REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

LEADWAY HOLDINGS, INCORPORATED, Petitioner,	**CTA Case No. 9835**
	Members:
-versus-	**DEL ROSARIO,** *P.J.*, Chairperson, and, **MANAHAN**, *JJ*.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: SEP 09 2020 8:44am

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DECISION

***DEL ROSARIO, P.J.*:**

Before the Court is the Petition for Review[1] filed by Leadway Holdings, Incorporated (petitioner) on May 11, 2018 praying for the cancellation of the assessment issued by the Commissioner of Internal Revenue (respondent) for alleged deficiency Documentary Stamp Tax (DST) consisting of interests and surcharge for calendar year (CY) 2009 amounting to ₱28,842,421.23.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws. It is registered with the Securities and Exchange Commission under Company Registration No. A199900458 on January 13, 1999 and with the Bureau of Internal Revenue (BIR) with Tax Identification No. 005-679-227. Its principal office is at Fairlane Street corner West Capitol Drive, Pasig City.[2]

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[1] Docket, pp. 10-90.
[2] Paragraph II (A) (1), Pre-Trial Order (PTO), Docket, p. 368.

Respondent is the duly appointed Commissioner of Internal Revenue[3] (CIR). He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City. He is sued in his official capacity. As the CIR, he is vested by law with the authority to carry out the functions and duties of his office, including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC).[4]

THE FACTS

On May 26, 2010, petitioner received Letter of Authority (LOA) No. LOA-124-2010-00000045 dated May 14, 2010[5] authorizing Revenue Officers (ROs) Lizette Mallari, Evangeline Casipe, Roque Doloiras and Denver Gomez and Group Supervisor (GS) Lanie Luna to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period from January 1, 2009 to December 31, 2009.[6]

Sometime in September 2012, petitioner received a Preliminary Assessment Notice dated September 3, 2012 (PAN).[7]

On November 13, 2012, petitioner paid in full the basic deficiency DST indicated in the PAN amounting to ₱11,325,000.00.[8]

On November 26, 2012, petitioner filed an Application for Abatement or Cancellation of Tax, Penalties and/or Interest (BIR Form 2110) (Application for Abatement) for the cancellation of the imposed surcharge and interest totaling ₱16,646, 875.00, relating to the alleged deficiency DST indicated in the PAN. Among the reasons enumerated in the Application for Abatement, petitioner ticked the box corresponding to the reason "Non-compliance due to difficult interpretation of the law". In the same Application for Abatement, petitioner offered to pay ₱11,325,000.00 which pertains to the basic DST assessed under the PAN.[9]

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[3] The incumbent CIR is Hon. Caesar R. Dulay.
[4] Paragraph II (A) (2), PTO, Docket, p. 368.
[5] Paragraph II (A) (3), PTO, Docket, p.368.
[6] Exhibit "P-5", Docket, p. 421.
[7] Paragraph II (A) (4), PTO, Docket, p. 368.
[8] Exhibits "P-7-C" to "P-7-F", Docket, pp. 422-426.
[9] Paragraph II (A) (5), PTO, Docket, p. 369.

In support of its Application for Abatement, petitioner submitted the Abatement Program Payment Form (BIR Form 0618) and Letter dated November 26, 2012, signed by its Corporate Secretary Lolita T. Chua, where it was mentioned that petitioner already paid the basic DST amounting to ₱11,325,000.00 and that it requested that the surcharge and interest totaling ₱16,646,875.00, be cancelled for the reason that its non-payment of DST was allegedly due to difficult interpretation of the law.[10]

On April 4, 2016, petitioner received a Letter from the Chief of Excise Tax Large Taxpayers Audit Division II of the BIR, Linda Grace B. Sagun, denying its Application for Abatement. The letter also stated that its case was re-assigned to ROs Flor Jasmin R. Soriano and Armie A. Buena for the issuance of a Formal Letter of Demand (FLD).[11]

