REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9007

Members:
BAUTISTA, Chairperson
FABON-VICTORINO, *and*
RINGPIS-LIBAN, *JJ.*

Promulgated:

APR 19 2017
10:35 a.m.

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DECISION

RINGPIS-LIBAN, *J.*:

Before the Court are the Petition for Review[1] and Supplemental Petition for Review filed on March 13, 2015 and on April 21, 2015, respectively, by San Miguel Corporation to seek the refund or the issuance of tax credit certificate (TCC) in the amount of ₱70,774,563.44, allegedly representing erroneously and/or illegally collected documentary stamp tax (DST) for taxable year 2010.

The Facts

Petitioner San Miguel Corporation is a corporation duly organized and existing under Philippine laws, with principal office at 40 San Miguel Avenue, Mandaluyong City.

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[1] Docket, Vol. I, pp. 6-38.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) empowered to perform the duties of his office, including, among others, to act on and approve claims for refund or tax credit as provided by law. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[2] ("Filinvest case" for brevity) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest extended to its affiliates qualified as loan agreements upon which documentary stamp taxes may be imposed.

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011[3], circularizing to all concerned internal revenue officials and employees relevant excerpts from the decision of the Supreme Court in the Filinvest case and enjoining all employees engaged in the audit and review of audit cases "to assess deficiency DST, if warranted, on these kinds of transactions."

Petitioner received on February 11, 2013 an undated Notice of Informal Conference[4] issued by the BIR, informing it that, in connection with the examination of its internal revenue tax liabilities for taxable year 2010, petitioner is found liable for certain deficiency taxes and is requested to appear for an informal conference.[5] The alleged deficiency taxes are summarized as follows:[6]

KIND OF TAX	TOTAL AMOUNT
Income Tax (IT)	₱ 5,014,122.97
Value-added Tax (VAT)	9,842,445.16
Expanded Withholding Tax (EWT)	5,397,905.11
Withholding Tax on Compensation (WTC)	50,000.00
DST	70,774,563.43
TOTAL	**₱91,079,036.67**

The alleged deficiency DST is broken down as follows:[7]

Taxable Base to be subjected to DST	
Pacific Central Properties Inc.	₱ 231,374,770.99

[2] G.R. Nos. 163653 and 167689, July 19, 2011.
[3] Exhibit "P-7", Docket, Vol. I, pp. 319-321.
[4] Exhibit "P", Docket, Vol. I, pp. 276-280.
[5] Par. 1.01, Joint Stipulation of Facts, Documents, Issues, and Other Matters (JSFDIOM), Docket, Vol. I, pp. 403-404.
[6] Exhibit "P", Docket, Vol. I, p. 278; Par. 1.01, JSFDIOM, Docket, Vol. I, p. 404.
[7] *Ibid.*

SMC Retirement Plan	1,129,800,000.00
Top Frontier Holdings Inc.	2,542,720,000.00
Challenger Aero Air Corporation	1,129,800,000.00
San Miguel Properties Inc.	542,000,000.00
South Premiere Power Corporation	682,304,000.00
Panasia Energy Holdings Inc.	271,891,090.00
Mindanao Corrugated Fibreboard Inc.	82,786,966.55
Coastal View Exploration Corp.	1,765,243,060.00
Total Inter-Company Cash Advances	**₱8,377,919,887.54**
Tax Rate	1/200
DST Due	41,889,599.44
Add: Increment	
Surcharge	10,472,399.86
Interest up to March 15, 2013	18,362,564.14
Compromise Penalty	50,000.00
Deficiency DST including increments	**₱ 70,774,563.43**

With respect to petitioner's advances to its affiliates in the amount of ₱8,377,919,887.54, the same were subjected to DST pursuant to Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to the decision of the Supreme Court in the Filinvest case.[8]

On February 19, 2013, petitioner submitted to the BIR its Letter-Reply[9] dated February 18, 2013 to the Notice of Informal Conference.[10]

Petitioner paid under protest to the BIR on March 15, 2013,[11] through the Electronic Filing and Payment System (EFPS), the amount of ₱70,774,563.44, inclusive of surcharge and interest up to March 15, 2013 and penalty, for the alleged deficiency DST.[12] On April 3, 2013, petitioner submitted its Letter[13] dated March 25, 2013, informing the BIR that it paid under protest the amount of ₱70,774,563.44.[14]

On February 23, 2015, petitioner filed with the BIR its Letter-Claim for Refund[15] dated February 16, 2015, seeking the refund or issuance of TCC in the amount of ₱70,774,563.44, allegedly representing erroneously and/or illegally collected DST for taxable year 2010, pursuant to Section 229 and Section 204(C) of the NIRC of 1997, as amended.[16]

[8] Exhibit "P", Docket, Vol. I, p. 280; Par. 1.01, JSFDIOM, Docket, Vol. I, p. 404.
[9] Exhibit "P-1", Docket, Vol. I, pp. 281-282.
[10] Par. 1.03, JSFDIOM, Docket, Vol. I, p. 404.
[11] Exhibits "P-2", "P-2-a", and "P-2-b", Docket, Vol. I, pp. 283-284 and 461.
[12] Par. 1.04, JSFDIOM, Docket, Vol. I, p. 405.
[13] Exhibit "P-3", Docket, Vol. I, p. 286.
[14] Par. 1.05, JSFDIOM, Docket, Vol. I, p. 405.
[15] Exhibits "P-4", "P-4-a", and "P-4-b", Docket, Vol. I, pp. 290-301.
[16] Par. 1.06, JSFDIOM, Docket, Vol. I, p. 405.

Petitioner filed its original Petition for Review on March 13, 2015. However, on March 24, 2015, petitioner received respondent's decision[17] dated March 10, 2015, denying its claim for refund or issuance of TCC for lack of legal basis. As a result, petitioner filed its Supplemental Petition for Review[18] on April 21, 2015.

Respondent filed his Answer[19] through registered mail on June 5, 2015 and received by the Court on June 15, 2015, interposing the following Special and Affirmative Defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

5. Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of her Special and Affirmative Defense.

Commissioner of Internal Revenue v. Filinvest Development Corporation (Filinvest Case) is applicable to the instant case. Thus, respondent correctly denied petitioner's claim for refund.

6. Petitioner argued that its advances to its affiliates in 2010 is not subject to Documentary Stamp Tax (DST) since at that time, the prevailing court decisions were to the effect that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST; not the Filinvest Case.

7. Respondent disagrees.

8. The Honorable Supreme Court promulgated in the En Banc Decision of the Filinvest Case, which was reiterated in RMC 48-2011, that:

> On the other hand, insofar as documentary stamp taxes on loan agreements and promissory notes are

[17] Exhibits "P-5", Docket, Vol. I, p. 316.
[18] Docket, Vol. I, pp. 101-111.
[19] Docket, Vol. I, pp. 224-231.

concerned, Section 180 of the NIRC provides follows:

> 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 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 notes 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.

When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to '(a)ll loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located or used in the Philippines.' Correlatively, Section 3(b) and Section 6 of Revenue Regulations No. 9-94 provide as follows:

> Section 3. Definition of Terms. – For purposes of these Regulations, the following term shall mean:
>
> (b) 'Loan agreement' – refers to a contract in writing where one of the parties delivers to another money or other consumable thing, upon the condition that the same amount of the same kind and quality shall be paid. The term shall include credit facilities, which may be evidenced by credit memo, advice or drawings.
>
> The terms 'Loan Agreement' under Section 180 and 'Mortgage' under Section 195, both of the Tax Code, as amended, generally refer to distinct and separate instruments. A loan agreement shall be taxed under Section 180, while a deed of mortgage shall be taxed under Section 195.'
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> Section 6. Stamp 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 in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) 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 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.
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> **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. (Emphasis supplied).**

9. As can be seen from the above-quoted portion of the Decision in Filinvest Case, the Honorable Supreme Court merely clarified and applied the provisions of the Tax Code; that is intercompany advances, evidenced by instructional letters as well as the journals and cash vouchers, are indeed subject to DST.

10. Moreover, to further bolster respondent's position that the Filinvest Case is merely clarificatory, the subject Assessment Notices in the said case issued for deficiency DST pertains to taxable years 1996 and 1997.

11. Thus, there can be no other conclusion but that from the time of the enactment of the Tax Code, such intercompany advances were already subject to DST.

12. Accordingly, petitioner's argument must fail.

A claim for refund cannot rely on vague inferences.

13. Petitioner further argued that even assuming that respondent correctly applied Section 179 of the Tax Code in relation to the Filinvest case, it is not liable for DST since: (a) there were no debt instruments identified by respondent; (b) there were no advances made by petitioner to Pacific Central Properties Inc.

in 2010; and (c) the amount of advances petitioner made to South Premier Power Corporation is alleged overstated.

14. Petitioner's averments are bereft of merit.

15. It must be borne in mind that taxes collected and paid are presumed to be in accordance with laws and regulations.

16. Thus, in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications.

17. First, the law and jurisprudence on the matter are clear. Intercompany advances are subject to DST.

18. Second, factual averments of petitioner are mere allegations without proof.

19. Finally, petitioner must prove compliance with Section 229 of the Tax Code, the governing provision relative to refund of internal revenue taxes. It provides:

> **SEC. 229. Recovery of Tax Erroneously or Illegally Collected.** – no suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of

> any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

20. Taxes are essential to government's very existence; hence, the dictum that 'taxes are the lifeblood of the government.' Since tax refunds are regarded as tax exemptions and these are to be construed **strictissimi juris** against the person or entity claiming the exemption.

21. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

The Pre-Trial[20] was set on August 25, 2015. Respondent's Pre-Trial Brief[21] was filed on August 14, 2015; while petitioner's Pre-Trial Brief[22] was filed on August 20, 2015.

The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[23] on September 3, 2015. The Court issued the Pre-Trial Order[24] on October 6, 2015.

Petitioner presented Eileen P. Ratilla[25] and Rogelio G. Lui as its witnesses.[26] On December 22, 2015, petitioner filed its Formal Offer of Evidence[27] offering Exhibits "P", "P-1", "P-1-a", "P-2", "P-2-a", "P-2-b", "P-3", "P-3-a", "P-4", "P-4-a", "P-4-b", "P-4-b-1", "P-4-c", "P-4-d", "P-4-e", "P-4-f", "P-5", "P-6", "P-6-a", "P-7", "P-8", "P-9", "P-10", "P-11", "P-11-a", "P-12", "P-12-a", "P-13", and "P-13-a" as its documentary evidence. Respondent filed a Comment (Re: Petitioner's Formal Offer of Evidence)[28] on January 4, 2016.

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[20] Docket, Vol. I, pp. 238-239.
[21] Docket, Vol. I, pp. 247-251.
[22] Docket, Vol. I, pp. 367-376.
[23] Docket, Vol. I, pp. 403-414.
[24] Docket, Vol. I, pp. 422-431.
[25] Minutes of the hearing dated October 27, 2015, Docket, Vol. I, p. 433.
[26] Minutes of the hearing dated November 24, 2015, Docket, Vol. I, p. 434.
[27] Docket, Vol. I, pp. 443-460.
[28] Docket, Vol. I, pp. 497-498.

In the Resolution[29] dated January 14, 2016, the Court admitted Exhibits "P", "P-1", "P-1-a", "P-2", "P-2-a", "P-2-b", "P-3", "P-3-a", "P-4", "P-4-a", "P-4-b", "P-4-b-1", "P-4-c", "P-4-d", "P-4-e", "P-4-f", "P-5", "P-6", "P-6-a", "P-7", "P-8", "P-9", "P-10", "P-11", "P-11-a", "P-12", "P-12-a", "P-13", and "P-13-a".

During the hearing[30] on March 7, 2016, respondent manifested that he would not present evidence. The parties were then granted a period of thirty (30) days within which to file their respective memoranda.

Respondent filed his Memorandum[31] on April 20, 2016; while the Memorandum for the Petitioner[32] was filed on April 29, 2016. Hence, the case was declared submitted for decision on May 12, 2016.[33]

The Issue

The parties submitted the following issue for the Court's resolution:[34]

> Whether petitioner is entitled to a refund of the amount of ₱ 70,774,563.44 that it paid under protest to the BIR for alleged deficiency DST.

The Court's Ruling

The Court shall determine first whether petitioner's claim for refund was timely filed.

Pertinent to the resolution of this matter are Sections 204(C) and 229 of the NIRC of 1997, as amended, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx

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[29] Docket, Vol. I, p. 501
[30] Minutes of the hearing dated March 7, 2016, Docket, Vol. II, p. 502
[31] Docket, Vol. II, pp. 515-524.
[32] Docket, Vol. II, pp. 532-580.
[33] Resolution dated May 12, 2016, Docket, Vol. II, pp. 587-588.
[34] JFDIOM, Docket, Vol. I, p. 408.

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however*, that a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

Thus, in order to be entitled to a refund of erroneously or illegally collected tax, the following requisites must be present:[35]

1. That there must be an erroneous or illegal collection of tax, or a penalty collected without authority, or sum excessively or wrongfully collected;

[35] *Pilipinas Shell Petroleum Corporation vs. Commissioner of Internal Revenue*, CTA EB No. 1078, (CTA Case No. 8049), July 27, 2015.

2. That the claim for refund has been duly filed with the Commissioner, within two (2) years after the payment of tax or penalty; and

3. That the suit or proceeding is instituted with this Court within two (2) years from the date of payment of the tax or penalty.

From the foregoing, for a claim for refund of erroneously or illegally collected tax to be valid, both the administrative claim and the judicial claim must be filed within two (2) years from the date of payment of the tax.

In this case, petitioner paid under protest the alleged deficiency DST in the amount of ₱70,774,563.44 for taxable year 2010 on March 15, 2013. Hence, petitioner had until March 15, 2015 within which to file both the administrative and judicial claims for refund. Records show that petitioner filed its administrative claim for refund on February 23, 2015, while its original Petition for Review was filed on March 13, 2015. Clearly, both the administrative and judicial claims were filed within the two-year prescriptive period.

The Court shall now determine whether petitioner is entitled to tax refund or issuance of TCC in the amount of ₱70,774,563.44, allegedly representing erroneously and/or illegally collected DST for taxable year 2010.

Petitioner raised the following grounds: (a) the *Filinvest* case and RMC No. 48-2011 may not be applied to the advances made in 2010, without violating the principle on non-retroactivity of laws and rulings, and even assuming that the decision may be applied retroactively, the same will not cover the advances subject of this case; (b) under Section 179 of the NIRC of 1997, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances; (c) the BIR erred in subjecting to DST the amount of ₱1,156,873.85, pertaining to the alleged advances to Pacific Central Properties Inc., and in subjecting to DST the amount of ₱3,411,520.00, representing the advances to South Premiere Power Corporation; (d) petitioner is entitled to a refund in the amount of ₱70,774,563.44, representing erroneous and/or illegal collection from it by the BIR of DST for taxable year 2010; (e) assuming that petitioner is liable to pay DST under Section 179 of the NIRC of 1997, it is liable for the basic tax of ₱41,889,599.44 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR rulings at the time of the extension of the advances; (f) at the time the decision of respondent on the administrative claim for refund of petitioner was served on the latter, the former had no more jurisdiction over petitioner's claim for refund; thus, the said decision is null and void; and (g) assuming that the decision of respondent on petitioner's administrative claim for refund is valid, the same is contrary to law and evidence.[36]

On the other hand, respondent argues that petitioner is liable for deficiency DST pursuant to Section 179 of the NIRC of 1997. Respondent claims that advances to affiliates are considered loan agreements subject to DST as held in the *Filinvest* case. Moreover, there is no retroactive application of the *Filinvest* case since it merely clarified and applied the provisions of the Tax Code and its implementing rules and regulations. Respondent pointed out that petitioner cited decisions issued by the Court of Appeals and the Court of Tax Appeals, which are not part of the law of the land. Respondent asserts that a claim for refund cannot rely on vague inferences.

Filinvest case and RMC No. 48-2011 may be applied retroactively. Prospective effect applies only to decisions issued by the Supreme Court enunciating new doctrines.

Petitioner contends that the decision of the Supreme Court in the *Filinvest* case, which was rendered on July 19, 2011, as well as RMC No. 48-2011, which was issued by the BIR on October 6, 2011, may not be applied to its advances made in 2010 without violating the principle on non-retroactivity of laws and rulings. Petitioner argues that it merely relied on court decisions and BIR issuances prevailing in 2010, *viz.*, inter-office memos covering intercompany advances are not considered loan agreements subject to DST. It likewise states that even assuming that the decision may be applied retroactively, the same will not cover the advances subject of this case.

Petitioner's argument has no merit.

It must be stressed that the interpretation placed upon a law by the Supreme Court constitutes a part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by the Supreme Court in the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[37], as follows:

> "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

[36] Memorandum for the Petitioner, Docket, Vol. II, pp. 547-548.
[37] G.R. No. 197525, June 4, 2014.

> 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."

In the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[38], this Court stated that the Supreme Court's interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997) in the *Filinvest* case constituted as part of the NIRC as of December 23, 1994, since said section was already inserted in the NIRC through the enactment of Republic Act (RA) No. 7660, to wit:

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

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

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

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[38] CTA Case No. 8892, September 30, 2016.

In the case of *The People of the Philippines vs. Jose Jabinal y Carmen*[39], the Supreme Court ruled that prospective effect applies only to decisions enunciating new doctrines.

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

Likewise, in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue*[40], the Supreme Court ruled that BIR Ruling and Revenue Regulation issued even after the transaction took place are still applicable because they are issuances interpreting the same rule imposing a DST, thus:

> "The BIR Ruling and Revenue Regulation cited are still applicable to this case, even if they were issued after the transactions in question had already taken place. They apply because they are issuances interpreting the same rule imposing a DST on promissory notes. At the time BIR Ruling No. 139-97 was issued, the law in effect was the 1986 Tax Code; the 1997 NIRC took effect only on January 1, 1998. Moreover, the BIR Ruling referred to a transaction entered into in 1992, when the 1986 Tax Code had been in effect. On the other hand, the BIR issued Revenue Regulations No. 13-2004 when Section 180 of the 1986 Tax Code had already been amended. Nevertheless, the rule would still apply to this case because the pertinent part of Section 180 – the part dealing with promissory notes – remained the same; it imposed the DST on the promissory notes' issuances and renewals, but not on their assignment or transfer: xxx"

DST may be imposed on the advances on the basis of a mere Note appearing in petitioner's 2010 Audited Financial Statement.

Petitioner claims that under Section 179 of the NIRC of 1997, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.

[39] G.R. No. L-30061, February 27, 1974.
[40] G.R. No. 169899, February 6, 2013.

DST is 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.[41] DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law.[42] A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[43] Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document.[44] In other words, DST may be imposed even in the absence of a debt instrument, as long as the transactions are clearly established.

Besides, Section 6 of Revenue Regulations No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes are executed, thus:

> "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 in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) 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."

Thus, petitioner is liable to pay the subject DST on the basis of the Note appearing in its 2010 Audited Financial Statement.

Tax assessments by tax examiners are presumed

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[41] *Philippine Home Assurance, et al. vs. Court of Appeals, et al.,* G.R. No. 119446, January 21, 1999.

[42] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue,* G.R. Nos. 164155 and 175543, February 25, 2013.

[43] *Philippine Bank of Communications vs. Commissioner of Internal Revenue,* G.R. No. 194065, June 20, 2016.

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

correct and made in good faith.

Petitioner also alleges that the BIR erred in subjecting to DST the amount of ₱1,156,873.85, representing the alleged advances to Pacific Central Properties Inc., for the reason that it had no advances to Pacific Central Properties Inc. in 2010. It claims that the advances in the amount of ₱231,374,770.99 pertain to its advances in 2011. Similarly, petitioner argues that the BIR erred in subjecting to DST the advances to South Premiere Power Corporation in the amount of ₱3,411,520.00, because the amount of advances is overstated by ₱204,000.00. It contends that its actual advances amounted to ₱682,100,000.00 instead of ₱682,304,000.00. In support of the foregoing, petitioner presented Exhibits "P-13"[45] and "P-13-a"[46]. However, contrary to petitioner's claims, an examination of these exhibits shows that the amount of ₱231,374,770.99 pertaining to advances to Pacific Central Properties Inc. was extended in 2010 and that the actual advances to South Premiere Power Corporation in 2010 were ₱682,304,000.00.

Aside from its bare allegation, petitioner presented no other evidence to prove its claims. It is basic in the rule of evidence that bare allegations, unsubstantiated by evidence, are not equivalent to proof. In short, mere allegations are not evidence.[47]

It bears stressing that tax assessments by tax examiners are presumed correct and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularity in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments.[48]

Petitioner is not liable to pay interest, surcharge, and compromise penalty.

Petitioner asserts that assuming it is liable to pay DST under Section 179 of the NIRC of 1997, it is liable for the basic tax of ₱41,889,599.44 only, without the imposition of surcharge, interest, and penalty; since it relied on existing court decisions and BIR rulings at the time of the extension of the advances.

[45] Docket, Vol. I, p. 493.
[46] Docket, Vol. I, p. 494.
[47] *Real vs. Belo*, G.R. No. 146224, January 26, 2007.
[48] *Commissioner of Internal Revenue vs. Traders Royal Bank*, G.R. No. 167134, March 18, 2015, citing *Sy Po vs. Court of Tax Appeals*, 247 Phil. 487 (1988).

The Court agrees with petitioner.

The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax laws are sufficient justification to delete the imposition of surcharges and interest.[49]

A perusal of petitioner's claim for refund shows that it merely relied on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, which states that inter-company loans and advances covered by inter-office memoranda are not subject to DST. Accordingly, petitioner's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest.

This Court further notes that compromise penalty may not be imposed upon petitioner considering that this penalty, by its nature, is mutual in essence. Therefore, the payment made under protest by petitioner could only mean that there was no agreement between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*[50], the Supreme Court held that:

> "The Court of Tax Appeals correctly held that the compromise penalty of ₱20,000.00 could not be imposed on petitioner, a compromise being, by its nature, mutual in essence. The payment made under protest by petitioner could only signify that there was no agreement that had effectively been reached between the parties."

Considering that petitioner disputed respondent's imposition of compromise penalty, the same cannot be imposed upon it.

Upon filing of the Petition for Review, respondent shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency pursuant to RMC No. 49-2003.

Petitioner asserts that at the time the decision of respondent on the administrative claim for refund was served on petitioner, respondent had no

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[49] *The City of Iloilo, et al. vs. Smart Communications, Inc. (Smart)*, G.R. No. 167260, February 27, 2009.
[50] G.R. No. 138485, September 10, 2001.

more jurisdiction over its claim for refund. Consequently, the decision is null and void.

Petitioner's claim lacks basis.

RMC No. 49-2003[51], issued on August 15, 2003, provides:

> "In response to request of selected taxpayers for adoption of procedures in handling refund cases that are aligned to the statutory requirements that refund cases should be elevated to the Court of Tax Appeals before the lapse of the period prescribed by law, certain provisions of RMC No. 42-2003 are hereby amended and new provisions are added thereto.
>
> In consonance therewith, the following amendments are being introduced to RMC No. 42-2003, to wit:
>
> I.) A-17 of Revenue Memorandum Circular No. 42-2003 is hereby revised to read as follows:
>
> In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), the administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.

[51] Amending Answer to Question Number 17 of Revenue Memorandum Circular No. 42-2003 and Providing Additional Guidelines on Issues Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS-DOF) by Direct Exporters.

If the CTA is able to release its decision ahead of the evaluation of the administrative agency, the latter shall cease from processing the claim. On the other hand, if the administrative agency is able to process the claim of the taxpayer ahead of the CTA and the taxpayer is amenable to the findings thereof, the concerned taxpayer must file a motion to withdraw the claim with the CTA. A copy of the positive resolution or approval of the motion must be furnished the administrative agency as a prerequisite to the release of the tax credit certificate/tax refund processed administratively. However, if the taxpayer is not agreeable to the findings of the administrative agency or does not respond accordingly to the action of the agency, the agency shall not release the refund/TCC unless the taxpayer shows proof of withdrawal of the case filed with the tax court. If, despite the termination of the processing of the refund/TCC at the administrative level, the taxpayer decides to continue with the case filed at the tax court, the litigation lawyer of the BIR, upon the initiative of either the Legal Office or the Processing Office of the Administrative Agency, shall present as evidence against the claim of the taxpayer the result of investigation of the investigating/processing office."

Pursuant to RMC No. 49-2003, upon filing of the Petition for Review with this Court, respondent shall still continue processing the refund/TCC case until such time that a final decision has been reached by either this Court or the BIR. Consequently, respondent does not lose jurisdiction over petitioner's claim for refund.

Moreover, this Court is not bound by the decision of respondent on petitioner's claim for refund or issuance of TCC. It must be noted that the Court of Tax Appeals being a court of record, the cases filed before it are litigated *de novo* and party litigants should prove every minute aspect of their cases. Judicial claims are decided based on the evidence presented and formally offered by the party litigants during the trial.[52]

WHEREFORE, premises considered, the Petition for Review and the Supplemental Petition for Review are **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱28,884,964.00**, representing the following amounts:

[52] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, CTA EB No. 657 (CTA Case Nos. 7424 and 7492), April 4, 2012.

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 10,472,399.86
Interest up to March 15, 2013	18,362,564.14
Compromise Penalty	50,000.00
TOTAL	**₱28,884,964.00**

SO ORDERED.

Ma. Belen R. L.

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's 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