REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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BREWERY PROPERTIES, INC., Petitioner,	**CTA Case No. 8892**
	Members:
- versus -	**DEL ROSARIO,** *Chairperson*, **UY,** and **MINDARO-GRULLA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** FEB 27 2017 ; 10:38 a.m.

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RESOLUTION

UY, J.:

For resolution are the following:

1. Petitioner's **"MOTION FOR PARTIAL RECONSIDERATION OF THE DECISION DATED SEPTEMBER 30, 2016"** filed on October 19, 2016, without respondent's comment despite due notice; and

2. Respondent's **"MOTION FOR PARTIAL RECONSIDERATION (Re: Decision dated 30 September 2016)"** filed on October 20, 2016, with petitioner's **"OPPOSITION TO RESPONDENT'S 'MOTION FOR PARTIAL RECONSIDERATION (Re: Decision dated 30 September 2016)' DATED OCTOBER 20, 2016"** filed on November 29, 2016.

Both Motions assail this Court's Decision dated September 30, 2016, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTLY**

GRANTED. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of **₱349,813.96**, representing the following:

Penalties erroneously paid by petitioner	Amount
Surcharge	₱ 102,699.00
Interest	231,114.96
Compromise penalty	16,000.00
Total	**₱ 349,813.96**

SO ORDERED."

Petitioner's Motion:

In petitioner's *Motion for Partial Reconsideration*, it is argued that the decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* ("*Filinvest* case")[1] cannot be given any retroactive application. Relative thereto, petitioner claims that the decision in the case of *Co vs. Court of Appeals* ("*Co* case")[2] which decreed that the principle of prospectivity also applies to judicial decisions, should be applied to this case, instead of the decision in *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.* ("*Victorias* case")[3]; and that if there is any conflict between the said cases, petitioner submits that the *Co* case, being a later decision than the decision in the *Victorias* case, should prevail.

Petitioner also contends that there was an existing doctrine that was overruled by the decision in the *Filinvest* case; and that a previous doctrine having been overruled by the Supreme Court, the said decision cannot be applied retroactively, pursuant to the decisions in the *Co* case and the case of *People of the Philippines vs. Jabinal*[4].

According to petitioner, Revenue Memorandum Circular (RMC) No. 48-2011 did not merely circularize the decision in the *Filinvest* case, but enjoined all employees of the Bureau of Internal Revenue (BIR) engaged in the audit and review of cases *"to assess deficiency DST, if warranted, on these kinds of transactions."*

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[1] G.R. Nos. 163653 and 167689, July 19, 2011.
[2] G.R. No. 100776, October 28, 1993.
[3] G.R. No. 66880, August 2, 1991.
[4] G.R. No. L-30061, February 27, 1974.

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Furthermore, petitioner avers that there are two (2) basic requisites that must exist before DST may be imposed: (1) there must be a transaction or privilege which is exercised by persons; and (2) this transaction is evidenced through the execution of specific instruments. Petitioner points out that respondent has not controverted that these two (2) requisites must be present; and that respondent, in imposing the alleged deficiency DST, merely relied on a mere Note to the Audited Financial Statements of petitioner.

Petitioner likewise insists that the definition of "simple loan" in Section 1933 of the Civil Code is not applicable in the instant case. Instead, according to petitioner, what has application in this case is Section 179 of the NIRC which specifically refers to "debt instruments".

Lastly, petitioner argues that while the Details of Discrepancy were attached to both the Preliminary Assessment Notice (PAN) and Formal Assessment Notice (FAN), there was no mention therein of any documentary basis for the assessment; and that it was only in the Final Decision on Disputed Assessment that petitioner was informed of the basis of the assessment, which is the Note appearing in its Audited Financial Statements for taxable year 2009.

Respondent's Motion:

In the Motion of respondent, the latter argues that this Court has no jurisdiction to entertain the instant petition; and that reliance in good faith is insufficient to relieve one from payment of penalties for tax cases.

THE COURT'S RULING

Both Motions lack merit.

Considering respondent's view that this Court has no jurisdiction to entertain the present Petition for Review, the same shall be primarily dealt with.

