REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

SAN MIGUEL ENERGY CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9221

Members:

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

Promulgated:

JUL 24 2018 : 1:40 pm

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RESOLUTION

UY, *J.*:

For the Court's resolution are the following:

1. petitioner's **Motion for Partial Reconsideration of the Decision dated February 2, 2018**, filed on February 20, 2018, with respondent's **Comment**, filed on March 12, 2018; and

2. respondent's **Motion for Partial Reconsideration Re: Decision dated February 2, 2018**, filed through registered mail on February 21, 2018 and received by the Court on March 1, 2018, with petitioner's **Opposition to Respondent's Motion for Partial Reconsideration dated February 21, 2018**, filed on April 11, 2018.

Both parties move for reconsideration of the Court's Decision dated February 2, 2018, the dispositive portion of which reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in the aggregate amount of **₱8,456,497.05**, representing the following amounts:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Surcharge	₱ 2,038,785.00
Interest	6,367,712.05
Compromise Penalty	50,000.00
TOTAL	**₱ 8,456,497.05**

> **SO ORDERED.**"

Petitioner's Motion for Partial Reconsideration.

Petitioner submits that the Court should apply the decision of the Supreme Court in *Co vs. Court of Appeals*[1], (Co case) which ruled that judicial decisions shall be applied prospectively, instead of *Visayas Geothermal Power Company vs. Commissioner of Internal Revenue*[2] (Visayas Geothermal case).

Moreover, petitioner argues that the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[3] (Filinvest case), did not interpret Section 180 (now Section 179) of the National Internal Revenue Code (NIRC), such as ascertaining "the contemporaneous legislative intent" behind Section 180. The Supreme Court simply applied the said legal provision to the "instructional letters and journal and cash vouchers" by peremptorily declaring that the said "instructional letters and journal and cash vouchers" qualified as "loan agreements". Therefore, it claims 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

[1] G.R. No. 100776, October 28, 1993.
[2] G.R. No. 197525, June 4, 2014.
[3] G.R. Nos. 163653 and 167689, July 19, 2011.

effect". Consequently, the Filinvest case does not fall within the coverage of the Supreme Court decision in the Visayas Geothermal case.

For his part, respondent states that the Filinvest case merely affirmed the obligation by corporations to treat their inter-company advances as loan agreements subject to documentary stamp tax (DST) under the NIRC of 1997, as amended.

Petitioner's arguments have no merit.

It bears stressing that the Supreme Court in Visayas Geothermal case, in fact, recognizes the prospective application of judicial decisions, as held in the Co case. It, however, qualifies that the prospective application shall apply only if there is a prior ruling that was overruled by new doctrine. In that case, the new doctrine may be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.

Applying the foregoing to the instant case, the Court finds that there was no previous doctrine that was overruled by the doctrine in the Filinvest case. In this regard, the interpretation placed upon Section 180 of the NIRC (now Section 179 of the NIRC of 1997) by the Supreme Court in the Filinvest case is considered as part of the NIRC, as of the date it was originally passed, since it establishes the contemporaneous legislative intent of the law.

Since 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.

Petitioner further asserts that there was a previous doctrine that was overruled by the doctrine in the Filinvest *case*. It argues that the previous doctrine that was overruled need not be embodied in a Supreme Court decision. Petitioner 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 (a) decision of the Court of Appeals in *Commissioner of Internal Revenue vs. APC Group, Inc.*; (b) decision of the Court of Tax Appeals *En Banc* in *Commissioner of Internal Revenue vs. Belle*

Corporation;(c) Bureau of Internal Revenue (BIR) Ruling [DA (C-035) 127-08] dated August 8, 2008; and (d) Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185. Thus, petitioner concludes that the Filinvest case cannot be given any retroactive effect.

Petitioner seems to disregard the fact that the cited decisions are those issued by the Court of Appeals and Court of Tax Appeals, and not decisions issued by the Supreme Court.

Article 8 of the Civil Code clearly 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. Relevantly "it must be stressed that judicial decisions which form part of our legal system are only the decisions of the Supreme Court."[4] "CTA or CA decisions are specific rulings applicable only to the parties to the case and not to the general public. CTA or CA decisions, unlike those of this Court (Supreme Court), do not form part of the law of the land. Decisions of lower courts do not have any value as precedents. Obviously, decisions of lower courts are not binding on this Court (Supreme Court)."[5] Hence, petitioner's cited decisions cannot be considered previous doctrines and therefore have no value as precedents.

Petitioner also argues that the decision in the Filinvest case will not cover the advances subject of this case. The documents subject in the Filinvest case were instructional letters and journals and cash vouchers evidencing advances which Filinvest extended to its affiliates. In this case, the BIR relied on mere Notes in the Audited Financial Statements of SMC and/or its affiliates. Petitioner further alleges that the Notes are not debt instruments under Section 179 of the NIRC.

