Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SPECIAL FIRST DIVISION

ASIA UNITED LEASING & FINANCE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8735
For: Assessment

Members:

DEL ROSARIO, P.J., *Chairperson*
UY, and
MINDARO-GRULLA, JJ.

Promulgated:

FEB 12 2019 2:41pm

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DECISION

MINDARO-GRULLA, J.:

This Petition for Review filed by Asia United Leasing & Finance Corporation against the Commissioner of Internal Revenue is an appeal pursuant to Section 7(a)(1) of Republic Act (RA) No. 9282, in order to preserve the former's right to challenge the latter's Final Decision on Disputed Assessment (FDDA) dated September 16, 2013 concerning the former's alleged deficiency taxes for taxable year (TY) ending December 31, 2009.[1]

Petitioner Asia United Leasing & Finance Corporation is a corporation duly registered and existing under the laws of the Philippines, with principal place of business at 31/F Joy-Nostalg Center 17 ADB Avenue, Ortigas Center, Pasig City.[2]

As stated in its Articles of Incorporation, petitioner is incorporated primarily: (1) to extend credit facilities for the

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[1] Pre-Trial Order, Docket, vol. I, p. 518
[2] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 471; Exhibit "P-1", Docket, vol. III, p. 1758

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construction of housing projects and construction of agricultural, commercial and industrial development projects; (2) to purchase, own, discount, assign, negotiate or collect promissory notes, drafts, bills of exchange, negotiate instruments, letters of credit and other evidences of indebtedness; and to sell, rediscount, mortgage, assign, or otherwise dispose of such negotiable instruments acquired by the corporation; (3) to buy and sell shares of stock and bonds of any corporation, whether domestic or foreign, and to exercise all the rights, powers and privileges appertaining thereto provided that the corporation shall not act as stock broker; (4) to make loans against persons, securities or against securities consisting of personal properties or mortgage on real estate properties; (5) to purchase, acquire, and take over all or any part of the rights, assets and business of any person, partnership, corporation, or association and to undertake and assume the liabilities and obligations of such person, partnership, corporation, or association whose rights, assets or business may be purchased, acquired or taken over; (6) to own, buy, purchase, lease, sub-lease, rent, sub-rent, mortgage, take option to buy or lease and otherwise to deal in real property, improved and unimproved, insofar as may be permitted by law, as may be necessary to accomplish the purpose of the corporation; (7) to incur indebtedness in such manner as may be ascertained by the corporation; (8) to perform management promotions and/or collections services, in connection with the financing of the operation of the business, industry or enterprises of any person, partnership, or corporation insofar as may be permitted under the laws of the Philippines; (9) to purchase and own office equipment, machinery and other movable properties and to lease or let such equipment, mortgage or otherwise encumber such properties; (10) to borrow money from banks and other institutions and to contract obligations upon such terms and conditions as may be approved by the Board of Directors for any and all purpose of the Corporation and to secure and guarantee such loans, and contractual obligations by mortgage, deal of trust, assignment, charge of lien upon all or part of the properties and assets of the corporation.[3] It operates as a financing company in accordance with RA No. 8556.[4]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. He holds

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[3] Exhibit "P-1", Docket, vol. III, pp. 1760 to 1761
[4] Exhibit "P-2", Docket, vol. III, p. 1778

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office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2010, petitioner filed its Annual Income Tax Return[5] (AITR) for TY 2009, and amended[6] it on the same day. Petitioner likewise filed its Documentary Stamp Tax Returns[7].

On June 9, 2010, respondent issued Letter of Authority No. LOA-127-2010-00000043, authorizing revenue officers to examine petitioner's books of accounts and other accounting records for all internal revenue taxes for the period covering January 1, 2009 to December 31, 2009.[8] Hence, respondent requested petitioner to submit its accounting records/files and documents necessary for the audit investigation,[9] and sent to petitioner a Checklist of Requirements for Books of Accounts Maintain Manually.[10] Respondent also issued a First Notice for the Presentation of Books of Accounts and Other Accounting Records[11] and Letter[12] dated August 5, 2010, requesting petitioner to submit certain documents.

Thereafter, petitioner received a Notice of Informal Conference on September 24, 2010.[13]

Respondent issued a Preliminary Assessment Notice (PAN) on December 10, 2010, which petitioner received on February 1, 2011, assessing petitioner for deficiency income tax and deficiency documentary stamp tax (DST) in the respective amounts of ₱629,937.53 and ₱682,266.82 for TY 2009.[14]

Through a Letter dated April 7, 2011, respondent reminded petitioner to submit its information returns/attachments and other accounting documents.[15]

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5 Exhibit "P-3", Docket, vol. I, pp. 314 to 316
6 Exhibit "P-4", Docket, vol. IV, pp. 2433 to 2436
7 Exhibits "P-5", "P-5-1", "P-5-2", "P-5-4", "P-5-5", "P-5-6", "P-5-7", "P-5-8", "P-5-9", "P-5-10", and "P-5-11", Docket, vol. IV, pp. 2437 to 2439, 2440 to 2442, 2443 to 2445, 2446 to 2448, 2449 to 2451, 2452 to 2454, 2455 to 2457, 2458 to 2460, 2461 to 2463, 2464 to 2466, and 2467 to 2469, respectively
8 Exhibit "R-1", BIR records, p. 2
9 Exhibit "R-2", BIR records, p. 4
10 Exhibit "R-3", BIR records, p. 3
11 Exhibit "R-4", BIR records, p. 361
12 Exhibit "R-5", BIR records, p. 363
13 Exhibit "R-7", BIR records, pp. 466 to 468
14 Par. 3, JSFI, Docket, vol. I, p. 472; Exhibit "R-9", BIR records, pp. 525 to 528
15 Exhibit "R-10", BIR records, p. 1065

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On April 11, 2013, petitioner received an undated Revised Preliminary Assessment Notice (RPAN), still assessing petitioner for deficiency income tax and DST in the amounts of ₱384,820.78 and ₱8,669,695.31, respectively.[16] Thus, petitioner filed a Letter Reply[17] to the RPAN.

On June 6, 2013, respondent released a Formal Letter of Demand[18] (FLD) and Final Assessment Notice[19] (FAN), which petitioner received on July 1, 2013. In the said FLD and FAN, respondent assessed petitioner only for deficiency DST in the amount of ₱6,939,838.87 with interest, computed as follows:[20]

DEFICIENCY DOCUMENTARY STAMP TAX	TAX BASE	RATE	TAX DUE
Advances from related parties	₱553,468,668.00	₱1.00/200	₱ 2,767,344.00
Loans – leasing	₱ 73,599,156.00	₱1.00/200	367,996.00
Basic deficiency tax			3,135,340.00
Add. Surcharge (50%)			1,567,670.00
20% interest p.a. 01.06.10 to 07.31.13			2,236,828.87
TOTAL AMOUNT DUE			**₱6,939,838.87**

As such, petitioner disputed the FLD and FAN with no additional supporting documents.[21]

On September 16, 2013, respondent issued the FDDA and received by petitioner on October 16, 2013, assessing the latter for deficiency DST in the amount of ₱7,097,894.36 and stating that financial leases and advances are subject to the DST.[22]

As a result, petitioner filed a Petition for Review[23] on November 15, 2013. Petitioner subsequently filed an Amended Petition for Review[24] and Supplemental Petition for Review[25], which were both admitted by the Court.[26]

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[16] Par. 4, JSFI, Docket, vol. I, p. 472; Exhibit "R-13", BIR records, pp. 1148 to 1152
[17] Par. 5, JSFI, Docket, vol. I, p. 472
[18] Exhibit "P-6", Docket, vol. I, pp. 356 to 358; Exhibit "R-16", BIR records, pp. 1208 to 1210
[19] Exhibit "R-16-a", BIR records, p. 1207
[20] Par. 6, JSFI, Docket, vol. I, p. 472
[21] Par. 7, JSFI, Docket, vol. I, p. 472
[22] Par. 8, JSFI, Docket, vol. I, pp. 472 to 473; Exhibit "P-7", Docket, vol. I, pp. 359 to 362; Exhibits "R-18" and "R-18-a", BIR records, pp. 1228 to 1230 and 1227, respectively
[23] Docket, vol. I, pp. 17 to 30
[24] Docket, vol. II, pp. 1188 to 1207
[25] Docket, vol. IV, pp. 2375 to 2381
[26] Resolution dated February 6, 2016, Docket, vol. III, 1618 to 1629; Resolution dated November 29, 2016, Docket, vol. IV, pp. 2517 to 2522

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Respondent filed his Answer[27] through registered mail on February 3, 2014 and received by the Court on February 10, 2014. Thereafter, respondent filed an Amended Answer[28] on March 7, 2016 and interposed the following special and affirmative defenses:

> "6. She reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defenses.
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> ***RESPONDENT OBSERVED BOTH SUBSTANTIAL AND PROCEDURAL DUE PROCESS IN ISSUING THE ASSESSMENT.***
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> 7. Respondent posits that she observed both procedural and substantial due process in issuing the assessment subject of this case.
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> 8. Petitioner was informed of the factual and legal basis of the assessment. The Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/ Assessment Notice and Final Decision on Disputed Assessment indicated not only the deficiency tax involved and interest due thereon, but also sufficiently stated the facts, the law, rules and regulations on which the assessment is based.
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> 9. Likewise, the Letter of Authority with attached Checklist of Requirements for Books of Accounts, Notice of Informal Conference, Preliminary Assessment Notice, Formal Letter of Demand with Audit Result/ Assessment Notice and Final Decision on Disputed Assessment were issued in accordance with law, rules and jurisprudence.
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> ***THE ASSESSMENT IS VALID AS IT IS ISSUED WITHIN THE APPLICABLE PRESCRIPTIVE PERIOD.***

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[27] Docket, vol. I, pp. 95 to 102

[28] Docket, vol. III, pp. 1647 to 1660

10. Anent petitioner's erroneous allegation that the Final Assessment Notice for AULF was issued beyond the Prescriptive Period provided by law.

11. Respondent begs to disagree.

12. Documentary Stamp Tax is paid on a per transaction basis within five (5) days after the close of the month when the taxable document was made, signed, accepted or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed. Accordingly, petitioner is required to file the DST returns within the period provided for under the law.

13. There was omission or falsity in petitioner's return when it omitted entries for the advances and financial leases subject to Documentary Stamp Tax; thus, when the transactions subject to DST were not included in the returns filed, the same have not prescribed pursuant to Section 222 (a) of the Tax Code.

14. Now assuming without admitting that petitioner filed the required tax returns for DST with the BIR, petitioner's declaration in such returns were deficient and did not disclose the true and correct amount of DST subject to tax making the subject returns 'false' and within the contemplation of Section 222 (a) of the Tax Code.