This Court has jurisdiction to entertain the present Petition for Review.

According to respondent, this Court has no jurisdiction to entertain the instant petition because petitioner did not, or was not able to file its appeal of the Final Decision on Disputed Assessment (FDDA) to this Court or to the Office of the Commissioner of Internal Revenue in accordance with Revenue Regulations No. 12-99. Thus, in effect, the findings in the FDDA are now final, executory and demandable. Respondent further emphasizes that in the case at bar, as the findings of tax liability has already become final, there is no erroneously or illegally collected tax; and hence, petitioner's claim for refund has no basis in law.

Respondent is clearly mistaken.

Contrary to respondent's assertion, an *"erroneous or illegal tax"* is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[5]

In the assailed Decision, the Court ruled that in effect, there is indeed no *"erroneous or illegal tax"* which may be refunded, since the subject documentary stamp tax was correctly assessed and collected. However, as regards the penalties, *i.e.*, the interest, surcharge, and compromise penalty, the Court further ruled that the same must be refunded, for being wrongfully collected.

Nevertheless, while it is true that the taxpayer's failure to file a petition for review with this Court within the statutory period renders the disputed assessment final, executory and demandable, thereby precluding it/him from interposing the defenses of legality or validity of the assessment and prescription of the Government's right to assess,[6] there is no law prohibiting the refund of what has been paid by virtue of the said assessment. Parenthetically, what the law does not prohibit, it allows.[7] In fact, Section 229 of the NIRC of 1997 is implicit that **<u>any penalty claimed to have been excessively or in any manner wrongfully collected</u> may be a subject of a claim for refund**. Said provision reads:

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in

[5] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.

[6] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue*, G.R. No. 168498, April 24, 2007.

[7] *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, Honorato B. Catindig, Petitioner*, G.R. No. 148311, March 31, 2005.

> 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 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.
>
> 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." *(Emphases and underscoring supplied)*

In this case, it is shown that the said penalties were wrongfully collected. We have ruled, in the assailed Decision, as follows:

> "Good faith and honest belief that one is not subject to tax on the previous interpretation of the government instrumentality tasked to implement the tax law are sufficient justification for petitioner to be spared of interest and surcharges.[8]
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> In this case, petitioner's witness, Mrs. Eileen P. Ratilla, testified that petitioner has relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008,[9] and such reliance to the said Ruling is confirmed in its Letter/Protest dated February 8, 2012.[10] Thus, the non-imposition of the surcharge and interest is justified in this case.
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> As regards the compromise penalty, it has been held that payment made under protest by the taxpayer could only signify that there was no agreement between

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

[9] Exhibit "P-13" (Q&A No. 15), Docket – Vol. II, p. 737.

[10] Exhibit "P-11-d", Docket – Vol. I, pp. 374 to 375.

the parties. In *De San Agustin vs. Commissioner of Internal Revenue*,[11] the Supreme Court ruled as follows:

> '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.**' *(Emphasis supplied)*

Considering that petitioner disputed the imposition of compromise penalty, the same must not have been required to be paid by petitioner."

As regards the imposition of the subject surcharge, interest, and compromise penalty, considering that the same is not in accordance with the cited jurisprudential pronouncements, which forms part of the law of the land,[12] it is plain that the collection thereof by respondent in the amounts of ₱102,699.00, ₱231,114.96, and ₱16,000.00, respectively, was wrongfully made.

In *Gibbs, et al. vs. Collector of Internal Revenue, et al.*,[13] the Supreme Court held:

> "xxx. **If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, <u>the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector</u>.** This is so because of the positive requirement of Section 306[14] and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute." *(Emphasis and underscoring supplied)*

Based on the foregoing, this Court is endowed with jurisdiction to entertain refund cases filed under the aforequoted Section 229 of

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[11] G.R. No. 138485, September 10, 2001.

[12] *Floresca, et al. vs. Philex Mining Corporation, et al.*, G.R. No. L-30642, April 30, 1985.

[13] G.R. No. L-13453, February 29, 1960.

[14] Now Section 229, National Internal Revenue Code of 1997, *Supra*.