On June 29, 2016,[12] petitioner received the FLD dated June 15, 2020, together with the Details of Discrepancies, Annex A and Assessment Notice No. ELTAD-II-DS-09-0044, assessing it for ₱28,842,421.23, broken down as follows:[13]

Assessment No. ELTAD-II-DS-09-0044

Total Deficiency Tax per PAN	27,971,875.00
Less: Amount paid on November 13, 2012	11,325,000.00
Unpaid Amount	16,646,875.00
Add:	
Interest 20% p.a. (November 1, 2012 to June 30, 2016)	12,195,546.23
TOTAL AMOUNT DUE	**28,842,421.23**

In response to the FLD, petitioner filed an Administrative Protest in the form of a Request for Reconsideration on July 26, 2016 pleading for the total cancellation of the assessed deficiency DST which actually represents the unpaid interests and surcharge portion as indicated in the PAN, with an additional imposition of interest on such unpaid portion.[14]

[10] Paragraph II (A) (6), PTO, Docket, p. 370.
[11] Paragraph II (A) (7), PTO, Docket, p. 370.
[12] Paragraph I(2) and III(18), Petition for Review, Docket, pp. 11 and 15; Paragraph I (2), Memorandum for the Petitioner, Docket, p. 515.
[13] Paragraph II (A) (8), PTO, Docket, p. 370.
[14] Paragraph II (A) (9), PTO, Docket, p. 370.

On April 16, 2018, petitioner received the Final Decision on Disputed Assessment ("FDDA").[15]

Aggrieved, petitioner filed the present Petition before the Court.

On June 1, 2018, summons[16] was received by respondent, who submitted his Answer[17] thereon on August 15, 2018 within the extended period granted by the Court.[18] In his Answer, respondent raised the following special and affirmative defenses: *(i)* the assessment was validly made in accordance with law; *(ii)* the deficiency DST assessment has legal and factual bases; *(iii)* petitioner is liable for surcharge and interest; *(iv)* the assessment issued against petitioner is valid and lawful.

In the Order dated September 24, 2018,[19] the case was transferred to the Court of Tax Appeals (CTA) - First Division from the CTA - Second Division, pursuant to CTA Administrative Circular No. 02-2018 dated September 18, 2018, reorganizing the three (3) Divisions of the CTA.

The Pre-Trial Brief for the Petitioner[20] was filed on September 21, 2018 while Respondent's Pre-Trial Brief[21] was filed on January 28, 2019.

On October 29, 2018,[22] the Court admitted respondent's Amended Answer[23] filed on August 28, 2018 wherein respondent raised the same special and affirmative defenses indicated in his Answer.

The Pre-Trial Conference was conducted on April 4, 2019.[24] On April 24, 2019, the parties filed their Joint Stipulation of Facts and

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[15] Paragraph II (A) (10), PTO, Docket, p. 370.
[16] Docket, p. 91.
[17] Docket, pp. 104-118.
[18] Order dated July 16, 2018, Docket, p.103.
[19] Docket, p. 246.
[20] Docket, pp. 238-245.
[21] Docket, pp. 263-266.
[22] Resolution dated October 29, 2018, Docket, pp. 258-259.
[23] Docket, pp. 131-144.
[24] Order dated April 4, 2019, Docket, pp. 274-275.

Issues.[25] On June 6, 2019, the Pre-Trial Order[26] was promulgated thereby terminating the Pre-Trial.

During trial, petitioner presented its sole witness, Ms. Raquel Veronique Go Ting, its Bookkeeper.[27] Respondent, on the other hand, manifested that he will not present any witness in view of his position that the case involves purely legal questions.[28]

The Formal Offer of Evidence of the Petitioner[29] was filed on June 26, 2019. In the Resolution dated October 7, 2019,[30] the Court admitted in evidence all of petitioner's offered exhibits and reiterated its prior directive to the parties to file their respective memoranda within thirty (30) days from receipt thereof.