15. Substantial under declaration means that more than thirty (30) % of the tax was not reported.

16. In the instant, there was a substantial under declaration of DST which constitutes prima facie evidence of a false or fraudulent return.

17. As provided under Section 222 of the Tax Code, to wit:

> 'SEC.222. Exception as to Period of Limitations 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 the falsity, fraud or omission:' xxx (Emphasis and underscoring supplied)

THE ASSESSMENT ISSUED AGAINST PETITIONER IS VALID AND LAWFUL

18. Assessments are presumed correct and made in good faith. The taxpayer has the duty of proving otherwise. In the absence of proof of any irregularities in the performance of official duties, an assessment will not be disturbed. Even an assessment based on estimates is prima facie valid and lawful where it does not appear to have been arrived at arbitrarily or capriciously. **(Marcos II vs. Court of Appeals G.R. No. 120880 June 5, 1997)**

19. The burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong but the taxpayer is right. Otherwise the presumption of correctness of tax assessment stands **(Commissioner of Internal Revenue vs. Hantex Trading Co.Inc. G.R No. 136975, March 31, 2005).** The presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting. Hence, the assessment issued against petitioner is imbued with factual and legal bases.

20. All presumptions are in favor of the correctness of tax assessments *(Sy Po vs. Court of tax Appeals, 164 SCRA 524).* Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notice.

THE ASSESSMENT ISSUED AGAINSTS PETITIONER HAS FACTUAL AND LEGAL BASES

21. The Revenue Officers performed a comprehensive audit procedure taking into account relevant documents. Consequently, petitioner is liable to pay deficiency Documentary Stamp Tax for taxable year 200.

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A. *FINANCIAL LEASES*

23. Petitioner misleadingly argues that the 'law defines financial leases not as a loan or a lending transaction but clearly as a non-cancellable lease contracts, wherein the payments relating to such transaction are treated as lease rentals between a lessee and lessor'; and concluded 'that financial lease is not a debt instrument.

24. Respondent disagrees.

25. Petitioner may change the title of its loan contracts; yet it is glaring that the contract itself entered into by petitioner is a chattel mortgage. It may deceptively change the language or title and name of the contract in any way it want but it cannot deny the fact that the transaction entered into is simply a car loan with a monthly amortization schedule.

26. A financial lease is akin to a debt rather than a lease. It is the nature of an obligation or debt rather than a lease. The mere act of extending credit is already a means of facilitating an obligation or advancing in behalf of the lessee certain property in lieu of cash in exchange for a definitive amortization to be paid to the lessor with profit margin included. Thus, a financial lease is covered under Section 179 of the Tax Code and is subject to DST.

B. *ADVANCES*

THE PREVAILING LAW IS SECTION 179 OF THE TAX CODE AS CORRECTLY INTERPRETED IN THE FILINVEST CASE. HENCE, THERE IS NO RETROACTIVE EFFECT IN THE INSTANT CASE.

27. In the instant case, petitioner asseverated that the case of *CIR vs. Filinvest Development Corporation* cannot be given retroactive effect.

28. With all due respect, respondent begs to disagree.

29. On the contrary, the basis of the deficiency DST assessment is Section 179 of the Tax Code which is the law on the imposition of DST on all debt instrument for the year under

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audit. The ruling of the Supreme court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* is an affirmation of respondent's position that intercompany loans and advances covered by mere office memo, instructional letter and/or cash and journal vouchers qualify as loan agreements that are subject to DST. Hence, there is no retroactive effect in the instant case.

30. In the case of *Diageo Philippines, Inc. vs. CIR*, the Honorable Court of Tax Appeals En Banc ruled, to wit:

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> It is axiomatic that when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a statute constitutes part of that law as of the date of its original passage. It merely casts light upon the contemporaneous legislative intent of that law.

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31. Additionally, petitioner argues that the person, who made, signed, or transferred the money corresponding to the Advances was not AULF but are different individuals. Nonetheless, its contention is a bare allegation without substantiation whatsoever and it does not prove that petitioner did not enter into such transaction considering that the Advances were recorded in its Financial Statements.

C. ***Surcharge and Interests***

32. Petitioner is liable to pay for surcharge and interest pursuant to Sections 248 (B) and 249 (B) of the Tax Code due to the filing of a false or fraudulent return and failure to pay the tax within the time prescribed by law for its payment.

33. The above impositions are provided in Sections 248 (B) and 249 (B) of the Tax Code, to wit:

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34. In its attempt to persuade the Honorable Court that it is not liable for Surcharges and Interest; Petitioner cited the cases of *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue, Tuason, Jr. vs. Lingad and Commissioner of Internal Revenue vs. Republic Cement Corporation* which unfortunately are not all four with the instant case. The first case pertains to issued pawn tickets; the second case pertains to sale of residential lots; and the third case pertains to cement as a 'mineral product' and the corresponding tax exemption if there is any.

35. The imposition of surcharge and interest is justified because the intention of the law is precisely to discourage delay in the payment of taxes due to the State and, in this sense, the surcharge and interest charged is not penal but compensatory in nature. They are compensation to the State for the delay in payment of the tax and for the concomitant use by the taxpayer of the funds that rightfully should be in the government hands. Thus for failure of Petitioner to timely comply with its obligation, imposition of surcharge is nothing but a consequence of its own act.

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PETITIONER'S DEMAND FOR THE RETURN OF COMPROMISE SETTLEMENT AMOUNT IS TANTAMOUNT TO A CLAIM FOR REFUND.

37. As to its last ground, Petitioner demands for the return of the compromise amount which in effect is a claim for refund.

38. Accordingly, the issue in the Petition for Review does not only involve the cancellation of the Final Assessment Notice but also petitioner's prayer that an order be issued directing herein respondent to return the deposited compromise settlement amount of ₱1,240,760.36.

39. In the instant case, there is non-compliance with the rules and procedures for an administrative claim for refund/credit. An administrative claim for refund is a condition sine qua non before this Honorable Court can acquire jurisdiction over the claim for refund.

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40. Sections 204 and 229 of the NIRC of 1997, provides:

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41. The aforesaid provisions are clear and categorical. A claim for refund must first be filed with the Commissioner before filing a suit or proceeding in any court for the recovery of tax alleged to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected; Petitioner never filed a claim for refund for the return of the compromise amount of ₱1,250,760.36.

42. In consequence of the non-filing of administrative claim for refund; respondent Commissioner was deprived of the opportunity to exercise its function. This is the very essence, the very substance of the doctrine of exhaustion of administrative remedies.

43. The doctrine of exhaustion of administrative remedies ensures an orderly procedure which favors a preliminary sifting process, particularly with respect to matters peculiarly within the competence of the administrative agency. After this sifting process comes the availability of judicial review of administrative decisions.

44. It is a well settled rule in tax laws, that the taxpayer who feels aggrieved by the actions taken by tax authorities may not seek redress in the courts of justice without first exhausting available administrative remedies, except for certain well-recognized exceptions. It is the policy of the law and good practice to discourage court litigations and encourage resort to administrative action whenever the latter is feasible, adequate and speedy. (*Bagatsing vs. Ramirez*, 74 SCRA 306)

PETITIONER FAILED TO COMPLY WITH THE REQUIREMENTS PROVIDED FOR UNDER APPLICABLE LAWS AND REGULATION.

45. While the remedy of a compromise is available to Petitioner, the burden clearly is on its part to convince Respondent that a compromise is in order. The taxpayer must be able to sufficiently prove that the compromise recourse complies with the stringent requirements under applicable laws

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and regulations. Failure to do so will leave the taxpayer with no choice but to fulfill his or her tax obligations.

46. The power of the Commissioner to compromise tax liabilities is enshrined in Section 204 of the Tax Code, which states:

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47. The grounds for compromise are very specific, and failure to qualify under any of those cases would automatically warrant a denial of the application. In the instant case, petitioner failed to comply with the requirements provided under the law.

48. Besides, Section 204 of the Tax Code does not confer an absolute right to be entitled to the said remedies.

49. Moreover, Respondent is expected to act upon these offers of compromise with extreme caution since the power to compromise tax liabilities diminishes or decreases the amount that is rightfully due the government

50. Thus, Respondent correctly denied petitioner's application for compromise."

On February 21, 2014, petitioner applied for a compromise settlement of the subject deficiency taxes.[29]

The Court set this case for pre-trial conference on March 7, 2014,[30] however, the same was reset to April 11, 2014.[31] Thereafter, petitioner moved for the suspension of pre-trial conference on the ground of a possible compromise settlement[32], which the Court granted.[33] Then, petitioner prayed again for the suspension of the pre-trial conference[34] and the Court granted the same.[35]

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[29] Exhibit "P-11", Docket, vol. I, p. 399
[30] Order dated February 7, 2014, Docket, vol. I, p. 94
[31] Order dated February 17, 2014, Docket, vol. I, p. 110
[32] Motion to Suspend Pre-Trial Conference, Docket, vol. I, pp. 119 to 122
[33] Resolution dated April 11, 2014, Docket, vol. I, pp. 189 to 190
[34] Motion to Suspend Pre-Trial Conference, Docket, vol. I, pp. 191 to 194
[35] Order dated June 24, 2014, Docket, vol. I, p. 198

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On August 20, 2014, petitioner asked for further suspension of the pre-trial conference and to archive this case.[36] However, the Court denied the motion to archive the case.[37]

Respondent likewise prayed for the deferment of the pre-trial conference[38] and the Court granted it.[39] Nonetheless, the Court set the case for pre-trial conference on May 7, 2015.

Respondent's Pre-Trial Brief[40] was filed on April 28, 2015; while the Pre-Trial Brief for Petitioner[41] was filed on May 4, 2015.

The parties filed their Joint Stipulation of Facts and Issues[42] on May 27, 2015, which the Court approved on June 9, 2015.[43] Subsequently, the Court issued a Pre-Trial Order[44] on July 8, 2015 and terminated the pre-trial.

Upon petitioner's motion,[45] the Court commissioned Atty. Adan Delamide as an Independent Certified Public Accountant (ICPA) on July 2, 2015.[46]

On September 14, 2015, petitioner filed a Motion to Suspend Collection without Bond[47].

In the Resolution[48] dated February 9, 2016, the Court denied the motion to suspend the collection without bond. The Court likewise denied petitioner's motion for partial reconsideration of the said Resolution[49] on May 31, 2016.

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[36] Motion, Docket, vol. I, pp. 200 to 203
[37] Resolution dated September 9, 2014, Docket, vol. I, pp. 212 to 213
[38] Urgent Motions to Defer Pre-Trial Conference, Docket, vol. I, pp. 214 to 216 and 223 to 226
[39] Orders dated November 28, 2014 and February 25, 2015, Docket, vol. I, pp. 218 and 228, respectively
[40] Docket, vol. I, p. 235
[41] Docket, vol. I, p. 266
[42] Docket, vol. I, pp. 471 to 480
[43] Resolution, Docket, vol. I, p. 496
[44] Docket, vol. I, pp. 518 to 525
[45] Motion to Commission an Independent Certified Public Accountant, Docket, vol. I, pp. 481 to 484
[46] Resolution dated July 2, 2015 and Oath of Commission, Docket, vol. I, pp. 515 to 516 and 510, respectively
[47] Docket, vol. II, pp. 984 to 996
[48] Docket, vol. III, pp. 1618 to 1629
[49] Resolution, Docket, vol. IV, pp. 2330 to 2334

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Trial ensued. Petitioner presented Ms. Ma. Lourdes P. Andam, Shirley B. Puse, and Atty. Adan Delamide as witnesses. Afterwards, petitioner formally offered its documentary evidence as well as testimonial evidence, which the Court admitted except for Exhibits "P-5-3", "P-22", and "P-23".[50] Consequently, petitioner proffered the excluded Exhibits "P-5-3", "P-22", and "P-23"[51], and the Court noted the same.[52]

On the other hand, respondent presented Revenue Officers Zenaida T. Paz and Joel M. Aguila as his witnesses. Aside from the testimonial evidence, respondent formally offered his documentary evidence, which were all admitted.[53]

After the filing of respondent's Memorandum[54] on January 8, 2018 and of petitioner's Memorandum[55] on February 5, 2018, the Court declared the instant case submitted for decision on February 12, 2018.[56]

THE ISSUE

The parties submitted the following issue for this Court's disposition:

> Whether petitioner is liable to pay deficiency documentary stamp tax for TY 2009 in the amount of ₱7,097,894.36, as well as deficiency and delinquency interest as provided under Sections 248 and 249 of the NIRC of 1997, as amended.[57]

Before addressing the main issue, the Court shall first determine the timeliness of the filing of the Petition for Review.

Section 228 of the National Internal Revenue Code of 1997, as amended, provides:

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50 Resolutions dated July 15, 2016 and November 29, 2016, Docket, vol. IV, pp. 2336 to 2339 and 2517 to 2522, respectively
51 Proffer of Excluded Evidence with Manifestation, Docket, vol. IV, pp. 2523 to 2528
52 Resolution dated May 24, 2017, Docket, vol. IV, pp. 2584 to 2588
53 Resolution dated October 30, 2017, Docket, vol. IV, pp. 2636 to 2637
54 Docket, vol. IV, pp. 2653 to 2671
55 Docket, vol. IV, pp. 2675 to 2719
56 Resolution, Docket, vol. IV, p. 2722
57 JSFI, Docket, vol. I, p. 473

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> "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 preassessment notice shall not be required in the following cases:
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> xxx xxx xxx
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> 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.
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> 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.
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> 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) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.
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> 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 the one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable."

Based on the foregoing provision, petitioner has thirty (30) days from receipt of the FDDA within which to appeal the same before this Court.

Considering that petitioner received the FDDA on October 16, 2013, it had thirty days therefrom or until November 15, 2013 within which to appeal the said FDDA. Accordingly, this Petition for Review filed on November 15, 2013 was timely filed.

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Petitioner contends that the deficiency tax assessment is void for lack of legal basis. Petitioner alleges that no letter of authority was issued to authorize the revenue officers to conduct an assessment. According to petitioner, respondent failed to present any evidence or testimony to prove the fact of service of the LOA in relation to the subject assessment. A mere assumption of receipt of the FAN/FLD does not automatically prove or authenticate proof of service of the alleged LOA.

Petitioner likewise avers that the assessment is void for being issued beyond the applicable prescriptive period. Petitioner claims that it filed its last DST Return on December 3, 2009, thus, the three-year prescriptive period to assess had lapsed on January 5, 2013. Petitioner further asserts that the ten-year prescriptive period under Section 222(A) of the NIRC of 1997, as amended, is not applicable on the ground that it duly filed its DST Returns for TY 2009 and did not commit any falsity or fraud in filing the said returns because the advances and financial leases are not subject to DST.

Petitioner insists that there was no intent to evade taxes on its part and respondent did not include in the FDDA any explanation or substantiation for the application of the ten-year prescriptive period.

Respondent counter-argues that he observed both substantial and procedural due process in issuing the assessment; hence, the said assessment is valid. Respondent posits that petitioner was informed of the factual and legal bases of the assessment, and respondent duly issued and served the PAN, the FLD, the FAN, and the FDDA to petitioner. As to the LOA, respondent insists that petitioner's authorized representative received it on June 15, 2010.

According to respondent, the assessment is valid as it was issued within the applicable prescriptive period. Respondent explains that DST is paid on a per transaction basis within five (5) days after the close of the month when the taxable document was made, signed, accepted or transferred, and the DST return shall be filed within the same period. Respondent points out that there was omission or falsity in petitioner's return when it omitted entries for the advances and financial leases subject to DST in the Return; thus, respondent's right to assess petitioner for deficiency DST has not yet lapsed pursuant to Section 222(a) of the NIRC of 1997, as amended. Even assuming that

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petitioner filed the required DST Return, there was substantial underdeclaration.

A careful perusal of the records shows that Ms. Shirley B. Puse received the Letter of Authority on June 15, 2010.[58] It is worthy to note that petitioner presented Ms. Puse as one of its witnesses to prove the material allegations of this case.[59]

As regards petitioner's contention that the right of respondent to assess it for deficiency DST has already prescribed, the Court finds it without merit.

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

> "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."
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> "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 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*)

Based on the foregoing provisions, a taxpayer may only be assessed for deficiency taxes within three years after the last day

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[58] Exhibit "R-2", BIR records, p. 2

[59] Minutes of the Hearing and Resolution, both dated October 8, 2015, Docket, vol. III, pp. 1520 to 1523 and 1526 to 1528, respectively

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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 relation thereto is Section 200(B) of the NIRC of 1997, as amended, which states:

"SEC. 200. *Payment of Documentary Stamp Tax.* –

xxx xxx xxx

(B) *Time for Filing and Payment of the Tax.* – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the **tax return** prescribed this Section **shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred**, and the tax thereon shall be paid at the same time the aforesaid return is filed." (*Emphasis supplied*)

In this case, the advances to petitioner from its related parties and the financial leases were not subjected to DST; thus, a return was not filed for the said transactions. Although petitioner filed its DST Returns[60] for TY 2009, the same did not pertain to its transactions on the advances from related parties and financial leases. The testimony of petitioner's witness, Ms. Ma. Lourdes P. Andam, confirmed that petitioner did not pay for documentary stamp tax on the aforesaid transaction documents, to wit:

"24. Ms. Witness, as stated in the FAN dated 6 June 2013, AULFC is being assessed for deficiency documentary stamp tax for advances from related parties and financial leases.

Q: Would you know if AULFC paid the documentary stamp tax due for these transaction documents?

[60] Exhibits "P-5", "P-5-1", "P-5-2", "P-5-4", "P-5-5", "P-5-6", "P-5-7", "P-5-8", "P-5-9", "P-5-10", and "P-5-11", Docket, vol. IV, pp. 2437 to 2439, 2440 to 2442, 2443 to 2445, 2446 to 2448, 2449 to 2451, 2452 to 2454, 2455 to 2457, 2458 to 2460, 2461 to 2463, 2464 to 2466, and 2467 to 2469, respectively

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A: Based on AULFC's financial records, it appears that AULFC did no pay for documentary stamp tax because we relied on the BIR's previous interpretations of laws on the subject matter. Moreover, we note that the DST law does not state that leases of personal property are subject to DST."[61]

For its failure to file a return and to pay the corresponding tax on the transaction documents, deficiency DST may be assessed within ten years after the discovery of such omission.

As indicated in the RPAN[62] and the FLD[63], the imposition of interest started on January 6, 2010. It can be presumed from the said documents that respondent discovered only on January 6, 2010 that the advances from related parties and financial leases were not subjected to DST.

Accordingly, the ten-year period shall be counted from January 6, 2010 or until January 6, 2020 within which respondent may assess petitioner for deficiency DST. Thus, the right of respondent to assess petitioner has not yet prescribed.

The Court shall now proceed to discuss whether petitioner is liable to pay deficiency documentary stamp tax for TY 2009 in the amount of ₱7,097,894.36.

In the FDDA[64], respondent assessed petitioner for the following deficiency DST covering TY 2009 in the aggregate amount of ₱7,097,894.36:

	TAX BASE	RATE	TAX DUE
Advances from related parties	₱553,468,668.00	₱1.00/200	₱ 2,767,344.00
Loans – leasing	₱ 73,599,156.00	₱1.00/200	367,996.00
Basic deficiency tax			**₱3,135,340.00**
Add: Surcharge (50%)			1,567,670.00
20% interest p.a. 01.06.10 to 10.31.13			2,394,884.36
TOTAL			**₱7,097,894.36**

I. Advances from Related Parties – ₱553,468,668.00

[61] Exhibit "P-259", Docket, vol. I, pp. 288 to 289
[62] Exhibit "R-13", BIR records, pp. 1148 to 1152
[63] Exhibit "R-16", BIR records, p. 1210
[64] Exhibit "P-7", Docket, vol. I, pp. 359 to 362; Exhibits "R-18", BIR records, pp. 1228 to 1230

Respondent issued Revenue Memorandum Circular (RMC) No. 48-2011 clarifying relevant portions of the Decision of the Supreme Court En Banc in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[65] ("*Filinvest* case" for brevity) in relation to the imposition of DST on inter-office memo covering advances granted by an affiliated corporation, to wit:

> "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 terms shall mean:
> >
> > (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.
> >
> > 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.
> >
> > 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 or used 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,

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

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, as amended.

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 tax may be imposed. xxx" *(Emphasis supplied)*

Pursuant to Revenue Regulations (RR) No. 13-2004, new DST rates shall be applied on the following transactions:

"SECTION 5. *New Rate of DST on All Debt Instruments.*

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'SEC. 179. Stamp Tax on All Debt Instruments. – On every original issue of debt instruments, there shall collected a documentary stamp tax of One pesos (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,

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> 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 instrument, 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.'

> Section 179 used to be Section 180 of the Code, and, as amended, it now covers all instruments representing borrowing and lending transaction under a single heading, i.e., 'All Debt Instruments' and applying a new unitary tax rate thereon. Consequently, 'debentures and certificates of indebtedness' found in the former Section 174 of the Code, and likewise 'due bills and certificates of obligation' found in the former Section 176 of the Code, have been incorporated in this renumbered and amended Section."[66]

Petitioner points out that the examination of its financial statements, passbooks and books of account by the Court-commissioned ICPA revealed that petitioner's advances in 2009 were indeed short-term advances, and if the Court would decide that the same should be subject to DST, the amount of DST on petitioner's advances should only be ₱573,419.35.

Allegedly, the taxable base of ₱553,468,668.00 used by the BIR is incorrect. The said amount was purportedly lifted from petitioner's Audited Financial Statements (AFS) for 2009, particularly from the Statements of Cash Flow Statement; however, the very same Statements of Cash Flow also show that petitioner's related party advances amounting to ₱451,193,326.00 were paid during the same year and were obviously short-term in nature.

Petitioner explains that the movements of the subject advances from related parties (*i.e.*, stockholders) were made on short-term periods ranging its duration from 20-35 days maturity period that were either withdrawn or rolled over. Thus, petitioner maintains that

[66] Details of Discrepancies of the FDDA, Exhibit "R-18", BIR records, p. 1228

respondent's assessment should be cancelled since it is clearly based only on presumptions.

Petitioner's arguments are partially meritorious.

In the *Filinvest* case, what was interpreted by the Supreme Court is Section 180 of the NIRC, particularly on the scope of the word "loan agreements" as being subject to DST, in that it includes "instructional letters as well as the journal and cash vouchers evidencing the advances of (Filinvest) extended to its affiliates". Section 180 was inserted in the NIRC, through the enactment of RA No. 7660 on December 23, 1994; and it is still in our statute books up to this time. Parenthetically, it must be noted that the same Section 180 was carried over in Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended via the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements is retained in the present Section 179 of the NIRC of 1997, as amended by said RA No. 9243. Thus, the said interpretation in the *Filinvest* case constituted as part of the NIRC as of said date, *i.e.*, December 23, 1994, up to the present time.[67]

Since the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) in the *Filinvest* case was deemed constituted as part of the NIRC as of December 23, 1994 up to the present time, the same may therefore be applied to this case without violating the principle on non-retroactivity of laws and rulings.

Moreover, it is worthy to note that prospective application of decisions applies only in cases where an old doctrine of the Supreme Court is overruled by a subsequent decision which adopts a new doctrine. In such situation, the new doctrine must be applied prospectively. In the present case, however, there is no previous doctrine that is overruled by the doctrine in the *Filinvest* case.[68]

Considering that RMC No. 48-2011 merely implements the doctrine laid down in the *Filinvest* case, the same may also be applied to this case.

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[67] *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016

[68] *San Miguel Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 9007, April 19, 2017

Since petitioner does not deny the existence of the advances, respondent's assessment must then be upheld.

Nevertheless, the Court agrees with petitioner that it was erroneous to assess the whole amount of cash received during the year 2009 amounting to ₱553,468,668.00 as advances without considering its term.

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

> "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 pesos (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." *(Emphasis supplied)*

The aforesaid provision explicitly provides 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.

The Court-commissioned ICPA, Atty. Adan T. Delamide, examined the records and supporting documents submitted by petitioner to determine the transactions booked under the "Advances from Related Parties" account during the year 2009.

The general ledger (GL) for Advances from Related Parties for the year 2009 shows total credits or additions in the account amounting to ₱549,605,108.45[69]. However, as correctly found by the ICPA, only the amount of ₱549,418,170.17 pertains to advances received by petitioner during the year 2009. The difference of ₱186,938.28 pertains to the excess of the settlement made by

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[69] Exhibit "P-180", Docket, vol. II, pp. 813 to 815

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petitioner for the ₱47,804,321.93 outstanding balance of its Advances from Related Parties as of 2008, as demonstrated below:

Advances from related parties (2008), beginning balance	₱ 47,804,321.93
Debits in 2009 GL:	
1/9/2009	(40,000,000.00)
2/9/2009	(7,991,260.21)
Excess settlement	**₱ (186,938.28)**

A comparison of the ₱549,418,170.17 Advances from Related Parties per petitioner's GL with the assessed amount of ₱553,468,668.00, which was declared as Cash Proceeds from Advances to Related Parties in petitioner's 2009 Statement of Cash Flows[70], reveals a discrepancy in the amount of ₱4,050,497.83, to wit:

Advances received per General Ledger	₱549,418,170.17
Per assessment	553,468,668.00
Unaccounted discrepancy	**₱4,050,497.83**

For petitioner's failure to account for the discrepancy of ₱4,050,497.83, the corresponding deficiency DST assessment in the amount of ₱20,253.00 is upheld.

The analysis of the GL and related documents, *i.e.*, promissory notes (PN) and official receipts (OR) submitted by petitioner, shows that out of the total ₱549,418,170.17 proceeds from Advances from Related Parties during 2009, ₱466,418,170.17 were indeed short-term in nature, ranging from zero to fifty-four (54) days outstanding, while the amount of ₱83,000,000.00 was classified as "On demand" in the maturity grouping of petitioner's financial liabilities outstanding as of the end of 2009.[71]

The advances amounting to ₱83,000,000.00 were sourced from petitioner's stockholders as evidenced by the corresponding ORs, summarized as follows:

Stockholder[72]	OR No.	OR Date	Amount	Exhibit No.[73]	Date Credited in GL
Jonathan C. Ng	17345	1/9/2009	₱ 15,000,000.00	"P-28"	1/9/2009

[70] Exhibit "P-9-1", Docket, vol. I, p. 373
[71] 2009 AFS, Exhibit "P-9", Docket, vol. I, p. 388
[72] Fifth Clause of the Articles of Incorporation, Exhibit "P-1", Docket, vol. III, p. 1762
[73] Docket, vol. III, pp. 1789, 1790, 1795, and 1796

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Jonathan C. Ng	17695	2/12/2009	23,000,000.00	"P-29"	2/9/2009
Jonathan C. Ng	19289	8/14/2009	22,500,000.00	"P-34"	8/14/2009
Jacinto Ng, Jr.	19290	8/14/2009	22,500,000.00	"P-35"	8/14/2009
Total			**₱83,000,000.00**		

Since these advances were classified as "On demand" in the AFS, it was payable anytime at the demand of the stockholder, which would possibly happen after more than one (1) year. As such, these shall be treated as long-term advances.

On the other hand, the short-term advances amounting to ₱466,418,170.17 is further broken as follows:

Short-term advances evidenced by PNs	₱ 185,759,448.96
Short-term advances without term	48,000,000.00
Short-term advances rolled over from original PNs and advances without term	232,658,721.21
Total short-term advances	**₱466,418,170.17**

The short-term advances amounting to ₱185,759,448.96 are evidenced by the following PNs issued during 2009 with the corresponding maturity dates and amounts:

PN No.	Amount	Issue Date	Maturity Date	Term	Maturity Amount	Exhibit No.[74]
0135	₱ 20,000,000.00	5/21/2009	6/22/2009	32	₱20,097,777.78	"P-20"
0136	15,000,000.00	5/28/2009	6/29/2009	32	15,073,333.33	"P-21"
0146	165,328.64	7/14/2009	8/13/2009	30	166,086.40	"P-22"
0147	413,938.34	7/20/2009	8/19/2009	30	415,835.56	"P-23"
0149	30,983,442.11	8/19/2009	9/18/2009	30	31,125,449.55	"P-24"
0155	3,000,000.00	10/15/2009	11/19/2009	35	3,014,166.67	"P-25"
0159	52,980,635.19	11/19/2009	12/21/2009	32	53,216,104.68	"P-26"
0164	63,216,104.68	12/21/2009	1/11/2010	21	₱63,400,484.99	"P-27"
Total	**₱185,759,448.96**					

The issue date and maturity date from the above PNs match the dates when the amounts were credited and debited in the GL, except for PN No. 0164 where the debit date did not appear in the GL. Nevertheless, said PN clearly shows that it was short-term in nature albeit the maturity date crossed over the next calendar year.

Since there are no available records for this Court to determine the term of the short-term advances without term and rolled over advances, the Court finds it reasonable to rely on the number of days it was outstanding based on the transaction's movements in the GL

[74] Docket, vol. III, pp. 1781 to 1788

(*i.e.*, date the amount was credited and the date the same was debited). Accordingly, the dates of the transactions in the GL manifest how petitioner treated the advances in its financial books, where the credit date signifies that petitioner recognized it as a payable to the affiliate and the debit date signifies settlement of the same.

The short-term advances without term amounting to ₱48,000,000.00 are evidenced only by ORs, summarized as follows:

OR No.	Amount	OR Date	Exhibit No.[75]	Date Credited in GL	Date Debited in GL	No. of Days Outstanding
18046	₱ 6,500,000.00	3/19/2009	"P-30"	3/19/2009	4/14/2009	26
18673	23,000,000.00	6/3/2009	"P-33"	6/3/2009	7/3/2009	30
19858	3,500,000.00	10/23/2009	"P-37"	10/23/2009	11/19/2009	27
19913	15,000,000.00	10/29/2009	"P-38"	10/29/2009	11/19/2009	21
Total	**₱48,000,000.00**					

The remaining short-term advances amounting to ₱232,658,721.21 are merely rolled over from the prior year advances, PNs, and ORs as summarized above and only involve book entries without re-issuance of debt notes or instruments:

Originating PN/OR No.	Rolled Over Amount	Date Credited in GL	Date Debited in GL	Amount Debited	No. of Days Outstanding
from beginning balance	₱ 8,025,667.02	2/9/2009	3/11/2009	₱ 8,025,667.02	30
	8,059,107.30	3/11/2009	4/14/2009	8,059,107.30	34
	8,097,164.20	4/14/2009	4/14/2009	8,097,164.20	0
0135	20,097,777.78	5/21/2009	7/14/2009	20,097,777.78	54
0136	15,073,333.33	6/29/2009	6/30/2009	15,073,333.33	1
	7,075,625.00	6/30/2009	7/30/2009	7,075,625.00	30
	7,108,054.95	7/30/2009	8/19/2009	7,108,054.95	20
	7,129,774.01	8/19/2009	8/19/2009	7,129,774.01	0
0146	166,086.40	8/13/2009	8/19/2009	166,086.40	6
	166,238.65	8/19/2009	8/19/2009	166,238.65	0
0147	415,835.56	8/19/2009	8/19/2009	415,835.56	0
0149	31,125,449.55	9/18/2009	10/19/2009	31,125,449.55	31
	31,272,863.14	10/19/2009	11/19/2009	31,272,863.14	31
18046	6,525,277.78	4/14/2009	4/14/2009	139,501.12	0
			4/30/2009	63,334.68	16
			5/28/2009	6,322,441.98	44
	6,348,785.49	5/28/2009	6/15/2009	6,348,785.49	18
	6,379,824.00	6/15/2009	7/20/2009	6,379,824.00	35
18673	23,105,416.67	7/3/2009	8/3/2009	23,105,416.67	31
	23,214,846.49	8/3/2009	8/19/2009	23,214,846.49	16
	23,271,593.89	8/19/2009	8/19/2009	23,271,593.89	0
Total	**₱232,658,721.21**				

[75] Docket, vol. III, pp. 1791, 1794, 1798, and 1799

With all of the above advances accounted for and considered, the Court finds that the deficiency DST due from these transactions must be reduced to ₱591,738.21, as computed below, in accordance with Section 179 of the NIRC of 1997, as amended:

Particulars	Amount	Term or No. of Days Outstanding	DST Due[76]
Advances from stockholders	***₱83,000,000.00***	***365***	***₱415,000.00***
Promissory notes:			
0135	20,000,000.00	32	8,767.12
0136	15,000,000.00	32	6,575.34
0146	165,328.64	30	67.97
0147	413,938.34	30	170.14
0149	30,983,442.11	30	12,732.99
0155	3,000,000.00	35	1,438.36
0159	52,980,635.19	32	23,224.46
0164	63,216,104.68	21	18,185.48
Subtotal	***185,759,448.96***		***71,161.86***
Advances without term:			
18046	6,500,000.00	26	2,315.07
18673	23,000,000.00	30	9,452.05
19858	3,500,000.00	27	1,294.52
19913	15,000,000.00	21	4,315.07
Subtotal	***48,000,000.00***		***17,376.71***
Rolled over advances and PNs:			
from beginning balance in excess of P40M - P7,991,260.21; and Excess settlement of beginning balance - P186,938.28	8,025,667.02	30	3,298.27
	8,059,107.30	34	3,753.60
	8,097,164.20	0	-
0135	20,097,777.78	22	6,056.87
0136	15,073,333.33	1	206.48
	7,075,625.00	30	2,907.86
	7,108,054.95	20	1,947.45
	7,129,774.01	0	-
0146	166,086.40	6	13.66
	166,238.65	0	-
0147	415,835.56	0	-
0149	31,125,449.55	31	13,217.72
	31,272,863.14	31	13,195.38
18046	139,501.12	0	-
	63,334.68	16	13.90
	6,322,441.98	44	3,810.88
	6,348,785.49	18	1,565.46
	6,379,824.00	35	3,058.90
18673	23,105,416.67	31	9,811.97
	23,214,846.49	16	5,088.22
	23,271,593.89	0	-
Subtotal	***232,658,721.21***		***67,946.64***
Unaccounted Advances	***4,050,497.83***	**365**	***20,253.00***
Total	**₱553,468,668.00**		**₱591,738.21**

[76] (Base Amount ÷ ₱200.00) x (No. of Days Outstanding ÷ 365 days in a year)

II. Loans – Leasing – ₱73,599,156.00

Respondent's assessment is based on the premise that the financial lease agreements entered into by petitioner are in the nature of an obligation and considered as debt instruments subject to DST under Section 179 of the NIRC of 1997, as amended, which states:

> "SEC. 179. *Stamp Tax on All Debt Instruments.* – On every original issue of debt instruments, there shall 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 or any of its instrumentalities, deposit substitute debt instrument, 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."

Respondent further cites RR No. 09-2004, which defines "financial lease", as follows:

> "SEC. 2. *Definition of Terms.* – For purposes of these Regulations, the terms enumerated hereunder shall have the following meaning:
>
> xxx xxx xxx

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2.8. ***Financial Leasing*** – shall refer to the **mode of extending credit** through a non-cancellable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property **in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize** at least seventy percent (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract (R.A. No. 5980 as amended by R.A. No. 8556). A finance lease is a lease that transfers substantially all the risks and rewards incident to ownership of an asset. Title may or may not eventually be transferred." (*Emphasis supplied*)

Respondent maintains that based on the above definition, financial lease is a form of debt instrument that facilitate an obligation on the part of the borrower (called lessee in financial lease). The alleged process of acquiring a loan or an obligation, that instead of cash proceeds from loan to buy a specific property, the financial company (in this case, Asia United Leasing and Finance Corp.) advances the payment of property (whether movable or immovable) and in return the borrower (lessee) is obliged to pay in amortization the amount of money sufficient to cover the cost of the advances made by the financial lease plus a profit margin the company may derive therefrom. Thus, respondent posits that a financial lease transaction is a debt instrument where the obligation to pay a sum of loaned money arises from the first day the financial lease agreement was signed.[77]

On the other hand, petitioner avers that financial leases are not debt instruments as contemplated under Section 179 of the NIRC of 1997, as amended. Section 179 expressly defines "debt instruments" as pertaining to borrowings and lending transactions, and not to financial leases that contemplates rental rather than a loan.

[77] Details of Discrepancy of FDDA, Exhibit "R-18", BIR records, pp. 1228 to 1229

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Petitioner argues that under Section 3 of the Financing Company Act or RA No. 5980, as amended by RA No. 8556, the nature of a financial lease is essentially that of a lease contract.

> "(d) 'Financial leasing' is a mode of extending credit through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract."

Petitioner contends that based on the foregoing definition, the classification of "financial lease as a debt instrument" made by respondent is misplaced. Petitioner alleges that the law explicitly distinguishes a finance lease from borrowing or loans, such that even the Financing Act of 1998, as amended, defines and treats finance lease as distinct and separately from other contracts, such as loans.

Petitioner asserts that unlike a loan agreement which can be cancelled, financial leases are non-cancellable. This allegedly means that payments made during the duration of the contract are treated as lease rentals by the parties and cannot be recovered anymore. Petitioner points out that its Lease Contracts for taxable year 2009[78] would show that its model of finance leasing entails rent of vehicles, and not loan or borrowing.

Petitioner further states that as early as 1992, in *Beltran vs. PAIC Finance Corporation, et al.*[79], the Supreme Court recognized the *sui generis* nature of a financial lease, to wit:

> "A financing lease may be seen to be a contract sui generis, possessing some but not necessarily all of the elements

[78] Exhibit "P-40" to "P-163", Docket, vol. III, pp. 1805 to 2054
[79] G.R. Nos. 83113 and 83256, May 19, 1992

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of an ordinary or civil law lease. Thus, legal title to the equipment leased is lodged in the financial lessor. The financial lessee is entitled to the possession and use of the leased equipment. At the same time, the financial lessee is obligated to make periodic payments denominated as lease rentals, which enable the financial lessor to recover the purchase price of the equipment which had been paid to the supplier thereof. xxx"

Petitioner maintains that being *sui generis* in nature, financial leases are certainly distinct from debt instruments, and do not form part of the documents subject to DST under Section 179 of the NIRC of 1997, as amended.

Petitioner submits that the basis of respondent for the assessed deficiency DST is factually incorrect. Purportedly, the total financial leases booked by petitioner for the year 2009 was only ₱71,751,204.00, which is actually composed of the principal amount, interest on the leases and even an erroneous recording of a lease residual value, as follows:

Amount financed per lease contract	₱ 60,577,161.80
Erroneous and overstated recording of residual value of lease contract no. 053-659313-1184	800.00
Embedded interest income	11,174,042.20
Total 2009 booked finance leases	**₱71,751,204.00**

According to petitioner, had the BIR properly audited its books and contracts, the BIR could have clearly verified that:

1. The difference of ₱1,847,952 pertains to promissory notes, and not financial leases of petitioner; and
2. The booked financial lease of ₱71,751,204.00 is inclusive of embedded interest, and
3. The total amount of financial leases per contracts is only ₱60,577,161.80.

Petitioner stresses that the ICPA's examination of petitioner's records revealed that the financial lease per contracts for taxable year 2009 is indeed only ₱60,577,161.80. Thus, petitioner argues that even assuming that financial leases are subject to DST, the amount of DST due must be computed based on the principal amount only per contract, that is, ₱60,577,161.80, and the pro-rated DST due would be ₱302,923.00 only.

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The Court partially agrees with petitioner's arguments.

Petitioner is a registered financial company under RA No. 5980, as amended by RA No. 8556.[80]

RA No. 5980, as amended by RA No. 8556, defines "credit" and "financial leasing" as follows:

> "(c) '**Credit' shall mean** any loan, mortgage, **financial lease,** deed of trust, advance or discount, any conditional sales contract, contract to sell, or sale or contract of sale of property or service, either for present or future delivery, **under which, part of all or the price is payable subsequent to the making of such sale or contract**; any contract, any option, demand, lien or pledge, or to the other claims against, or for the delivery of, property or money, any purchase, or other acquisition of or any credit upon the security of, any obligation or claim arising out of the foregoing, and any transaction or series of transactions having similar purpose or effect; and
>
> (d) '**Financial leasing' is a mode of extending credit** through a non-cancelable lease contract under which the lessor purchases or acquires, at the instance of the lessee, machinery, equipment, motor vehicles, appliances, business and office machines, and other movable or immovable property in consideration of the periodic payment by the lessee of a fixed amount of money sufficient to amortize at least seventy (70%) of the purchase price or acquisition cost, including any incidental expenses and a margin of profit over an obligatory period of not less than two (2) years during which the lessee has the right to hold and use the leased property with the right to expense the lease rentals paid to the lessor and bears the cost of repairs, maintenance, insurance and preservation thereof, but with no obligation or option on his part to purchase the leased property from the owner-lessor at the end of the lease contract." (*Emphasis supplied*)

Meanwhile, under Section 179 of the Tax Code, debt instruments subject to DST is defined as **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

[80] Exhibit "P-2", Docket, vol. III, p. 1778

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instrument, 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.

Based on the above definition under Section 3 of RA No. 8556 it can be deduced that financial leasing is a mode of extending credit and falls within the same category of loans, which is undoubtedly borrowing and lending transactions in relation to the definition of debt instruments under Section 179 of the NIRC of 1997, as amended. As such, finance lease contracts are subject to DST.

However, we find merit in petitioner's arguments that the amount assessed by respondent to be subject to DST is incorrect.

A DST is imposed on every original issue of debt instruments and the tax shall be based on the issue price thereof (Section 179 of the NIRC of 1997, as amended by RA No. 9243). The term "issue price" shall refer to the face value of the debt instrument.[81]

The face value of the debt instrument pertains to the principal amount of indebtedness. It must thus exclude the embedded interest as it is merely an income to be derived by petitioner in exchange of granting credit to its financial lessees.

This interpretation is confirmed by Revenue Memorandum Circular No. 024-11 dated May 16, 2011, when respondent used the term "principal" in demonstrating the computation of the DST due as follows:

> Q7: *How will the eDST System compute the DST due? Is it by rounding off the tax base before multiplying it by the DST rate and term, or by straight computation?*
>
> A7: The eDST System computes the DST due based on the formula indicated in the National Internal Revenue Code (NIRC). It treats the fractional part of the tax base as one

[81] BIR Ruling [DA-312-06] dated May 10, 2006

(1) and computes the DST by rounding off first before multiplying by the DST rate and term.

e.g.,	**if Principal**	— P366,755.00
	DST Rate	— 1/200
	Term	— 30 days

DST will be computed as follows:

P366,755.00/200	= 1,833.775 rounded to 1,834
then multiplied by the tax rate and term	= 1,834 x 1.0 x 30/365 = P150.739 = P150.74.

In petitioner's case, the principal shall pertain to the cost of the leased property which was financed by petitioner in favor of its lessees.

Petitioner posits that the total finance lease assessed by respondent is higher than the actual finance lease contracts during 2009 by ₱1,847,952.00, as computed below:

Total rent per assessment[82]	₱ 73,599,156.00
Total rent per contracts[83]	71,751,204.00
Difference	**₱1,847,952.00**

As explained by the ICPA, the difference amounting to ₱1,847,952.00 was traced to the inclusion of two (2) promissory notes, which are not part of petitioner's finance lease activities, the DST on which is not an issue in this case.

Reference	Date	Maker	Amount	Exhibit No.[84]
052-659213-1333	12/7/2009	Thomas Asia Packaging Corporation	₱ 658,872.00	P-164
052-619213-1351	12/14/2009	Macrolite Trading Corp	1,189,080.00	P-165
			₱1,847,952.00	

Out of the total finance lease contracts executed during the year 2009 amounting to ₱71,751,204.00, petitioner was only able to substantiate an amount of ₱68,335,560.00 through submission of lease contracts, as summarized below:

Exhibit No.[85]	Lease No.	Lessee	Cost of Leased Property	Monthly Rent	Lease Term	Total Rent	Deposit

[82] FDDA, Exhibit "R-18", BIR records, p. 1230
[83] Annex G, ICPA Report, Exhibit "P-262"
[84] Docket, vol. III, pp. 2055 to 2056
[85] Docket, vol. III, pp. 1805 to 2054

"P-40"	053-779313-1165	Verdantpoint Development Corp.	590,000.00	11,695.00	60	701,700.00	59,000.00
"P-41"	053-659313-1176	Airfreight 2100, Inc.	1,287,500.00	30,800.00	48	1,478,400.00	128,750.00
	SUB-TOTAL (JANUARY)		**1,877,500.00**			**2,180,100.00**	**187,750.00**
"P-42"	053-659313-1177	Jackbilt Industries, Inc.	1,900,000.00	70,763.00	24	1,698,312.00	570,000.00
"P-43"	053-659313-1178	Steel Asia Manufacturing Corp.	793,000.00	16,394.000	48	786,912.00	158,600.00
"P-44"	053-695313-1183	Fort Steel Cargo Integrators, Inc.	1,140,000.00	42,267.00	24	1,014,408.00	342,000.00
"P-45"	053-659313-1184	Steel Asia Manufacturing Corp.	1,596,000.00	28,870.00	48	1,385,760.00	478,000.00
"P-46"	053-639304-1185	High Street (SPV-MAC), Inc.	3,800,000.00	140,391.00	24	3,369,384.00	1,140,000.00
"P-47"	053-639313-1186	Fort Steel Cargo Integrators, Inc.	1,080,000.00	40,042.00	24	961,008.00	324,000.00
	SUB-TOTAL (FEBRUARY)		**10,309,000.00**			**9,215,784.00**	**3,012,600.00**
"P-48"	053-639313-1188	Fort Steel Cargo Integrators, Inc.	1,080,000.00	40,042.00	24	961,008.00	324,000.00
"P-49"	053-779313-1199	One Asia Development Corporation	939,000.00	18,613.00	60	1,116,780.00	93,900.00
P-50	053-619313-1200	Food and Beverage (Subic), Inc.	329,465.00	9,818.00	36	353,448.00	32,946.00
P-51	053-619313-1201	Food and Beverage (Subic), Inc.	329,465.00	9,818.00	36	353,448.00	32,946.00
P-52	053-619313-1202	Food and Beverage (Subic), Inc.	329,465.00	9,818.00	36	353,448.00	32,946.50
P-53	053-659313-1203	Land Registration Systems, Inc.	875,000.00	23,177.00	36	834,372.00	175,000.00
P-54	053-619313-1204	Progressive Medical Corporation	614,000.00	20,032.00	24	480,768.00	184,200.00
	SUB-TOTAL (MARCH)		**4,496,395.00**			**4,453,272.00**	**875,938.50**
P-55	053-619313-1206	Food and Beverage (Subic), Inc.	329,465.00	9,818.00	36	353,448.00	32,946.50
P-56	053-619313-1208	Signed by Ralph L. Joseph	500,000.00	14,899.00	36	536,364.00	50,000.00
P-57	053-619313-1209	Signed by Ralph L. Joseph	500,000.00	14,899.00	36	536,364.00	50,000.00
P-58	053-619313-1210	Signed by Ralph L. Joseph	500,000.00	14,899.00	36	536,364.00	50,000.00
P-59	053-619313-1211	Signed by Ralph L. Joseph	500,000.00	14,899.00	36	536,364.00	50,000.00
P-60	053-619313-1212	Signed by Ralph L. Joseph	676,786.00	20,167.00	36	726,012.00	67,679.00
P-61	053-619304-1217	FL Suns Corporation	1,295,000.00	48,355.00	24	1,160,520.00	388,500.00
	SUB-TOTAL (APRIL)		**4,301,251.00**			**4,385,436,.00**	**689,125.50**
P-62	053-659313-1219	Steel Asia Manufacturing Corp.	875,000.00	18,089.00	48	868,272.00	175,000.00
P-63	053-619313-1222	Signed by Seungchul Lee, (CEO)	593,000.00	23,492.00	24	563,808.00	88,950.00

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P-64	053-609313-1225	Signed by Tennyson G. Chen/Peter James G. Chen	1,015,000.00	20,090.00	60	1,205,400.00	-
P-65	053-659313-1226	Airfreight 2100, Inc.	624,000.00	14,789.00	48	709,872.00	62,400.00
P-66	053-659313-1227	Airfreight 2100, Inc.	624,000.00	14,789.00	48	709,872.00	62,400.00
	SUB-TOTAL (MAY)		**3,731,000.00**		**0**	**4,057,224.00**	**388,750.00**
P-66	053-779313-1228	Verdantpoint Development Corp.	1,250,000.00	24,778.00	60	1,486,680.00	125,000.00
P-67	053-659313-1229	Airfreight 2100, Inc.	624,000.00	14,789.00	48	709,872.00	62,400.00
P-68	053-659313-1230	Airfreight 2100, Inc.	624,000.00	14,790.00	48	709,920.00	62,400.00
P-69	053-639313-1231	F. Martinez and Co., Inc.	1,250,000.00	33,109.00	36	1,191,924.00	250,000.00
	SUB-TOTAL (JUNE)		**3,748,000.00**			**4,098,396.00**	**499,800.00**
P-70	053-609313-1237	Bounty Agro-Ventures, Inc.	695,000.00	20,757.00	36	747,252.00	-
P-71	053-779313-1238	One Asia Development Corporation	600,000.00	11,894.00	60	713,640.00	60,000.00
P-72	053-619313-1239	Food and Beverage (Subic), Inc.	832,142.00	24,796.00	36	892,656.00	83,215.00
P-73	053-609313-1243	Bounty Agro-Ventures, Inc.	495,000.00	14,725.00	36	530,100.00	-
P-74	053-609313-1245	Bounty Agro-Ventures, Inc.	740,000.00	22,013.00	36	792,468.00	-
P-75	053-639313-1246	Steel Asia Manufacturing Corporation	802,000.00	16,580.00	48	795,840.00	160,400.00
	SUB-TOTAL (JULY)		**4,164,142.00**			**4,471,976.00**	**303,615.00**
P-76	053-779313-1249	Verdantpoint Development Corp.	1,400,000.00	27,751.00	60	1,665,060.00	140,000.00
P-77	053-619313-1250	Progressive Medical Corporation	531,000.00	17,246.00	24	413,904.00	159,300.00
P-78	053-619313-1251	Inmed Corporation	1,119,000.00	36,343.00	24	872,232.00	335,700.00
P-79	053-639313-1253	Dwightsteel Building Systems, Inc.	756,000.00	19,755.00	36	711,180.00	151,200.00
P-80	053-609313-1254	Bounty Fresh Food, Inc.	593,000.00	17,640.00	36	635,040.00	-
P-81	053-659313-1255	NBC Exim Corporation	1,780,000.00	58,073.00	24	1,393,752.00	534,000.00
P-82	053-609313-1257	Bounty Agro-Ventures, Inc.	495,000.00	14,725.00	36	530,100.00	-
	SUB-TOTAL (AUGUST)		**6,674,000.00**			**6,221,268.00**	**1,320,200.00**
P-83	053-619313-1258	LG Electronics Phils., Inc.	788,300.00	31,230.00	24	749,520.00	118,500.00
P-84	053-619313-1259	LG Electronics Phils., Inc.	990,000.00	39,220.00	24	941,280.00	148,500.00
P-85	053-639313-1260	Steel Asia Manufacturing Corporation	578,000.00	11,950.00	48	573,600.00	115,600.00
P-86	053-609313-1261	Bounty Fresh Food, Inc.	593,000.00	17,640.00	36	635,040.00	-

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P-87	053-779313-1262	Verdantpoint Development Corp.	520,000.00	10,308.00	60	618,480.00	52,000.00
P-88	053-609313-1263	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-89	053-609313-1264	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-90	053-609313-1265	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-91	053-609313-1266	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-92	053-609313-1267	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-93	053-659313-1269	Medicotek, Inc.	979,000.00	27,367.00	36	985,212.00	146,850.00
	SUB-TOTAL (SEPTEMBER)		**5,273,300.00**			**5,329,572.00**	**663,950.00**
P-94	053-609313-1270	Bounty Agro-Ventures, Inc.	593,000.00	17,640.00	36	635,040.00	-
P-95	053-609313-1271	Bounty Agro-Ventures, Inc.	495,000.00	14,725.00	36	530,100.00	-
P-96	053-609313-1275	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-97	053-609313-1276	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-98	053-609313-1277	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-99	053-609313-1278	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-100	053-609313-1279	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-101	053-639313-1280	Steel Asia Manufacturing Corp.	943,000.00	19,495.00	48	935,760.00	188,600.00
P-102	053-639313-1281	Earth Aspire Corporation	600,000.00	11,893.00	60	713,580.00	60,000.00
P-103	053-639313-1282	Steel Asia Manufacturing Corp.	749,000.00	15,485.00	48	743,280.00	149,800.00
P-104	053-639313-1283	Steel Asia Manufacturing Corp.	749,000.00	15,485.00	48	743,280.00	149,800.00
P-105	053-609313-1285	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-106	053-609313-1286	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-107	053-609313-1287	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-108	053-609313-1288	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
	SUB-TOTAL (OCTOBER)		**5,614,000.00**			**5,788,632.00**	**696,700.00**
P-109	053-659313-1289	Sybase Solutions Corporation	1,444,000.00	24,632.00	36	886,752.00	700,000.00
P-110	053-619313-1290	LG Electronics Phils., Inc.	1,651,000.00	65,406.00	24	1,569,744.00	247,650.00
P-111	053-659313-1291	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00

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P-112	053-659313-1292	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-113	053-659313-1293	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-114	053-659313-1294	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-115	053-659313-1295	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-116	053-659313-1296	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-117	053-659313-1297	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-118	053-659313-1298	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-119	053-659313-1299	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-120	053-659313-1300	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-121	053-659313-1301	Signed by Ariel J. Agcaoili/Angelito A. Alvarez	390,000.00	13,518.00	30	405,540.00	39,000.00
P-122	053-609313-1302	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-123	053-609313-1304	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-124	053-609313-1305	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-125	053-779313-1306	First Advance Development Corp.	1,379,000.00	27,335.00	60	1,640,100.00	137,900.00
P-126	053-609313-1316	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-127	053-609313-1317	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-128	053-609313-1318	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-129	053-609313-1319	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-130	053-609313-1320	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-131	053-609313-1321	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-132	053-609313-1322	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-133	053-609313-1323	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-134	053-609313-1324	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-135	053-609313-1325	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-136	053-659313-1327	Airfreight 2100, Inc.	390,000.00	13,518.00	30	405,540.00	39,000.00
P-137	053-659313-1328	Airfreight 2100, Inc.	390,000.00	13,518.00	30	405,540.00	39,000.00

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P-138	053-659313-1329	Airfreight 2100, Inc.	390,000.00	13,518.00	30	405,540.00	39,000.00
P-139	053-659313-1330	Airfreight 2100, Inc.	390,000.00	13,518.00	30	405,540.00	39,000.00
P-140	053-639313-1331	Steel Asia Manufacturing Corporation	900,000.00	15,229.00	48	730,992.00	300,000.00
	SUB-TOTAL (NOVEMBER)		**13,369,000.00**			**13,059,432.00**	**2,185,050.00**
P-141	053-609313-1322	Bounty Agro-Ventures, Inc.	495,000.00	14,725.00	36	530,100.00	-
P-142	053-639313-1334	Steel Asia Manufacturing Corp.	714,000.00	14,761.00	48	708,528.00	142,800.00
P-143	053-609313-1335	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-144	053-609313-1336	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-145	053-609313-1337	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-146	053-609313-1338	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-147	053-609313-1339	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-148	053-609313-1340	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-149	053-609313-1341	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-150	053-609313-1342	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-151	053-609313-1343	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-152	053-609313-1344	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-153	053-609313-1345	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-154	053-609313-1347	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-155	053-609313-1348	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-156	053-609313-1349	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-157	053-609313-1350	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-158	053-609313-1352	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-159	053-609313-1353	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-160	053-609313-1354	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-161	053-609313-1355	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00
P-162	053-609313-1356	Bounty Agro-Ventures, Inc.	165,000.00	6,887.00	24	165,288.00	16,500.00

P-163	053-609313-1357	Bounty Agro-Ventures, Inc.	495,000.00	14,725.00	36	530,100.00	-
	SUB-TOTAL (DECEMBER)		5,004,000.00			5,074,488.00	472,800.00
	TOTAL (ANNUAL)		68,651,588.00			68,335,560.00	11,296,279.00

The amount of ₱68,335,560.00 pertains to the total rentals stipulated in the contracts. However, the total cost of the leased property stipulated therein amounts to ₱68,651,588.00.

As discussed earlier, the DST in this case shall be based on the cost of the leased property. However, due consideration must be given to the residual value of the leased property, which is equivalent to the guaranty deposit stipulated in the lease contracts.

The residual value of leased equipment is the estimated proceeds from the disposal of the leased asset at the end of the lease term which approximates the amount of guaranty deposit paid by the lessee at the inception of the lease. At the end of the lease term, the residual value is generally applied against the guaranty deposit of the lessee.[86]

Considering this, the actual amount of indebtedness is not the total cost of the leased property. It must be reduced by the amount of the guaranty deposit which represents the residual value of the leased property since, in essence, said deposit was retained by petitioner and was not turned over to its lessees.

As such, with regard to the finance lease substantiated with lease contracts, the amount of indebtedness for DST purposes must only be ₱57,265,309.00, representing the net amount after deducting the total deposits of ₱11,296,279.00 from the total cost of leased property of ₱68,561,588.00.

As for the amount of ₱3,415,644.00 (₱71,751,204.00 total rentals per finance lease contracts minus ₱68,335,560.00 total rentals with lease contracts) which is unsubstantiated with lease contracts, the same should be subject to DST without due regard to the cost of leased property and the guaranty deposit since petitioner failed to provide supporting lease contracts.

In sum, the amount of finance lease during 2009 which must be subjected to DST, shall be reduced to ₱60,680,953.00 and the

[86] Summary of Significant Accounting Policies, Note 2, 2009 AFS, Exhibit "P-9", Docket, vol. I, p. 379

corresponding basic DST shall be reduced to ₱303,405.00, as computed below:

Amount of indebtedness per lease contracts	₱ 57,265,309.00
Unsubstantiated finance lease	3,415,644.00
Total finance lease contract subject to DST	**₱60,680,953.00**
Multiply by DST rate (₱1 for every ₱200)	1/200
Basic DST due	**₱ 303,405.00**

III. Imposition of Interest and 50% Surcharge

Respondent imposed fifty percent (50%) surcharge pursuant to Section 248(B) of the Tax Code due to false or fraudulent return.[87]

On Advances from Related Parties

Petitioner posits that it is not liable for surcharge and interest because it relied in good faith on the BIR's previous interpretation of the law involved.

Petitioner alleges that in a number of cases,[88] the Supreme Court has consistently recognized good faith and honest belief as valid justification to cancel surcharges and interests. More so, if such good faith and honest belief arose from a previous interpretation of government agencies tasked to implement the tax law.[89]

Petitioner further avers that this principle was thoroughly discussed and upheld by this Court in the case of *Saturn Holdings, Inc. vs. Commissioner of Internal Revenue*[90], ("*Saturn Holdings* case" for brevity) which coincidentally involved alleged deficiency DST due on advances to related parties based on the *Filinvest* case. In the said case, this Court cancelled the surcharges and interest because petitioner Saturn Holdings was led to believe by previous BIR Rulings that its Advances to Related Parties are not subject to DST.

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[87] FDDA, Exhibit "R-18", BIR records, p. 1230

[88] *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 166786, September 11, 2006, citing *Tuason, Jr. vs. Lingad*, 157, Phil. 159, 167-168 (1974) and *Commissioner of Internal Revenue vs. Republic Cement Corporation, et al.*, G.R. Nos. L-35668-72 and L-35683, August 10, 1983

[89] *Antam Pawnshop Corporation vs. Commissioner of Internal Revenue*, G.R. No. 167962, September 19, 2008

[90] CTA Case No. 9085, August 18, 2017

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Similarly, in this case, petitioner maintains that it did not subject its related party advances to DST as it relied in good faith on the BIR's previous rulings that such advances are not subject to DST. Hence, petitioner submits that it should be allowed to have the surcharge and interest on its alleged deficiency DST for taxable year 2009 cancelled on the basis of good faith and reliance on the BIR's previous Rulings.

The Court agrees with petitioner.

In *Michel J. Lhuiller Pawnshop, Inc. vs. Commissioner of Internal Revenue*[91], the Supreme Court settled the rule 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 laws, are sufficient justification to delete the imposition of surcharges and interest.

The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by respondent. The ensuing controversy was generated in good faith and should furnish no justification for the imposition of a penalty.[92]

Applying the above doctrines, this Court's First Division in the *Saturn Holdings* case gave credence to Saturn Holdings, Inc.'s good faith in believing that no DST was due on its advances to/from affiliates in 2009 as it relied on respondent's previous rulings declaring that intercompany advances are not subject to DST. Among these rulings were 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.

The BIR Rulings relied upon by Saturn Holdings, Inc. in the *Saturn Holdings* case are the same rulings relied upon by petitioner in this case. Until the promulgation of the *Filinvest* case on July 19, 2011, petitioner believed in these BIR Rulings, hence, did not subject its advances to/from affiliates to DST. Petitioner even settled as compromise the basic deficiency DST due to its belief that it owes the government the amount of ₱1,250,760.36 on February 28, 2014 sans interest and surcharges based on the grounds being invoked herein.[93]

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

[92] *Connell Bros. Co. (Phil.) vs. Collector of Internal Revenue*, G.R. No. L-15470, December 26, 1963

[93] Exhibit "P-266", Docket, vol. III, pp. 1586 to 1588

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Due to these circumstances and applying the prevailing jurisprudence, the Court finds that petitioner cannot be held liable for any interest and surcharge arising from the deficiency DST assessment over Advances from Related Parties.

On Finance Lease

Section 248(A)(1) and (3) and (B) of the NIRC of 1997, as amended, provides:

"SEC. 248. *Civil Penalties.* –

(A) There shall be imposed, in addition to the tax required to be paid, a penalty equivalent to twenty-five percent (25%) of the amount due, in the following cases:

(1) Failure to file any return and pay the tax due thereon as required under the provisions of this Code or rules and regulations on the date prescribed; or

xxx xxx xxx

(3) Failure to pay the deficiency tax within the time prescribed for its payment in the notice of assessment; or

xxx xxx xxx

(B) **In case of willful neglect to file the return** within the period prescribed by this Code or by rules and regulations, **or in case a false or fraudulent return is willfully made**, the **penalty to be imposed shall be fifty percent (50%) of the tax or of the deficiency tax**, in case any payment has been made on the basis of such return before the discovery of the falsity or fraud: *Provided*, That a substantial underdeclaration of taxable sales, receipts or income, or a substantial overstatement of deductions, as determined by the Commissioner pursuant to the rules and regulations to be promulgated by the Secretary of Finance, shall constitute *prima facie* evidence of a false or fraudulent return: *Provided, further*, That failure to report sales, receipts or income in an amount exceeding thirty percent (30%) of that declared per return, and

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a claim of deductions in an amount exceeding thirty percent (30%) of actual deductions, shall render the taxpayer liable for substantial underdeclaration of sales, receipts or income or for overstatement of deductions, as mentioned herein." (*Emphasis and underscoring supplied*)

Section 248(B) imposes the surcharge of fifty percent (50%) only in two instances. *First*, in case of willful neglect to file the return within the period prescribed, and *second*, in case a false or fraudulent return is willfully made. Thus, it is not enough that the taxpayer failed to file the required tax return or that the return is false to justify the imposition of the 50% for fraud. The law clearly requires that "a false or fraudulent return is willfully made".[94]

The term "willfully" generally connotes a voluntary, intentional violation of a known legal duty.[95]

An act or omission is "willfully" done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law. A willful act may be described as one done intentionally, knowingly, and purposely, without justifiable excuse.[96]

It must be emphasized that respondent did not present any evidence to directly prove that there was a willful intention on the part of petitioner to evade the payment of taxes. There is no clear and convincing proof that petitioner's alleged failure to file DST Returns on the subject transaction documents was done willfully and deliberately. What is evident in this case is the omission or failure of petitioner to subject its financial leases to the corresponding DST and to file a return on the same since petitioner erroneously believed that its financial leases are not subject to DST. At any rate, such negligence or mistake is subject to 25% surcharge, pursuant to Section 248(A)(1) and (3) of the NIRC of 1997, as amended.

WHEREFORE, premises considered, the assessment issued by respondent against petitioner for taxable year ended December 31, 2009 covering deficiency DST is **AFFIRMED but with modifications**. Accordingly, petitioner is liable for deficiency DST in

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[94] *Estate of Fidel F. Reyes and Estate of Teresita R. Reyes vs. Commissioner of Internal Revenue*, CTA EB Case No. 189 (CTA Case No. 6747), March 21, 2007
[95] Mertens Law of Federal Income Taxation, Volume 15, 1988 Ed., Chapter 55A, p. 76
[96] Black's Law Dictionary, 6th Ed., p. 1599.

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the aggregate amount of **₱1,292,082.10** as of the date of petitioner's payment on February 28, 2014, inclusive of the 25% surcharge, 20% deficiency interest and 20% delinquency interest imposed under Sections 248(A)(3), 249(B) and (C) of the NIRC of 1997, as amended, respectively, computed until February 28, 2014. However, considering that the payment made by petitioner on February 28, 2014 amounted only to ₱1,250,760.36[97], petitioner is still liable to pay the amount of **₱56,130.62**, representing still unpaid 20% delinquency interest, as computed below:

	Advances to	Loans -	
	Related Parties	**Finance Lease**	**TOTAL**
Basic Tax Due	₱591,738.21	₱303,405.00	₱895,143.21
25% Surcharge	-	75,851.25	75,851.25
Sub-Total	₱591,738.21	₱379,256.25	970,994.46
Add: 20% Deficiency Interest			
06-Jan-10 to 31-Jul-13*	-	216,622.86	216,622.86
(₱303,405.00 x 20% x 1,303/365)			
Total Amount Due, Jul. 31, 2013[98]	591,738.21	₱595,879.11	1,187,617.32
Add: 20% Deficiency Interest			
From 01-Aug-13 to 28-Feb-14			
212 Days			
(₱303,405.00 x 20% x 212/365)	-	35,244.85	35,244.85
Add: 20% Delinquency Interest			
From 01-Aug-13 to 28-Feb-14			
212 Days			
(₱595,879.11 x 20% x 212/365)	-	69,219.93	69,219.93
Total Amount Due, Feb. 28, 2014	₱591,738.21	₱700,343.89	**₱1,292,082.10**
Less: Payment on Feb. 28, 2014			1,250,760.36
Amount Still Due as of Feb. 28, 2014			₱41,321.74
Add: 20% Deficiency Interest			
From 01-Mar-14 to 31-Dec-17			
1,402 Days			
(₱41,321.74 x 20% x 1,402/365)			31,744.15
Sub-Total			**₱73,065.90**
Add: 20% Delinquency Interest			
From 01-Mar-14 to 31-Dec-17			
1,402 Days			
(₱73,065.90 x 20% x 1,402/365)			**56,130.62**
Total Amount Due, Dec. 31, 2017			**₱129,196.52**

[97] Exhibits "P-266" and "P-266-1", Docket, vol. III, pp. 1586 to 1588.
[98] Exhibit "P-6", Formal Letter of Demand, Assessment Notice, Docket, Vol. 1, pp. 356 to 358.

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In addition, petitioner is **ORDERED TO PAY** delinquency interest at the rate of twelve percent (12%), on the total unpaid amount of **P73,065.90,** as determined above, computed from January 1, 2018 until full payment thereof, pursuant to Section 249(C) of the Tax Code, as amended by RA No. 10963 and implemented by Revenue Regulations No. 21-2018.

SO ORDERED.

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

WE CONCUR:

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

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, Special 1st Division

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

ASIA UNITED LEASING & FINANCE CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8735

Members:

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

Promulgated:
FEB 12 2019 12:41pm

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CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in sustaining the assessment for deficiency Documentary Stamp Tax (DST) on petitioner's finance lease arrangements, albeit in the reduced amount of Php303,405; cancelling the imposition of the 50% surcharge thereon for respondent's failure to prove petitioner's willful intent to evade the payment of the DST on financial lease; and, imposing the 25% surcharge pursuant to Section 248(A)(1) and (3) of the National Internal Revenue Code (NIRC) of 1997, as amended.

With due respect, however, I dissent with the *ponencia* in affirming the assessment for deficiency DST on the advances from related parties.

I submit that petitioner correctly relied on the Bureau of Internal Revenue's (BIR) prevailing interpretation in the year 2009 that inter-company advances or advances from related parties which are not covered by loan agreements or debt instruments are not subject to DST under Section 179 of the National Internal Revenue Code

(NIRC) of 1997, as amended. Specifically, petitioner relied on BIR Ruling No. DA-666-A-99 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 sated January 17, 2008 and BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008.

I find it worthy to note that in *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002*, the **Court of Appeals (CA)** held that the interpretation of the BIR in BIR Ruling No. 116-98 dated July 30, 1998 that inter-office memo covering advances granted by an affiliate company is not subject to DST is in accordance with law. Moreover, in *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006*, the **Court of Tax Appeals (CTA)** also ruled that the pronouncement in BIR Ruling No. 116-98 dated July 30, 1998 that the inter-company advances made by Belle to its affiliates are not subject to DST is consistent with the provisions of the NIRC of 1997.

Undeniably, the existing interpretation at the time of the transactions (year 2009) was that loans and advances to affiliates which are not covered by loan agreements or debt instruments are not subject to DST. **The rulings of the CA in *APC Group* and the CTA in *Belle Corporation*, interpreting BIR Ruling No. 116-98 dated July 30, 1998, were in essence the final judicial determination on the non-taxability of loans and advances to affiliates which are covered by inter-office memoranda.** Pronouncements of the CA and the CTA are at the very least persuasive.

Specifically, on the matter of the persuasive effect of the decisions of the CTA, the disquisition of the Supreme Court in *Commissioner of Internal Revenue vs. Court of Appeals, Atlas Consolidated Mining Corporation and Court of Tax Appeals / Atlas Consolidated Mining Corporation vs. Court of Appeals, Commissioner of Internal Revenue and Court of Tax Appeals*[1] is enlightening:

> "The Commissioner of Internal Revenue argues that the ruling in the case above stated is not binding, considering that the incumbent Commissioner of Internal Revenue is not bound by decisions or rulings of his predecessor when he finds that a different construction of the law should be adopted, invoking therefor the doctrine enunciated in *Hilado vs. Collector of Internal Revenue, et al.* This trenches on specious reasoning. What was

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

involved in the *Hilado* case was a previous ruling of a former Commissioner of Internal Revenue. In the case at bar, the Commissioner based his findings on a previous decision rendered by the Court of Tax Appeals itself.

The Court of Tax Appeals is not a mere superior administrative agency or tribunal but is a part of the judicial system of the Philippines. It was created by Congress pursuant to Republic Act No. 1125, effective June 16, 1954, as a centralized court specializing in tax cases. It is a regular court vested with exclusive appellate jurisdiction over cases arising under the National Internal Revenue Code, the Tariff and Customs Code, and the Assessment Law.

Although only the decisions of the Supreme Court establish jurisprudence or doctrines in this jurisdiction, nonetheless the decisions of subordinate courts have a persuasive effect and may serve as judicial guides. It is even possible that such a conclusion or pronouncement can be raised to the status of a doctrine if, after it has been subjected to test in the crucible of analysis and revision the Supreme Court should find that it has merits and qualities sufficient for its consecration as a rule of jurisprudence.

Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an agency such as the Court of Tax Appeals, which is, by the very nature of its function, dedicated exclusively to the study and consideration of tax problems and has necessarily developed an expertise on the subject, unless there has been an abuse or improvident exercise of authority on its part." (Boldfacing supplied)

While the doctrine on the non-taxability of loans and advances covered by inter-office memoranda was over-ruled in year **2011** when the Supreme Court promulgated *Commissioner of Internal Revenue vs. Filinvest Development Corporation,*[2] the same cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on the prevailing interpretation of the BIR which interpretation was sustained by the CA and CTA in *APC Group* and *Belle Corporation,* respectively. Needless to say, **if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice[3] (that is - - by applying the Supreme Court doctrine reversing the BIR ruling prospectively), I submit that reliance in**

[2] G.R. Nos. 163653 and 167689, July 19, 2011.
[3] Commissioner of Internal Revenue vs. San Roque Power Corporation, G.R. No. 187485, February 12, 2013; Taganito Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 196113, February 12, 2013; Philex Mining Corporation vs. Commissioner of Internal Revenue, G.R. No. 197156, February 12, 2013.

good faith on a principle of law as interpreted by no less than a collegial court should be accorded the same legal consequence to the taxpayer.

All told, I **VOTE** to: (i) **PARTIALLY GRANT** the Petition for Review filed by petitioner Asia United Leasing and Finance Corporation; (ii) **CANCEL** the 2009 deficiency basic DST assessment, surcharge and interest issued against petitioner arising from advances from related parties; (iii) **AFFIRM** with **MODIFICATION** the 2009 deficiency DST assessment issued against petitioner arising from its financial lease arrangements thereby reducing the basic deficiency DST to Php303,405.00, imposing the 25% surcharge instead of the 50% surcharge, and subjecting the same to deficiency interest and delinquency interest which should be computed pursuant to Section 249 (B) and (C) of the NIRC of 1997, as amended by Republic Act (RA) No. 10963 (otherwise known as the Tax Reform for Acceleration and Inclusion [TRAIN] Law) and as implemented by Revenue Regulations (RR) No. 21- 2018.

ROMAN G. DEL ROSARIO
Presiding Justice