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the NIRC of 1997. Thus, petitioner's contention that this Court has no jurisdiction is not supported by any legal basis.

The decision in the* Filinvest *case cannot be given a prospective application.

Petitioner strongly argues that the *Filinvest* case must be given a prospective application.

The argument of petitioner, however, is untenable.

The *Victorias* case holds that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[15] In *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.* ("*Columbia* case"),[16] the same Supreme Court qualified this principle, to wit:

> "It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, **<u>subject only</u> to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith**. To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication."

Thus, based on the foregoing jurisprudential pronouncement, the general rule is that judicial interpretation becomes part of the law as of the date it was originally passed, and the exception thereto is that when a doctrine laid down by the High Court is subsequently overruled or reversed, in which case, the new doctrine will only be applied prospectively.

Hence, the pertinent question now is: Whether or not the decision in the *Filinvest* case overrule a previous doctrine?

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[15] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.,* G.R. No. 66880, August 2, 1991.
[16] G.R. No. 110318, August 28, 1996.

Petitioner answers in the affirmative, citing the decision rendered by the Court of Appeals (CA) in *Commissioner of Internal Revenue vs. APC Group, Inc.* ("*APC Group* case")[17] that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the NIRC, as the supposed previous doctrine, which was overruled by the *Filinvest* case. It alleges that when the said CA case was elevated to the Supreme Court, the latter adopted the said ruling of the CA when the High Court ruled that petitioner failed to show that a reversible error had been committed by the appellate court.

The reasoning of petitioner is specious.

In *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al.*,[18] the Supreme Court held:

> "...the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort.** We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that **'[O]nly the decisions of this Honorable Court establish <u>jurisprudence or doctrines</u> in this jurisdiction.'** xxx." *(Emphases and underscoring supplied)*

Thus, the CA decision in the *APC Group* case cannot be treated or equated as a doctrinal pronouncement.

Neither can it be treated as a binding precedent, notwithstanding the fact that the said case was appealed to the Supreme Court via Petition for Review on *Certiorari* and that this Petition was denied for the failure of petitioner therein *"to show that a reversible error had been committed by the appellate court"* via the Minute Resolution dated May 17, 2004[19].

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*,[20] the Supreme Court held:

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[17] CA-G.R. No. 69869, November 29, 2002.
[18] G.R. No. L-25291, January 30, 1971.
[19] Docket – Vol. II, pp. 1134 to 1135 .
[20] G.R. No. 167330, September 18, 2009.

"It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, *if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.* Thus, in *CIR v. Baier-Nickel*,[21] the Court noted that a previous case, *CIR v. Baier-Nickel*[22] **involving the same parties and same issues**, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision.

Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and

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[21] G.R. No. 153793, August 29, 2006.
[22] Extended Resolution, G.R. No. 156305, February 17, 2003.

> *certified by the Chief Justice*." *(Italics and underscoring supplied)*

Since it is neither a doctrine, nor a binding precedent, the ruling in the *APC Group* case could not have been overruled by the *Filinvest* case. There being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 of the NIRC constitutes part thereof as of the date it was originally passed, *i.e.*, on December 23, 1994, as stated in the assailed Decision. Consequently, the *Filinvest* case cannot be applied prospectively.

In the same vein, there is no merit in petitioner's contention that RMC No. 48-2011 did not merely circularize the decision in the *Filinvest* case, so as to exclude the same to the ruling in *Philacor Credit Corporation vs. Commissioner of Internal Revenue*,[23] as cited in the assailed Decision. This is so because it is clearly apparent, upon a cursory reading of the said RMC, that it uses the term *"Circularization"* in its subject matter[24] and it merely quotes the *"relevant excerpts"* from the *Filinvest* case. The fact that the said RMC No. 48-2011 enjoined all employees of the BIR engaged in the audit and review of cases *"to assess deficiency DST, if warranted, on these kinds of transactions"* is not an indication that it has made a specific ruling and has overruled or reversed a prior one, because the assessment of deficiency DST, if warranted, will be merely a necessary consequence of what has been ruled in the same *Filinvest* case, as quoted therein.