This Court had already addressed the foregoing arguments in the assailed Decision. To emphasize, the DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[6] Thus, there is no basis in petitioner's assertion that DST is literally a tax on the document.[7] Also, Section 6 of Revenue

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[4] *Government Service Insurance System vs. Cadiz*, G.R. No. 154093, July 8, 2003.

[5] *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.

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

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

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Regulations (RR) No. 9-94 provides for the imposition of DST where no formal agreements or promissory notes that are executed. Based on the foregoing, DST may be imposed on the advances on the basis of a mere Note appearing in their 2010 Audited Financial Statement.

Respondent's Motion for Partial Reconsideration.

Respondent contends that the Court has no jurisdiction to entertain the instant petition because the assessment was already final and unappealable, and that petitioner never alleged that the assessment was of doubtful validity, but instead paid the amount assessed, *albeit* under protest. He also asserts that the Court erred in ruling that good faith and honest belief that one is not subject to tax are sufficient ground to delete the imposition of surcharges and interest.

On the other hand, petitioner argues that respondent is precluded from filing a Motion for Reconsideration on the portion of this Court's assailed Decision which ordered the refund or issuance of tax credit certificate (TCC) of the surcharge, interest and compromise penalty based on the doctrines of *stare decisis* and *res judicata*. Further, it argues that in any case there is no merit in the arguments raised by respondent in his motion.

Respondent's arguments have no basis.

It must be recalled that petitioner paid under protest the alleged deficiency DST in the amount of ₱16,611,637.05 for the taxable year 2010 on December 23, 2013. By virtue of petitioner's payment under protest, the case would then fall under Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide for the period in claim tax refund or credit.

To validly claim for refund or tax credit of erroneously or illegally collected tax, Sections 204(C) and 229 of the NIRC of 1997, as amended, merely require that both the administrative and judicial claims for refund must be filed within two (2) years from the date of payment of the tax. Hence, petitioner had until December 23, 2015 within which to file both the administrative and judicial claims for refund.

Records show that petitioner filed its administrative and judicial claims on November 12, 2015 and December 18, 2015, respectively.

Clearly, both the administrative and judicial claims for refund were filed within the two (2)-year prescriptive period. Therefore, the assessment is not yet final and unappealable. Hence, the Court has jurisdiction to entertain the same pursuant to Section 7 (a) (2) of Republic Act (RA) No. 1125, as amended by RA No. 9282.

The Court maintains its ruling that petitioner's reliance on BIR Ruling [DA (C-035) 127-08] dated August 8, 2008 is sufficient justification to delete the imposition of surcharges and interest. This is in accordance with the Supreme Court's pronouncement in the case of *Michel J. Lhuillier Pawnshop, Inc. vs. Commissioner of Internal Revenue*[8], to wit:

> xxx 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 law, are sufficient justification to delete the imposition of surcharges and interest. In *Connell Bros. Co. (Phil.) v. Collector of Internal Revenue*, it was held that:
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>> We are convinced that appellant, in preparing its sales invoices as it did, was not guilty of an intentional violation of the law. It did not delay filing the returns for the sales taxes corresponding to the period in question, let alone did so purposely. The delay was in the payment of the deficiency, which arose from a mistaken understanding of the regulations laid down by appellee. The ensuing controversy was, in our opinion, generated in good faith and should furnish no justification for the imposition of a penalty.
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>> WHEREFORE, modified by eliminating the surcharge of 25% imposed upon appellant, the judgment appealed from is affirmed, without costs.
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> This ruling was subsequently reiterated in *Tuason, Jr. v. Lingad*, where we deleted the order to pay interest and surcharges, and in *Commissioner of Internal Revenue v. Republic Cement Corporation*, where the

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

> same surcharge was dispensed with because of the taxpayer's good faith and the BIR's previous erroneous interpretation of the laws involved. We see no reason not to apply the same doctrine in the instant case which settles the divergent rulings of the BIR on DST and establishes the foremost categorical pronouncement of the Court that pledge transactions entered into by pawnshops are subject to DST.

Thus, petitioner's reliance on the said BIR Ruling justifies the non-imposition of surcharges and interest. Moreover, compromise penalty is, 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.[9] Considering that petitioner disputed respondent's imposition of compromise penalty, the same cannot be imposed upon it.

WHEREFORE, in light of the foregoing considerations, petitioner's **Motion for Partial Reconsideration of the Decision dated February 2, 2018** and respondent's **Motion for Partial Reconsideration Re: Decision dated February 2, 2018**, are hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

[9] *De San Agustin vs. Commissioner of Internal* Revenue, G.R. No. 138485, September 10, 2001.