its judicial claim on March 9, 2016. In other words, the Court has jurisdiction to hear and determine the case.

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[24] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue vs. CBK Power Company Limited, G.R. Nos. 193407-08.
[25] Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, G.R. No. 209776, December 7, 2016.
[26] Exhibit "P-8", docket, vol. 1, pp. 431 to 448

Section 229 of the Tax Code presupposes that the taxes sought to be refunded were wrongfully paid.[27] Thus, to be entitled to the refund sought, petitioner must establish that respondent did not have any legal basis for the imposition of DST against it.

Section 179 of the NIRC of 1997, as amended, provides:

> SEC. 179. *Stamp Tax on All Debt Instruments*. – On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instrument: *Provided*, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean 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.

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[27] CE Luzon Geothermal Power Company, Inc. vs. Commissioner of Internal Revenue, G.R. No. 197526 and Republic of the Philippines, represented by the Bureau of Internal Revenue vs. CE Luzon Geothermal Power Company, Inc., G.R. No. 199676-77, July 26, 2017.

In the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[28] (*Filinvest case*), the Supreme Court ruled that Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) in relation to Section 173 of the 1993 NIRC applies to all loan agreements, and that instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements upon which documentary stamp taxes may be imposed, to wit:

> On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are concerned, Section 180 of the NIRC provides follows:
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> > *Sec. 180. **Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand.** – On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: **Provided**, That only one documentary stamp tax shall be imposed on either loan*

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

> *agreement, or promissory notes issued to secure such loan, whichever will yield a higher tax:* ***Provided however****, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section.*

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3 (b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. *Definition of Terms*. – For purposes of these Regulations, the following term shall mean:
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> (b) 'Loan agreement' – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
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> The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of

> mortgage shall be taxed under Section 195.'
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> 'Section 6. *Stamp 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.
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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.

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. In keeping with the caveat attendant to every BIR Ruling to the effect that it is valid only if the facts claimed by the taxpayer are correct, we find that the CA reversibly erred in utilizing BIR Ruling No. 116-98, dated 30 July 1998 which, strictly speaking, could be invoked only by ASB Development Corporation, the taxpayer who sought the same. xxx"

From the foregoing, instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates qualify as loan agreements upon which DST may be imposed. In the same vein, DST may be imposed on the advances made to petitioner from related parties per Note 18 of its 2009 Audited Financial Statements, which constitute as loan agreements.

On the surface it appears that petitioner does not deny the pronouncement of the Supreme Court in the *Filinvest case* promulgated in 2011. In the main, it argues that the principle laid down in the said case should not be given retroactive application as to apply to the subject inter-company advances covered by inter-office memos or vouchers which it insists were not loans citing the prevailing rulings in 2009 when the transactions occurred.

Apparently, petitioner failed to recall the essence of the Supreme Court's interpretation of a law - it ruled that its interpretation of the law "constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect."[29] Judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. 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.[30]

Thus, the ruling of the High Court in the *Filinvest case* necessarily retroacts to the date the NIRC took effect and therefore applicable to the present case.

While it is true that when a prior ruling of the Supreme Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith,[31] such principle will not apply to this case. There is

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[29] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Senarillos v. Hermosisima, 100 Phil. 501 (1956).
[30] Eagle Realty Corporation vs. Republic of the Philippines represented by the Administrator of the Land Registration Authority, National Treasurer of the Philippines, Heirs of Casiano De Leon and Maria Socorro De Leon, G.R. NO. 151424, July 31, 2009.
[31] Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.

no prior ruling promulgated by the Supreme Court interpreting or regarding Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) that was overruled in the *Filinvest case*.

Significantly, the rulings allegedly prevailing at the time of the alleged transaction and relied upon by petitioner to justify its position were of the Court of Appeals (CA),[32] or of this Court.[33] In one case, the Supreme Court clarified that "CTA decisions do not constitute precedent and do not bind this Court or the public. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[34] 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."[35]

To shore up its stance, petitioner cites the Supreme Court Resolution dated May 17, 2004 in G.R. No. 162185[36] which it claims was promulgated prior to the *Filinvest case*.