DST may be imposed on the advances to petitioner on the basis of the Note appearing in its Audited Financial Statement.

Petitioner avers that respondent has not controverted that the following two (2) requisites must be present, before DST may be imposed: (1) there must be a transaction or privilege which is exercised by persons; and (2) this transaction is evidenced through the execution of specific instruments. Moreover, petitioner points out that respondent, in imposing the alleged deficiency DST, merely

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

[24] SUBJECT: Circularization of the relevant excerpts from the *En Banc* Supreme Court Decision in the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. Nos. 163653 and 167689 dated July 19, 2011, on the imposition of Documentary Stamp Tax on inter-office memo covering advances granted by an affiliate corporation.

relied on a mere Note to the Audited Financial Statements of petitioner; and that respondent has not shown that the subject transactions were manifested through the execution of specific instruments.

In addition, petitioner contends that there is no willful suppression of evidence under Section 3(e), Rule 131 of the Revised Rules of Evidence, since there was no necessity for it to present the vouchers, statements of accounts and memos covering the advances; and that it was incumbent upon respondent to present, or require the presentation of, such documents, if he so desired, but he did not, as indeed he opted not to present any evidence in this case.

We rule against petitioner.

Petitioner's line of contention has already been addressed by this Court, when it ruled in the assailed Decision, the following:

> "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**.[25] As a corollary, there is no basis in the assertion that a DST is literally a tax on a document.[26] Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established.
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> Moreover, it is noteworthy that Section 6 of Revenue Regulations No. 9-94, which has the force of law,[27] provides for the imposition of DST where even no formal agreements or promissory notes are executed, to wit:
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> > "SECTION 6. *Stamp Tax on all Loan Agreements*. – All loan agreements whether made or signed in the Philippines, or abroad

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[25] *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 194065, June 20, 2016, citing *Commissioner of Internal Revenue vs. First Express Pawnshop Co., Inc.*, 607 Phil 227 (2009).

[26] *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, May 3, 2006.

[27] *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, G.R. No. 159490, February 18, 2008.

> 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)*

In this case, while it may be true that respondent merely based the DST imposition on the information obtained from the Note to the audited financial statements of petitioner, the latter does not deny the existence of the subject transactions to which respondent imposed the DST; nor does petitioner deny that it is a party to the same transactions.

In fact, petitioner impliedly admitted at the administrative level, through its witness, Mrs. Eileen P. Ratilla, the existence of the subject transactions in its Letter/Protest dated February 8, 2012[28], since it merely argued therein that the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[29] cannot be given retroactive application; and that in invoking a 2011 issuance on a 2009 assessment against the taxpayer, the BIR contravened Section 246 of the NIRC that mandates the non-retroactivity of rulings if they are prejudicial to the taxpayer. Nothing more. This, despite the fact that said witness *'was already familiar with the nature of the transactions involved, with the assessments, and with the related documents involved in the administrative investigation by the BIR'*, and has

[28] Exhibit "P-11-d", Docket – Vol. I, pp. 371 to 375.
[29] G.R. Nos. 163653 and 167689, July 19, 2011.

> *'possession of the said documents'.*[30] Simply put, if petitioner was convinced that the said transactions never transpired, it would logically deny their existence; but it did not. Moreover, it is equally noteworthy that, in effect, petitioner itself declared or admitted the existence of the taxable transactions by declaring it in its financial statements. Thus, the inevitable conclusion is that the subject transactions really did happen.
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> Correspondingly, since it was clearly shown that said transactions exist, We find no reason not to agree with respondent in the imposition of the DST thereon on the basis of petitioner's financial statements and the Notes thereto. Otherwise, it would be relatively easy for any taxpayer to circumvent the law on DST by simply hiding the corresponding and/or supporting document or documents.
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> Furthermore, it is noted that while it is shown that the transactions exist, petitioner did not present the pertinent documents that brought about the reporting thereof in its financial statements and the Notes thereto. This presumption then comes to mind: *'That evidence wilfully suppressed would be adverse if produced'.*[31]

We find no merit in petitioner's assertion that there was no necessity for it to present the subject vouchers, statements of accounts and memos covering the advances. In fact, it was necessary. This is so because by presenting the said documents, the Court can judiciously evaluate and examine the same, and thereafter, properly determine whether indeed no DST is imposable. Thus, the failure of petitioner to present to this Court the subject vouchers, statements of accounts and memos covering the advances for this Court's scrutiny, is a clear indication that they will be adverse to petitioner, if produced.

Moreover, We also find no merit in petitioner's contention that it was incumbent upon respondent to present, or require the presentation of, said documents.

Entitlement to a tax refund is for the taxpayer to prove and not for the government to disprove.[32] The fact that respondent failed to

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[30] Exhibit "P-13", Docket – Vol. II, p. 736.
[31] Section 3(e), Rule 131, Rules of Court.
[32] *Commissioner of Internal Revenue vs. Far East Bank & Trust Co.*, G.R. No. 173854, March 15, 2010.

present any evidence or to refute the evidence presented by the taxpayer does not *ipso facto* entitle to a tax refund. It is not the duty of the government to disprove a taxpayer's claim for refund. Rather, the burden of establishing the factual basis of a claim for a refund rests on the taxpayer.[33]

A loan or simple loan is included in the term "debt instruments" under Section 179 of the NIRC of 1997, as amended by Republic Act No. 9243.

It is also the view petitioner that the definition of "simple loan" in Section 1933 of the Civil Code is not applicable in the instant case. Instead, according to petitioner, what has application in this case is Section 179 of the NIRC, which specifically refers to "debt instruments" as defined therein. Relative thereto, petitioner emphasizes that the said Section 179 speaks of "issue price" and "terms".

Petitioner's argument is untenable.

It is apparent that said argument proceeds from the mistaken notion of petitioner that a "simple loan" is not included in the term "debt instruments". Section 179 of the NIRC of 1997, as amended by Republic Act No. 9243, suggests otherwise. It provides as follows:

> "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, **<u>but not limited to</u>**

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[33] Supra.

> 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." *(Emphases and underscoring supplied)*

Based on the foregoing, it is not hard to discern that a "loan" or "loan agreement" is considered as embraced in the term "debt instruments". Thus, a "loan" or "simple loan", which is defined by Section 1933 of the Civil Code as a *"contract of loan, 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"*, being a contract of loan or a loan agreement, falls under the purview of a "debt instrument".

Petitioner was informed of the facts and law upon which the subject assessment was made.

Petitioner argues that while the Details of Discrepancy were attached to both the PAN and FAN, there was no mention therein of any documentary basis for the assessment; and that it was only in the FDDA that petitioner was informed of the basis of the assessment, which is the Note appearing in its Audited Financial Statements for taxable year 2009.

We disagree with petitioner.

This issue has been sufficiently addressed in the assailed Decision. Nevertheless, even after a second hard look upon the subject PAN and FAN, it is still the ruling of this Court that the same have complied with the requirement of Section 228 of the NIRC of 1997 that *"(t)he taxpayer shall be informed in writing of the law and the facts on which the assessment is made".* To reiterate, both the

Details of Discrepancy attached to the said PAN and FAN, clearly stated the factual and legal bases for the subject assessment.

To be clear, the factual basis of the said assessment is that *"(t)here were advances from San Miguel Corporation of P 1,941,888.00 and from San Miguel Brewery, Inc. of P 80,217,126.00 for a total of P 82,159,014.00 not subjected to DST"*;[34] while the legal basis therefor is *"Section 179 of the Tax Code, as amended,[35] and as clarified under Revenue Memorandum Circular No. 48-2011."*[36] The law does not require that the said factual and legal bases be stated in minute details. Especially so that petitioner was able to file a protest[37], containing eloquent arguments against the subject DST assessment, thereby showing that it has verily understood the bases therefor. Thus, the said statements of the factual and legal bases, as indicated in the PAN and FAN, will suffice.

Hence, the DST assessment issued by respondent is valid.