After the filing of the Memorandum for the Petitioner[31] on November 18, 2019 and respondent's Memorandum[32] on January 14, 2020, the case was submitted for decision on January 28, 2020.[33]

THE ISSUE

The parties stipulate the following issue for the Court's resolution:

> Whether petitioner is liable for the alleged deficiency DST for CY 2009 in the total amount of ₱28,842,421.23, comprising of unpaid interest and surcharge, as indicated in the PAN, with additional interest computed from November 1, 2012 to June 30, 2016.[34]

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[25] Docket, pp. 277-284.
[26] Docket, 367-375.
[27] Order dated June 11, 2019, Docket, pp. 377-378; Exhibit "P-13" and "P-16" (Judicial Affidavits of Ms. Ting), Docket, pp. 150-237 and 308-359.
[28] Order dated June 11, 2019, Docket, pp. 377-378.
[29] Docket, pp. 383-491.
[30] Docket, pp. 507-509.
[31] Docket, pp. 514-539.
[32] Docket, pp. 548-564.
[33] Resolution dated January 28, 2020, Docket, p. 566.
[34] Paragraph II (B), PTO, Docket, p. 371.

THE PARTIES' ARGUMENTS

Petitioner's arguments

Petitioner maintains that the deficiency DST assessment is null and void on the following grounds;

1) Inter-corporate advances are not subject to DST prior to the Supreme Court decision in *Commissioner of Internal Revenue vs. Filinvest Development Corporation.*[35] Prior to *Filinvest Development Corporation,* inter-corporate advances were treated as analogous to capital contribution and were not subject to DST as there was no taxable debt instrument to evidence or document the advances;

2) Numerous BIR Rulings support the non-imposition of DST on inter-corporate advances prior to *Filinvest Development Corporation, i.e.,* BIR Ruling No. 116-98 dated July 30, 1998; BIR Ruling No. DA-666A-99 in relation to BIR Ruling No. 191-99A both dated December 3, 1999; BIR Ruling No. DA-696-06 dated December 11, 2006; BIR Ruling No. DA-701-07 dated December 28, 2007; BIR Ruling No. DA-016-08 dated January 17, 2008; and, BIR Ruling No. DA-(C-035)127-08 dated August 8, 2008;

3) The afore-cited BIR Rulings were even applied in the decision of the Court of Appeals in *Commissioner of Internal Revenue vs. Filinvest Development Corporation and Filinvest Alabang, Incorporated,*[36] although reversed by the Supreme Court in *Filinvest Development Corporation;*

4) Section 179, NIRC of 1997, as amended, imposing DST on debt instruments is not applicable to deposit on future subscription as it is not a borrowing or lending as contemplated under said Section 179. Thus, for failure to provide the legal basis for such assessment, the same must be declared void pursuant to Section 228 of the NIRC of 1997, as amended;

5) Deposits on future subscription are neither loan agreements nor debt instruments but merely an amount of money received by a

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[35] G.R. Nos. 163653 and 167689, July 19, 2011.
[36] CA-G.R. SP. No. 74510, January 26, 2005.

corporation with a view of applying the same as payment for additional issuance of shares in the future;

6) In its Statement of Financial Position, the "deposit on future subscription" is not presented under "Liabilities" but under "Equity", belying respondent's assertion that "deposits for future subscription" partake the nature of a loan agreement subject to DST;

7) In *Commissioner of Internal Revenue vs. First Express Pawnshop Company*,[37] the Supreme Court ruled that DST is not due on deposits on future subscription;

8) The FLD did not indicate a due date. If at all, the "June 30, 2016" date indicated in the FLD is not the actual "due date" but merely the reckoning period for the computation of the interest on the unpaid "amount", citing *Commissioner of Internal Revenue vs. Fitness by Design, Inc.*;[38]

9) Its receipt of the Assessment Notice on June 29, 2016 indicating June 30, 2016 as its due date, giving it barely one day to comply, runs foul of the rudiments of fair play and can hardly be said as compliant with the requirement of due process;

10) The computation attached to the PAN shows that the assessed DST for CY 2009 actually pertains to prior years' transactions. It can be easily deduced that the alleged "advances to/from affiliates" and "deposit on future subscription" are from years earlier as the computation of interest begins from January 6, 2008 and January 6, 2005, respectively;

11) Given that the audit dealt with transactions earlier than CY 2009, the same are not covered by the LOA relevant to the present assessment which covers all internal revenue taxes only for the period from January 1, 2009 to December 1, 2009. Therefore, the ROs who conducted petitioner's audit investigation went beyond their delegated authority; and,

12) In the absence of an LOA, the assessment or examination is a nullity, pursuant to *Commissioner of Internal Revenue vs. Sony Philippines, Inc.*[39]

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[37] G.R. Nos. 172045-46, June 16, 2009.
[38] G.R. No. 215957, November 9, 2016.
[39] G.R. No. 178697, November 17, 2010.

Petitioner also points out that while it had reason to dispute the imposition of the DST on inter-corporate advances, it did not do so, for it was rendered moot in view of its payment of the basic DST as early as the PAN stage of the assessment.

Similarly, petitioner posits that the computation and basis of additional imposition of 20% interest computed from November 1, 2012 to June 30, 2016 in the amount of ₱12,195,546.23 are erroneous considering that it has already paid in full the basic deficiency DST on November 13, 2012.

Finally, petitioner asserts that its good faith and honest belief that it is not liable for DST in CY 2009 warrants cancellation of the imposition of surcharges and interests.

Respondent's counter-arguments

Respondent maintains that the assessment was validly made in accordance with law. Contrary to petitioner's assertion, the FLD has fixed and definitely set the deficiency tax liabilities of petitioner. The basic tax deficiency as well as the surcharge and interest were already fixed in said FLD as due on June 30, 2016. Further, the deficiency DST assessment has basis in fact and in law which were stated in the FDDA.

Respondent explains that when petitioner paid only the basic tax and failed to pay the interest and surcharges thereon, the total amount of the interest and surcharge formed part of the unpaid portion of the tax that is subject to deficiency interest pursuant to Section 249 (B) of the NIRC of 1997, as amended.

He emphasizes that the burden of proof is on petitioner who contests the validity or correctness of an assessment to prove not only that respondent is wrong but petitioner is right. Otherwise, the presumption of correctness of tax assessment stands.

THE COURT'S RULING

The Petition for Review is impressed with merit.

Timeliness of the Petition

Section 11 of Republic Act No. 1125, as amended, *vis-à-vis* Section 3, Rule 8 of the Revised Rules of the Court of Tax Appeals (RRCTA), states that any party adversely affected by a decision or ruling of the CIR may file an appeal with the CTA within thirty (30) days after receipt of such decision or ruling.

In the case at bar, petitioner received the assailed FDDA on April 16, 2018. Thus, the filing of its Petition for Review on May 11, 2018, was timely.

Deposit on future subscription is not a loan agreement subject to DST

A deposit on future subscription has been characterized in *Commissioner of Internal Revenue vs. First Express Pawnshop Company,*[40] as "merely an amount of money received by a corporation with a view of applying the same as payment for additional issuance of shares in the future, an event which may or may not happen". The Supreme Court went on to rule that First Express Pawnshop is not liable for the payment of DST imposed under Sections 175 and 176 of the NIRC of 1997, as amended, on its deposit on future subscription for the reason that there is yet no subscription that creates rights and obligations between the subscriber and the corporation.

In *Central Textile Mills, Inc. vs. National Wages and Productivity Commission, et al.,*[41] deposit on future subscription was described as "money which the corporation will hold in trust for the subscribers. As a trust fund, this money is still withdrawable by any of the subscribers at any time before the issuance of the corresponding shares of stock."

A loan agreement, on the other hand, is a contract where one of the parties delivers to another money or other consumable thing, upon

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[40] *Supra*, Note 37.
[41] G.R. No. 104102, August 7, 1996.

the condition that the same amount of the same kind and quality shall be paid.[42]

The foregoing description of a deposit on future subscription and definition of a loan agreement, show that they are not the same.

In petitioner's Audited Financial Statements (AFS) for CYs 2009 and 2008,[43] there is an entry for deposit on future subscription in the amount of ₱35,000,000.00. Note 10[44] thereof states that *"[a]s of December 31, 2009 and 2008, the Company has deposit on future stock subscription amounting to ₱ 35,000,000. The deposit will be converted into equity upon the occurrence of certain economic events."* Its AFS for CYs 2008 and 2007[45] and AFS for CYs 2007 and 2006,[46] contain a similar entry for deposit on future subscription in the amount of ₱35,000,000.00.

Respondent treated the deposit on future subscription appearing in petitioner's AFS as a "borrowing," purportedly anchored on *Filinvest Development Corporation* and imposed DST thereon pursuant to Section 179[47] of the NIRC of 1997, as amended. The PAN pertinently states:

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[42] Article 1933, Civil Code. By the contract of loan, one of the parties delivers to another, either something not consumable so that the latter may use the same for a certain time and return it, in which case the contract is called a commodatum; or money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid, in which case the contract is simply called a loan or mutuum. xxx *(Boldfacing supplied)*
[43] Exhibit "P-15", Docket, p. 470.
[44] Exhibit "P-15", Docket, p. 489.
[45] Exhibit "P-14", Docket, p. 446.
[46] Exhibit "P-12", Docket, p. 429.
[47] "SEC. 179.Stamp Tax on All Debt Instruments. — On every original issue of debt instruments, there shall be collected a documentary stamp tax of One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: 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 of any of its instrumentalities, deposit substitute debt instruments,

> **"Reflected in the financial statement are the deposits for future subscription which were verified to have been made in 2005 and utilized to acquire shares of stock in another related party. Since it is already years that the deposits have not yet been converted into shares of stock and yet fully invested, the transaction partakes the nature of borrowing, thus, subject to the imposition of DST. Also, there are advances from stockholders which were not moving since it was recorded in 2008.**
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> The taxpayer has deposits for future subscription amounting to P35,000,000.00 and advances from stockholders amounting to P2,230,000,000.00 as of December 31, 2009. Said transactions with related parties are uncollaterized, non-interest bearing and payable upon demand. This transaction likewise partakes the nature of a borrowing, thus, subject to the imposition of DST.
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> We have checked our Integrated Tax System and found no payment for documentary stamp tax for the period 2007 to 2009. Thus, subject taxpayer failed to file a return and pay DST due. Such omission is discovered during audit.[48] *(Boldfacing supplied)*

Respondent's assessment of DST for deposit on future subscription is apparently based solely on petitioner's AFS, from which he drew the conclusion that "*the deposits for future subscription which were verified to have been made in 2005 and utilized to acquire shares of stock in another related party. Since it is already years that the deposits have not yet been converted into shares of stock and yet fully invested, the transaction partakes the nature of borrowing, thus, subject to the imposition of DST.*"

Perusal of the AFS presented by petitioner shows, however, that the deposit on future subscription in the amount of ₱35,000,000.00, remained intact since 2006. It must be so considering that such deposit is money held in trust for petitioner's subscribers. Also, there is nothing in the AFS and the BIR Records that supports respondent's claim that petitioner acquired shares of stock using the deposit on future subscription.

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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."

[48] Exhibit "P-6 ", BIR Records, p. 224.

It is well to remember that assessments should not be based on mere presumptions no matter how reasonable or logical said presumptions may be. In order to stand the test of judicial scrutiny, the assessment must be based on actual facts.[49] The presumption of correctness of assessment being a mere presumption cannot be made to rest on another presumption that since years have passed and the deposit on stock subscription has not yet been converted into stocks, the same is now considered a borrowing transaction subject to DST. Such conclusion is purely conjectural. Thus, the assessment must be nullified for lack of basis.

Advances from stockholders evidenced by vouchers are not subject to DST prior to the *Filinvest Development Corporation* ruling

In petitioner's AFS for CYs 2009 and 2008, there is an entry for advances from stockholders in the amount of ₱2,230,000,000.00.[50] Note 10[51] thereof states that "[a]dvances from stockholders are non-interest bearing, uncollateralized and payable on demand." Its AFS for CYs 2008 and 2007 contains a similar entry for advances from stockholders in the amount of ₱2,230,000,000.00.[52]

Similar to the deposit on future subscription, the advances from stockholders appear to have remained intact since 2008.

Noticeably, respondent's assessment did not specify whether these advances were evidenced by instructional letters, memos or vouchers. Nonetheless, petitioner does not deny the existence of the said advances from its stockholders and in the June 11, 2019 Hearing,[53] petitioner's witness, Ms. Raquel Veronique Go Ting, testified that these advances were evidenced by vouchers and made by related parties. Petitioner does not rely on a specific BIR Ruling issued to it, but it takes refuge on BIR rulings and on *Commissioner of Internal Revenue vs. Filinvest Development Corporation and Filinvest Alabang, Incorporated*[54] issued prior to *Filinvest Development Corporation*, declaring that advances evidenced by instructional letters, memos or vouchers are not loan agreements subject to DST.

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[49] *Collector of Internal Revenue (now Commissioner) vs. Alberto D. Benipayo*, G.R. No. L-13656, January 31, 1962.
[50] Exhibit "P-15", Docket, p. 470.
[51] Exhibit "P-15", Docket, p. 489.
[52] Exhibit "P-14", Docket, p. 446.
[53] Transcript of Stenographic Notes of the June 11, 2019 Hearing, pp.12-13.
[54] *Supra*, Note 36.

There is no dispute that beginning July 19, 2011 when the Supreme Court promulgated *Filinvest Development Corporation*, the prevailing rule is that instructional letters, journal and cash vouchers evidencing advances extended to affiliates or inter-corporate advances qualify as loan agreements upon which DST may be imposed.

Prior thereto or in 2002, the Court of Appeals (CA) in *Commissioner of Internal Revenue vs. APC Group, Inc.,*[55] held that the interpretation in BIR Ruling No. 116-98 dated July 30, 1998 (*i.e.*, that inter-office memo covering advances granted by an affiliate company is not subject to DST) is in accordance with law. Similarly in 2005, in *Commissioner of Internal Revenue vs. Filinvest Development Corporation and Filinvest Alabang, Incorporated*, the CA upheld, BIR Ruling No. 116-98, dated July 30, 1998. The following year, in *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue,*[56] the CTA also declared that BIR Ruling No. 116-98 dated July 30, 1998 (*i.e.*, that inter-company advances made by Belle Corporation to its affiliates is not subject to DST) is consistent with the provisions of the NIRC of 1997.

The rulings of the CA in *Commissioner of Internal Revenue vs. APC Group, Inc. and Commissioner of Internal Revenue vs. Filinvest Development Corporation and Filinvest Alabang, Incorporated*, and the CTA in *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on the non-taxability of loans and advances which are covered by instructional letters, memos or vouchers. These pronouncements of the CA and the CTA are at the very least persuasive.

On the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals / Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals,*[57] is enlightening:

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[55] CA-G.R. SP No. 69869, November 29, 2002.
[56] CTA EB Nos. 147 and 155, October 13, 2006.
[57] G.R. Nos. 104151 and 105563, March 10, 1995.

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

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

In the consolidated cases of *Commissioner of Internal Revenue vs. San Roque Power Corporation,*[58] *Taganito Mining Corporation vs. Commissioner of Internal Revenue,*[59] and *Philex Mining Corporation vs. Commissioner of Internal Revenue*,[60] the Supreme Court, citing the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.,*[61] held that the reversal of a general interpretative rule should be applied **prospectively**, thus:

> "Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. **The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under Atlas prior to its abandonment. This Court is applying *Mirant***

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[58] G.R. No. 187485, February 12, 2013.
[59] G.R. No. 196113, February 12, 2013.
[60] G.R. No. 197156, February 12, 2013.
[61] G.R. No. 168129, April 24, 2007.

> **and *Aichi* <u>prospectively</u>.** Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the **reversal of a specific BIR ruling under Section 246, should also apply prospectively**. As held by this *Court in CIR v. Philippine Health Care Providers, Inc.*:
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> > In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals,* this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer**. Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.
> >
> > This Court has consistently reaffirmed its ruling in ABS-CBN Broadcasting Corp. in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd., Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp., Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.) Inc.,* and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**
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> More recently, in Commissioner of Internal Revenue v. Benguet Corporation, wherein the taxpayer was entitled to tax refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer." *(Boldfacing and underscoring supplied)*

Needless to say, if a taxpayer can rely in good faith on an erroneous "favorable" ruling of the BIR without suffering any prejudice (that is - - by applying a Supreme Court doctrine reversing such BIR ruling **prospectively**), the same goes with reliance in good faith on a principle of law as finally interpreted by no less than the CA and CTA prior to its reversal by the Supreme Court.

Indeed, with the numerous BIR Rulings coupled with existing judicial pronouncement at that time on the taxability of advances evidenced by instructional letters, memos or vouchers, petitioner had enough reason to sustain belief that its advances from stockholders covered by vouchers were not subject to DST.

The advances from stockholders evidenced by vouchers which were made prior to *Filinvest Development Corporation* should not be subjected to DST.

Good faith as basis in deleting the imposition of interest and surcharge

Sections 248 and 249 of the NIRC of 1997, as amended, explicitly impose a penalty equivalent to 25% of the amount due in case of failure to file any return and pay the tax due on or before the date prescribed for the filing and payment thereof and interest of 20% per annum from the date prescribed for payment until the amount is fully paid, respectively.

There are, however, instances when the imposition of the aforesaid penalty and interest has been deleted.

In *Michael J Lhuillier, Inc. v. Commissioner of Internal Revenue,*[62] the Supreme Court ruled that 'good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.' Said the Supreme Court:

> "Nevertheless, all is not lost for petitioner. The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest. In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
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>> 'We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.

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[62] G.R. No. 166786, September 11, 2006.

> WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.'
>
> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST." *(Citations omitted)*

Also, In *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.,*[63] the imposition of surcharges and interest under Sections 248 and 249 of the NIRC of 1997, as amended, was deleted by the Supreme Court on the basis of good faith and honest belief on the part of St. Luke's Medical Center, Inc. that it is not subject to tax. This ruling was reiterated by the Supreme Court in *Commissioner of Internal Revenue v. St. Luke's Medical Center, Inc.*[64] when it held that St. Luke's Medical Center, Inc. should not be held liable for compromise penalty for its alleged failure to file its quarterly income tax returns based on its good faith and honest belief that it is not subject to tax.

In other words, the imposition of surcharge and interest is not an iron-clad rule that is totally unmindful of special circumstances which -- by the use of ordinary reason -- preclude its imposition.

In the present case, petitioner's good faith reliance on BIR Rulings and existing judicial pronouncement at that time anent the taxability of advances evidenced by instructional letters, memos or vouchers is sufficient justification to cancel the imposition of surcharge and interests imposed by respondent.

ROs exceeded the authority granted them under the LOA

The LOA gives notice to the taxpayer that it is under investigation for possible deficiency tax assessment. At the same time, it authorizes or empowers a designated revenue officer to examine, verify, and

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[63] G.R Nos. 195909 and 195960, September 26, 2012.
[64] G.R. No. 203514, February 13, 2017.

scrutinize a taxpayer's books and records, in relation to internal revenue tax liabilities for a particular period.[65]

In *Commissioner of Internal Revenue vs. Sony, Philippines, Inc.*,[66] the Supreme Court affirmed the cancellation of the deficiency assessment because, while the LOA covered "the period 1997 and unverified prior years," the said deficiency was arrived at based on the records of a later year, from January to March 1998, or using the fiscal year which ended on March 31, 1998. The Supreme Court explained that the CIR knew which period should be covered by the investigation and that if the CIR wanted or intended the investigation to include the year 1998, it would have done so by including it in the LOA or by issuing another LOA.

In *Commissioner of Internal Revenue vs. Lancaster Philippines, Inc.*,[67] the Supreme Court sustained the declaration that the subject assessment was without force and effect upon a finding that the revenue examiners exceeded their authority when they issued the assessment against Lancaster Philippines, Inc. (Lancaster). The CTA Division observed that LOA No. 00012289 authorized the BIR officers to examine the books of account of Lancaster for the taxable year 1998 only or, since Lancaster adopted a fiscal year (FY), for the period April 1, 1997 to March 31, 1998. However, the deficiency income tax assessment which the BIR eventually issued against Lancaster was based on the disallowance of expenses reported in FY 1999, or for the period April 1, 1998 to March 31, 1999.

Thus, even if DST is indeed due on petitioner's deposit on future subscription and advances from stockholders, the assessment should still be cancelled considering that the ROs went beyond the authority granted them by LOA No. LOA-124-2010-00000045 which limited their examination of petitioner's books of accounts and other accounting records for all internal revenue taxes to the period from January 1, 2009 to December 31, 2009.

As stated in the PAN, respondent verified that the deposit on future subscription was made in 2005 while the advances from stockholders were recorded in 2008. Consequently, respondent imposed interest on the assessed basic DST due on the advances

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[65] Commissioner of Internal Revenue vs. Lancaster Philippines, Inc., G.R. No. 183408, July 12, 2017.
[66] *Supra*, Note 39.
[67] *Supra*, Note 62.

from stockholders as early as 2008 and on the deposit on future subscription as early as 2005,[68] *viz.*:

II. DOCUMENTARY STAMP TAX

1. DST on Advances to/from affiliates pursuant to **RMC 48-2011**

Total advances from stockholders		2,230,000,000.00
DST rate sec. 179 NIRC: P1.00 for every P200		
DST Due – Basic		11,150,000.00
Add: Penalties		
25% Surcharge	2,787,500.00	
Interest (1-06-08 to 11-05-12) 58 months	13,472,916.67	16,260,416.67
Total DST DUE		**27,410,416.67**

2. DST on deposit on future stock subscription pursuant to **Sec. 179 NIRC**

Deposit on future stock subscription year **2007**		35,000,000.00
DST rate sec. 179 NIRC: P1.00 for every P200		
DST Due - Basic		175,000.00
Add: Penalties		
25% Surcharge	43,750.00	
Interest (1-06-05 to 11-05-12) 94 months	342,708.33	386,458.33
Total DST DUE		**561,458.33**

(Additional boldfacing supplied)

Unquestionably, the assessment of DST on these transactions occurring in 2005 and 2008 is outside the period covered by the LOA issued to the ROs who audited petitioner for CY 2009.

A valid LOA does not necessarily clothe validity to an assessment issued on it, as when the ROs designated in the LOA act in excess or outside of the authority granted them under said LOA.[69] While the ROs were authorized under LOA No. LOA-124-2010-00000045 to audit petitioner, their examination and the resulting assessment are a nullity since they went beyond the authority given them when they assessed petitioner on transactions occurring prior to CY 2009.

In fine, the assessment for deficiency DST being a nullity there is nothing to impose interests or surcharges on.

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[68] Exhibit "P-6-A", BIR Records, p. 222.
[69] *Supra*, Note 62.

WHEREFORE, in light of the foregoing discussion, the Petition for Review filed by Leadway Holdings, Incorporated is hereby **GRANTED**. The Formal Letter of Demand dated June 10, 2016 and Assessment Notice No. ELTAD-II-DS-09-0044 are **CANCELLED** and **WITHDRAWN**. Accordingly, the Final Decision on Disputed Assessment dated November 25, 2016 is **SET ASIDE**.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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.

ROMAN G. DEL ROSARIO
Presiding Justice