

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

**E.E. BLACK LTD. – PHILIPPINE
BRANCH,**

Petitioner,

CTA CASE NO. 8719

Members:

- versus -

**BAUTISTA, *Chairperson*
FABON- VICTORINO, *and*
RINGPIS-LIBAN, *II*.**

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

Promulgated:

MAR 08 2016
can 10:04 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

The Case

This is a Petition for Review¹ filed by E.E. Black Ltd. – Philippine Branch on October 16, 2013 seeking the cancellation of Assessment Notice No. DS-LA3668-08-12-0113 issued by the Commissioner of Internal Revenue, assessing petitioner for alleged deficiency documentary stamp tax (DST) for taxable year 2008 in the total amount of Eight Hundred Forty-Three Thousand Three Hundred Sixteen Pesos and 40/100 (P843,316.40).

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¹ Docket, pp. 6-27.

The Facts

Petitioner E.E. Black Ltd. – Philippine Branch is a corporation organized and existing under and by virtue of the laws of the State of Hawaii, United States of America, and is duly licensed by the Securities and Exchange Commission to establish a branch office and to do business as a general contractor in the Philippines. Its office address is at 2nd Floor, 111 Paseo de Roxas Building, corner Legazpi Street and Paseo de Roxas, Makati City.²

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) vested under the appropriate laws with the authority to carry out the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide disputed assessments and cancel and abate tax liabilities, pursuant to the provisions of the National Internal Revenue Code (NIRC) of 1997 and other tax laws, rules and regulations. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent issued a Formal Assessment Notice and Assessment Notice Nos. IT-LA3668-08-12-0113, VT-LA3668-08-12-0113, WE-LA3668-08-12-0113, WR-LA3668-08-12-0113, and DS-LA3668-08-12-0113, all dated January 5, 2012, copies of which were received by petitioner on January 6, 2012, assessing petitioner for deficiency income tax, value-added tax (VAT), expanded withholding tax (EWT), fringe benefit tax (FBT), and DST for taxable year ended December 31, 2008.³

On February 2, 2012, petitioner filed with respondent a protest letter dated January 31, 2012 and the necessary supporting documents.⁴

On February 15, 2012, petitioner received from the Regional Director of BIR Revenue Region No. 8 – Makati a letter dated February 10, 2012, acknowledging receipt of the protest letter and informing petitioner that the entire tax docket with the protest letter has been forwarded to Revenue District Office No. 50 for further verification, evaluation, and necessary action.⁵

A conference was held on March 6, 2012, where the investigating Revenue Officers required the submission of additional supporting documents. Petitioner complied on March 23, 2012.⁶

² Pars. 1 and 2, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 236-237.

³ Par. 2, Summary of Admitted Facts, JSFI, docket, p. 231.

⁴ Par. 3, Summary of Admitted Facts, JSFI, docket, p. 232.

⁵ Par. 4, Summary of Admitted Facts, JSFI, docket, p. 232.

⁶ Par. 5, Summary of Admitted Facts, JSFI, docket, p. 232.

On September 19, 2013, petitioner received the Final Decision on Disputed Assessment dated September 16, 2013, finding petitioner liable for deficiency FBT in the amount of ₱1,292,537.88 and deficiency DST in the amount of ₱843,316.40.⁷

Petitioner paid the deficiency FBT assessment, with interest recomputed, on September 27, 2013, through the electronic payment system.⁸

However, petitioner did not pay the deficiency DST which was imposed by respondent on the net increase in the amount of advances to/from affiliates of petitioner for taxable year 2008.⁹

The deficiency DST was computed by respondent as follows:¹⁰

Basic Tax Due	₱ 380,930.00
Add: Surcharge (25%)	95,232.50
Interest (01.06.09 to 10.31.13)	367,153.90
Total Amount Due	₱843,316.40

Schedule 2 of the Details of Discrepancies¹¹ attached to the Final Decision on Disputed Assessment breaks down the basic DST assessment as follows:

	Ending	Beginning	Net Increase
Due from E.E Black, Ltd (Hawaii)	₱242,812,624.00	₱220,973,058.00	₱ 21,839,566.00
Due to Tutor Saliba Corp.	29,770,189.00	23,684,377.00	6,085,812.00
Due to Black Construction Corp.	69,453,857.00	21,193,401.00	48,260,456.00
Total Increase/Borrowings for the Year	₱342,036,670.00	₱265,850,836.00	₱76,185,834.00
DST Rate			₱1.00 / ₱200.00
DST on Loan Agreements			₱ 380,930.00

During the reinvestigation, respondent’s Revenue Officers maintained that the DST assessment on debt instrument was issued pursuant to the directive of respondent in Revenue Memorandum Circular No. 48-2011 dated October 6, 2011.¹²

⁷ Par. 6, Summary of Admitted Facts, JSFI, docket, p. 232.
⁸ Par. 7, Summary of Admitted Facts, JSFI, docket, pp. 232-233.
⁹ Pars. 8 and 9, Summary of Admitted Facts, JSFI, docket, p. 233.
¹⁰ Exhibit "P-3", docket, p. 327.
¹¹ Exhibit "P-3", Annex-A, docket, p. 330.
¹² Par. 10, Summary of Admitted Facts, JSFI, docket, p. 233. RMC No. 48-2011 is the *Circularization of the Relevant Excerpts from the En Banc Supreme Court Decision in the Case of Commissioner of Internal Revenue vs. Filinvest Development Corporation, G.R. Nos. 163653 and 167689 Dated July*

Hence, petitioner filed the instant Petition for Review on October 16, 2013.

Respondent filed her Answer¹³ on December 16, 2013, interposing the following special and affirmative defenses: (1) petitioner failed to substantiate or submit supporting evidence against the BIR findings; (2) the deficiency DST was assessed in accordance with law, regulations and jurisprudence, particularly, the pronouncement of the Supreme Court in *Commissioner of Internal Revenue v. Filinvest Development Corporation*;¹⁴ and (3) the deficiency assessment is presumed correct.

Petitioner and respondent filed their respective pre-trial briefs on February 14, 2014¹⁵ and February 13, 2014.¹⁶ The pre-trial conference was held on February 20, 2014.¹⁷

The parties' Joint Stipulation of Facts and Issues¹⁸ was filed on March 3, 2014. Thereafter, the Court issued a Pre-Trial Order¹⁹ on March 24, 2014, thereby terminating the pre-trial.

On March 28, 2014, petitioner filed a Motion for Correction of Pre-Trial Order,²⁰ which was granted by the Court in a Resolution²¹ dated May 9, 2014. Accordingly, an Amended Pre-Trial Order²² was issued by the Court on May 21, 2014.

During trial, petitioner presented Ms. Cristina C. Paras²³, the Accounting Manager of petitioner as its sole witness. On April 28, 2014, petitioner filed its Formal Offer of Evidence,²⁴ submitting Exhibits "P-1" to "P-9", inclusive of sub-markings, which were all admitted by the Court in a Resolution²⁵ dated June 20, 2014.

On the other hand, respondent presented her sole witness, Revenue Officer I Edmond M. Caluag.²⁶ Subsequently, respondent filed her Formal Offer of

19, 2011, on the Imposition of Documentary Stamp Tax on Inter-Office Memo Covering Advances Granted by an Affiliated Corporation.

¹³ Docket, pp. 86-89.

¹⁴ G.R. Nos. 163653 and 167689, July 19, 2011.

¹⁵ Docket, pp. 119-142.

¹⁶ Docket, pp. 113-116.

¹⁷ Notice of Pre-Trial Conference, docket, p. 91.

¹⁸ Docket, pp. 231-239.

¹⁹ Docket, pp. 244-253.

²⁰ Docket, pp. 257-260.

²¹ Docket, pp. 360-361.

²² Docket, pp. 365-374.

²³ Minutes of March 24, 2014 Hearing, docket, 254.

²⁴ Docket, pp. 269-274.

²⁵ Docket, pp. 376-377.

²⁶ Minutes of June 30, 2014 Hearing, docket, 378.

Evidence²⁷ on October 23, 2014, submitting Exhibits “R-1” to “R-4”, inclusive of sub-markings. In a Resolution²⁸ dated January 12, 2015, the Court admitted all of respondent’s exhibits, except Exhibits “R-1” and “R-1-a” for respondent’s failure to present the original documents.

Petitioner filed its Memorandum²⁹ on February 13, 2015. Respondent failed to file her memorandum, as evidenced by the Records Verification Report³⁰ dated February 24, 2015. The Court declared the case submitted for decision in a Resolution dated March 9, 2015.³¹

The Issues

The issues submitted by the parties for this Court’s resolution are as follows:

1. Whether or not the Supreme Court decision in *Commissioner of Internal Revenue v. Filinvest Development Corporation* (G.R. Nos. 163653 and 167687, July 19, 2011) applies to intercompany transactions of petitioner for the taxable year 2008;
2. Whether or not petitioner is liable for the assessed basic deficiency DST on debt instruments; and
3. Assuming that petitioner is liable for the assessed basic deficiency DST on debt instruments, whether or not petitioner is liable to pay surcharge and interest thereon.³²

In sum, the issue is whether or not petitioner is liable to pay the amount of ₱843,316.40, representing deficiency DST, inclusive of surcharge and interest, covering taxable year 2008.

The Court’s Ruling

We deny the petition.



²⁷ Docket, pp. 427-430.

²⁸ Docket, pp. 455-456.

²⁹ Docket, pp. 457-488.

³⁰ Docket, p. 489.

³¹ Resolution, docket, p. 491.

³² Stipulation of Issues, JSFI, docket, p. 237.

Before going into the substance, we first tackle the timeliness of the filing of the administrative and judicial claims, in accordance with Section 228 of the NIRC of 1997.

A taxpayer aggrieved by an assessment must administratively file a valid protest by filing a request for reconsideration or reinvestigation within thirty (30) days from receipt thereof, and submit the required documents in support of his protest within sixty (60) days from date of filing of his letter of protest. Otherwise, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the CIR or his duly authorized representative, or is not acted upon within one hundred eighty (180) days from date of submission of the required documents, the taxpayer may appeal before the Court within thirty (30) days from date of receipt of the said decision or from the lapse of the said 180-day period, as the case may be.

In the instant case, the records show that the DST assessment³³ dated January 5, 2012 issued by respondent was received by petitioner on January 6, 2012³⁴. Petitioner had until February 5, 2012 within which to file its administrative protest. On February 2, 2012, petitioner filed its protest,³⁵ together with the required documents. Hence, the administrative protest was timely filed.

On September 19, 2013, petitioner received the Final Decision on Disputed Assessment dated September 16, 2013.³⁶ Petitioner thus had until October 19, 2013 within which to file a judicial claim before this Court. Hence, its judicial claim was timely filed on October 16, 2013.

We now resolve the issues raised by the parties.

Documentary stamp tax is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto.³⁷ A DST is actually an excise tax

³³ Exhibit "P-1-A".

³⁴ Par. 2, Summary of Admitted Facts, JSFI, docket, p. 231.

³⁵ Exhibit "P-2".

³⁶ Par. 6, Summary of Admitted Facts, JSFI, docket, p. 232.

³⁷ Section 173, 1997 NIRC, which states:

Stamp Taxes Upon Documents, Loan Agreements, Instruments and Papers. –

Upon documents, instruments, loan agreements and papers, upon acceptances, assignments, sales and transfers of the obligation, right or property incident thereto, there shall be levied, collected and paid for, and in respect of the transaction so had or accomplished, the corresponding documentary stamp taxes prescribed in the following Sections of this Title, by the person making, signing, issuing, accepting, or transferring the same whenever the document is made, signed, issued, accepted, or transferred when the obligation or right arises from Philippine sources or the property is situated in the Philippines, and at the same time such act is done or transaction had: *Provided*, That whenever one party to the taxable document enjoys exemption from the tax therein

because it is imposed on the transaction rather than on the document.³⁸ DST is also levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments.³⁹ Hence, **in imposing the DST, the Court considers not only the document but also the nature and character of the transaction.**⁴⁰

Petitioner argues that it is not liable to pay the DST assessment on debt instruments amounting to ₱843,316.40 since the cash and journal vouchers evidencing the intercompany advances are not subject to DST under the 1997 NIRC⁴¹, and implemented by Revenue Regulations No. 13-04.⁴²

The specific provision of the 1997 NIRC on DST relating to debt instruments states:

SEC 179. Stamp Tax on All Debt Instruments. – On every original issue of debt in instruments, there shall be collected a documentary stamp tax of One peso (₱1.00) on each Two hundred pesos (₱200.00), 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 terms in number of days to three hundred sixty-five (365) days: *Provided, further*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government or any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing

imposed, the other party thereto who is not exempt shall be the one directly liable for the tax.

³⁸ *Commissioner of Internal Revenue v. First Express Pawnshop Company, Inc.*, G.R. Nos. 172045-46, June 16, 2009.

³⁹ *Id.*

⁴⁰ *Philippine Banking Corporation v. Commissioner of Internal Revenue*, G.R. No. 170574, January 30, 2009.

⁴¹ As amended by Republic Act (RA) No. 9243, Act Rationalizing the Provisions on the Documentary Stamp Tax of the NIRC of 1997, as Amended, and for Other Purposes.

⁴² Petitioner's Memorandum, docket, pp. 468-469.

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. (Underscoring supplied.)

*On the Cash Disbursement Vouchers and
Journal Vouchers Evidencing Intercompany Advances*

Petitioner contends that cash or journal vouchers evidencing intercompany loans or advances are not debt instruments as defined under Section 179 of the 1997 NIRC and Section 5 of RR No. 13-04.⁴³ Petitioner argues that based on the enumeration of documents in Section 5 of RR No. 13-04, a debt instrument must not only represent “borrowing and lending transactions” but must also be originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor. Petitioner posits that the cash receipts or disbursement vouchers or journal vouchers are internal accounting documents which are not signed by or issued to the affiliates with whom it transacted in 2008, hence, the DST assessment on debt instrument must be cancelled for lack of legal basis.⁴⁴

*The ruling of the Supreme Court in CIR v.
Filinvest Development Corporation⁴⁵
applies to this case*

Petitioner's arguments are untenable. In *Commissioner of Internal Revenue v. Filinvest Development Corporation*,⁴⁶ the Supreme Court, interpreting Section 180 of Presidential Decree No. 1158,⁴⁷ as amended by RA 7660 (1993 NIRC), categorically stated that instructional letters as well as journal and cash vouchers evidencing advances to affiliates qualified as loan agreements upon which DST may be imposed.

Section 180 of the 1993 NIRC reads:

SEC. 180. Stamp tax on all loan agreements, promissory notes, bills of exchange, drafts, instruments and securities issued by the government or any of its instrumentalities, certificates of deposit bearing interest and others not payable on sight or demand. – On all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines; bill of exchange (between points within the Philippines), drafts, instruments

⁴³ Petitioner's Memorandum, docket, pp. 470-471.

⁴⁴ Petitioner's Memorandum, docket, p. 472.

⁴⁵ Supra, note 14.

⁴⁶ Id.

⁴⁷ 1977 NIRC.

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and securities issued by the Government or any of its instrumentalities or certificates of deposits drawing interest, or orders for the payment of any sum of money otherwise than at sight or on demand, or on all promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation, and on each renewal of any such note, there shall be collected a documentary stamp tax of Thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreement, bill of exchange, draft, certificate of deposit or note: *Provided*, That only one documentary stamp tax shall be imposed on either loan agreement, or promissory note issued to secure such loan, whichever will yield a higher tax: *Provided however*, That loan agreements or promissory notes the aggregate of which does not exceed Two hundred fifty thousand pesos (₱250,000.00) executed by an individual for his purchase on installment for his personal use or that of his family and not for business, resale, barter or hire of a house, lot, motor vehicle, appliance or furniture shall be exempt from the payment of documentary stamp tax provided under this Section. (Underscoring supplied.)

A comparison of Section 180 of the 1993 NIRC and Section 179 of the 1997 NIRC shows that both provisions impose a stamp tax on **all loan agreements signed abroad wherein the object of the contract is located or used in the Philippines**.

In *Filinvest*, the Supreme Court held:

When read in conjunction with Section 173 of the 1993 NIRC, [Section 180] 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.

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The terms “Loan Agreement” under Section 180 and “Mortgage” under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.

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, 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 taxes may be imposed. x x x**⁴⁸ (Emphasis supplied.)

We find that the cash disbursement vouchers and journal vouchers in this case constitute loan agreements. Thus, they are subject to DST.

Still, petitioner insists that *Filinvest* does not apply to the instant petition because that case interprets the old Section 180 of the Tax Code and Section 6 of RR No. 09-94; whereas the intercompany advances in this case were made in 2008 and is governed by the present Section 179 of the 1997 NIRC which was implemented by RR No. 13-04.⁴⁹ We disagree.

⁴⁸ Supra, note 14.

⁴⁹ Petitioner’s Memorandum, docket, pp. 472-473.

Section 5 of RR No. 13-04 explains that Section 179 of the 1997 NIRC is Section 180 of the 1993 NIRC, but incorporated in one provision with the previous Sections 174 and 176 of the 1993 NIRC:

x x x

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. x x x (Emphasis supplied.)

In *Accenture, Inc. v. Commissioner of Internal Revenue*,⁵⁰ the Supreme Court held that since Section 108(B) of the 1997 Tax Code was a mere reproduction of Section 102(b) of the 1977 Tax Code, the any interpretation of the latter holds true for the former.

Based on the foregoing, it is clear that the interpretation by the Supreme Court in *Filinvest* of Section 180 of the 1993 NIRC can be used in interpreting Section 179 of the 1997 NIRC.

Petitioner further argues that the Supreme Court anchored its ruling in *Filinvest* on the second paragraph of Section 6 of RR No. 09-94. The same being absent in RR No. 13-04, petitioner claims that the law has removed from coverage of DST those instances when no formal loan agreement or promissory note has been executed to cover credit facilities. Petitioner is mistaken.

The repealing clause of RR No. 13-04 provides that “(a)ll existing rules and regulations or parts thereof, which are inconsistent with the provisions of these regulations, are hereby repealed, amended or modified accordingly.” Section 6 of RR No. 09-94 is not inconsistent with Section 5 of RR No. 13-04. Hence, the latter cannot be deemed to have repealed the former.

In any event, RR 13-04 does not limit the definition of debt instrument to those originally issued by the debtor in favor of the creditor as a source or proof of the creditor's right to claim against the debtor, as petitioner claims. *Ubi lex non distinguit nec nos distinguere debemus*. When the law does not distinguish, we must not distinguish. Anyway, the list in Section 5 of RR No. 13-04⁵¹ is not exhaustive.

⁵⁰ G.R. No. 190102, July 11, 2012.

⁵¹ The same enumeration is provided in Section 179 of the 1997 NIRC:

Section 5 of RR No. 13-04 provides:

x x x

“Debt Instrument” shall mean instruments representing borrowing and lending transaction **including but not limited to:**

- a. debentures,
- b. certificates of indebtedness,
- c. due bills,
- d. bonds,
- e. loan agreements, including those signed abroad wherein the object of the contract is located or used in the Philippines,
- f. instruments and securities issued by the government or any of its instrumentalities,
- g. deposit substitute debt instruments,
- h. certificates or other evidences of deposits that are drawing instrument significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved,
- i. certificates or other evidences of deposits that are drawing interest and having a specific maturity date,
- j. orders for payment of any sum of money otherwise than at sight or on demand,
- k. promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.

(Emphasis and underscoring supplied.)

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

When words are not defined in a statute they are to be given their common and ordinary meaning in the absence of a contrary legislative intent.⁵² The word “including,” as used in Section 5 of RR No. 13-04 and Section 179 of the 1997 NIRC, should therefore be understood in its common and ordinary usage, since there is no legislative intent to the contrary. The root word, “include”, means to have something as part of a whole, to be a subordinate part of a larger whole.⁵³ The use of the word “including” means that the enumeration merely provides a sampling of instruments representing borrowing and lending transactions. That the said provisions also use the phrase “but not limited to” provides emphasis that the enumeration is not exhaustive.

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

The minute resolution of the Supreme Court in CIR v. APC Group, Inc.⁵⁴ is not binding precedent

Petitioner’s reliance on the minute resolution of the Supreme Court in *Commissioner of Internal Revenue v. APC Group, Inc.*,⁵⁵ is likewise misplaced. In *Deutsche Bank AG Manila Branch v. Commissioner of Internal Revenue*,⁵⁶ the Supreme Court held:

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

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with

⁵² *Silverio v. Republic*, G.R. No. 174689, October 22, 2007.

⁵³ Merriam-Webster Online Dictionary, last viewed on February 10, 2016, <http://www.merriam-webster.com/dictionary/including>.

⁵⁴ *Infra*, note 55.

⁵⁵ G.R. No. 162185, May 17, 2004.

⁵⁶ G.R. No. 188550, August 19, 2013; citing *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.

the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* involving the same parties and the same issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that the previous case “ha(d) no bearing” on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

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

The Resolution of the Supreme Court in *CIR v. APC*⁵⁷ is a mere minute resolution and not a decision that provides the facts and law on which it is based. Neither is it signed by the members of the Supreme Court and certified by the Chief Justice. Hence, it is not a decision in contemplation of Section 8 of the Civil Code⁵⁸ as would form part of the law of the land. As such, *res judicata* will only apply to another case having the same subject matter, issues and parties. Clearly, then, *CIR v. APC*⁵⁹ is not binding precedent in this case.

It must also be noted that said resolution was issued by the Third Division of the Supreme Court in 2004. In contrast, *Filinvest* was decided by the Supreme Court *En Banc* in 2015. Although each division of the Supreme Court is not a body inferior to the Supreme Court *En Banc*, any doctrine or principle of law laid down by the Supreme Court, either rendered *en banc* or in division, may be overturned or reversed only by the Court sitting *en banc*.⁶⁰ Even granting *arguendo* that doctrine was laid down by the minute resolution, the same cannot prevail over the *Filinvest* decision.

⁵⁷ Supra, note 55.

⁵⁸ Section 8. Judicial decisions applying or interpreting laws or the Constitution shall form part of the legal system of the Philippines.

⁵⁹ Supra, note 55.

⁶⁰ Section 4(3), Article VIII of the 1987 Constitution.

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

With regard to petitioner's argument that it cannot issue a debt instrument to its head office because being a branch office, it does not have a separate legal personality from its head office,⁶¹ the Supreme Court made the following pronouncements in *Marubeni Corporation (formerly Marubeni-Iida, Co. Ltd.) vs. Commissioner of Internal Revenue and Court of Tax Appeals*⁶²:

Under the Tax Code, a resident foreign corporation is one that is "engaged in trade or business" within the Philippines. Petitioner contends that precisely because it is engaged in business in the Philippines through its Philippine branch that it must be considered as a resident foreign corporation. Petitioner reasons that since the Philippine branch and the Tokyo head office are one and the same entity, whoever made the investment in AG&P, Manila does not matter at all. A single corporate entity cannot be both a resident and a non-resident corporation depending on the nature of the particular transaction involved. Accordingly, whether the dividends are paid directly to the head office or coursed through its local branch is of no moment for after all, the head office and the office branch constitute but one corporate entity, the Marubeni Corporation, which, under both Philippine tax and corporate laws, is a resident foreign corporation because it is transacting business in the Philippines.

The Solicitor General has adequately refuted petitioner's arguments in this wise:

The general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. This rule is based on the premise that the business of the foreign corporation is conducted through its branch office, following the principal-agent relationship theory. It is understood that the branch becomes its agent here. So that when the foreign corporation transacts business in the Philippines independently of its branch, the principal-agent relationship is set aside. The transaction becomes one of the foreign corporation, not of the branch. Consequently, the taxpayer is the foreign corporation, not the branch or the resident foreign corporation.

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⁶¹ Petitioner's Memorandum, docket, p. 472.

⁶² G.R. No. 76573, September 14, 1989.

Corollarily, if the business transaction is conducted through the branch office, the latter becomes the taxpayer, and not the foreign corporation. (Emphasis supplied.)

For purposes of imposing the DST, the general rule that a foreign corporation is the same juridical entity as its branch office in the Philippines cannot apply here. The cash advances and intercompany trade payables and receivables which were booked under “due to/from accounts”⁶³ are well within the purview of “debt instruments” under Section 179 of the 1997 NIRC.

On the Amount of Deficiency DST Due

Meanwhile, except in questioning the legal basis of the DST assessment, petitioner did not attempt to dispute the amount or computation of such assessment by respondent. Instead, petitioner solely relied on advancing its legal theories and did not present any evidence or witnesses to provide the details of the transactions which resulted in DST assessment. As a consequence, respondent's assessment of basic deficiency DST in the amount of ₱380,930.00 is afforded the presumption of regularity.

On the Surcharges and Interest

Finally, petitioner invokes good faith to warrant the lifting of surcharges and interest. It cites the ruling of the Supreme Court in *Michel J. Lhuillier Pawnshop, Inc. v. Commissioner of Internal Revenue*,⁶⁴ that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax law, are sufficient justification to delete the imposition of surcharges and interest.

However, petitioner cites BIR Rulings obtained by other entities that may or not be similarly situated as petitioner. BIR Rulings contain the following or similar caveat:

This ruling is being issued on the basis of the foregoing facts as represented. However, if upon investigation, it will be disclosed that the facts are different, then this ruling shall be considered as null and void.

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

⁶³ Page 6 of Exhibit “P-9”, Judicial Affidavit of Ms. Cristina C. Paras.

⁶⁴ G.R. No. 166786, September 11, 2006.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**. The assessment covering the deficiency documentary stamp tax for taxable year 2008 is **UPHELD**. Accordingly, petitioner is hereby **ORDERED TO PAY** the following:

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

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

- (b) Deficiency interest at the rate of twenty percent (20%) per annum on the basic DST of **₱380,930.00**, computed from January 5, 2009 until full payment thereof pursuant to Section 249(B) of the 1997 NIRC, as amended; and
- (c) Delinquency interest at the rate of 20% per annum on the total amount of **₱476,162.50** and on the 20% deficiency interest which have accrued as afore-stated in (b), computed from October 31, 2013 until full payment thereof pursuant to Section 249(C) of the 1997 NIRC, as amended.

SO ORDERED.


MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:


LOVELL R. BAUTISTA
Associate Justice


ESPERANZA R. FABON-VICTORINO
Associate Justice

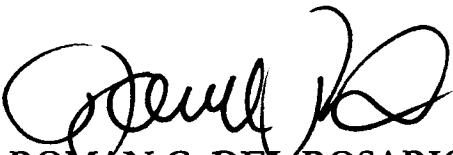
ATTESTATION

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


LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

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


ROMAN G. DEL ROSARIO
Presiding Justice