WHEREFORE, in light of the foregoing considerations, both petitioner's *Motion for Partial Reconsideration of the Decision dated September 30, 2016* and respondent's *Motion for Partial Reconsideration (Re: Decision dated 30 September 2016)* are **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

(with Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

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[34] Refer to Exhibits "P-6" and "P-5", Docket – Vol. I, pp. 288 and 319.
[35] Refer to Exhibit "P-5", Docket – Vol. I, p. 319.
[36] Refer to Exhibit "P-6", Docket – Vol. I, p. 288.
[37] Exhibit "P-7", Docket – Vol. I, pp. 214 to 218.

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

BREWERY PROPERTIES, INC.,
Petitioner,

CTA CASE NO. 8892

Members:

-versus-

Del Rosario, *Chairperson,*
Uy, *and*
Mindaro-Grulla, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 27 2017 ; 10:38 a.m.

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in holding that this Court has jurisdiction to entertain the Petition for Review concerning the inaction of respondent on petitioner's claim for refund anent the alleged erroneously or illegally collected documentary stamp tax (DST) amounting to Php760,609.96.

Indeed, the Court is clothed with jurisdiction to review on appeal inaction of the Commissioner of Internal Revenue (CIR) on cases involving refunds of internal revenue taxes pursuant to Sec. 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA 9282,[1] and as implemented by Sec. 3(a)(2), Rule 4 of the Revised Rules of the Court of Tax Appeals, as amended,[2] in relation to Section 229 of the National

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[1] Sec. 7. Jurisdiction. - The CTA shall exercise:
a. Exclusive appellate jurisdiction to review by appeal, as herein provided:
1. xxx
2. Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial; xxx *(Emphases supplied)*
[2] RULE 4. JURISDICTION

Internal Revenue Code (NIRC) of 1997, as amended.[3] Since the administrative claim for refund (filed on June 30, 2014[4]) and the Petition for Review (filed on September 18, 2014[5]) were both filed within the two-year prescriptive period from the date of payment of the subject tax and penalties on September 24, 2012,[6] the Court correctly exercised its jurisdiction in reviewing the inaction of respondent over petitioner's administrative claim for refund.

In the assailed Decision, I concurred in the grant of a refund to petitioner to the extent of the penalties paid by petitioner, *viz.*:

Penalties	Amount
Surcharge	Php102,699.00
Interest	231,114.96
Compromise Penalty	16,000.00
Total	**Php349,813.96**

After a judicious re-evaluation of the records of the case and a careful consideration of the arguments presented in the parties'

SEC. 3. Cases within the jurisdiction of the Court in Division.- The Court in Division shall exercise:
(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
(1) xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; xxx *(Emphases supplied)*

[3]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, of any sum alleged to have been excessively or in any manner wrongfully 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.
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.

[4] Exhibit "P-11"; CTA Docket, p. 871.

[5] CTA Docket, p. 14.

[6] Exhibits "P-9", "P-9-a", "P-9-c", "P-9-d", "P-9-b"; CTA docket, pp. 860-864.

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respective Motions, I am constrained to reconsider the position I have earlier taken. I submit that petitioner is not entitled to the refund of the afore-stated penalties as the Final Decision on Disputed Assessment (FDDA)[7], assessing petitioner for deficiency DST in the amount of P760,609.96, inclusive of penalties, had long become final and executory.

Records disclose the following:

- **September 19, 2012** – petitioner received the FDDA signed by then CIR Kim S. Jacinto-Henares;[8]
- **September 24, 2012** – petitioner paid the DST of Php760,609.96, inclusive of penalties, as indicated in the FDDA;
- **June 30, 2014** – petitioner filed its administrative claim for refund asserting that the DST and penalties had been erroneously and/or illegally collected by the Government.[9]

Section 228 of the NIRC of 1997, as amended, provides for the remedy available to a taxpayer in questioning a final decision rendered by the CIR on a disputed assessment, *viz.*:

> "SEC. 228. Protesting of Assessment. - When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases: xxx
>
> The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void.
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations. Within sixty (60)

[7] Exhibit "P-8"; CTA Docket, p. 856.
[8] Exhibit "P-8"; CTA Docket, p. 856.
[9] Exhibit "P-11"; CTA Docket, pp. 871-879.

> days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
>
> **If the protest is denied** in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, **the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision**, or from the lapse of one hundred eighty (180)-day period; **otherwise, the decision shall become final, executory and demandable**. (Emphases supplied)

Truth to tell, the remedy of appeal to the Court of Tax Appeals (CTA) was even indicated in the FDDA. The FDDA requested petitioner to immediately pay the deficiency DST, inclusive of penalties, upon its receipt thereof as it is already the final decision of the BIR. **The FDDA likewise states that should petitioner disagree, it may appeal the decision to the CTA within thirty (30) days from its receipt; otherwise the deficiency tax assessment shall become final, executory and demandable.**

Since petitioner received the FDDA on **September 19, 2012**,[10] petitioner had only until **October 19, 2012** to file an appeal before the CTA to question the FDDA. Records reveal that no appeal to the CTA was filed by petitioner on or before October 19, 2012 to question the FDDA. **The fact that petitioner paid the assessment under protest on September 24, 2012 was not sufficient to toll the running of the 30-day period within which to contest the validity of the FDDA before the CTA**.

Considering that petitioner did not exercise the remedy of appeal as provided in Section 228 of the NIRC of 1997, as amended, the FDDA became final, executory and demandable. Petitioner is thereby precluded from questioning the legality or validity of the assessment in the guise of claiming a refund of the DST and penalties it paid under protest. Simply put, petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the final decision of the CIR on the disputed assessment.

Otherwise stated, the deficiency DST and penalties paid by petitioner, pursuant to a final and executory FDDA, were not in the nature of "illegal" or "erroneous" collection by respondent more so, considering that the correctness, validity or legality of the FDDA can only be contested in an appropriate appeal before the CTA.

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[10] Exhibit "P-11"; CTA Docket, pp. 871-879, 872.

Conversely, the validity of the said deficiency DST and penalties pursuant to a final and executory FDDA may not be assailed nor be the subject of a claim for refund under Section 229 of the NIRC of 1997, as amended.

In sum, the proper remedy for the petitioner was to appeal the FDDA before the CTA within the 30-day period and pray for the cancellation of the FDDA and the refund of the deficiency DST and penalties that it paid under protest. This remedy has long been recognized in this jurisdiction. In *Treasurer-Assessor vs. University of the Philippines*,[11] the Supreme Court held:

> "Xxx xxx xxx. **When the law vested the Court of Tax Appeals with the power to declare an assessment illegal or unreasonable, in the exercise of its appellate jurisdiction, it follows that said court is also given the power to grant the relief arising from its finding that the appealed assessment is illegal or unreasonable.** The law could not have intended that after the Court of Tax Appeals had decided that a tax assessment is invalid or unreasonable the aggrieved taxpayer would still have to go to another court to seek the refund of the realty taxes illegally collected from him on the basis of the assessment that was declared invalid or unreasonable. **To hold the view that the Court of Tax Appeals, after declaring a tax assessment invalid, cannot order the refund of the taxes illegally collected under the invalid assessment but has to order the aggrieved taxpayer to go to the regular courts to seek a refund, would be to sanction multiplicity of suits.** Certainly Congress, in enacting R.A. 1125, did not intend to promote multiplicity of suits." (Boldfacing supplied)

In *Dr. Felisa L. Vda. San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin vs. Commissioner of Internal Revenue*,[12] which involves an assessment case for deficiency estate tax, including surcharge, interest and penalties, the Supreme Court upheld the CTA's decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer.

All told, I VOTE to DENY petitioner's Motion for Partial Reconsideration of the Decision dated September 30, 2016 for lack of merit and to GRANT respondent's Motion for Partial Reconsideration (Re: Decision dated 30 September 2016). The assailed Decision ordering the refund of Php349,813.96 in petitioner's favor should be

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[11] G.R. No. L-20550 April 30, 1971.
[12] G.R. No. 138485, September 10, 2001

REVERSED AND SET ASIDE. The Petition for Review filed by petitioner on September 18, 2014 should be DENIED.

ROMAN G. DEL ROSARIO
Presiding Justice