

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL SECOND DIVISION

**LIBERTY TELECOMS
HOLDINGS, INC.,**

Petitioner,

CTA CASE NO. 9311

Members:

-versus-

**Castañeda, Jr., *Chairperson*,
Manahan, and,
Mindaro-Grulla,* JJ.**

**COMMISSIONER
INTERNAL REVENUE,**

OF

Promulgated:

Respondent.

OCT 18 2018

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DECISION

✓ 4:10 p.m.

CASTAÑEDA, JR., J:

THE CASE

This is a Petition for Review filed by Liberty Telecoms Holdings, Inc. to seek the refund or the issuance of tax credit certificate (TCC) in the amount of Twenty Million Three Hundred Twenty-Four Thousand Six Hundred Twenty-Five Pesos and 70/100 (P20,324,625.70), allegedly representing deficiency documentary stamp tax (DST) erroneously and illegally collected by the Bureau of Internal Revenue (BIR) for taxable year 2009.

THE FACTS

Petitioner Liberty Telecoms Holdings, Inc. is a corporation duly organized and existing under the laws of the Republic of the *Philippines*

*Designated as a special member under Rule V Section 3(c) of the Internal Rules of the Court of Tax Appeals.

Philippines. Its office address is at Technology Center Bldg., 2298 Pasong Tamo Extension, Makati City.¹

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

Letter of Authority (LOA) No. LOA-121-2010-00000016 dated May 14, 2010 was issued by respondent authorizing Revenue Officers (ROs) Arthur Ramos, Arnaldo Ancheta, Mariesol Girang, Dalisay Umlas, Ranilo Sy, and Group Supervisor (GS) Roberto Castro of the BIR LT Excise Audit Division 1 to examine petitioner's books of accounts and other accounting records from January 1, 2009 to December 31, 2009.²

On October 25, 2012, petitioner received from the BIR a Preliminary Assessment Notice (PAN) dated July 12, 2012, assessing the former for alleged deficiency DST and expanded withholding tax (EWT) in the aggregate amount of ₱17,729,439.97.³

On November 9, 2012, petitioner responded to the PAN, refuting the BIR's findings and requesting for reconsideration of the assessment.⁴

On October 23, 2013, petitioner received from the BIR a Formal Letter of Demand (FLD) and Assessment Notices dated October 21, 2013, assessing petitioner for alleged deficiency DST and EWT for calendar year 2009, in the aggregate amount of ₱19,913,497.55 including increments (as of September 30, 2013), broken down as follows: (a) ₱517,865.63, representing petitioner's alleged deficiency EWT; and (b) ₱19,395,631.92, representing petitioner's alleged *re* deficiency DST.⁵

¹ Par. 3.00, Petition for Review, docket, vol. I, p. 14.

² Exhibit "R-1", BIR Records, p. 3.

³ Par. 2.01, Joint Stipulation of Facts, Documents, Issues, and Other Matters (Joint Stipulation), docket, vol. II, p. 506; Exhibit "P-1", docket, vol. I, pp. 339-343.

⁴ Exhibit "P-2", docket, vol. I, pp. 344-350.

⁵ Par. 2.02, Joint Stipulation, docket, vol. II, pp. 506-507; Exhibit "R-12", BIR Records, pp. 166-160.

As regards the deficiency DST assessment, the same was computed as follows:

	Advances to subsidiaries	Advances from related parties	Total
End Balance 2009	₱ 4,507,928,679.00	₱ 459,746,532.00	₱ 4,967,675,211.00
End Balance 2008	2,807,991,529.00	222,068,206.00	3,030,059,735.00
Additions in 2009	1,699,937,150.00	237,678,326.00	1,937,615,476.00
Basic DST rate: ₱1 per ₱200 & fraction	8,499,685.75	1,188,391.63	9,688,077.38
Add: 25% surcharge	2,124,921.44	297,097.91	2,422,019.35
Interest from 1-6-2010 to 9-30-2013 (74.69%)	6,347,985.72	887,549.47	7,235,535.20
Compromise penalty			50,000.00
Total amount due	₱ 16,972,592.91	₱ 2,373,039.01	₱ 19,395,631.92

Subsequently, on November 22, 2013, petitioner filed with the BIR its protest to the FLD.⁶

On March 26, 2014, petitioner paid under protest the amount of ₱20,324,625.70 representing the deficiency DST, interest and penalties.⁷

Thereafter, on March 16, 2016, petitioner filed an application for refund or issuance of TCC for the DST paid under protest for taxable year 2009.⁸

On April 21, 2016, petitioner received respondent's response to its application for refund. In the said letter, respondent denied petitioner's request for refund, and informed petitioner that he considers the payment as full settlement of the deficiency tax including the surcharge, interest and penalties thereon, notwithstanding that the said payment was made "under protest".⁹

Hence, petitioner filed a Petition for Review¹⁰ on March 22, 2016. Subsequently, on May 20, 2016, petitioner filed a Motion for Leave in Filing, and for Admission of, Attached Supplemental Petition for Review¹¹; which the Court granted on June 27, 2016¹². Hence, *gr*

⁶ Exhibit "P-6", docket, vol. I, pp. 393-402.
⁷ Exhibits "P-7", "P-7-a", and "P-8" docket, vol. I, pp. 414-417.
⁸ Exhibits "P-9", "P-9-a", and "P-9-b", docket, vol. I, pp. 418-432.
⁹ Exhibit "P-11", docket, vol. I, p. 459.
¹⁰ Docket, vol. I, pp. 10-50.
¹¹ Docket, vol. I, pp. 142-145.
¹² Resolution dated June 27, 2016, docket, vol. I, pp. 283-285.

petitioner's Supplemental Petition for Review¹³ was admitted on even date.

On July 21, 2016, respondent filed his Answer Re: Original and Supplemental Petition for Review¹⁴ and interposed the following special and affirmative defenses:

"8. On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent alleges the following as her defense that:

9. Basic as a hornbook principle is that, taxes are the lifeblood of the government and should be collected without unnecessary hindrance. It is upon taxation that the Government chiefly relies to obtain the means to carry on its operations and it is of the utmost importance that the means adopted to enforce the collection of taxes levied should be summary and interfered with as little as possible.

***THE SUPREME COURT MERELY
INTERPRETED AND APPLIED
SECTION 179 OF THE
NATIONAL INTERNAL
REVENUE CODE OF 1997, AS
AMENDED***

10. Petitioner alleged in its Petition for Review that the application of the Filinvest case must be limited to transactions after the effectivity of the said decision. Petitioner further alleged that it relied in good faith in the rulings of the BIR and the decisions of the CTA and CA.

11. Such arguments of petitioner lacks factual and legal basis. In the instant case, the Court merely interpreted and applied Section 179 of the National Internal Revenue Code (NIRC) of 1997 which took effect on January 1, 1998. The Filinvest case merely delineated and clarified transactions that must be subjected to 

¹³ Docket, vol. I, pp. 146-156.

¹⁴ Docket, vol. I, pp. 294-309.

documentary stamp tax. **Even without the Filinvest case, Section 179 is clear and unambiguous. A straightforward application of Section 179 will produce the same result.**

12. As ruled by the Honorable Supreme Court in *COMMISSIONER OF INTERNAL REVENUE vs. FILINVEST DEVELOPMENT CORPORATION, G.R. Nos. 163653 and 167689, July 19, 2011:*

xxx xxx xxx

13. In *Diageo Philippines, Inc. vs. CIR, CTA EB Case No. 818 (CTA Case No. 7815), March 5, 2013*, the Honorable CTA En Banc ruled, to wit:

xxx xxx xxx

14. In the recent case of *Accenture, Inc. v. Commissioner of Internal Revenue*, the Supreme Court elucidated the foregoing principle in this wise:

xxx xxx xxx

15. The ruling of the Honorable Supreme Court in the *Filinvest* case is merely an affirmation of respondent’s position that intercompany loans and advances covered by mere office memo, instructional letter and/or cash and journal vouchers qualify as loan agreements that are subject to DST.

16. 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 (2009).

17. Republic Act (RA) No. 9243 provides that: *Je*

'SECTION 5. Section 180 of the National Internal Revenue Code of 1997, as amended, is hereby renumbered as Section 179 and further amended to read as follows:

'SEC. 179. *Stamp Tax on All Debt Instruments.*
– On every original issue of debt instruments, there shall be collected a documentary stamp tax on One peso (P1.00) on each Two hundred pesos (P200), or fractional part thereof, of the issue price of any such debt instruments: Provided, That for such debt instruments with terms of less than one (1) year, the documentary stamp tax to be collected shall be of a proportional amount in accordance with the ratio of its term in number of days to three hundred sixty-five (365) days: *Provided, further,* That only one documentary stamp tax shall be imposed on either loan agreement, or promissory notes issued to secure such loan.

For purposes of this section, the term debt instrument shall mean instruments representing borrowing and lending transactions including but not limited to debentures, certificates of indebtedness, due bills, bonds, loan agreements, including those signed abroad wherein the object of contract is located or used in the Philippines, instruments and securities issued by the government of any of its instrumentalities, deposit substitute debt instruments, certificates or other evidences of deposits that are either drawing interest significantly higher than the regular savings deposit taking into consideration the size of the deposit and the risks involved or drawing interest and having a specific maturity date, orders for payment of any sum of money otherwise than at sight or on demand, promissory notes, whether negotiable or non-negotiable, except bank notes issued for circulation.' *gr*

18. Additionally, petitioner is arguing that respondent issued Rulings delving on the same DST assessment which allegedly contradict respondent's position in this case.

19. However, petitioner's reliance on the Rulings cited is manifestly misplaced.

20. It must be stressed that the BIR Rulings cited by petitioner do not apply in the instant case since these are based only on a set of facts as represented by a taxpayer and made applicable only to the facts and circumstances thereto.

21. Besides, the cited BIR Rulings can only be utilized by the taxpayer who applied for the same. Since petitioner is not the one who applied for the BIR Rulings, then it cannot invoke the applicability of such BIR rulings.

22. Again, in the *Filinvest case*, the Honorable Supreme Court ruled that:

xxx

xxx

xxx

23. In view of the foregoing discussions, the assessment of DST against petitioner has bases in fact and law.

**THE WAIVERS OF THE DEFENSE
OF PRESCRIPTION UNDER THE
STATUTE OF LIMITATIONS OF
THE TAX CODE WHICH WAS
DULY ACCEPTED AND
APPROVED BY RESPONDENT
AND THEREAFTER RECEIVED
BY PETITIONER ARE VALID
AND BINDING BETWEEN THEM.
HENCE, THE WAIVERS VALIDLY** *je*

**EXTENDED THE PERIOD TO
ASSESS PETITIONER.**

24. Section 222(b) of the National Internal Revenue Code of 1997, as amended states that the three-year prescriptive period may be extended through execution of a waiver of defense of prescription between the taxpayer and the Commissioner of Internal Revenue (CIR).

25. Petitioner executed four Waivers of the Defense of Prescription under the Statute of Limitations of the National Internal Revenue Code covering the proposed deficiency documentary stamp tax and expanded withholding tax liabilities for taxable year 2009.

1. The first waiver was executed on December 15, 2011. It extended the period to assess until June 15, 2012.
2. The second waiver was executed on May 31, 2012. It extended the period to assess until December 15, 2012. The second waiver was executed within the period to assess as stated in the first waiver.
3. The third waiver was executed on November 23, 2012. It extended the period to assess until June 15, 2013. The third waiver was executed within the period to assess as stated in the second waiver.
4. Finally, petitioner executed the fourth waiver on April 24, 2013 and it extended the period of assessment until December 15, 2013. The fourth waiver was executed within the period to assess as stated in the third waiver.

26. Petitioner alleged that respondent had a period of three years from January 5, 2010 or until January 5, 

2013 within which to issue FLD/Assessment Notice. Accordingly, the Formal Letter of Demand/Assessment Notice it received on October 23, 2013 was beyond the three-year period prescribed by law.

27. The allegation of petitioner does not hold water. Petitioner executed four waivers of the defense of prescription under the statute of limitations and respondent had until December 15, 2013 within which to issue the assessment. As alleged by petitioner it received the FLD and Assessment Notice on October 23, 2013, well within the period as stated in the fourth waiver.

28. Respondent humbly posits that petitioner's voluntary act of signing the waivers is tantamount to an assent or consent to extend the period of assessment.

29. Viewed in the light of the foregoing considerations the four waivers were valid and binding between petitioner and respondent.

**THE ASSESSMENT FOR
DEFICIENCY DOCUMENTARY
STAMP TAX AND EXPANDED
WITHHOLDING TAX ARE VALID
AND MADE IN ACCORDANCE
WITH SECTION 179 OF THE
NIRC OF 1997, AND AS SUCH
PETITIONER IS NOT ENTITLED
TO THE CLAIMED REFUND.**

30. The real issue in the instant case is the validity of the assessment for deficiency documentary stamp tax and expanded withholding tax.

**31. Documentary Stamp Tax (DST)
(Php19,395,631.92)**

Petitioner made cash advances to its wholly-owned subsidiaries *Liberty Broadcasting Network, Inc. and* *je*

Skyphone Logistics, Inc., amounting to P1,698,783,611.00 and P1,153,539.00, respectively or an aggregate amount of P1,699,937,150.00. Petitioner also received advances from its subsidiaries, *Qtel West Bay* and *Wi-tribe Asia* to finance working capital and capital expenditures, amounting to P237,678,326.00. Both transactions were subjected to DST under Section 179 of the National Internal Revenue Code, as amended (Tax Code), at the rate of P1.00 on each P200.00, or fractional part thereof, of the issue price/consideration. As a result the aforesaid, petitioner was assessed with a basic DST due of P9,688,078.00.

This issue was reiterated by the Supreme Court, thru En Banc decision in the case of Commissioner of Internal Revenue vs. Filinvest Development Corporation, (G.R. No. 167689 and G.R. No. 163653 dated 19, July 2011) which states:

'Applying the aforesaid provision to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreement upon which documentary stamp taxes may be imposed'

**32. Expanded Withholding Tax (EWT)
(Php517,865.63)**

Income payments such as Rental expense, Professional fees, membership/registration fees and Miscellaneous expenses claimed for Cost and deductions were not properly subjected to withholding tax (Expanded), as provided under Section 57(B) of the Tax Code, implemented by Revenue Regulations No. 02-98 as amended, hence the deficiency basic EWT assessment of P287,748.91.

33. Details of tax computation is shown below: *je*

I. EXPANDED WITHHOLDING TAX

EWT PER Returns	9,300.00
Add: (Deducts)	
EWT on expenses that were subjected thereto	287,748.91
EWT per investigation	297,048.91
Less: Payment	9,300.00
Deficiency EWT	287,748.91
Add: Interest (01-11-2010 to 09-30-13)	214,116.72
Compromise Penalty	16,000.00
Amount still due	517,865.63

II. DOCUMENTARY STAMP TAX – Advances to/from related parties

Advances to subsidiaries	1,699,937,150.00
Advances from related parties	237,678,326.00
Total	1,937,615,476.00
Tax base	1,937,615,600.00
Divided by	200.00
Tax base	9,688,078.00
Multiply by rate	1.00
Documentary Stamp Tax due	9,688,078.00
Less: Payment made	
Deficiency DST	9,688,078.00
Add: 25% Surcharge-LATE PAYMENT	2,422,019.50
Add: Interest (01-06-2010 to 09-30-2013)	7,235,534.42
Compromise penalty	50,000.00
Amount still due	19,395,631.92
Total amount still due	19,913,497.55

Schedule I: Documentary Stamp Tax

Tax base transaction	Subsidiaries	Related Parties	Total
End Balance 2009	4,507,928,679.00	459,746,532.00	4,967,675,211.00
End Balance 2008	2,807,991,529.00	222,068,206.00	3,030,059,735.00
Additions in 2009	1,699,937,150.00	237,678,326.00	1,937,615,476.00
DST rate: P1 per 200 & fraction	8,499,685.75	1,188,391.63	9,688,077.38
Add: 25% Surcharge	2,124,921.44	297,097.91	2,422,019.35
Interest from 01-06-2010 to 09-30-2013 (74.69%)	6,347,985.72	887,549.47	7,235,535.20
Compromise penalty			50,000.00
Total amount due	16,972,592.91	2,373,039.01	19,395,631.92

Schedule II: Expanded withholding tax:

	Tax base	Due	Remitted	Balance
Rental 5%	15,025.00	751.25		751.25
Professional fees-10%	44,009.00	44,000.90	9,300.00	34,700.90
misc-2%	13,600.00	272.00		272.00
Membership/ registration-2%	12,601,238.00	252,024.76		252,025.76
Total Deficiency basic tax	12,673,872.00	29,048.91	9,300.00	287,748.91

34. All told, the burden of proof is on the taxpayer contesting the validity or correctness of an assessment to prove not only that the Commissioner of Internal Revenue is wrong, but also that the taxpayer is right. The 

presumption in favor of the correctness of tax assessment stands where evidence to the contrary is wanting.

35. Well-settled is the rule that tax assessments are entitled to the presumption of correctness and made in good faith. The taxpayer has the duty to prove otherwise. In the absence of proof of any irregularities in the performance of duties, an assessment duly made by a Bureau of Internal Revenue examiner, and approved by his superior officers will not be disturbed. All presumptions are in favor of the correctness of tax assessments (*Sy Po vs. Court of Tax Appeals*, 164 SCRA 524). Dereliction on the part of petitioner to satisfactorily overcome the presumption of regularity and correctness of the assessment will justify the judicial upholding of said assessment notices.

36. From the foregoing it can be gleaned that the assessment was made in accordance with the law, and rules and regulations. With the validity of the assessment being presumed, the denial of the claimed refund stands.

37. It bears stressing that in an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund."

Thereafter, a Notice of Pre-Trial Conference¹⁵ was issued by the Court on August 1, 2016, setting the case for pre-trial conference on September 15, 2016. Accordingly, Petitioner's Pre-Trial Brief¹⁶ and Respondent's Pre-Trial Brief¹⁷ were both filed on September 9, 2016. *je*

¹⁵ Docket, vol. I, pp. 312-313.

¹⁶ Docket, vol. I, pp. 463-471.

¹⁷ Docket, vol. I, pp. 472-476.

Pre-trial ensued. The parties filed their Joint Stipulation of Facts, Documents, Issues, and Other Matters¹⁸ on October 12, 2016. Thereafter, a Pre-Trial Order¹⁹ was issued on November 3, 2016 and the pre-trial was deemed terminated.

During trial, petitioner presented Ryan Vincent R. Baraan²⁰ and subsequently filed its Formal Offer of Evidence²¹ on December 15, 2016. In the Resolution²² dated February 10, 2017, the Court admitted all of petitioner's formally offered exhibits.

On the other hand, respondent presented Dalisay C. Umlas.²³ On April 3, 2017, respondent filed a Motion to Admit Attached Formal Offer of Evidence²⁴, which the Court granted on May 4, 2017²⁵. Hence, respondent's Formal Offer of Evidence²⁶ was admitted. On September 20, 2017, the Court likewise admitted all of respondent's evidence.²⁷

The case was deemed submitted for decision on December 12, 2017,²⁸ in view of the filing of the Memorandum for the Petitioner²⁹ on November 17, 2017 and of respondent's Memorandum³⁰ on November 27, 2017.

THE ISSUES

The parties submitted the following issues for the Court's disposition:³¹ *ju*

¹⁸ Docket, vol. II, pp. 505-513.

¹⁹ Docket, vol. II, pp. 520-524.

²⁰ Judicial Affidavit of Ryan Vincent R. Baraan in Lieu of Direct Testimony, docket, vol. I, pp. 321-338; Minutes of the Hearing dated November 23, 2016, docket, vol. II, p. 532.

²¹ Docket, vol. II, pp. 538-554.

²² Docket, vol. II, pp. 557-558.

²³ Exhibit "R-13", docket, vol. I, pp. 482-488; Minutes of the Hearing dated March 15, 2017, docket, vol. II, p. 561.

²⁴ Docket, vol. II, pp. 563-566.

²⁵ Resolution dated May 4, 2017, docket, vol. II, pp. 582-583.

²⁶ Docket, vol. II, pp. 568-572.

²⁷ Resolution dated September 20, 2017, docket, vol. II, pp. 592-593.

²⁸ Resolution dated December 12, 2017, docket, vol. II, p. 692

²⁹ Docket, vol. II, pp. 610-671.

³⁰ Docket, vol. II, pp. 675-690.

³¹ Par. 4.00, Joint Stipulation, docket, vol. II, pp. 507-508.

1. Whether petitioner is liable for the assessed deficiency DST in the amount ₱19,395,631.92, for taxable year 2009, including 25% surcharge and 20% deficiency and delinquency interest for late payment pursuant to Sections 248 and 249 of the 1997 NIRC;
2. Whether petitioner is entitled to a refund of the amount of ₱20,324,725.70 that it paid to the BIR under protest for alleged deficiency DST;
3. Whether the assessment was issued within the prescriptive period; and,
4. Whether the right of the Government to assess petitioner for deficiency DST has prescribed.

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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(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 *pc*

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 

³² *PMFTC, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8691, July 27, 2015.

A perusal of the records reveals that petitioner paid the alleged deficiency DST on March 26, 2014.³³ Counting from the said date, it had until March 25, 2016 within which to file its claim for refund administratively and judicially.

Petitioner's administrative claim for refund was filed on March 16, 2016³⁴; while the instant Petition for Review was filed on March 22, 2016.³⁵ Hence, both administrative and judicial claims for refund were timely filed.

The *Filinvest* decision merely reflected the contemporaneous legislative intent of the NIRC by upholding the DST assessment and did not overturn any established precedent and, thus, can be given retroactive application

On July 19, 2011, the Supreme Court rendered a decision in the case of *Commissioner of Internal Revenue vs. Filinvest Development Corporation*³⁶ (Filinvest) holding, among others, that instructional letters and journal and cash vouchers evidencing the advances which Filinvest Development Corporation extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.

On October 6, 2011, the BIR issued Revenue Memorandum Circular (RMC) No. 48-2011, circularizing the relevant excerpts from the *Filinvest* case on the imposition of DST on inter-office memo covering advances granted by an affiliate corporation.³⁷

Petitioner avers that the *Filinvest* case and RMC No. 48-2011 should not be given retroactive effect so as to cover the subject 

³³ Exhibits "P-7" and "P-7-a", docket, vol. I, pp. 414-415.

³⁴ Exhibits "P-9" and "P-9-b", docket, vol. I, pp. 418-432.

³⁵ Docket, vol. I, pp. 10-50.

³⁶ G.R. Nos. 163653 and 167689, July 19, 2011.

³⁷ Exhibit "P-10", docket, vol. I, pp. 456-458.

advances extended by petitioner to its subsidiaries and received by it from related parties in 2009.

Petitioner avers that at the time the subject advances were extended and received by petitioner, the prevailing rule was that mere inter-office memos covering inter-company advances were not loan agreements subject to DST under the Tax Code. It contends that it relied on the said rule which was embodied in the following court decisions and BIR Rulings:

1. *APC Group, Inc. vs. Commissioner of Internal Revenue*³⁸ which was affirmed by the Court of Appeals (CA) in *Commissioner of Internal Revenue vs. APC Group, Inc.*³⁹;
2. The Resolution of the Supreme Court dated May 17, 2004 in G.R. No. 162185 entitled *Commissioner of Internal Revenue vs. APC Group, Inc.*;
3. The CTA *En Banc* decision in *Commissioner of Internal Revenue vs. Belle Corporation*;⁴⁰ and
4. BIR Ruling Nos. [DA-320-07] dated May 31, 2007 and [DA (C-035) 127-08] dated August 8, 2008.

On the other hand, respondent argues that the Supreme Court merely interpreted and applied Section 179 of the Tax Code. Respondent avers that the *Filinvest* case merely delineated and clarified transactions that must be subjected to DST. Respondent avers that even without the *Filinvest* case, a straightforward application of Section 179 will produce the same result, since the provision is clear and unambiguous.

The Court finds petitioner's arguments unmeritorious.

In the similar case of *San Miguel Corporation vs. Commissioner of Internal Revenue*⁴¹ (San Miguel Corporation), this Court's Third *per*

³⁸ CTA Case No. 6155, March 11, 2002.

³⁹ CA-G.R. SP No. 69869, November 29, 2002.

⁴⁰ CTA EB Nos. 147 and 155, October 13, 2006, Docket, vol. I, pp. 371-389.

⁴¹ CTA Case No. 9007, April 19, 2017.

Division ruled that the interpretation of Section 180 of the Tax Code in the *Filinvest* case is deemed constituted as part of the Tax Code as of the date of its enactment, thus:

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

'Article 8 of the Civil Code provides that judicial decisions applying or interpreting the law shall form part of the legal system of the Philippines and shall have the force of law. The interpretation placed upon a law by a competent court establishes the contemporaneous legislative intent of the law. Thus, such interpretation constitutes a part of the law as of the date the statute is enacted. It is only when a prior ruling of the Court is overruled, and a different view adopted, that the new doctrine may have to be applied prospectively in favor of parties who have relied on the old doctrine and have acted in good faith.'

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

'In the *Filinvest* case, what was interpreted by the High Court is Section 180 of the NIRC, particularly on the scope of the word 'loan agreements' as being subject to DST, in *Je*

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

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

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

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

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

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

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

Petitioner avers that the Supreme Court's decision in *Co vs. Court of Appeals, et al.*⁴² (Co) should prevail over its decision in other cases where it pronounced that the 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. *ju*

⁴² G.R. No. 100776, October 28, 1993.

The Court is not convinced.

The *Co* case recognized that judicial decisions applying or interpreting the law form part of the legal system as of the date that law was originally passed, and it is only when a doctrine of the Court is overruled, and a different view adopted, that the new doctrine should be applied prospectively. The doctrine in the *Co* case was reiterated in the case of *Columbia Pictures, Inc., et al. vs. Court of Appeals, et al.*⁴³, where the Supreme Court ruled as follows:

"Article 4 of the Civil Code provides that '(l)aws shall have no retroactive effect, unless the contrary is provided. Correlatively, Article 8 of the same Code declares that '(j)udicial decisions applying the laws or the Constitution shall form part of the legal system of the Philippines.'

Jurisprudence, in our system of government, cannot be considered as an independent source of law; it cannot create law. While it is true that judicial decisions which apply or interpret the Constitution or the laws are part of the legal system of the Philippines, still they are not laws. Judicial decisions, though not laws, are nonetheless evidence of what the laws mean, and it is for this reason that they are part of the legal system of the Philippines. Judicial decisions of the Supreme Court assume the same authority as the statute itself.

Interpreting the aforequoted correlated provisions of the Civil Code and in light of the above disquisition, this Court emphatically declared in *Co vs. Court of Appeals, et al.* that the principle of prospectivity applies not only to original amendatory statutes and administrative rulings and circulars, but also, and properly so, to judicial decisions. Our holding in the earlier case of *People vs. Jubinal* echoes the rationale for this judicial declaration, viz. *je*

⁴³ G.R. No. 110318, August 28, 1996.

Decisions of this Court, although in themselves not laws, are nevertheless evidence of what the laws mean, and this is the reason why under Article 8 of the New Civil Code, 'Judicial decisions applying or interpreting the laws or the Constitution shall form part of the legal system.' The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that the law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. The settled rule supported by numerous authorities is a restatement of the legal maxim '*legis interpretatio legis vim obtinet*' - the interpretation placed upon the written law by a competent court has the force of law. x x x, but when a doctrine of this Court is overruled and a different view is adopted, the new doctrine should be applied prospectively, and should not apply to parties who had relied on the old doctrine and acted on the faith thereof. xxx. (Stress supplied).

This was forcefully reiterated in *Spouses Benzonan vs. Court of Appeals, et al.*, where the Court expounded:

x x x. But while our decisions form part of the law of the land, they are also subject to Article 4 of the Civil Code which provides that laws shall have no retroactive effect unless the contrary is provided. This is expressed in the familiar legal maximum *lex prospicit, non respicit*, the law looks forward not backward. The rationale against retroactivity is easy to perceive. The retroactive application of a law usually divests rights that have already become vested or impairs the obligations of contract and hence, is unconstitutional (*Francisco v. Certeza*, 3 SCRA 565 [1961]). The same consideration underlies our rulings giving only *Je*

prospective effect to decisions enunciating new doctrines. x x x.

The reasoning behind *Senarillos vs. Hermosisima* that judicial interpretation of a statute constitutes part of the law as of the date it was originally passed, since the Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect, is all too familiar. Such judicial doctrine does not amount to the passage of a new law but consists merely of a construction or interpretation of a pre-existing one, and that is precisely the situation obtaining in this case.

It is consequently clear that a judicial interpretation becomes a part of the law as of the date that law was originally passed, **subject only to the qualification that when a doctrine of this Court is overruled and a different view is adopted, and more so when there is a reversal thereof, the new doctrine should be applied prospectively and should not apply to parties who relied on the old doctrine and acted in good faith.** To hold otherwise would be to deprive the law of its quality of fairness and justice then, if there is no recognition of what had transpired prior to such adjudication." (*Emphasis supplied*)

However, there is no previously established doctrine or ruling that was overturned by *Filinvest* in the present case. The BIR Ruling and cases cited by petitioner do not constitute binding precedent.

First, 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 the Supreme Court, do not form part of the law of the land. Decisions of lower courts do not have any value as precedents.⁴⁴ 

⁴⁴ *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.

Moreover, a cursory reading of BIR Rulings [DA (C-035) 127-08] dated August 8, 2008 and [DA-320-07] dated May 31, 2007 reveals that these do not promulgate a general interpretative rule applicable to all taxpayers. In BIR Ruling [DA (C-035) 127-08] dated August 8, 2008, the taxpayer sought confirmation from the BIR on its opinion that inter-company loans and advances made to its clients which are covered by inter-office memoranda, are not subject to DST imposed under Section 179 of the Tax Code. On the other hand, in BIR Ruling [DA-320-07] dated May 31, 2007, the taxpayer sought confirmation of its opinion that inter-company advances documented by mere board resolution and inter-office memo are not subject to DST on loan agreements. Considering that both rulings are responses to specific queries made to the BIR, the Court finds that these are rulings applicable only to the particular taxpayers being responded to.

As to the Supreme Court minute resolution in *APC Group* case mentioned by petitioner, it has been ruled that minute resolutions only constitutes *res judicata* if it pertains to the same subject matter and the same issues concerning the same parties. If other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent.⁴⁵

In the similar case of *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*⁴⁶ (Brewery Properties), this Court's First Division ruled as follows:

"In *The Insular Life Assurance Co., Ltd., Employees Association-NATU, et al. vs. The Insular Life Assurance Co., Ltd., et al.*, the Supreme Court held:

'...the decisions referred to in article 8 of the Civil Code which reads: 'Judicial decisions applying or interpreting the laws of the Constitution shall form a part of the legal system of the Philippines,' **are only those enunciated by this Court of last resort.** We said in no uncertain terms in *Miranda, et al. vs. Imperial, et al.* (77 Phil. 1066) that '[O]nly the **decisions of this Honorable Court** *re*

⁴⁵ *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 167330, September 18, 2009.

⁴⁶ Resolution dated February 27, 2017 in CTA Case No. 8892, September 30, 2016.

establish jurisprudence or doctrines in this jurisdiction.' xxx." (*Emphases and underscoring supplied*)

Thus, the CA decision in the *APC Group* case cannot be treated or equated as a doctrinal pronouncement.

Neither can it be treated as a binding precedent, notwithstanding the fact that the said case was appealed to the Supreme Court via Petition for Review on *Certiorari* and that this Petition was denied for the failure of petitioner therein '*to show that a reversible error had been committed by the appellate court*' via the Minute Resolution dated May 17, 2004.

In *Philippine Health Care Providers, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court held:

'It is true that, although contained in a minute resolution, our dismissal of the petition was a disposition of the merits of the case. When we dismissed the petition, we effectively affirmed the CA ruling being questioned. As a result, our ruling in that case has already become final. When a minute resolution denies or dismisses a petition for failure to comply with formal and substantive requirements, the challenged decision, together with its findings of fact and legal conclusions, are deemed sustained. But what is its effect on other cases?

With respect to the same subject matter and the same issues concerning the same parties, it constitutes *res judicata*. However, if other parties or another subject matter (even with the same parties and issues) is involved, the minute resolution is not binding precedent. Thus, in *CIR v. Baier-Nickel*, the Court noted that a previous case, *CIR v. Baier-Nickel* **involving the same parties and same** *je*

issues, was previously disposed of by the Court thru a minute resolution dated February 17, 2003 sustaining the ruling of the CA. Nonetheless, the Court ruled that **the previous case 'ha(d) no bearing'** on the latter case because the two cases involved different subject matters as they were concerned with the taxable income of different taxable years.

Besides, there are substantial, not simply formal, distinctions between a minute resolution and a decision. The constitutional requirement under the first paragraph of Section 14, Article VIII of the Constitution that the facts and the law on which the judgment is based must be expressed clearly and distinctly applies only to decisions, not to minute resolutions. A minute resolution is signed only by the clerk of court by authority of the justices, unlike a decision. It does not require the certification of the Chief Justice. Moreover, unlike decisions, minute resolutions are not published in the Philippine Reports. Finally, the proviso of Section 4(3) of Article VIII speaks of a decision.

Indeed, as a rule, this Court lays down doctrines or principles of law which constitute binding precedent in a decision duly signed by the members of the Court and certified by the Chief Justice.' (Italics and underscoring supplied)

Since it is neither a doctrine, nor a binding precedent, the ruling in the *APC Group* case could not have been 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 *je*

the assailed Decision. Consequently, the *Filinvest* case cannot be applied prospectively." (*Emphasis supplied*)

Petitioner asserts that RMC No. 48-2011 shows that it did not merely circularize the *Filinvest* decision but enjoined all employees of the BIR engaged in the audit and review of cases "to assess deficiency DST, if warranted, on these kinds of transactions," referring to "instructional letters and journal and cash vouchers" evidencing cash advances.

The above-cited *Brewery Properties* case also stated that RMC No. 48-2011 merely circularizes the *Filinvest* case, to wit:

"In the same vein, there is no merit in petitioner's contention that RMC No. 48-2011 did not merely circularize the decision in the *Filinvest* case, so as to exclude the same to the ruling in *Philacor Credit Corporation vs. Commissioner of Internal Revenue*, as cited in the assailed Decision. This is so because it is clearly apparent, upon a cursory reading of the said RMC, that it uses the term 'Circularization' in its subject matter and it merely quotes the 'relevant excerpts' from the *Filinvest* case. The fact that the said RMC No. 48-2011 enjoined all employees of the BIR engaged in the audit and review of cases 'to assess deficiency DST, if warranted, on these kinds of transactions' is not an indication that it has made a specific ruling and has overruled or reversed a prior one, because the assessment of deficiency DST, if warranted, will be merely a necessary consequence of what has been ruled in the same *Filinvest* case, as quoted therein."

To reiterate, in the case of *Filinvest*, the Supreme Court in 2011 found that the instructional letters as well as the journal and cash vouchers evidencing the advances extended to affiliates in 1996 and 1997 qualified as loan agreements which are subject to DST.

Clearly, the *Filinvest* decision merely reflected the contemporaneous legislative intent enacted in the NIRC and did not overturn any established precedent and, thus, can be given retroactive application. *Je*

Based on the foregoing, respondent correctly assessed petitioner for deficiency DST on its advances for taxable year 2009.

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

Petitioner argues that even assuming that the decision in the *Filinvest* case may be applied retroactively, the same will not cover the advances subject of this case, since the assessment was based on mere Notes to its 2009 Financial Statements. Petitioner insists that such Notes are not the "debt instruments" referred to in Section 179 of the Tax Code, nor are they "instructional letters" or "journal and cash vouchers" contemplated in the decision in the *Filinvest* case.

Petitioner's argument is untenable. In the afore-quoted *San Miguel Corporation* case, the CTA Third Division held that DST may be imposed on advances on the basis of a mere Note appearing in the Financial Statements, as follows:

"DST is levied on the exercise by persons of certain privileges conferred by law for the creation, revision, or termination of specific legal relationships through the execution of specific instruments. DST is by nature, an excise tax since it is levied on the exercise by persons of privileges conferred by law. 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. Thus, there is no basis for petitioner's assertion that a DST is literally a tax on the document. In other words, DST may be imposed even in the absence of a debt instrument, as long as the transactions are clearly established.**

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

'SECTION 6. *Stamp Tax on all Loan Agreements.* – All loan agreements, whether made or signed in the Philippines, or abroad when the obligation or right arises from Philippine sources or the property or object of the contract is located in the Philippines shall be subject to the documentary stamp tax of thirty centavos (₱0.30) on each two hundred pesos, or fractional part thereof, of the face value of any such agreements, pursuant to Section 180 in relation to Section 173 of the Tax Code.

In cases where no formal loan agreements or promissory notes have been executed to cover credit facilities, the documentary stamp tax shall be based on the amount of drawings or availment of the facilities, which may be evidenced by credit/debit memo, advice or drawings by any form of check or withdrawal slip, under Section 180 of the Tax Code.'

Thus, petitioner is liable to pay the subject DST on the basis of the Note appearing in its 2010 Audited Financial Statement." (*Citations omitted and emphasis supplied*)

From the foregoing, it is clear that respondent is correct in applying the rule enunciated in the *Filinvest* case to determine petitioner's deficiency DST.

Petitioner also posits that for DST to attach, two conditions must exist: *first*, there must be a transaction; and *second*, that this transaction is evidenced through the execution of specific instruments. The two conditions maintain a symbiotic relationship such that DST cannot be imposed in the absence of one. This is so because the transaction can only be proven through the existence of the document. Petitioner contends that pursuant to the case of *Philippine Home Assurance Corporation, et al. vs. Court of Appeals, et al.*⁴⁷ (Philippine *Je*

⁴⁷ G.R. No. 119446, January 21, 1999.

Home Assurance), there must be a transaction which should be evidenced through the execution of specific instruments.

The issue raised in the *Philippine Home Assurance* case is different. Petitioners therein argued 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 petitioner's liability for payment of DST. Clearly, the ruling in *Philippine Home Assurance* case cannot be applied to the instant case.

Respondent's right to assess has not prescribed

Petitioner contends that in the computation of interest, the BIR indicated that the start of the running of interest is on January 6, 2010. Hence, petitioner argues that respondent only has until January 5, 2013 within which to issue the FLD/Assessment Notice. However, the FLD/Assessment Notice was received by petitioner only on October 23, 2013, which is beyond the three-year period prescribed by law for the assessment and collection of taxes.

Petitioner also contends that the four waivers it executed are not valid and not binding between the parties. Petitioner avers that the waivers dated December 15, 2011, May 31, 2012, and November 23, 2012 do not show that copies thereof were received by petitioner after they were accepted by the CIR, in violation of paragraph 4 of Revenue Memorandum Order (RMO) No. 20-90. With respect to the waiver dated April 24, 2013, petitioner avers that it received a copy of the same only on June 26, 2013, or after its acceptance by the CIR, and after the waiver dated November 23, 2012 has already expired on June 15, 2013. Moreover, petitioner claims that the waivers do not indicate the kind and amount of taxes involved.

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

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xxx

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(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 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,*Je*

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. xxx" (*Emphasis supplied*)

Based on the afore-quoted provision, the three-year prescriptive period may not apply in cases when, among others, (a) the taxpayer failed to file a return, or (b) 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.

A perusal of the records reveals that petitioner executed four waivers as follows:

1. Waiver executed on December 15, 2011 (first waiver), accepted by OIC-Assistant Commissioner (ACIR) Alfredo Misajon on December 20, 2011, extending the period to assess until June 15, 2012. The accepted waiver was received by "Joy Baradi" on December 22, 2011.⁴⁸
2. Waiver executed on May 31, 2012 (second waiver), accepted by OIC-ACIR Misajon on June 7, 2012, extending the period to assess until December 15, 2012. The accepted waiver was received by "Milani Lucero" on "6/21".⁴⁹ 

⁴⁸ Exhibit "R-6", BIR Records, p. 121.

⁴⁹ Exhibit "R-7", BIR Records, p. 122.

3. Waiver executed on November 23, 2012 (third waiver), accepted by OIC-ACIR Misajon on December 4, 2012, and extending the period to assess until June 15, 2013. The accepted waiver was accepted by Milani M. Lucero on December 20, 2012.⁵⁰
4. Waiver executed on April 24, 2013 (fourth waiver) accepted by OIC-ACIR Misajon on May 20, 2013, extending the period to assess until December 15, 2013. The accepted waiver was received by Beverly Bustamante on June 26, 2013 and by Nory Dianne R. Miano on July 5, 2013.⁵¹

The case of *Commissioner of Internal Revenue vs. Kudos Metal Corporation*⁵² is instructive as to the proper execution of a waiver, to wit:

"Section 222 (b) of the NIRC provides that the period to assess and collect taxes may only be extended upon a written agreement between the CIR and the taxpayer executed before the expiration of the three-year period. RMO 20-90 issued on April 4, 1990 and RDAO 05 01 issued on August 2, 2001 lay down the procedure for the proper execution of the waiver, to wit:

1. The waiver must be in the proper form prescribed by RMO 20-90. The phrase 'but not after _____ 19 ____,' which indicates the expiry date of the period agreed upon to assess/collect the tax after the regular three-year period of prescription, should be filled up.

2. The waiver must be signed by the taxpayer himself or his duly authorized representative. In the case of a corporation, the waiver must be signed by any of its responsible officials. In case the authority is delegated by 

⁵⁰ Exhibit "R-9", BIR Records, p. 147.

⁵¹ Exhibit "R-10", BIR Records, p. 148.

⁵² G.R. No. 178087, May 5, 2010.

the taxpayer to a representative, such delegation should be in writing and duly notarized.

3. The waiver should be duly notarized.

4. The CIR or the revenue official authorized by him must sign the waiver indicating that the BIR has accepted and agreed to the waiver. The date of such acceptance by the BIR should be indicated. However, before signing the waiver, the CIR or the revenue official authorized by him must make sure that the waiver is in the prescribed form, duly notarized, and executed by the taxpayer or his duly authorized representative.

5. Both the date of execution by the taxpayer and date of acceptance by the Bureau should be before the expiration of the period of prescription or before the lapse of the period agreed upon in case a subsequent agreement is executed.

6. The waiver must be executed in three copies, the original copy to be attached to the docket of the case, the second copy for the taxpayer and the third copy for the Office accepting the waiver. The fact of receipt by the taxpayer of his/her file copy must be indicated in the original copy to show that the taxpayer was notified of the acceptance of the BIR and the perfection of the agreement."

Contrary to petitioner's allegations, the waivers do not violate the procedure laid down in RMO No. 20-90. Based on the above-cited case, it is not required that the copy of the accepted waiver be received by petitioner before the lapse of the previous period agreed upon.

As to petitioner's contention that the kind and amount of tax due is not indicated on the subject waivers, it was in fact petitioner who caused the same. When petitioner's representative executed the waivers, he indicated the phrase "taxes which may be found due after investigation" instead of specifying the kind and amount of tax due that is covered by the waivers. Hence, the application of the exception *Je*

enunciated in the case of *Commissioner of Internal Revenue vs. Next Mobile, Inc. (formerly Nextel Communications Phils., Inc.)*⁵³ is appropriate in the present case, since petitioner argues for the waivers' invalidity by raising the very same defect which it caused.

Even assuming that the waivers are invalid, petitioner's contentions are still 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 any evidence that petitioner filed a DST return in the subject period or for the subject transactions, the ten-year prescriptive period applies. Clearly, the period to assess has not yet prescribed when respondent issued the assessment.

Respondent is not proscribed from rendering his own decision on the issue

Petitioner contends that when respondent issued his decision on the administrative claim for refund, respondent no longer has jurisdiction over the same. Petitioner avers that the original Petition for Review shows on its face that a copy thereof was received by respondent on March 22, 2016, the same date the Petition was filed with the Court. Hence, petitioner asseverates that when respondent served his decision on petitioner on April 21, 2016, he knew that he has already been deprived of jurisdiction in view of the filing of the instant Petition for Review with this Court.

Petitioner's argument is bereft of merit. RMC No. 49-03 provides that the BIR shall continue processing the refund/TCC case until a final decision has been reached by either the Court or the BIR. The relevant portions of the RMC state:

"In cases where the taxpayer has filed a 'Petition for Review' with the Court of Tax Appeals involving a claim for refund/TCC that is pending at the administrative agency (Bureau of Internal Revenue or OSS-DOF), **the** 

⁵³ G.R. No. 212825, December 7, 2015.

administrative agency and the tax court may act on the case separately. While the case is pending in the tax court and at the same time is still under process by the administrative agency, the litigation lawyer of the BIR, upon receipt of the summons from the tax court, shall request from the head of the investigating/processing office for the docket containing certified true copies of all the documents pertinent to the claim. The docket shall be presented to the court as evidence for the BIR in its defense on the tax credit/refund case filed by the taxpayer. **In the meantime, the investigating/processing office of the administrative agency shall continue processing the refund/TCC case until such time that a final decision has been reached by either the CTA or the administrative agency.**

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

In view of the above-quoted RMC, respondent is not proscribed from, and is even directed to continue processing the administrative claim despite the filing of the Petition for Review. Therefore, petitioner's argument must fail.

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

Petitioner contends that assuming that it is liable for deficiency DST, its liability is for the basic tax of ₱9,688,078.00 only, without the imposition of surcharge, interest, and penalty, since it relied on existing court decisions and BIR rulings prevailing at the time of the extension of the advances.

The Court finds merit in petitioner's contention.

In the case of *Trustmark Holdings Corporation* (Trustmark) *vs. Commissioner of Internal Revenue*,⁵⁴ where Trustmark Holdings Corporation likewise raised BIR rulings and court decisions it relied upon in arguing against the imposition of interest and surcharge, this Court considered the corporation's good faith in deciding to delete the imposition of the same, to wit:

"From the foregoing rulings of the BIR and CTA/CA issued prior to *Filinvest* case promulgated on July 19, 2011, the taxpayer cannot be faulted if it relied on these rulings and believed in good faith that intercompany advances covered by board resolution, office memo, instructional letter and/or cash and journal vouchers or similar documents are not subject to DST.

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In *Michel J. Lhuillier Pawnshop, Inc. vs. CIR*, the Supreme Court held that: 

⁵⁴ CTA Case No. 9072, May 19, 2017.

‘Nevertheless, all is not lost for petitioner. **The settled rule is that good faith and honest belief that one is not subject to tax on the basis of previous interpretation of government agencies tasked to implement the tax 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:

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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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 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.'** (*Emphasis supplied*)

Applying the foregoing, the Court is convinced that petitioner acted in good faith when it believed that intercompany advances are not subject to DST prior to the 2011 *Filinvest* case. After all, it was based on numerous rulings of the BIR that intercompany advances are not subject to DST. Moreover, the CA and CTA, the specialized body handling tax cases, also had similar rulings. Hence, petitioner cannot be faulted if it relied in good faith on these rulings.”

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 surcharge and interest in the instant case is also proper.

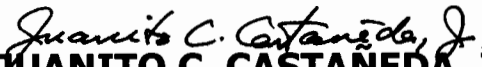
As to the compromise penalty, the payment under protest made by petitioner signifies that there was no agreement reached between the parties, and hence, the same must not be imposed as well.⁵⁵

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 ₱10,636,547.70, representing the following:

PENALTIES ERRONEOUSLY PAID BY PETITIONER	AMOUNT
Interest	₱ 8,164,528.20
Surcharge	2,422,019.50
Compromise Penalty	50,000.00
TOTAL	₱10,636,547.70

⁵⁵ *Brewery Properties, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 8892, September 30, 2016, citing *De San Agustin vs. Commissioner of Internal Revenue*, G.R. No. 138485, September 10, 2001.

SO ORDERED.


JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:


(with Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice


CIELITO N. MINDARO-GRULLA
Associate Justice

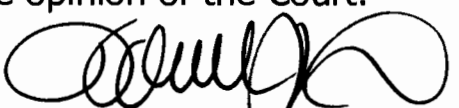
ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.


JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.


ROMAN G. DEL ROSARIO
Presiding Justice

**REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY**

SPECIAL SECOND DIVISION

**LIBERTY TELECOMS
HOLDINGS, INC.,**

Petitioner,

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

Respondent.

CTA Case No. 9311

Members:

CASTAÑEDA, JR., *Chairperson,*
MANAHAN, and,
MINDARO-GRULLA,* JJ.

Promulgated:

OCT 18 2018

4:10 p.m.

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CONCURRING AND DISSENTING OPINION

MANAHAN, J.:

With all due respect to my esteemed colleague, Hon. Justice Juanito C. Castaneda, I register my dissent to his *ponencia* which upholds the position that a Supreme Court ruling decided in 2011 should apply to transactions which occurred in 2009, thus, holding petitioner liable for deficiency documentary stamp tax (DST) and granting only the interest portion of its DST refund claim which was paid under protest.

In gist, this case involves the advances to and from subsidiaries/related parties of petitioner which were borne out by notes in the 2009 Audited Financial Statements of the company. Based on these notes, respondent assessed petitioner with deficiency DST. Legal bases for said assessment was Sec. 179 of the 1997 National Internal Revenue Code as amended (NIRC) and the case of *Commissioner of Internal Revenue vs.*

* Designated as a special member under Rule V, Section 3 (c) of the Internal Rules of the Court of Tax Appeals. *an*

*Filinvest Development Corporation*¹ In this case, the Supreme Court ruled in this wise:

“When read in conjunction with Section 173 of the 1993 NIRC, the foregoing provision concededly applies to “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 or used in the Philippines.

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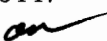
Applying the aforesaid provisions to the case at bench, we find that the instructional letters as well as the journal and cash vouchers evidencing the advances FDC extended to its affiliates in 1996 and 1997 qualified as loan agreements upon which documentary stamp taxes may be imposed.”

Prior to the aforequoted decision of the Supreme Court, the prevailing legal milieu was that “inter-office memos” covering intercompany advances were not considered loan agreements subject to the documentary stamp tax (DST) based on various BIR Rulings issued by the respondent, decisions of this Court and more significantly the decision of the Court of Appeals (CA) in the case entitled *Commissioner of Internal Revenue vs. Filinvest Development Corp.*² In short, the doctrine enunciated by the Supreme Court in the *Filinvest* case was lacking or absent at the time that herein petitioner entered into such transactions in 2009. Given that lacuna in the judicial interpretation of the subject matter, petitioner faithfully relied on the pronouncements made by respondent and the CA on a similar matter, thus prompting non-payment of said DST.

As to the legal efficacy of the issuances, pronouncements or opinions of the heads of administrative agencies, I find guidance in the ruling of the Supreme Court in the *En Banc* case of *Albino S. Co v. Court of Appeals and People of the Philippines (Co case)*³, to wit:

“In the present case on the other hand, the defense is that reliance was placed, not on the opinion of a private lawyer but upon an official pronouncement of no less than the attorney of the Government, the Secretary of Justice, whose opinions, though not law, are entitled to great weight and on which reliance may be placed by private individuals as reflective of the

¹ G.R. Nos. 163563 and 167680, July 19, 2011.

² CA-G.R. SP No. 74510, January 26, 2005. 

correct interpretation of a constitutional or statutory provision." (underscoring supplied)

The *ponencia* elucidated that the *Filinvest* decision of the Supreme Court that merely interpreted and applied Section 179 of the 1997 National Internal Revenue Code (NIRC), effectively forms part of the law as of the date of its enactment. It cites several decisions of this Court, particularly the case of *San Miguel Corporation vs. CIR*³ where it was ruled that the interpretation of the Supreme Court in the *Filinvest* case (of Section 179) of the 1997 Tax Code is deemed effective from the date of the enactment of the said law, hence it covers transactions even prior to 2011.

It is this legal conclusion that I respectfully disagree with, and proffer, instead, the view that the power to tax must be construed strictly against the government⁴ and any retroactive application of the *Filinvest* doctrine violates the taxpayer's constitutional rights to equity and due process.

A taxpayer relying on the official interpretation of the NIRC provisions by the Commissioner of Internal Revenue (CIR) who, by law, is vested with the power to interpret tax laws, must be amply protected by law. There is no doubt that judicial decisions of the Supreme Court interpreting statutory and constitutional provisions form part of the law of the land. Article 8 of the Civil Code⁵ expressly provides that judicial decisions applying or interpreting the laws shall form part of the legal system of the Philippines. Corollarily, Article 4 of the Civil Code⁶ mandates the non-retroactivity of laws, unless expressly provided. The principle of prospectivity has also been applied to judicial decisions which although by themselves are not laws, *per se*, are nevertheless evidence of what the laws mean.⁷ The reason for this is obvious – it will be inequitable and against the principles of fair play to penalize a taxpayer who relied on the pronouncements of the Commissioner of Internal Revenue (CIR) who is authorized under the law to interpret tax statutes⁸ and

³ CTA Case No. 9007, April 19, 2017.

⁴ *Republic of the Philippines vs. Intermediate Appellate Court and Sps. Antonio and Clara Pastor*, G.R. No. 69344, April 26, 1991.

⁵ "Article 8. Judicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines."

⁶ "Article 4. – Laws shall have no retroactive effect, unless the contrary is provided."

⁷ *Albino S. Co vs. Court of Appeals and People of the Philippines*, G.R. 100776, October 28, 1993.

⁸ Section 4 of the 1997 NIRC. 

which taxpayers are enjoined to follow. In the absence of a definitive Supreme Court decision interpreting Sec. 179 of the 1997 NIRC at the time that the subject transactions of this instant case took place, equity and justice dictate that no retroactive application of a fairly recent Supreme Court decision which overrules the CIR's pronouncements must be made to the case at hand.

The *ponencia* maintains that no previous doctrine or ruling was overruled by the *Filinvest* case such that the ruling of the Supreme Court offers a fresh interpretation of the subject provision of the Tax Code.

Considering the newness of the SC interpretation which became available only after 2 years from the date of the questioned transactions, the adherence by petitioner to the BIR rulings, CTA decisions and the CA decision which espoused the legal theory on the non-loan character of inter-office memos, journals, vouchers and the like, and therefore not subject to DST, must not result in the prejudice of the petitioner, like exposure to a deficiency tax assessment.

At this juncture, allow me to reiterate my earlier Concurring and Dissenting Opinion in the case of *South Premiere Power Corporation vs. CIR*⁹ which, in part, provides as follows:

"In the consolidated cases of *CIR vs. San Roque Power, Taganito Mining Corp vs. CIR* and *Philex Mining Corp vs. CIR*¹⁰, the Supreme Court recognized the good faith of the taxpayers who relied on previous rulings which turn out to be erroneous under a recent interpretation, and we quote:

Since the Commissioner has exclusive and original jurisdiction to interpret tax laws, taxpayers acting in good faith should not be made to suffer for adhering to general interpretative rules of the Commissioner interpreting tax laws, **should such interpretation later turn out to be erroneous and be reversed by the Commissioner or this Court.** Indeed, Section 246 of the Tax Code expressly provides that a reversal of a BIR regulation or ruling cannot

"Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases.- The power to interpret the provisions of this Code and other tax laws shall be under the exclusive and original jurisdiction of the Commissioner, subject to review by the Secretary of Finance."

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⁹ CTA Case No. 9337, February 27, 2018.

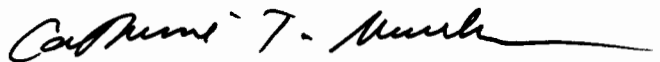
¹⁰ G.R. Nos. 187485, 196113 and 197156, February 12, 2013. 

adversely prejudice a taxpayer who in good faith relied on the BIR regulation or ruling prior to its reversal’.” (emphasis supplied)

Adhering to the principles of justice and fair play, I deem it prudent to approve not only the refund of the interest penalties imposed upon the late payment of the deficiency DST by the petitioner but of the entire amount of the deficiency tax assessment, including the compromise penalty which the *ponencia* has likewise approved.

I believe that an immediate relief by way of granting the Petition for Review is in order.

Accordingly, I vote to grant the Petition for Review and decide on the amount to be refunded to petitioner based on the factual veracity of its evidence.


CATHERINE T. MANAHAN
Associate Justice