It must be pointed out that the cited Resolution was a mere two (2)-page Minute Resolution which denied respondent's petition for review on certiorari of the Decision dated November 29, 2002 of the Court of Appeals in CA-GR SP No. 69869 on procedural ground - that the petition failed to include a certified legible copy of the judgment, final order, or resolution being assailed. The two-page Resolution discussed at length this procedural infirmity of the petition. In the penultimate paragraph of the Minute Resolution, the Court ruled that "even if the petition complied with the aforesaid requirement, it would still be denied, as the petitioner failed to show that a reversible error had been

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[32] Commissioner of Internal Revenue vs. APC Group, Inc., CA-GR No. 69869, November 29, 2002; Commissioner of Internal Revenue vs. APC Group, G.R. SP No. 69869, November 29, 2002.
[33] Commissioner of Internal Revenue vs. Belle Corporation, CTA EB No. 147, October 13, 2006; APC Group, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6155, March 11, 2002.
[34] Visayas Geothermal Power Company vs. Commissioner of Internal Revenue, G.R. No. 197525, June 4, 2014.
[35] Nippon Express (Philippines) Corporation vs. Commissioner of Internal Revenue, G.R. No. 196907, March 13, 2013.
[36] Commissioner of Internal Revenue vs. APC Group, Inc.

permitted by the appellate court". On this regard, the Supreme Court declared, to wit:

> Any issue, whether raised or not by the parties, *but not passed upon by the Court*, does not have any value as precedent. As this Court has explained as early as 1926:
>
> > It is contended, however, that the question before us was answered and resolved against the contention of the appellant in the case of *Bautista vs. Fajardo* (38 Phil. 624). In that case no question was raised nor was it even suggested that said Section 216 did not apply to a public officer. That question was not discussed nor referred to by any of the parties interested in that case. It has been frequently decided that the fact that a statute has been accepted as valid, and invoked and applied for many years in cases where its validity was not raised or passed on, does not prevent a court from later passing on its validity, where that question is squarely and properly raised and presented. **Where a question passes the Court *sub silentio*, the case in which the question was so passed is not binding on the Court (*McGirr vs. Hamilton and Abreu,* 30 Phil. 563), nor should it be considered as a precedent.** (*U.S. vs. Noriega and Tobias*, 31 Phil. 310; *Chicote vs. Acasio,* 31 Phil. 401; *U.S. vs. More*, 3 Cranch [U.S.] 159, 172; *U.S. vs. Sanges*, 144 U.S. 310, 319; *Cross vs. Burke*, 146 U.S. 82.) For the reasons given in the case of *McGirr vs. Hamilton and Abreu*, supra, the decision in the case of *Bautista vs. Fajardo*, supra, can have no binding force in the interpretation of the question

presented here.

> In *Cebu Toyo*, the nature of the 120-day period, whether it is mandatory or optional, was not even raised as an issue by any of the parties. **The Court never passed upon this issue.** Thus, *Cebu Toyo* does not constitute binding precedent on the nature of the 120-day period.[37]

For a ruling of this [Supreme] Court to come within this rule (known as *stare decisis*), the Court must categorically rule on an issue expressly raised by the parties; it must be a ruling on an issue directly raised. When the court resolves an issue merely *sub silentio*, *stare decisis* does not apply on the issue touched upon. In fact, the same argument was struck down by this court in *San Roque-Taganito*. There, we held that, "any issue, whether raised or not by the parties, but not passed upon by the court, does not have any value as precedent.[38]

Anent the BIR Rulings cited by petitioner, these are likewise not binding doctrines. The Supreme Court explained, to wit:

> Article 8 of the Civil Code recognizes judicial decisions, applying or interpreting statutes as part of the legal system of the country. But administrative decisions do not enjoy that level of recognition. A memorandum-circular of a bureau head could not operate to vest a taxpayer with a shield against judicial action. For there are no vested rights to speak of respecting a wrong construction of the law by the administrative officials and such wrong interpretation could not place the Government in estoppel to correct or overrule the same.[39]

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[37] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485, Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113, Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.
[38] Procter and Gamble Asia PTE Ltd. vs. Commissioner of Internal Revenue, G.R. No. 204277, May 30, 2016.
[39] Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024. January 28, 1999.

Likewise, the Court cannot simply agree with petitioner that since respondent did not present the debt instrument as evidence of the subject transaction, deficiency DST may not be imposed.

Section 6 of Revenue Regulations (RR) No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, to wit:

> 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."

Petitioner's own witness admitted during his cross-examination that the advances from related parties in favor of petitioner were through vouchers and board resolution or memos, to wit:

"ATTY. MULI

Q Now I ask you, Mr. Witness, in what form are these advances, are they written?

MR. SARINAS
A This is in a form of vouchers and board resolution or memos."[40]

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.[41] DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law.[42] 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, because it is imposed on the transaction rather than on the document.[43] Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document.[44]

Clearly, even if there is no debt instrument or if it is on the basis of the Note appearing in petitioner's 2009 AFS, DST may be imposed given that the transactions were clearly established and were, in fact, admitted by petitioner itself.

It is also worth to note that the instant claim for refund stems from respondent's assessment against petitioner for deficiency taxes, which it paid only under protest.

Additionally, tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All

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[40] Transcript of Stenographic Notes (TSN) of the hearing held on February 7, 2017, p. 6.
[41] *Philippine Home Assurance, et al. vs. Court of Appeals, et al.*, G.R. No. 119446, January 21, 1999.
[42] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue*, G.R. Nos. 164155 and 175543, February 25, 2013.
[43] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.
[44] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008, citing *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

presumptions are in favor of the correctness of tax assessments.[45] Accordingly, the deficiency DST assessment is presumed correct, and it is incumbent upon petitioner to prove the contrary. Having failed to discharge this burden, and with the previous discussion establishing the opposite, the imposition for DST stands.

In a last-ditch effort to prove its entitlement to refund, petitioner contends that the right of respondent to issue an assessment against it for deficiency DST has already prescribed. This contention is devoid of merit.

Sections 203 and 222 of the NIRC of 1997, as amended, state in part, as follows:

> SEC. 203. *Period of Limitation Upon Assessment and Collection.* - Except as provided in Section 222, internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided*, That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day."
>
> 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**

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[45] *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015, citing *Sy Po vs. Court of Tax Appeals*, 247 Phil. 487 (1988).

> **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. (*Emphasis supplied*)

Under Section 203 of the NIRC, the prescriptive period to assess is set at three years. This rule is subject to the exceptions under Section 222 of the NIRC.[46]

Section 203 of the Tax Code provides a 3-year limit for the assessment of internal revenue taxes. While the prescriptive period to assess deficiency taxes may be extended to 10 years in cases where there is false, fraudulent, or non-filing of a tax return - the fraud contemplated by law must be actual.[47]

Based on the foregoing, a taxpayer may only be assessed for deficiency taxes within three years after the last day prescribed by law for the filing of a return, or if filed beyond the period prescribed by law, the three-year period shall be counted from the day the return was filed, except when a taxpayer fails to file a return, in which case a deficiency tax may be assessed within ten years after the discovery of the omission.

In this case, the advances to petitioner from its related parties were not subjected to DST, thus, a return was not filed. With this omission, any deficiency DST may be assessed within ten years after the discovery of the same.

The deficiency DST assessment on the advances to petitioner from related parties was based on Note 18 of petitioner's 2009 AFS. Reckoning the date of discovery of the non-filing of return on January 6, 2010 based on the indication in both the PAN[48] and FLD[49] that the imposition of

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[46] Commissioner of Internal Revenue vs. Philippine Daily Inquirer, Inc., G.R. No. 213943, March 22, 2017.
[47] Spouses Emmanuel D. Pacquiao and Jinkee J. Pacquiao vs. The Court of Tax Appeals - First Division and the Commission of Internal Revenue, G.R. No. 213394, April 06, 2016.
[48] Exhibit "P-2", docket, vol. 1, p. 365.
[49] Exhibit "P-4", docket, vol. 1, p. 405.

interest started on said date, respondent had ten years or until January 6, 2020 within which to assess petitioner for deficiency DST. Therefore, the right of respondent to assess petitioner was yet to prescribe when the latter received the FLD on February 26, 2014.

Be that as it may, by virtue of its reliance in good faith on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which provides that inter-company loans and advances covered by inter-office memoranda are not subject to DST, it justifies the non-imposition of surcharges and interest.

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 laws are sufficient justification to delete the imposition of surcharges and interest.[50]

As to compromise penalty, it must be stressed that the same is imposed to avoid prosecution for violation of the provisions of the Tax Code. Pursuant to Revenue Memorandum Order (RMO) No. 01-90, as amended by RMO No. 19-07, compromise penalties are only suggested amounts for purposes of settlement of tax liability, and may not be imposed or exacted on a taxpayer in the event that a taxpayer refuses to pay the same. Clearly, the compromise penalty implies a mutual agreement between the parties in respect to the thing or subject matter which is so compromised.[51] The imposition of the same without the conformity of the taxpayer is illegal and unauthorized.[52]

In this case, there is no indication that petitioner consented to the compromise penalty. Settled is the rule that payment made under protest by petitioner could only mean that there was no agreement between the parties, as held by the High Court, as follows:

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[50] *The City of Iloilo, et al. vs. Smart Communications, Inc. (Smart)*, G.R. No. 167260, February 27, 2009.
[51] *The Philippines International Fair, Inc. vs. The Collector of Internal Revenue, et al.*, G.R. Nos. L-12928 and L-12932, March 31, 1962.
[52] *Commissioner of Internal Revenue vs. Lianga Bay Logging Co., Inc. et al.*, G.R. No. L-35266, January 21, 1991.

> The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 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.[53]

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱3,631,519.37, representing illegally assessed and collected interest, surcharge, and compromise penalty for taxable year 2009, broken down as follows:

Surcharge	₱ 828,850.00
Interest	2,777,669.37
Compromise	25,000.00
Total	**₱3,631,519.37**

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

[53] De San Agustin vs. Commissioner of Internal Revenue, G.R. No. 138485, September 10, 2001.

ATTESTATION

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

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice