REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

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

- *versus* –

THE COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB No. 1611
(CTA Case No. 8719)

Present:

Del Rosario, *P.J.*
Castañeda, Jr.,
Uy,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban,
Manahan, *JJ.*

Promulgated:

JAN 22 2019 3:28pm

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DECISION

CASTAÑEDA, JR., *J.:*

Before the Court *En Banc* is a Petition for Review[1] which seeks the reversal of the Decision dated March 8, 2016,[2] (Assailed Decision) as well as the Resolution dated February 24, 2017[3] (Assailed Resolution) of the Third Division (Court in Division)[4] of this Court in CTA Case No. 8719 entitled *E.E. Black Ltd.-Philippine Branch v. Commissioner of Internal Revenue.*

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[1] Court *En Banc's* Docket, pp. 8-49.
[2] *Id.*, pp. 57-74.
[3] *Id.*, pp. 76-80.
[4] Composed of Associate Justice Lovell R. Bautista as Chairperson, Associate Justice Esperanza R. Fabon-Victorino and Associate Justice Ma. Belen M. Ringpis-Liban as members.

The respective dispositive portions of the Assailed Decision and Resolution are quoted hereunder:

Assailed Decision:

> "**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.**"

Assailed Resolution:

> "**WHEREFORE**, finding no compelling reason to reverse the ruling of the Court in the assailed Decision, petitioner's Motion for Reconsideration (of the Decision dated 8 March 2016) is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

As found by the Court in Division in its Decision dated March 8, 2016, the facts of the present case are as follows:[5]

"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.

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.

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

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

[5] Court *En Banc's* Docket, pp. 58-61. (Citations omitted).

with the protest letter has been forwarded to Revenue District Office No. 50 for further verification, evaluation, and necessary action.

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.

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.

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

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.

The deficiency DST was computed by respondent as follows:

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 Discrepancies 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

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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.

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

Respondent filed her Answer 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*; and (3) the deficiency assessment is presumed correct.

Petitioner and respondent filed their respective pre-trial briefs on February 14, 2014 and February 13, 2014. The pre-trial conference was held on February 20, 2014.

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

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

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

On the other hand, respondent presented her sole witness, Revenue Officer I Edmond M. Caluag. Subsequently, respondent filed her Formal Offer of Evidence on October 23, 2014, submitting Exhibits 'R-1' to 'R-4', inclusive of sub-markings. In a Resolution 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 Memorandum on February 13, 2015. Respondent failed to file her memorandum, as evidenced by the Records Verification Report dated February 24, 2015. The Court declared the case submitted for decision in a Resolution dated March 9, 2015."

On March 8, 2016, the Court in Division rendered the Assailed Decision denying petitioner's Petition for Review.

Aggrieved, petitioner filed a Motion for Reconsideration (of the Decision dated 8 March 2016)[6] on April 1, 2016 which the Court in Division denied in the Assailed Resolution.

On April 4, 2017, petitioner filed the present Petition for Review.

On May 9, 2017, petitioner filed a Manifestation[7] wherein it requested this Court to take note and consider the ruling of the Third Division of this Court in *San Miguel Corporation v. Commissioner of Internal Revenue*[8] as well as respondent's ruling in BIR Ruling [DA (C-035) 127-08] in resolving the present case.

Respondent, on the other hand, failed to file its Comment to the Petition for Review despite notice.[9]

In a Resolution[10] dated October 25, 2017, the Court *En Banc* gave due course to the present Petition for Review. Accordingly, the Court *En Banc* granted the parties a period of thirty (30) days from notice within which to file their Memoranda. *yr*

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[6] *Id.*, pp. 81-104.
[7] *Id.*, pp. 118-121.
[8] *Id.*, pp. 122-143.
[9] *Id.*, p. 166.
[10] *Id.*, pp. 168-169.

On January 3, 2018, petitioner filed its Memorandum[11] via registered mail. Meanwhile, respondent failed to file his memorandum as per the Records Verification[12] issued by the Judicial Records Division of this Court dated January 11, 2018.

Thus, through the Court *En Banc*'s Resolution[13] dated January 30, 2018, the present case was submitted for decision.

THE ISSUES

Petitioner filed the present Petition for Review on the basis of the following assigned errors: [14]

> "A.
>
> The Honorable Third Division seriously erred in applying the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation* retroactively to the Inter-company Accounts of Petitioner for the year 2008.
>
> B.
>
> The Honorable Third Division seriously erred in ruling that the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation* which interpreted Section 180 of the 1993 Tax Code applies to the DST Assessment issued based on Section 179 of the 1997 Tax Code.
>
> C.
>
> The Honorable Third Division seriously erred in holding that the general rule that foreign corporation is the same juridical entity as its branch office in the Philippines is not applicable to Petitioner simply because its Inter-company Accounts were booked under 'due to/from accounts'.
>
> D.
>
> The Honorable Third Division seriously erred in holding that Petitioner did not act in good faith to warrant the lifting of surcharge, interest and penalties on the assessed deficiency

[11] *Id.*, pp. 179-210.
[12] *Id.*, p. 216.
[13] *Id.*, pp. 218-219.
[14] *Id.*, p. 16.

DST on debt instruments because Petitioner failed to request Respondent to issue a BIR Ruling in its favor.

E.

The Honorable Third Division serious[ly] erred in affirming the imposition of deficiency interest under Section 249(B) of the Tax Code on the assessed deficiency DST."

THE COURT *EN BANC*'S RULING

The Petition for Review lacks merit.

At the outset, the Court *En Banc* affirms the Decision and Resolution of the Court in Division holding petitioner liable for deficiency documentary stamp tax (DST) for taxable year 2008, inclusive of surcharges and interests. The Court *En Banc* likewise agrees that the doctrine laid down by the Supreme Court in *Commissioner of Internal Revenue v. Filinvest Development Corporation (Filinvest)*[15] applies in the present case.

In its Petition, petitioner essentially argues that when its intercompany advances were made in 2008, the prevailing rule was that intercompany loans and advances as evidenced by intercompany memorandum are not subject to DST imposed under Section 180 (now Section 179) of the Tax Code, as amended.[16] Petitioner asserts that the said rule was only changed upon promulgation of the *Filinvest* case in 2011. In so arguing, petitioner had relied on the decision of this Court in *APC Group, Inc. v. Commissioner of Internal Revenue*[17] and the ruling of the Court of Appeals in *Commissioner of Internal Revenue v. APC Group, Inc.*,[18] as well as various BIR rulings. Accordingly, on the basis of the principle of prospectivity of laws and judicial decisions, operative fact doctrine, equal protection clause of the Constitution, equity and fairness, petitioner posits that the *Filinvest* doctrine should not be applied in the present case.

Petitioner's position is untenable.

The Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into

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[15] G.R. Nos. 163653 & 167689, July 19, 2011, 654 SCRA 56.
[16] Court *En Banc* Docket, pp. 17-25.
[17] CTA Case No. 6155, March 11, 2002.
[18] CA-GR SP No. 69869, November 29, 2002.

effect.[19] As aptly held by the Supreme Court in the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*,[20] to wit:

> "Petitioner VGPC also argues that Aichi should be applied prospectively and, therefore, should not be applied to the present case. This position cannot be given consideration.
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> Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. **The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.**" (*Emphasis supplied*)

The retroactive application of jurisprudence was also treated in *Accenture, Inc. v. Commissioner of Internal Revenue*[21] where the Supreme Court upheld this Court's application of the pronouncements in *Commissioner of Internal Revenue v. Burmeister and Wain Scandinavian Contractor Mindanao, Inc.* (2007)[22] as basis in ruling that Accenture's services would qualify for zero-rating under Section 108(b) of the 1997 NIRC [formerly Section 102(b) of the 1977 Tax Code], only if the recipient of the services was doing business outside of the Philippines. It was held that:

> "Moreover, **even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present one without violating the rule against retroactive application**. When this Court decides a case, it does not pass a new law, but merely interprets a preexisting one. When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister*, this

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[19] *Philippine International Trading Corporation v. Commission on Audit*, G.R. No. 205837, November 21, 2017; *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*, G.R. No. 197525, June 4, 2014, 725 SCRA 130; *Accenture, Inc. v. Commissioner of Internal Revenue*, G.R. No. 190102, July 11, 2012, 676 SCRA 325; *Eagle Realty Corporation v. Republic*, G.R. No. 151424, July 31, 2009, 594 SCRA 555; *Castro v. Deloria*, G.R. No. 163586, January 27, 2009, 577 SCRA 20; *Roos Industrial Construction, Inc. v. National Labor Relations Commission*, G.R. No. 172409, February 4, 2008, 543 SCRA 666; *Pesca v. Pesca*, G.R. No. 136921, April 17, 2001, 356 SCRA 588; *Re: Resolution Granting Automatic Permanent Total Disability Benefits to Heirs of Justices and Judges Who Die in Actual Service*, A.M. No. 02-12-01-SC, November 24, 2004, 443 SCRA 549; *Columbia Pictures, Inc. v. Court of Appeals*, G.R. No. 110318, August 28, 1996, 261 SCRA 144; *Philippine Constitution Association v. Enriquez*, G.R. Nos. 113105, 113174, 113766 & 113888, August 19, 1994, 235 SCRA 506; *Senarillos v. Hermosisima*, G.R. No. L-10662, December 14, 1956, 100 Phil. 501.

[20] G.R. No. 197525, June 4, 2014, 725 SCRA 130, 147.

[21] G.R. No. 190102, July 11, 2012, 676 SCRA 325, 339.

[22] G.R. No. 153205, January 22, 2007, 512 SCRA 124.

> interpretation became part of the law from the moment it became effective. **It is elementary that the interpretation of a law by this Court constitutes part of that law from the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.**" *(Emphasis supplied)*

On December 23, 1993, it will be recalled that Section 180 (now Section 179) was incorporated in the NIRC, through Republic Act No. (RA) 7660. On January 1, 1998, the same Section 180 was carried over in RA 8424. Then on February 17, 2004, Section 180 was amended through RA 9243 and renumbered as the present Section 179 of the 1997 NIRC.

Accordingly, the Supreme Court's 2011 interpretation of this provision of law in *Filinvest* became part of the NIRC as early as December 23, 1993, the date the statute was enacted, until the present.

Considering that the 2011 *Filinvest* interpretation of Section 180 of the NIRC (now Section 179) was deemed constituted as part of the NIRC since December 23, 1993 until the present, therefore, the same may be applied to this case without violating the principle on non-retroactivity of laws and rulings.

In the case of *The People of the Philippines v. Jose Jabinal y Carmen*,[23] the Supreme Court ruled that prospective effect applies only to decisions enunciating new doctrines:

> "Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code 'Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system xxx.' **The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of legal maxim '*legis interpretatio legis vim obtinet*' — the interpretation placed upon the written law by a competent court has the force of law.** The doctrine laid down in *Lucero* and *Macarandang* was part of the jurisprudence, hence of the law, of the land, at the time appellant was found in

[23] G.R. No. L-30061, February 27, 1974, 55 SCRA 607, 612.

possession of the firearm in question and when he [was] arraigned by the trial court. **It is true that the doctrine was overruled in the *Mapa* case in 1967, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof.** This is especially true in the construction and application of criminal laws, where it is necessary that the punishability of an act be reasonably foreseen for the guidance of society." (*Emphasis supplied*)

The decisions of the Court of Appeals and of this Court cannot, in any way, be deemed to have enunciated a prior doctrine (allegedly prevailing at the time when the subject advances were extended) that was overruled by *Filinvest* because **only the decisions of the Supreme Court constitute binding precedents** and form part of the Philippine legal system, pursuant to Article 8 of the Civil Code.[24] Judgments of lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are universal in their scope and application as well as mandatory in character.[25] On this point, the ruling of the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*,[26] is illuminating:

"There is also the claim that there are numerous CTA decisions allegedly supporting the argument that the filing dates of the administrative and judicial claims are inconsequential, as long as they are within the two-year prescriptive period. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public. That is why CTA decisions are appealable to this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.**" *(Emphasis supplied)*

Needless to state, the foregoing pronouncement may also be applied, *mutatis mutandis*, to decisions of the Court of Appeals.

Neither can the alleged various BIR rulings be invoked by petitioner to justify the non-imposition of the DST in the present case. Such rulings are merely of persuasive character and cannot be considered as conclusive

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[24] *Nippon Express (Philippines) Corporation v. Commissioner of Internal Revenue*, G.R. No. 196907, March 13, 2013, 693 SCRA 456 citing *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, February 12, 2013.
[25] *The Philippine Veteran Affairs Office v. Segundo*, G.R. No. L-51570, August 15, 1988, 164 SCRA 365.
[26] G.R. Nos. 187485, 196113 & 197156, February 12, 2013, 690 SCRA 336.

interpretation of the law. On this point, the ruling of the Supreme Court in *Philippine Bank of Communications v. Commissioner of Internal Revenue*[27] is instructive:

> "x x x It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. **Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement**." (Emphasis supplied)

Besides, petitioner could not invoke the alleged BIR rulings given that it is not the entity which actually sought the same.

Petitioner also avers that even assuming the *Filinvest* doctrine may be prospectively applied, the same is still inapplicable to petitioner's Inter-company Accounts for taxable year 2008 because *Filinvest* interpreted Section 180 of the 1993 Tax Code, as implemented by Revenue Regulations (RR) No. 9-1994 while petitioner's Inter-company Accounts are governed by Section 179 of the 1997 Tax Code as implemented by RR No. 13-2004.[28] Petitioner submits that *Filinvest* was anchored on the last paragraph of Section 6 of RR No. 9-1994 which are no longer found in RR No. 13-2004.[29]

Petitioner's submission is unmeritorious.

The Court *En Banc* notes that the above contentions are mere reiterations of arguments which had already been sufficiently discussed and passed upon by the Court in Division in both the Assailed Decision and Resolution. Accordingly, the Court *En Banc* quotes with approval the pertinent disquisition by the Court in Division in the Assailed Decision, to wit:[30]

> "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:
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> x x x

[27] G.R. No. 112024, January 28, 1999, 302 SCRA 241, 252.
[28] Court *En Banc* Docket, p. 35.
[29] *Id.*
[30] *Id.*, pp. 67-69 (Citations omitted).

> **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,* 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 distinguire debemus*. When the law does not distinguish, we must not distinguish. Anyway, the list in Section 5 of RR No. 13-04 is not exhaustive.

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.)

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. 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. 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."

Petitioner also contends that its Inter-company Accounts are not "debt instruments" subject to DST under Section 179 of the 1997 Tax Code, pursuant to *ejusdem generis* rule and the rule of strict construction of taxing provisions.[31] Petitioner adds that to be considered as "debt instrument" within the purview of Section 179 of the Tax Code and Section 5 of RR No. 13-2004, an instrument must not only represent "borrowing and lending transactions", it 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. In contrast, according to petitioner, a cash or journal voucher, by its very nature, is an internal accounting document that is not issued to the counterparty to the transaction.[32] Petitioner also maintains that its Inter-company Accounts are akin to interbranch or interdepartmental advances within the same legal entity and as such, are exempt from DST under Section 199(i) of the 1997 Tax Code.[33]

Petitioner's stance does not induce assent.

As correctly stated in the Assailed Decision, RR No. 13-2004 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. What is important is that the instrument, such as the cash or journal voucher involved in the present case, represents borrowing and lending transaction in order to be within the purview of the above taxing provisions. It may not be amiss to point out that in *Filinvest*, the very instruments that were considered as loan agreements and hence, are subject to DST are also cash and journal vouchers.

Petitioner likewise assails the simultaneous imposition of 20% deficiency interest and 20% delinquency interest for being unconscionable.[34] Citing this Court *En Banc*'s Decision in *Liquigaz Philippines Corporation v.*

[31] *Id.*, pp. 40-42.
[32] *Id.*
[33] *Id.*
[34] *Id.*, pp. 44-48.

Commissioner of Internal Revenue,[35] petitioner claims that deficiency interest under Section 249(B) of the Tax Code applies only whenever there are deficiency income tax, deficiency estate tax, and/or deficiency donor's tax. Petitioner also raises 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 as defense against the imposition of surcharge and interest in the present case.[36]

Petitioner's argument fails to persuade.

Section 247(a) in relation to Section 249(B) of the 1997 NIRC authorizes the imposition of deficiency interest on all taxes under the NIRC. The law is clear. There is no room left for interpretation.

Section 247(a) of the 1997 NIRC provides:

> **"TITLE X**
> **STATUTORY OFFENSES AND PENALTIES**
>
> **CHAPTER I**
> **ADDITIONS TO THE TAX**
>
> SECTION 247. General Provisions. —
>
> (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to **all taxes**, fees and charges **imposed in this Code**. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax." *(Emphasis and underscoring supplied)*

The text of Section 247(a) states without any doubt that the additions under Chapter I, Title X are applicable to *all taxes* imposed under the code, *i.e.*, the 1997 NIRC. The authority to impose additions under that provision clearly extends to *all taxes* regardless of the title under which they are classified.

Therefore, the law does *not* limit these additions *only* to the three (3) types of internal revenue taxes, namely, income (Title II), estate (Title III) and donor's tax (Title III). Their imposition applies with equal force and effect to the other taxes under the 1997 NIRC such as the value-added tax

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[35] CTA EB Nos. 1117 & 1119, September 21, 2015.
[36] *Id.*

(Title IV), other percentage taxes (Title V), excise tax (Title VI) and documentary stamp tax (Title VII).

Accordingly, the additions to the tax or deficiency tax such as, among others, *Civil Penalties or Surcharges* under Section 248, *Deficiency Interest* under Section 249(B), *Delinquency Interest* under Section 249(C), and *Interest on Extended Payment* under Section 249(D) are applicable to petitioner's deficiency DST.

It may be argued that because there are no definitions for *deficiency* withholding tax, value-added tax, percentage tax, excise tax or documentary stamp tax unlike those provided for *income tax* in Section 56(B), for *estate tax* in Section 93 and for *donor's tax* in Section 104 then no deficiency interest can be imposed on other kinds of taxes provided under the 1997 NIRC. The *lacuna* or the missing definition was precisely addressed by Section 247(a) when this provision was first legislated as a revision[37] to the *1977 NIRC* and then subsequently reenacted in the 1997 NIRC.

The Supreme Court discussed the history of this provision in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.*[38]

In that case, the Supreme Court held that PICOP was *not* liable for interest and surcharge on the unpaid transaction tax because the 1977 Tax Code applicable at that time authorized the imposition of interest and surcharge *only* on taxes within Title II of the Code (Income Tax). Therefore, since transaction tax was embraced under a *different* title, Title V (Taxes on Business), the Court concluded that said transaction tax was not one of the taxes on which interest and surcharge could be imposed. *Nonetheless, it further expounded that this inadvertence in the 1977 NIRC was cured subsequently by legislative fiat.* Thus:

> "The CIR, both in its petition before the Court of Appeals and its Petition in the instant case, points to Section 51(e) of the 1977 Tax Code as its source of authority for assessing a surcharge and penalty interest in respect of the thirty-five percent (35%) transaction tax due from Picop.
>
> x x x x x x x x x

[37] Presidential Decree No. 1994. Please refer to the subsequent discussions in the opinion.
[38] G.R. No. 106949-50, December 1, 1995 consolidated with *Commissioner of Internal Revenue v. Paper Industries Corporation of the Philippines (PICOP), et al.*, G.R. No. 106984-85, December 1, 1995.

It will be seen that Section 51(c)(1) and (e)(1) and (3), of the 1977 Tax Code, authorize the imposition of surcharge and interest only in respect of a '*tax imposed by this Title*,' that is to say, *Title II on 'Income Tax.'* It will also be seen that Section 72 of the 1977 Tax Code imposes a surcharge only in case of failure to file a return or list '*required by this Title*,' that is, *Title II on 'Income Tax.'* The thirty-five percent (35%) transaction tax is, however, imposed in the 1977 Tax Code by *Section 210 (b) thereof which Section is embraced in Title V on 'Taxes on Business'* of that Code. Thus, while the thirty-five percent (35%) transaction tax is in truth a *tax imposed on* interest *income* earned by lenders or creditors purchasing commercial paper on the money market, the relevant provisions, *i.e.*, Section 210(b), were *not* inserted in Title II of the 1977 Tax Code. The end result is that the thirty-five percent (35%) transaction tax is *not* one of the taxes in respect of which Section 51(e) authorized the imposition of surcharge and interest and Section 72 the imposition of a fraud surcharge.

It is not without reluctance that we reach the above conclusion on the basis of what may well have been an inadvertent error in legislative draftsmanship, a type of error common enough during the period of Martial Law in our country. Nevertheless, we are compelled to adopt this conclusion. We consider that the authority to impose what the present Tax Code calls (in Section 248) *civil penalties* consisting of additions to the tax due, must be expressly given in the enabling statute, in language too clear to be mistaken. The grant of that authority is not lightly to be assumed to have been made to administrative officials, even to one as highly placed as the Secretary of Finance.

The state of the present law tends to reinforce our conclusion that Section 51 (c) and (e) of the 1977 Tax Code did not authorize the imposition of a surcharge and penalty interest for failure to pay the thirty-five percent (35%) transaction tax imposed under Section 210(b) of the same Code. The corresponding provision in the *current* Tax Code very clearly embraces failure *to pay all taxes imposed in the Tax Code*, without any regard to the Title of the Code where provisions imposing particular taxes are textually located. Section 247(a) of the NIRC, as amended, reads: *fr*

Title X
Statutory Offenses and Penalties

Chapter I
Additions to the Tax

SECTION 247. *General Provisions.* — (a) The additions to the tax or deficiency tax prescribed in this Chapter shall *apply to all taxes, fees and charges imposed in this Code*. The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. . . .

SECTION 248. *Civil Penalties.* — (a) There shall be imposed, *in addition to the tax required to be paid, penalty equivalent to twenty-five percent (25%) of the amount due*, in the following cases:

xxx xxx xxx

(3) failure to pay the tax within the time prescribed for its payment; or

xxx xxx xxx

(c) the penalties imposed hereunder shall form part of the tax and the entire amount shall be subject to the interest prescribed in Section 249.

SECTION 249. *Interest.* — (a) *In General.* — There shall be assessed and collected *on any unpaid amount of tax, interest* at the rate of *twenty percent (20%) per annum* or *such higher rate as may be prescribed by regulations*, from the date prescribed for payment until the amount is fully paid. . . ..' (Emphases supplied)

In other words, Section 247(a) of the current NIRC supplies what did not exist back in 1977 when Picop's liability for the thirty-five percent (35%) transaction tax became fixed. **We do not believe we can fill that legislative *lacuna* by judicial fiat. There is nothing to suggest that Section 247(a) of the present Tax Code, which was inserted in 1985, was intended to be given retroactive application by the legislative authority**." *(Underscoring and emphases supplied; citations omitted)* *gr*

In fact, this Court *En Banc*, through the *ponencia* of J. Mindaro-Grulla in *Takenaka Corporation Philippine Branch v. Commissioner of Internal Revenue*,[39] relied upon the same *PICOP* holding. To stress its point, the Court cited *PICOP* and stated that the deficiency interest imposed under Section 249(B) of the 1997 NIRC does *not* apply merely to deficiency income, deficiency estate and deficiency donor's tax *by virtue* of Section 247(a) of the same law. It reads:

> "Anent the issue on the applicability of deficiency interest under Section 249(B) of the NIRC of 1997, as amended, only to deficiency income tax, deficiency estate tax, and deficiency donor's tax, as held by the Court a quo, petitioner asseverates that such an interpretation would result to absurd conclusions as it would mean triple imposition of 20% interest under Sections 249(A), 249(B), and 249(C) of the NIRC of 1997, simultaneously, effectively giving rise to at least 60% interest *per annum*.
>
> We agree with petitioner.
>
> The issue is no longer novel as the same was sufficiently discussed by the Supreme Court in *Paper Industries Corporation of the Philippines (PICOP) v. Court of Appeals, et al.* The Supreme Court held that Section 247(a) of the NIRC of 1977, as amended **[now Section 247(a) of the NIRC of 1997, as amended]**, very clearly embraces failure to pay **all taxes imposed in the Tax Code**, without any regard to the Title of the Code where provisions imposing particular taxes are textually located." (emphases and underscoring supplied; citations omitted)

This Court has consistently held that the plain reading of Section 249 of the 1997 NIRC justifies the simultaneous imposition of deficiency interest and delinquency interest. Section 249, paragraphs (A), (B) and (C) are clear that the imposition of both the deficiency interest and delinquency interest are to be reckoned from the date prescribed for their payment and until the full payment thereof. Section 249, paragraphs (A), (B) and (C) of the 1997 NIRC, read as follows:

[39] CTA EB Case No. 745, September 4, 2012.

"SECTION 249. *Interest.* —

(A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, **from the date prescribed for payment until the amount is fully paid.**

(B) Deficiency Interest. — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected **from the date prescribed for its payment until the full payment thereof.**

(C) Delinquency Interest. — In case of failure to pay:

(1) The amount of the tax due on any return required to be filed, or

(2) The amount of the tax due for which no return is required, or

(3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, **interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.**" *(Emphasis and underscoring supplied)*

The Supreme Court upheld this interpretation in a Resolution dated November 10, 2014 in *Republic Cement [as surviving corporation in a merger involving FR Cement Corporation] v. Commissioner of Internal Revenue*:[40]

"After a careful perusal of the records, the Court resolves to **DENY** the instant petition and **AFFIRM** the July 18, 2012 Decision and November 21, 2012 Resolution of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 821 for failure of Republic Cement Corporation (petitioner) to show that the CTA *En Banc* committed any reversible error in assessing it for deficiency *creditable withholding value-added tax* (CWVAT) for taxable year 1999 in the amount of ₱10,044,824.64, inclusive of 25% surcharge, and in imposing

[40] G.R. No. 204715.

deficiency interest of 20% *per annum* on the basic deficiency CWVAT of ₱8,035,859.71 from January 25, 2000 until full payment thereof, as well as *delinquency interest* of 20% *per annum* on the total deficiency taxes of ₱10,044,824.64 and on the 20% *deficiency interest* that have accrued from January 31, 2005 until full payment thereof.

As correctly ruled by the CTA *En Banc*, the simultaneous imposition of *deficiency* and *delinquency interests* are sanctioned under Section 249 of the National Internal Revenue Code (NIRC), which explicitly provides that *deficiency interest* shall be reckoned from the date prescribed for payment of the deficiency tax until full payment thereof while *delinquency interest* shall also be collected computed from the due date prescribed under the Assessment Notice until full payment thereof.

SO ORDERED." *(Underscoring and emphases supplied)*

In *Medicard Philippines, Inc. v. Commissioner of Internal Revenue*,[41] this Court also held that there is no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest:

"In the case of *Philippine Aerospace Development Corporation v. Commissioner of Internal Revenue*, this Court exhaustively discussed the propriety of the simultaneous imposition of deficiency and delinquency interest, in this wise:

> 'The propriety of the simultaneous imposition of deficiency and delinquency interests was more definitively resolved in April 2013. This was in *First Lepanto Taisho Insurance Corporation v. Commissioner of Internal Revenue*, where the Supreme Court upheld a 2011 decision of this Court affirming the imposition of delinquency interest under Section 249(c)(3) of the 1997 NIRC. The Supreme Court ruled this imposition 'to be proper, because failure to pay the deficiency tax assessed within the time prescribed for its payment justifies the imposition of interest at the rate of twenty percent (20%) per annum, which interest shall be assessed and collected from

[41] CTA EB No. 1224, September 2, 2015.

the date prescribed for its payment until full payment is made.'

Earlier in 2011, the Supreme Court sustained the 2005 rulings of this Court imposing 20% delinquency tax on deficiency taxes, inclusive of deficiency interest, in *Rizal Commercial Banking Corporation v. Commissioner of Internal Revenue.*

In 2006, the Supreme Court also upheld a 2004 Court of Appeals decision where the latter imposed delinquency interest at 20% per annum in addition to the interest on deficiency VAT and deficiency documentary stamp tax, in *Michel J. Lhuiller Pawnshop, Inc. v. Commissioner of Internal Revenue*, although without discussion of the propriety of multiple simultaneous interests.

And even earlier, in 2000, the Supreme Court likewise upheld the imposition of 20% annual delinquency interest on deficiency amusement tax, inclusive of 20% deficiency interest, in *Philippine Basketball Association v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue.*

Actually, double interests have been sustained by the Supreme Court at least as early as 1971, in *Commissioner of Internal Revenue v. Connel Bros. (Phil.) and Court of Tax Appeals*. Under the tax law at the time, R.A. No. 2343 of 1959, these were the 'interest on deficiency' and what may be referred to as 'additional interest' (in case of non-payment within the prescribed period), at the rates of 6% per annum and 1% per month, respectively.

It is abundantly clear, from the foregoing discussion of the law and jurisprudence, that under the circumstance laid down by Section 249(c)(3) of the Tax Reform Act of 1997 — *i.e.*, in case of failure to pay a deficiency tax, or any surcharge or interest on such deficiency tax — delinquency interest of 20% per annum shall be assessed and collected.

> The petitioner asked whether or not simultaneous deficiency and delinquency interests 'are allowed by law and equity.' The answer is in the law itself, which does not merely allow but prescribes simultaneous imposition under the aforecited circumstance. As this is undoubtedly proper under the law — and petitioner has not assailed the validity of the law itself — there is neither need nor duty for this Court to expand the discussion to the realm of equity, for 'equity is applied only in the absence of, and never against, statutory law, and the rule is that 'equity follows the law.''

Verily, We explained in the *Philippine Aerospace* case that, following the various and consistent rulings of the Supreme Court, there is nothing repugnant with the simultaneous imposition of deficiency and delinquency interests. Thus, the Court in Division is correct in imposing the aforesaid civil penalties in the instant case."

In the same vein, *Avon Products Manufacturing, Inc. v. Commissioner of Internal Revenue*[42] discussed the legal bases for the Court's position on this point, thus:

"Petitioner submits that the Court in Division seriously erred in its simultaneous imposition of the deficiency interest and the delinquency interest upon the amounts payable by petitioner. The latter argues that deficiency interest and delinquency interest provided under Section 249(B) and 249 (C) of the NIRC are not intended to be imposed simultaneously. Otherwise, it will amount to an interest that is excessive, iniquitous, unconscionable and exorbitant.

We do not agree with petitioner.

Section 249 of the NIRC of 1997 provides:

'SEC. 249. *Interest.* —

(A) *In General.* — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the

[42] CTA EB No. 1062, March 16, 2015.

> date prescribed for payment until the amount is fully paid.
>
> (B) *Deficiency Interest.* — Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof.
>
> (C) *Delinquency Interest.* — In case of failure to pay:
>
> (1) The amount of the tax due on any return required to be filed, or
>
> (2) The amount of the tax due for which no return is required, or
>
> (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid, which interest shall form part of the tax.
>
> xxx xxx xxx.'

Interest is imposed to *compensate* the State for the delay in paying the tax and for the concomitant use by the taxpayer of funds that rightfully should be in the government's hands. It is imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

In this case, by its own argumentation, petitioner stresses that the deficiency interest under subsection (B) of Section 249 is applicable where the taxpayer is found to have a tax deficiency. Since We find in this Decision that petitioner is liable to the deficiency excise tax assessed by respondent, there can be no doubt that petitioner is likewise liable to the deficiency interest imposed by the Court in Division.

Furthermore, We see no legal obstacle for the Court in Division to simultaneously impose the deficiency interest and the delinquency interest.

Nowhere in Section 249 does it state that if subsection (B) is applicable, subsection (C) would be rendered inapplicable, or *vice versa*. Furthermore, there is no indication in the same Section 249 that the beginning of the imposition of delinquency interest under subsection (C) would end upon the imposition of deficiency interest under subsection (B). Especially so that both subsection (B) and subsection (C) provide that the interests shall respectively accrue until full payment thereof.

It is a cardinal rule in statutory construction that no word, clause, sentence, provision or part of a statute shall be considered surplusage or superfluous, meaningless, void and insignificant. To this end, a construction which renders every word operative is preferred over that which makes some words idle and nugatory. This principle is expressed in the maxim *Ut magis valeat quam pereat*, that is, we choose the interpretation which gives effect to the whole of the statute — its every word. Thus, every word of Section 249 should be given effect." *(Underscoring supplied; citations omitted)*

The legislative intent to impose deficiency interest *concurrently* with delinquency interest is underscored especially when viewed in the light of the revisions of the germane provisions of the 1977 NIRC[43] and the enactment of substantially the same revisions in the 1997 NIRC. The relevant provisions are quoted in the table below to facilitate reference:

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	TITLE XI - Additions to the Tax and General Penal Provisions **CHAPTER I - Additions to the Tax** **Sec. 281. General provisions. -** (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code.	**TITLE X - Statutory Offenses and Penalties** **CHAPTER I - Additions to the Tax** **Sec. 247.** *General Provisions.* - (a) The additions to the tax or deficiency tax prescribed in this Chapter shall apply to all taxes, fees and charges imposed in this Code.

[43] Presidential Decree No. 1994 which took effect on January 1, 1986 made substantial revisions to the 1977 NIRC.

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
	The amount so added to the tax shall be collected at the time, in the same manner and as part of the tax. XXXX	The amount so added to the tax shall be collected at the same time, in the same manner and as part of the tax. XXXX
Sec. 88. Civil penalties. — **(a) Individuals.** XXXX. **(b) Corporations.** – **(1) Deficiency, defined.** — XXXX. **(2) (i) Interest.** — Interest upon the amount determined as a deficiency shall be assessed at the same time as the deficiency; and shall be paid upon notice and demand from the Commissioner of Internal Revenue; and shall be collected as part of the tax at the rate of twenty per centum per annum from the date prescribed for the payment of the tax to the date the deficiency is assessed: **Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year**: Provided, further, That no interest on deficiency quarterly income tax shall be assessed at any time after assessment of the actual income tax due for the taxable year. **(ii) Addition to estimated tax in case of nonpayment.** – (1) Tax shown on the quarterly return. — Where the amount shown by the taxpayer as tax on its quarterly return or part of such amount, is not paid on or before the date prescribed for its payment, there shall be collected, as part of the tax interest upon such unpaid amount at the rate of twenty per centum per annum from the date prescribed for its payment until it is paid but not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year. (2) Deficiency. — Where the deficiency, or interest on deficiency,	**Sec. 282. Civil Penalties.** – XXXX. **Sec. 283. Interest.** – (a) *In general.* -There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by regulations, from the date prescribed for payment until the amount is fully paid. (b) *Deficiency interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in paragraph (a) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. (c) *Delinquency interest.* - In case of failure to pay:	**Sec. 248.** *Civil Penalties.* – XXXX. **Sec. 249.** *Interest.* – (A) In General. — There shall be assessed and collected on any unpaid amount of tax, interest at the rate of twenty percent (20%) per annum, or such higher rate as may be prescribed by rules and regulations, from the date prescribed for payment until the amount is fully paid. (B) *Deficiency Interest.* - Any deficiency in the tax due, as the term is defined in this Code, shall be subject to the interest prescribed in Subsection (A) hereof, which interest shall be assessed and collected from the date prescribed for its payment until the full payment thereof. (C) *Delinquency Interest.* - In case of failure to pay:

Jc

1977 NIRC as amended by Presidential Decree No. (P.D.) 1705, Section 14.	**1977 NIRC** as amended/revised by P.D. 1994, Section 40	**1997 NIRC**
assessed under subsection (a) of this Section, or part thereof, is not paid in full within thirty days from the date of receipt by the taxpayer of the notice and demand from the Commissioner of Internal Revenue, **there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year**. (emphases and underscoring supplied)	(1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon, on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected, on the unpaid amount, interest at the rate prescribed in paragraph (a) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)	(1) The amount of the tax due on any return required to be filed, or (2) The amount of the tax due for which no return is required, or (3) A deficiency tax, or any surcharge or interest thereon on the due date appearing in the notice and demand of the Commissioner, **there shall be assessed and collected on the unpaid amount, interest at the rate prescribed in Subsection (A) hereof until the amount is fully paid**, which interest shall form part of the tax. (emphases and underscoring supplied)

By comparing the above-cited codal provisions, it can be seen from their texts that:

1. With respect to *deficiency* interest, when P.D. 1994 deleted the limiting clause "*Provided, That the maximum amount that may be collected as interest on deficiency shall in no case exceed the amount corresponding to a period not later than the fifteenth day of April or the fifteenth day of fourth month following the close of the taxable year:*" the legislature clearly intended to let the interest period run without a ceiling. Therefore:

   a. *Before the revisions under P.D. 1994*, deficiency interest was computed at 20% *per annum* from the date prescribed for the payment of tax to the date the deficiency tax is assessed. But the amount of deficiency interest cannot exceed the limit imposed by the clause which, it is submitted, can be difficult to calculate due to the construction of the text.

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, deficiency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the cap. Thus, interest is computed at 20% *per annum* from the date prescribed for the payment of tax, to the date the deficiency tax is assessed and, *even extending beyond*, until the date of full payment.

2. With respect to *delinquency* interest, it must be noted that:

   a. *Even before the revision under P.D. 1994*, Section 88(b)(2)(ii)(2) of the 1977 NIRC *already* imposed 20% interest[44] on "*interest on deficiency.*"

   However, the *delinquency* interest period was computed from the taxpayer's receipt of notice and demand until paid *but again, with the limiting clause*, "there shall be collected upon such unpaid amount, as part of the tax, interest at the rate of twenty per centum per annum from the date of receipt by the taxpayer of such notice and demand until it is paid not later than the fifteenth day of April or the fifteenth day of the fourth month following the close of the taxable year."

   b. *After the revisions under P.D. 1994 and even subsequently under the 1997 NIRC*, delinquency interest is still computed at 20% *per annum* but the interest period is now allowed to run without the ceiling. Thus, interest is computed at 20% *per annum* from the due date appearing in the notice and demand of the Commissioner until the date of full payment.

3. There is a *legislated overlap* in the imposition of the deficiency and of the delinquency interest. Specifically, both deficiency and delinquency interests toll concurrently *from* the due date appearing in the notice and demand of the Commissioner *until* the full payment.

Lastly, as regards petitioner's invocation of 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 as defense against the imposition of surcharge and interest in the present case, the Court *En Banc* finds the following discussion in the Assailed Decision correctly and sufficiently addressed the above matter, to wit:

> "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,* 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.

[44] The term used by the 1977 NIRC, as amended by P.D. 1705, is "deficiency."

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."

WHEREFORE, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

(See Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

(I join PJ Del Rosario's Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

E.E. BLACK LTD. – PHILIPPINE BRANCH, Petitioner,	**CTA EB NO. 1611** **(CTA Case No. 8719)**
	Present:
- versus -	**DEL ROSARIO**, P.J., **CASTAÑEDA, JR.**, **UY**, **FABON-VICTORINO**, **MINDARO-GRULLA**, **RINGPIS-LIBAN**, and **MANAHAN**, JJ.
THE COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 22 2019 3:28pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With utmost respect, I am constrained to withhold my assent to the *ponencia* of my learned colleague, Honorable Associate Justice Juanito C. Castañeda, Jr., denying the Petition for Review filed by E.E. Black Ltd. – Philippine Branch thereby affirming the assailed Decision and Resolution of the Court in Division sustaining the deficiency documentary stamp tax (DST) assessment issued against petitioner for the year 2008.

While in previous cases, I joined the majority's position on the retroactive application of the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1] that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon

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

which DST may be imposed, I was constrained to depart therefrom in my Concurring and Dissenting Opinion in CTA EB Nos. 1724 and 1726[2] after re-visiting the legal basis for the non-retroactive application of the doctrine laid down in *Filinvest.*

I submit that the taxpayers' reliance on the judicial interpretation prevailing **prior** to *Filinvest* that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, is a valid justification to exonerate them from liability for DST.

To be specific, in the present case, petitioner relied on, among others, the following as bases for not subjecting its inter-company advances to DST:

(i) *Commissioner of Internal Revenue vs. APC Group, Inc., CA-G.R. SP No. 69869, November 29, 2002* wherein the Court of Appeals (CA) held that the interpretation of the Bureau of Internal Revenue (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; and,

(ii) *BIR Ruling [DA-(C-035) 127-08) dated August 8, 2008*, addressed to SGV & Co., wherein the BIR confirmed that inter-company loans and advances granted by Standard Bank Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to DST under Section 179 of the NIRC of 1997, as amended.

In addition to the foregoing, it is noteworthy that no less than the Court of Tax Appeals in *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006* **declared that BIR Ruling No. 116-98 dated July 30, 1998 mandating that inter-company advances made by Belle Corporation to its affiliates is not subject to DST is consistent with the provisions of the NIRC of 1997.**

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[2] Concurring and Dissenting Opinion on the Court *En Banc*'s Decision dated October 11, 2018 in the consolidated cases of *Commissioner of Internal Revenue vs. San Miguel Corporation*, CTA EB No. 1724 and *San Miguel Corporation vs. Commissioner of Internal*, CTA EB No. 1726.

Clearly, the existing interpretation at the time of the transaction (year 2008) was that loans and advances to affiliates which were not covered by loan agreements but by mere inter-office memoranda 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 not covered by loan agreements but by mere inter-office memoranda.** Pronouncements of the CA and the CTA are at the very least persuasive. On this point, 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*[3] 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 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**

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

> **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 *Filinvest*, the same cannot be applied retroactively to the prejudice of taxpayers who relied in good faith on the *judicial interpretation* laid down in *APC Group* and *Belle Corporation*. Needless to say, **if a taxpayer can rely in good faith on an erroneous ruling of the BIR without suffering any legal prejudice (that is - - by applying the Supreme Court doctrine reversing the BIR ruling prospectively),[4] I submit that reliance in 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: (1) GRANT the Petition for Review filed by E.E. Black Ltd. – Philippine Branch; (2) REVERSE and SET ASIDE the assailed Decision and Resolution of the Court in Division; and, (3) CANCEL the deficiency DST assessment against E.E. Black Ltd. – Philippine Branch.

ROMAN G. DEL ROSARIO
Presiding Justice

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[4] *Commissioner of Internal Revenue vs. San Roque Power, Taganito Mining Corp. vs. Commissioner of Internal Revenue, and Philex Mining Corp. vs. Commissioner of Internal Revenue*, G.R. Nos. 187485, 196113 and 197156, February 12, 2013.