REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

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SAN MIGUEL CORPORATION, Petitioner,	**CTA Case No. 9374**
	Members:
- versus -	**DEL ROSARIO,** P.J., Chairperson, **UY,** and **MINDARO-GRULLA,** JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	***Promulgated:*** MAY 03 2019 ; 1:30pm

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DECISION

UY, J.:

This is a Petition for Review filed by San Miguel Corporation on June 22, 2016, praying for the refund or issuance of tax credit certificate (TCC) in the amount of Thirty Million Four Hundred Twenty- Four Thousand Two Hundred Fifty-Nine and 59/100 Pesos (₱30,424,259.59) allegedly representing documentary stamp tax (DST) erroneously and/or illegally collected for taxable year 2009.

THE FACTS

Petitioner San Miguel Corporation is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at 40 San Miguel Avenue, Mandaluyong City, Metro Manila.[1]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) who has the power to decide on disputed assessments, refunds of internal

[1] Par. 3.00, The Parties, Petition for Review, docket, p. 14.

revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) or other laws or portions thereof administered by the BIR. 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 *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[2] ("*Filinvest* case" for brevity), holding, among others, that the instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates qualified as loan agreements upon which DST may be imposed.[3]

Subsequently, on October 6, 2011, Revenue Memorandum Circular (RMC) No. 48-2011[4] was issued by the BIR, circularizing to all 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 cases "to assess deficiency DST, if warranted, on these kinds of transactions."[5]

On May 14, 2014, petitioner received a Preliminary Assessment Notice[6] (PAN) issued by the BIR on May 12, 2014, informing the former that in connection with the examination of its internal revenue tax liabilities for taxable year 2009, the latter found certain deficiency taxes due from petitioner.[7]

As indicated in the PAN, petitioner was assessed for deficiency income tax, value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT), final tax, withholding of VAT (WVAT), and DST in the aggregate amount of ₱3,310,612,351.45 (inclusive of penalties and interest up to May 31, 2014), broken down as follows:[8]

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

[3] Par. 1.02, Joint Stipulation of Facts, Documents, Issues, and Other Matters (JSFDIOM), docket, pp. 431-432.

[4] Subject: Circularization of the Relevant Excerpts from the *En Banc* Supreme Court Decision in the Case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*, G.R. Nos. 163653 and 167689 Dated July 19, 2011, on the imposition of Documentary Stamp Tax on Inter-Office Memo Covering Advances Granted by an Affiliated Corporation, dated October 6, 2011.

[5] Exhibit "P-2", docket, pp. 233-235; Par. 1.03, JSFDIOM, docket, p. 432.

[6] Exhibit "P-1", docket, pp. 224-232.

[7] Par. 1.04, JSFDIOM, docket, p. 432.

[8] Exhibit "P-1", docket, pp. 224-232.

Tax Type	Basic	Surcharge	Interest (up to 5/31/2014)	Compromise	Total
Income Tax	₱ 1,055,304,646.42	₱ -	₱ 871,421,425.84	₱ 50,000.00	₱ 1,926,776,072.26
VAT	447,366,562.25	-	389,025,059.88	50,000.00	836,441,622.13
WTC	2,457,267.55	-	2,150,277.41	25,000.00	4,632,544.96
EWT	269,860,725.53	-	236,411,242.47	25,000.00	506,296,968.00
Final Tax	1,324,430.38	-	1,158,967.29	25,000.00	2,508,397.67
WVAT	1,425,231.29	356,307.82	1,251,079.74	25,000.00	3,057,618.85
DST (from 01-06-09) - Advances	14,507,465.00		15,676,011.49	50,000.00	30,233,476.49
- Lease	312,250.00		337,401.10	16,000.00	665,651.10
Total	₱1,792,558,578.41	₱356,307.82	₱1,517,431,465.22	₱266,000.00	₱3,310,612,351.45

The PAN made reference to petitioner's advances to related parties in the alleged amount of ₱2,901,493,003.15, which were made subject to deficiency DST by the BIR, citing Section 179 of the National Internal Revenue Code of 1997, as amended.

The alleged deficiency DST was computed as follows:[9]

Total Intercompany Advances subject to DST		₱2,901,493,003.15
Tax Rate		₱1.00 / ₱200
Basic Tax Due		₱ 14,507,465.00
Add: Penalties		
20% Interest (1-06-2009 to 5-31-2014)	₱15,676,011.49	
Compromise Penalty	50,000.00	15,726,011.49
Total Deficiency Documentary Stamp Tax		₱ 30,233,476.49

On May 29, 2014, petitioner filed its Reply to the PAN, alleging, with respect to deficiency DST, that its advances to related parties do not contemplate the nature of a loan, and that the BIR has no right to assess since the *Filinvest* decision cannot be given a retroactive application because doing so will be prejudicial or unfair for taxpayers.[10]

On June 24, 2014, petitioner paid the aggregate amount of ₱30,424,259.59 to the BIR.[11]

On April 20, 2016, petitioner filed its claim for refund with the BIR in the amount of ₱30,424,259.59.[12]

[9] Exhibit "P-1", docket, p. 227.
[10] Exhibit "R-1", docket, pp. 535-555.
[11] Exhibits "P-5-b", "P-5", and "P-5-a", docket, pp. 517-520.
[12] Exhibits "P-6" and "P-6-b", docket, pp. 271-289.

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As the claim for refund has not been acted upon by the BIR, petitioner filed the instant Petition for Review on June 22, 2016.[13]

On October 4, 2016, respondent filed his Answer (to the Petition for Review dated 20 June 2016)[14], interposing the following Special and Affirmative Defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
>
> 4. Respondent adopts the abovementioned admissions and denials as part of his special and affirmative defenses.
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> 5. Petitioner anchors its judicial claim on Section 229 of the Tax Code which provides:
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> xxx xxx xxx
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> 6. Based on the above quoted provision of the Tax Code, it is imperative that petitioner proves that such alleged payment is indeed erroneous or illegally collected before the same can be a proper subject of a claim for refund otherwise, the Honorable Court cannot take cognizance over the instant case.
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> 7. Respondent submits that the assessment against petitioner for deficiency Documentary Stamp Tax (DST) from advances to related parties was neither illegal nor erroneous as can be deduced from the following discussions.
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> 8. Verification disclosed that petitioner failed to pay Documentary Stamp Tax (DST) on its advances to related parties.
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> 9. Hence, for failure of petitioner to pay DST, it was assessed pursuant to Section 179 of the NIRC of 1997, in relation to Revenue Memorandum Circular (RMC) No. 48-2011 circularizing the En Banc Decision of the Supreme Court on the imposition of DST on inter-office memo on advances from affiliates and RMC No. 46-2014 clarifying the taxability of financial lease for purposes of DST, which provides:

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[13] Par. 1.05, Petition for Review, docket, p. 12; Q & A No. 26", docket, p. 220.
[14] Docket, pp. 179-190.

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10. Contrary to petitioner's contention, the basis of the deficiency DST assessment is Section 179 of the Tax Code which is the law on the imposition of DST on all debt instrument for the year under audit. The ruling of the Supreme Court in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* is an affirmation of respondent's position that intercompany loans and advances covered by mere office memo, instructional letters and/or cash and journal vouchers qualify as loan agreements that are subject to DST. Hence, there is no retroactive application of the decision in *Filinvest* in the instant case.

11. To emphasize, in the case of *Diageo Philippines, Inc. vs. Commissioner of Internal Revenue*, the Honorable Court En Banc ruled citing the decision of the Honorable Supreme Court in the case of *Accenture vs. Commissioner of Internal Revenue*, to wit:

> 'In refuting the application of *Aichi* Case in the instant petition, **petitioner argues that the rule enunciated in the *Aichi* Case should not be applied retroactively as its vested rights would be unduly impaired. Petitioner asseverates that at the time it filed the instant Petition for Review, the controlling jurisprudence insofar as the prescriptive period for filing a judicial claim for refund under *Section 112(A) of the NIRC of 1997, as amended,* was that both the administrative and judicial claims for input VAT refund must** be filed within two years reckoned from the filing of the VAT return citing ***Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal* Revenue** (the '*Atlas* Case').
>
> Petitioner's argument is misplaced.
>
> **It is axiomatic that when the Supreme Court decides a case, it does not amount to a passage of a new law but merely interprets a pre-existing one, and such judicial interpretation of a statute**

> **<u>constitutes part of that law as of the date of its original passage. It merely casts light upon the contemporaneous legislative intent of that law.</u>**
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> In the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*, the Supreme Court elucidated the foregoing principle in this wise:
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>> 'Moreover, even though Accenture's Petition was filed before *Burmeister* was promulgated, the pronouncements made in that case may be applied to the present once without violating the rule against retroactive application. **<u>When this Court decides a case, it does not pass a new law, but merely interprets pre-existing one.</u>** When this Court interpreted Section 102(b) of the 1977 Tax Code in *Burmeister,* this interpretation became part of the law from the moment it became effective. **<u>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.</u>**'
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> Thus, contrary to petitioner's assertion, the Supreme Court's interpretation of *Section 112(C) of the NIRC of 1997, as amended,* in **<u>the *Aichi* Case may be applied to the instant case without violating the rule against retroactive application as such interpretation constitutes part of the law as of the date of its original passage.</u>** (Emphasis and underscoring supplied)

12. As extensively discussed above, petitioner's contention on the application of the non-retroactivity doctrine in the instant case does not hold water.

13. Petitioner also argued that there should be no DST imposable against its advances to related parties since there was no debt instrument identified by respondent in the conduct of the audit. Respondent differs. The audit findings for deficiency DST against petitioner were based on evaluation of petitioner's documents and records.

14. Further, in the alleged Reply to the Preliminary Assessment Notice (PAN) petitioner admitted the existence of cash vouchers and board resolutions evidencing the such *[sic]* advances to related parties. Page 18 of said Reply stated, viz:

> 'The intent of the parties, that the related parties has no obligation to repay the amount received, is clearly manifested by the absence of a loan agreement, promissory notes, debit and credit memos nor by inter-company loan memos **but by mere board resolutions and cash vouchers issued by the parent company (lender) which are acknowledged by the related parties (borrower). As such, the said advances are not subject to DST. Such board resolutions and cash vouchers of the lender acknowledged by the borrower are not in the nature of promissory note subject to DST under Section 180 of the Tax Code of 1997.**' (Emphasis ours)

15. Such reply was duly signed by petitioner through its AVP & Finance Manager Eileen P. Ratilla. Petitioner admitted the existence of the board resolutions and **cash vouchers**, which were proper subject of DST. To put emphasis the Honorable Supreme Court En Banc ruled in *Commissioner of Internal Revenue* vs. *Filinvest Development Corporation*, viz:

> Viewed in the light of the foregoing considerations, we find that both the CTA and the CA erred in invalidating the assessments issued by the CIR for deficiency documentary stamp tax due on the **instructional letters as well as the journal and cash vouchers evidencing the advances** FDC extended to

its affiliates in 1996 and 1997. (Emphasis and underscoring ours)

16. Based on the foregoing decision, it is not a prerequisite that there exists a formal debt instrument in order for the loan agreement to be subject to Documentary Stamp Tax. A mere journal or cash voucher evidencing such advances are sufficient for such imposition.

17. Therefore, the imposition of Documentary Stamp Tax on Advances has legal, jurisprudential and factual bases.

18. Petitioner also argued that respondent' *[sic]* right to assess petitioner for deficiency DST has already prescribed.

19. Respondent differs. Petitioner executed several waivers in relation to this audit assessment extending the period to assess until 30 June 2015. Hence, the respondent's right to assess petitioner has not yet prescribed.

20. Thus, petitioner's payment is considered as full settlement of the basic deficiency tax including the surcharge, interest and penalties thereon pursuant to the Tax Code, notwithstanding that the said payment was made 'under protest'.

21. It is thus clear from the foregoing that the Honorable Court has no jurisdiction to act on the instant petition for review. The amount petitioner for *[sic]* deficiency DST was not illegally nor erroneously collected by respondent. Hence, the said amount cannot be the proper subject of a claim for refund.

22. The claimant has the burden of proof to establish the factual basis of his claim for tax credit or refund. After all tax refunds, like tax exemptions, are construed strictly against the taxpayer **(Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332, both cited in Benguet Corporation vs. Commissioner**

of Internal Revenue, CTA Case No. 5392 promulgated October 30, 1998).

23. Partaking the nature of exemptions, claims for refund are strictly construed against the claimant and cannot be allowed unless granted in the most explicit and categorical language **(Sps. Aguilar vs. Commissioner of Internal Revenue, et al., CA G.R.SP No. 16432, March 30, 1999)**. Being in the nature of tax exemptions, these claims are regarded as in derogation of sovereign authority and to be construed strictissimi juris against the claimant and liberally in favor of the taxing authority **(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Manufacturing Corporation, 204 SCRA 377)**.

24. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)** and such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211)**."

As agreed upon by both counsels during the Pre-trial Conference held on February 16, 2017, the parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters[15] on March 7, 2017. Thereafter, a Pre-Trial Order[16] was issued on May 15, 2017 and pre-trial was deemed terminated.

During trial, petitioner presented Eileen P. Ratilla[17], petitioner's Assistant Vice-President and Finance Manager, and Rogelio G. Lui[18], petitioner's Tax Adviser – Group Tax Services, as its witnesses.

On September 13, 2017, petitioner filed its Formal Offer of Evidence (with Prayer for Marking and Re-marking of Certain Exhibits)[19], consisting of Exhibits "P-1" to "P-9", inclusive of submarkings.

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[15] Docket, pp. 431-437.
[16] Docket, pp. 451-459.
[17] Exhibit "P-8", docket, pp. 212-223; Minutes of the Hearing dated June 8, 2017, docket, pp. 460-461.
[18] Exhibit "P-9", docket, pp. 370-375; Order dated August 29, 2017, docket, pp. 466-467.
[19] Docket, pp. 471-487.

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On the other hand, respondent filed a Manifestation with Motion to Admit Attached Formal Offer of Evidence[20] on September 25, 2017, formally offering Exhibits "R-1" and "R-1-A".

In the Resolution[21] dated March 23, 2018, the Court admitted respondent's attached Formal Offer of Evidence[22] and likewise admitted all of petitioner's and respondent's formally offered exhibits.

The Memorandum for the Petitioner[23] was filed on May 8, 2018, while respondent filed his Memorandum[24] on May 18, 2018. Hence, the Court declared the case deemed submitted for decision on May 23, 2018.[25]

Hence, this decision.

THE ISSUES

The stipulated issues for resolution of the Court are the following:[26]

1. Whether petitioner is entitled to a refund of the amount of ₱30,424,259.59 that it paid to the BIR for alleged deficiency DST imposed on the advances by petitioner to related parties on the basis of Notes appearing in the Audited Financial Statements of the latter and its subsidiaries/affiliates;

2. Whether the Supreme Court decision in the case of *Filinvest* and RMC No. 48-2011 may be applied retroactively against petitioner;

3. Whether the right of the government to assess petitioner for deficiency DST has already prescribed;

4. Assuming that petitioner is liable to pay the alleged deficiency DST, whether interest and penalty may be imposed on the basic tax; and

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[20] Docket, pp. 529-531.
[21] Docket, pp. 580-582.
[22] Docket, pp. 532-534.
[23] Docket, pp. 595-644.
[24] Docket, pp. 648-658.
[25] Docket, p. 661.
[26] Pars. 3.00 to 3.00.e, JSFDIO, docket, pp. 433-434.

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5. Whether the Court has jurisdiction over the instant petition.

Petitioner's arguments:

Petitioner avers 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 petitioner without violating the principle on non-retroactivity of laws and rulings.

Allegedly, the subject advances were extended to its related parties in 2009, and at that time, prevailing court decisions and BIR issuances were to the effect that mere inter-office memos covering inter-company advances were not loan agreements subject to DST. To support its argument, petitioner cited (1) the decision of the Court of Appeals in the case of *Commissioner of Internal Revenue vs. APC Group, Inc.*[27], and the Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185; (2) the decision of the Court of Tax Appeals in the case of *Commissioner of Internal Revenue vs. Belle Corporation*[28]; and (3) BIR Ruling [DA (C-035) 127-08] dated August 8, 2008. Petitioner contends that when a doctrine is overruled by the Supreme Court 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 in good faith thereof, citing the cases of *Co vs. Court of Appeals, People vs. Jabinal*[29] and *Land Bank of the Philippines vs. Suntay*[30].

Even assuming that the *Filinvest* case may be applied retroactively, the same will not allegedly cover the subject advances, as the documents subject of the *Filinvest* case were instructional letters and journal and cash vouchers evidencing the advances which it extended to its affiliates, while in the case at bar, the BIR merely relied on Notes to the 2009 Audited Financial Statements of petitioner and its subsidiaries/affiliates. Petitioner submits that under Section 179 of the Tax Code, DST may not be imposed on advances in the absence of a debt instrument evidencing such advances.

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[27] CA-G.R. SP No. 69869, November 29, 2002.
[28] CTA EB Nos. 147 and 155 (CTA Case No. 6156), October 13, 2006.
[29] G.R. No. L-30061, February 27, 1974.
[30] G.R. No. 188376, December 14, 2011.

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Petitioner cites the case of *Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.*[31] and avers that for DST to attach, two (2) basic requisites must exist: (1) there must be a transaction or privilege which is exercised by persons; and (2) that this privilege is evidenced through the execution of specific instruments.

According to petitioner, while there may have been transactions in the form of advances in the instant case, the said transactions were not manifested through the execution of debt instruments which are allegedly required and defined in Section 179 of the Tax Code. Furthermore, petitioner avers that the advances subject of this case were non-interest bearing and had no provisions for definite payment terms and obligation to repay.

In addition, petitioner contends that the right of the government to assess deficiency DST on petitioner has already prescribed. Petitioner explains that in the computation of interest, the BIR indicated the start of the running of interest on January 6, 2009, and hence, it presumed that the PAN is reckoned by the BIR from the said date. Petitioner thus concluded that the BIR only had until January 6, 2012 within which to issue an assessment. And since the PAN was only issued on May 12, 2014, petitioner argues that it is beyond the three-year period prescribed by law for the assessment and collection of taxes; hence, the deficiency DST is barred by prescription.

Lastly, assuming that it is liable for DST, petitioner insists that it is liable only for the basic tax of ₱14,507,465.00, without the imposition of interest and penalty, since it relied on existing court decisions and BIR Rulings at the time of the extension of the advances.

Respondent's arguments:

Respondent submits that the assessment against petitioner for deficiency DST from advances to related parties was neither illegal nor erroneous. Respondent avers that there is no retroactive application of the *Filinvest* case decision because the said ruling is an affirmation of respondent's position that intercompany loans and advances covered by mere office memo, instructional letters and/or cash and journal vouchers qualify as loan agreements that are subject to DST.

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[31] G.R. No. 119446, January 21, 1999.

NO

Moreover, respondent contends that petitioner has admitted, in its Reply to the PAN, the existence of cash vouchers and board resolutions evidencing such advances to related parties, and that said Reply was duly signed by its Assistant Vice-President and Finance Manager, Eileen P. Ratilla.

Based on the *Filinvest* case, a formal debt instrument is allegedly not a prerequisite for the loan agreement to be subject to DST, and that a mere journal or cash voucher evidencing such advances are sufficient for such imposition.

Respondent also argues that its right to assess deficiency DST has not prescribed, because petitioner executed several waivers in relation to the audit assessment extending the period to assess until June 30, 2015.

Lastly, respondent asserts that petitioner's payment is considered as full settlement of the basic deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made "under protest".

THE COURT'S RULING

The Petition for Review was timely filed.

The Court shall first determine petitioner's compliance with the procedures governing the filing of claims for refund under Sections 204 and 229 of the National Internal Revenue Code of 1997, as amended, which state:

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

"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)*

Based on the provisions above, both the administrative and the judicial claims must be filed within two (2) years from the date of payment of the tax. Section 204(C) applies to administrative claims filed with the BIR; while Section 229 refers to judicial actions for the recovery of taxes erroneously or illegally collected and filed with the Court.[32]

A perusal of the records reveal that petitioner paid the alleged deficiency DST on June 24, 2014.[33] Counting from the said date, it had until June 23, 2016 within which to file its claim for refund administratively and judicially.

Petitioner's administrative claim for refund was filed on April 20, 2016[34], while the instant Petition for Review was filed on June

[32] *PMFTC, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8691, July 27, 2015.
[33] Exhibits "P-5" to "P-5-b", docket, pp. 517-520.
[34] Exhibits "P-6" to "P-6-b", docket, pp. 271-289.

22, 2016[35]. Hence, both the administrative and the judicial claims for refund were timely filed.

The decision in the *Filinvest* case can be given retroactive application.

The issue before this Court is not novel.

The Court has consistently ruled that 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 effect. This was the ruling of the Court of Tax Appeals *En Banc* in the case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[36], *viz.*:

> "The Court *En Banc* cannot subscribe to petitioner's view that the doctrine in *Co* should be applied in the present case. By the same token, the Court *En Banc* holds that the Court in Division correctly applied the rule that **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 effect**.
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> xxx xxx xxx
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> At any rate, the Court in Division correctly held in the Assailed Decision **that there is no previous doctrine that is overruled by the doctrine pronounced by the Supreme Court in *Filinvest***. The decisions of the Court of Appeals and of this Court *En Banc* cited by petitioner cannot be deemed to have enunciated a prior doctrine (allegedly prevailing at the time when the subject advances were extended) that was overruled by that of *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**. Judgments of the lower courts and other collegiate courts bind only the parties to specific cases, unlike decisions of the Supreme Court which are

[35] Docket, p. 10.
[36] CTA EB No. 1609 (CTA Case No. 8892), April 23, 2018.

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universal in their scope and application as well as mandatory in character. As aptly held by the Supreme Court in *Commissioner of Internal Revenue v. San Roque Power Corporation*, to wit:

> '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 petitioner take refuge under BIR Ruling [DA (C-035) 127-08] dated August 8, 2008. Such rulings are merely of persuasive character and cannot be considered as conclusive interpretation of the law. On this point, the ruling of the Supreme Court in *Philippine Bank of Communications v. Commissioner of Internal Revenue* is instructive:

> 'xxx 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 above ruling considering that it is not the entity which sought the same.

In *San Roque*, the Supreme Court also explained that pursuant to Section 4 of the 1997 NIRC, the Commissioner of Internal Revenue (CIR) has the exclusive and original jurisdiction to interpret tax laws. As such, taxpayers acting in good faith should not be made to suffer for adhering to ***general interpretative rules*** of the CIR interpreting tax laws, should such interpretation later turn out to be erroneous and be reversed by the CIR himself or the Supreme Court. As held by the Supreme Court:

xxx xxx xxx

As may be gleaned from the foregoing, the Supreme Court had ruled that taxpayers can validly rely on BIR Ruling No. DA-489-03 from the time of its issuance up to the time of its reversal given that the Supreme Court had found it to be a general interpretative rule covered by non-retroactivity rule under Section 246 of the 1997 NIRC.

In the present case, however, BIR Ruling [DA (C-035) 127-08] dated August 8, 2009 cannot, in any way, be considered as a general interpretative rule. On its face, it was clear that the said ruling was issued as a response to the specific query made by a particular taxpayer on behalf of its client.

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Viewed in the light of the foregoing considerations, the Court *En Banc* holds that **petitioner cannot validly claim that it had relied in good faith on the abovementioned decisions and ruling**." *(Emphasis supplied)*

There being no doctrine or jurisprudence being overruled, the interpretation of the Supreme Court in the *Filinvest* case on Section 180 (now Section 179) of the Tax Code constitutes part of the law as of the date it was originally passed.

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DST may be imposed on the advances based on a Note to the AFS.

In the same case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*[37], the Court of Tax Appeals *En Banc* quoted with approval the ruling of the CTA First Division that DST may be imposed on advances on the basis of a mere Note appearing in the Financial Statements, to wit:

> "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**. As a corollary, there is no basis in the assertion that a DST is literally a tax on a document. **Thus, even while the subject document was not shown or no debt instrument was identified by the BIR, DST may still be imposed, so long as the transactions are clearly established.**
>
> Moreover, it is noteworthy that Section 6 of Revenue Regulations No. 9-94, which has the force of law, provides for the imposition of DST where even no formal agreements or promissory notes are executed, to wit:
>
>> '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 documentary stamp tax of thirty centavos (P0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.
>>
>> **In cases where no formal agreements or promissory notes have been executed to cover credit facilities**, the documentary stamp tax shall be based on the amount of

[37] Supra, note 39.

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.' *(Emphasis supplied)*

In this case, while it may be true that respondent merely based the DST imposition on the information obtained from the Note to the audited financial statements of petitioner, the latter does not deny the existence of the subject transactions to which respondent imposed the DST; nor does petitioner deny that it is a party to the same transactions.

In fact, petitioner impliedly admitted at the administrative level, through its witness, Mrs. Eileen P. Ratilla, the existence of the subject transactions in its Letter/Protest dated February 8, 2012, since it merely argued therein that the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation* cannot be given retroactive application; and that in invoking a 2011 issuance on a 2009 assessment against the taxpayer, the BIR contravened Section 246 of the NIRC that mandates the non-retroactivity of rulings if they are prejudicial to the taxpayer. Nothing more. This, despite the fact that said witness *'was already familiar with the nature of the transactions involved, with the assessments, and with the related documents involved in the administrative investigation by the BIR,'* and has *'possession of the said documents.'* **Simply put, if petitioner was convinced that the said transactions never transpired, it would logically deny their existence; but it did not. Moreover, it is equally noteworthy that, in effect, petitioner itself declared or admitted the existence of the taxable transactions by declaring it in its financial statements. Thus, the inevitable conclusion is that the subject transactions really did happen.**

Correspondingly, **since it was clearly shown that said transactions exist, We find no reason not to agree with respondent in the imposition of the DST thereon on the basis of petitioner's financial statements and the Notes thereto. Otherwise, it would be relatively easy for any taxpayer to circumvent the law on DST by simply hiding the corresponding and/or supporting document or documents.**

> Furthermore, it is noted that while it is shown that the transactions exist, petitioner did not present the pertinent documents that brought about the reporting thereof in its financial statements and the Notes thereto. This presumption then comes to mind: *'That evidence willfully suppressed would be adverse if produced.' (Citations omitted)" (Emphasis supplied)*

This Court also finds that the issue raised in the *Philippine Home Assurance*[38] case is different. Petitioners therein contended that since premiums on the subject life and non-life insurance policies were not paid, the same are considered as never to have taken effect, and therefore, no DST were due thereon. The Supreme Court ruled that DST must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable. The fact that the policies have not become effective for non-payment of premiums cannot affect petitioners' liability for payment of DST. Clearly, the ruling in *Philippine Home Assurance* cannot be applied to the instant case.

Moreover, as pointed out by respondent, petitioner has admitted in its Reply to the PAN that these advances are evidenced by board resolutions and cash vouchers issued by the parent company which are acknowledged by the related parties. Respondent cannot be prejudiced by petitioner's failure or refusal to present these documents to respondent. The pertinent portion is quoted below:

> "The intent of the parties, that the related parties has no obligation to repay the amount received, is clearly manifested by the absence of a loan agreement, promissory notes, debit and credit memos nor by inter-company loan memos **but my *[sic]* mere board resolutions and cash vouchers issued by the parent company (lender) which are acknowledged by the related parties (borrower)**. As such, the said advances are not subject to DST. Such board resolutions and cash vouchers of the lender acknowledged by the borrower are not in the nature of promissory note subject to DST under Section 180 of the Tax Code of 1997." *(Emphasis supplied)*

Respondent's right to assess has not prescribed.

Section 203 of the NIRC of 1997, as amended, provides for the

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[38] G.R. No. 119446, January 21, 1999.

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prescriptive period for the assessment and collection of internal revenue taxes, to wit:

> "SEC. 203. *Period of Limitation Upon Assessment and Collection.* – Except as provided in Section 222, **internal revenue taxes shall be assessed within three (3) years after the last day prescribed by law for the filing of the return**, and no proceeding in court without assessment for the collection of such taxes shall be begun after the expiration of such period: *Provided,* That in a case where a return is filed beyond the period prescribed by law, the three (3)-year period shall be counted from the day the return was filed. For purposes of this Section, a return filed before the last day prescribed by law for the filing thereof shall be considered as filed on such last day." *(Emphasis supplied)*

On the other hand, Section 200 of the NIRC of 1997, as amended, provides for the filing and payment of DST, as follows:

> "SEC. 200. *Payment of Documentary Stamp Tax.* –
>
> xxx xxx xxx
>
> (B) *Time for Filing and Payment of the Tax.* – Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed."

Section 222(a) and (b) of the NIRC of 1997, as amended, provides for the exceptions to the three-year prescriptive period mentioned above. The provision reads:

> "SEC. 222. *Exceptions as to Period of Limitation of Assessment and Collection of Taxes.* –
>
> (a) **In the case of** a false or fraudulent return with intent to evade tax or of **failure to file a return, the tax may be assessed**, or a proceeding in court for the collection of such tax may be filed without assessment, **at any time within ten (10) years after the discovery of the** falsity, fraud or **omission**: *Provided,* That in a fraud assessment which has become final and executory, the

fact of fraud shall be judicially taken cognizance of in the civil or criminal action for the collection thereof.

(b) **If before the expiration of the time prescribed in Section 203 for the assessment of the tax, both the Commissioner and the taxpayer have agreed in writing to its assessment after such time, the tax may be assessed within the period agreed upon.** The period so agreed upon may be extended by subsequent written agreement made before the expiration of the period previously agreed upon." *(Emphasis supplied)*

Based on the afore-quoted provision, the three-year prescriptive period may not apply in cases when, among others, (1) the taxpayer failed to file a return, or (2) both the CIR and the taxpayer have agreed in writing, before the expiration of the time prescribed in Section 203, to extend the period of assessment.

Petitioner correctly pointed out that no waivers were introduced in evidence by respondent in this case. However, its contention that the assessment has already prescribed is devoid of merit.

Section 222 of the NIRC of 1997, as amended, states that in case of failure to file a return, the tax may be assessed at any time within ten (10) years after the discovery of the omission.

In the case at bar, since the record is bereft of evidence that petitioner filed a DST return in the subject period or for the subject transactions, the ten-year prescriptive period applies. Considering that the parties failed to adduce evidence on when the omission was discovered, the Court finds that the earliest that respondent could have discovered the omission is on May 14, 2010[39], the date indicated on the Letter of Authority. Counting from said date, respondent has until May 13, 2020 to issue an assessment on petitioner's deficiency DST. Clearly, the assessment has not yet prescribed when respondent issued the assessment.

Petitioner is not liable to pay interest and compromise penalty.

In the case of *Commissioner of Internal Revenue v. San*

[39] Stated by petitioner in Exhibit "R-1", docket, p. 535.

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Miguel Corporation[40], the Court of Tax Appeals *En Banc* considered San Miguel Corporation's good faith in deciding to delete the imposition of interest, surcharge and penalties, to wit:

> "After careful review of the case records and the arguments presented by the parties, the Court *En Banc* agrees with the Court in Division in ruling that SMC is not liable for surcharge, interest, and compromise penalty and thus, the same should be refunded. The Court in Division correctly applied the rule 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'. By law and jurisprudence, mistake upon a doubtful or difficult question of law may properly be the basis of good faith. Accordingly, while reliance on BIR Ruling DA(C-035)127-08 dated August 8, 2008, which states that intercompany loans and advances covered by inter-office memoranda are not subject to DST, may not be invoked to extricate SMC from its DST liability, it may nevertheless be used as basis of good faith on the part of SMC sufficient to negate the latter's liability for surcharge and interest. Remarkably, the issue of whether instructional letters as well as journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreement subject to DST may be considered as a doubtful or difficult question of law given that it required no less than the Supreme Court to definitively settle the same in *Commissioner of Internal Revenue v. Filinvest Development Corporation.*
>
> As regards the CIR's contention that this Court exceeded its jurisdiction when it ordered the cancellation of the interest and surcharge due since it effectively abated SMC's tax liability in essence and that under Section 204 of the 1997 NIRC, the CIR has the sole discretion to grant or deny an application for abatement, the Court *En Banc* finds the same to be patently erroneous.
>
> In cancelling the surcharge and interest imposed, this Court merely exercised its jurisdiction under Section 7(a)(1) and 7(a)(2) of Republic Act (RA) No. 1125, as amended, which provides:

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[40] CTA EB No. 1724 and 1726, *etseq.* (CTA Case No. 9007), October 11, 2018.

> 'Sec. 7. *Jurisdiction.* – The CTA shall exercise:
>
> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto,** or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
>
> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, **refunds of internal revenue taxes, fees or other charges, penalties in relation thereto**, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period for action, in which case the inaction shall be deemed a denial;' *(Emphasis and underscoring supplied)*

A *surcharge* is a civil penalty imposed once for late payment of a tax. The objective of its imposition is to hasten payment of taxes and to punish for evasion or neglect of duty. On the other hand, *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. Both the surcharge and interest are imposable upon failure of the taxpayer to pay the tax on the date fixed in the law for its payment.

Considering the above-quoted provisions vis-à-vis the nature of surcharge and interest, it is beyond doubt that this Court has jurisdiction to cancel the surcharge and interest imposed upon SMC.

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With respect to the compromise penalty, the Court *En Banc* agrees and adopts the Court in Division's ratiocination in the assailed Decision as follows:

> '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*, 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.' *(Citation omitted)*

The Court *En Banc* finds the above statements by the Court in Division as sound, accurate, and sufficient in addressing the particular matter raised by the CIR. There is no need to add to, much less modify or reverse the same."

Based on the above-cited case, and considering petitioner's good faith in relying on previous court decisions and BIR rulings and its payment of the deficiency DST albeit under protest, the deletion of the imposition of interest and compromise penalty in the instant case is also proper.

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE**

in favor of petitioner in the amount of **₱15,916,794.59**, representing the following:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	**AMOUNT**
Interest	₱ 15,866,794.59
Compromise penalty	50,000.00
TOTAL	**₱15,916,794.59**

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

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

CIELITO N. MINDARO-GRULLA
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
Chairperson, Special 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

SAN MIGUEL CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9374

Present:

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

Promulgated:

MAY __ 2019 1:30 pm

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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 esteemed colleague, the Honorable Associate Justice Erlinda P. Uy, in effectively declaring that San Miguel Corporation ("SMC") is liable to pay Documentary Stamp Tax (DST) on its intercompany advances for taxable year 2009 pursuant to the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*[1].

While in previous cases, I joined the majority's position on the retroactive application of the doctrine laid down in *Filinvest* that instructional letters and journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which Documentary Stamp Tax (DST) may be imposed, I am constrained to depart therefrom after re-visiting the basis of SMC in insisting that the doctrine laid down in *Filinvest* cannot be applied retroactively.

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

I submit that SMC correctly relied on the judicial interpretation prevailing in the year 2009 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.

To be specific, SMC relied on the following:

(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;

(ii) *Commissioner of Internal Revenue vs. Belle Corporation / Belle Corporation vs. Commissioner of Internal Revenue, CTA EB Nos. 147 and 155, October 13, 2006* wherein the Court of Tax Appeals ("CTA") ruled that the ruling in **BIR Ruling No. 116-98 dated July 30, 1998** that the intercompany advances made by Belle to its affiliates is not subject to DST is consistent with the provisions of the NIRC of 1997; and,

(iii) *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 Pic 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.

Clearly, the existing interpretation at the time of the transaction (year 2009) was that loans and advances to affiliates covered by 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 covered by inter-office memoranda.** Pronouncements of the CA and the CTA are at the very least persuasive.

Specifically, on the matter of the persuasive effect of the decisions of the CTA, 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[2] 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.
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> **Furthermore, as a matter of practice and principle, the Supreme Court will not set aside the conclusion reached by an 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**

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

prejudice (that is -- by applying the Supreme Court doctrine reversing the BIR ruling prospectively), 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 **GRANT** the Petition for Review filed by San Miguel Corporation and **ORDER the REFUND or ISSUANCE of TAX CREDIT CERTIFICATE** in favor of San Miguel Corporation, in the amount of ₱30,424,259.59, representing erroneously and/or illegally collected DST for taxable year 2009.

ROMAN G. DEL ROSARIO
Presiding Justice