REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SOUTH PREMIERE POWER CORP., Petitioner,	**CTA CASE NO. 9337**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **MANAHAN,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 12 2018 9:26 AM

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RESOLUTION

CASTAÑEDA, JR., *J.*:

For resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated February 27, 2018**, filed on March 8, 2018, with respondent's **Opposition Re: Petitioner's Motion for Partial Reconsideration**, filed on April 5, 2018; and

2. respondent's **Motion for Partial Reconsideration Re: Decision dated 27 February 2018**, filed on March 14, 2018, with petitioner's **Opposition to Respondent's "Motion for Partial Reconsideration....." dated March 14, 2018**, filed on April 16, 2018.

Both parties seek reconsideration of the Court's Decision (assailed Decision)[1] promulgated on February 27, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, the present Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the aggregate amount of **₱1,359,773.48**, representing the following amounts:
>
> | PENALTIES ERRONEOUSLY PAID BY PETITIONER | AMOUNT |
> |---|---|
> | Surcharge | ₱ 345,434.50 |
> | Interest up to April 30, 2014 | 989,338.98 |
> | Compromise Penalty | 25,000.00 |
> | **TOTAL** | **₱ 1,359,773.48** |
>
> **SO ORDERED.**"[2]

Petitioner's Motion for Partial Reconsideration

Petitioner argues that the decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3] (Filinvest case) cannot be given any retroactive application. It claims that the decision of the Supreme Court in *Co vs. Court of Appeals*[4], that judicial decisions shall be applied prospectively, should be applied in this case, instead of the ruling of the Supreme Court in *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[5] (*Visayas* case) and the decisions of this Court in *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[6] and *San Miguel Corporation vs. Commissioner of Internal Revenue*[7]. It contends that the *Co* case specifically deals with the matter of prospectivity and non-retrospectivity of decisions of the Supreme Court in relation to Article 4 of the Civil Code, while the *Visayas* case deals with the effect of decisions of the Supreme Court in general.

Moreover, petitioner asserts that in the *Filinvest* case, the Supreme Court did not interpret Section 180 (now Section 179) of

[1] Docket, vol. II, pp. 439-467.
[2] Docket, vol. II, p. 465-466.
[3] G.R. Nos. 163653 and 167689, July 19, 2011.
[4] G.R. No. 100776, October 28, 1993.
[5] G.R. No. 197525, June 4, 2014.
[6] CTA Case No. 8892, September 30, 2016.
[7] CTA Case No. 9007, April 19, 2017.

the National Internal Revenue Code (NIRC) of 1997, as amended, as ascertaining "the contemporaneous legislative intent" behind Section 180. The Supreme Court simply applied the said legal provision to the "instructional letters as well as journal and cash vouchers" by peremptorily declaring that the said "instructional letters and journal and cash vouchers" qualified as "loan agreements". Hence, petitioner argues that the *Filinvest* case cannot be characterized as "interpretation of a statute" constituting "part of the law as of the date it was originally passed" as it did not establish "the contemporaneous legislative intent" that then Section 180 of the NIRC supposedly "carried into effect". Consequently, the *Filinvest* case does not fall within the coverage of the Supreme Court decision in the *Visayas* case.

Petitioner also contends that prior to the promulgation of the *Filinvest* case, the rule was that intercompany advances covered by mere inter-office memos were not loan agreements subject to documentary stamp tax (DST) under the NIRC, on which petitioner had relied. This rule was embodied, among others, in (a) the decision of the Court of Appeals in *Commissioner of Internal Revenue vs. APC Group, Inc.*[8]; (b) the decision of the Court of Tax Appeals *En Banc* in *Commissioner of Internal Revenue vs. Belle Corporation*[9]; (c) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008; and (d) in the Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185. Petitioner submits that these rulings constitute the previous doctrine that was overruled in the *Filinvest* decision. Thus, petitioner concludes that the *Filinvest* case cannot be applied retroactively.

Furthermore, petitioner argues that even if the *Filinvest* decision may be applied retroactively, the same may not be invoked against it, as the facts involved in the instant case differ from those involved in the *Filinvest* case.

Petitioner avers that there are two (2) basic requisites that must exist before DST may be imposed: (1) there must be a transaction or privilege which is exercised by persons; and (2) this transaction is evidenced through the execution of specific instruments. Petitioner points out that respondent has not controverted that these two (2) requisites must be present; and that respondent, in imposing the alleged deficiency DST, merely relied on mere Notes to the Audited Financial Statements (AFS) of petitioner and its affiliates. Finally, petitioner submits that the Notes to the AFS

[8] CA-GR No. 69869, November 29, 2002.
[9] CTA EB No. 147, October 13, 2006.

of petitioner and its affiliates are not debt instruments under Section 179 of the NIRC, as amended.

Respondent opposes petitioner's motion for utter lack of merit.

Respondent contends that the instant Petition for Review should be dismissed for lack of jurisdiction. According to respondent, petitioner was not able to file its appeal or request for consideration within thirty (30) days from receipt of the Formal Letter of Demand on July 30, 2015. Thus, petitioner lost its remedy to contest the illegality of the tax assessed by respondent.

Moreover, respondent argues that the taxes paid are not erroneously or illegally collected. Respondent alleges that the amount of ₱2,741,511.48 representing Documentary Stamp Tax (DST) is not an erroneously or illegally collected tax for taxable year 2010 because the period to contest if the same is erroneous or illegal has already lapsed.

Lastly, respondent states that petitioner is not entitled to refund of interest, surcharge, and compromise penalty. Respondent avers that in the *Filinvest* case, the Supreme Court affirmed the imposition of surcharge interest and even the compromise penalty.

Petitioner's Motion for Partial Reconsideration is bereft of merit.

It must be noted that the Supreme Court in the *Visayas* case recognized the prospective application of judicial decisions, but qualifies that the prospective application shall only apply if there is a prior ruling that was overruled by new doctrine. In that case, 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 present case, contrary to petitioner's assertion, there is no previous doctrine that was overruled by the doctrine in the *Filinvest* case. Hence, the interpretation placed upon Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) by the Supreme Court in the *Filinvest* case constitutes part of the NIRC as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, as held by this Court in the assailed Decision, to wit: ge

"In the case of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue* , it was held that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it establishes the contemporaneous legislative intent of the law, to wit:

> 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."

Considering that the interpretation of Section 180 of the NIRC (now Section 179 of the NIRC of 1997, as amended) in the *Filinvest* case was deemed 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.

The Court finds no merit to petitioner's assertion that there was a previous doctrine that was overruled by the doctrine in the *Filinvest* case.

It must be noted that the decisions cited by petitioner were those issued by the Court of Appeals (CA) and Court of Tax Appeals (CTA) and not by the Supreme Court. 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.

Moreover, in the case of *Government Service Insurance System vs. Leo L. Cadiz*[10], the Supreme Court stressed that judicial decisions which form part of our legal system are only the decisions of the Supreme Court.

CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the public. CTA or CA decisions, unlike those of the Supreme Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents and are not binding on the Supreme Court. Only decisions of the Supreme Court constitute binding precedents, forming part of the Philippine legal system.[11]

Based on the foregoing, petitioner's cited CA and CTA decisions cannot be considered as previous doctrines and therefore have no value as precedents. Thus, there was no previous doctrine overruled by the *Filinvest* case.

There being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 of the NIRC constitutes part thereof as of the date it was originally passed, i.e., on December 23, 1994, as stated in the assailed Decision. Consequently, the *Filinvest* case cannot be applied prospectively.

Finally, there is also no merit to petitioner's argument that the decision in the *Filinvest* case will not cover the advances subject of this case, as the BIR relied on mere Notes in the Audited Financial Statements of petitioner and/or its affiliates which are not debt instruments under Section 179 of the NIRC, as amended.

The foregoing arguments of petitioner has already been addressed in the assailed Decision, as follows:

> "Petitioner argues that under Section 179 of the Tax Code, as amended, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances. *gr*

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[10] G.R. No. 154093, July 8, 2003.

[11] *Commissioner of Internal Revenue vs. San Roque Power Corporation*, G.R. No. 187485, October 8, 2013, *Taganito Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 196113, October 8, 2013, *Philex Mining Corporation vs. Commissioner of Internal Revenue*, G.R. No. 197156, October 8, 2013.

> 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. It is levied on the exercise by persons of privileges conferred by law.**
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> From the foregoing, **there is no basis for petitioner's assertion that if there is no document or if the document itself does not in any way manifest such borrowing and lending transaction, then DST on debt instruments under Section 179 of the NIRC of 1997, as amended, cannot be applied. DST may be imposed even in the absence of debt instrument, as long as the transactions are clearly established.**"

Considering the foregoing, the Court finds no merit in petitioner's Motion for Partial Reconsideration.

Respondent's Motion for Partial Reconsideration

Respondent moves for the partial reconsideration of the assailed Decision on the ground that the Court erred in ruling that petitioner is not liable to pay interest, surcharge and compromise penalty.

According to respondent, petitioner is not entitled to its claim for refund for the following reasons:

1. The instant petition should be dismissed for lack of jurisdiction;
2. The taxes paid are not erroneously or illegally collected which is the proper subject of an action for refund; and
3. Petitioner is not entitled to refund of interest, surcharge, and compromise penalty.

Petitioner opposes respondent's motion for partial reconsideration on the following grounds: 9r

1. Respondent is precluded from filing the instant motion for partial reconsideration on the portion of the assailed Decision which ordered respondent to refund or issue to petitioner a tax credit certificate in the amount of ₱1,359,773.48, representing surcharge, interest and compromise penalty paid by petitioner;
2. The grounds raised by respondent in his motion for partial reconsideration had already been raised in his Answer to the Petition for Review in this case and has already been considered by the Court in the assailed Decision; and
3. There is no merit in the arguments raised by the respondent in his motion for partial reconsideration.

Respondent's Motion for Partial Reconsideration is likewise bereft of merit.

The first two arguments raised by respondent in his Motion for Partial Reconsideration are mere rehash of the arguments previously raised in his Answer which have already been duly considered and extensively discussed in the assailed Decision.

It must be clarified that an "erroneous or illegal tax" is defined as one levied without statutory authority, or upon property not subject to taxation or by some officer having no authority to levy the tax, or one which is some other similar respect is illegal.[12]

In the assailed Decision, the Court, in essence, ruled that there is no "erroneous or illegal tax" which may be refunded, since the subject documentary stamp tax was correctly assessed and collected. However, as regards the interest, surcharge, and compromise penalty, the Court held that the same must be refunded since petitioner is not liable to pay the same.

As previously held by this Court in the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[13], while it is true that the taxpayer's failure to file a petition for review with this Court within the statutory period renders the disputed assessment final, executory and demandable, thereby precluding petitioner from interposing the defenses of legality or validity of the assessment and

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[12] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation*, G.R. No. 188497, April 25, 2012.
[13] CTA Case No. 8892, Resolution dated February 27, 2017.

prescription of the Government's right to assess[14], there is no law prohibiting the refund of what has been paid by virtue of the said assessment. Thus, what the law does not prohibit, it allows.[15]

Section 229 of the NIRC of 1997, as amended, states that any penalty claimed to have been excessively or in any manner wrongfully collected may be a subject of a claim for refund, to wit:

> "**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)*

In the assailed Decision, the Court held that petitioner is not liable to pay interest, surcharge, and compromise penalty, to wit:

> "In the case of *Commissioner of Internal Revenue vs. St Luke's Medical Center, Inc.*, the Supreme Court held 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,

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[14] *Rizal Commercial Banking Corporation vs. Commissioner of Internal Revenue,* G.R. No. 168498, April 24, 2007.

[15] *In the Matter of the Adoption of Stephanie Nathy Astorga Garcia, Honorato B. Catindig,* G.R. No. 148311, March 31, 2005.

are sufficient justification to delete the imposition of surcharges and interest.

An examination of petitioner's claim for refund shows that at the time the advances were made in 2010, petitioner relied on prevailing court decisions and previous BIR issuances to the effect that inter-company loans and advances covered by inter-office memoranda were not loan agreements subject to DST. Petitioner relied on the cases of *Commissioner of Internal Revenue vs. APC Group, Inc.* and *Commissioner of Internal Revenue vs. Belle Corporation* and on BIR Ruling [DA (C-035) 127-2008]55 dated August 8, 2008, BIR Ruling No. 116-98 dated July 30, 1998, and BIR Ruling No. DAO 16-2008 dated January 17, 2008. Hence, petitioner's reliance on the said cases and BIR issuances justifies the non-imposition of surcharges and interest.

Petitioner is also not subject to compromise penalty since this penalty is by its nature, mutual in essence. The payment made under protest by petitioner could only mean that there was no agreement that had been reached between the parties. In the case of *De San Agustin vs. Commissioner of Internal Revenue*, 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.

Since petitioner disputed respondent's assessment of compromise penalty, the same cannot be imposed upon it."[16]

Thus, the interest, surcharge, and compromise penalty were wrongfully collected by respondent. Petitioner is therefore entitled to the refund of interest, surcharge, and compromise penalty. *jc*

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[16] Assailed Decision, docket, vol. II, pp. 464-465.

Finally, with respect to the allegation of respondent on the imposition of compromise penalties based on Revenue Memorandum Order (RMO) No. 7-2015, in relation to RMO No. 1-90, the Court finds that the same does not apply in this case.

A perusal of RMO No. 7-2015, in relation to RMO No. 1-90, shows that the compromise penalties provided therein refers to criminal violations of the provision of NIRC of 1997, as amended, and that the same are mere amounts suggested in settlement of criminal liability which may not therefore be imposed or exacted on the taxpayer. Since the instant case does not involve criminal violations of the NIRC, and that petitioner did not agree to settle its tax liability, the compromise penalty assessed should not have been imposed and collected. Thus, the same was properly refunded to petitioner.

In view of the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on February 27, 2018.

WHEREFORE, premises considered, petitioner's **Motion for Partial Reconsideration of the Decision dated February 27, 2018** and respondent's **Motion for Partial Reconsideration Re: Decision dated 27 February 2018** are both **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice