

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

En Banc

SAN MIGUEL PAPER PACKAGING CORPORATION,
Petitioner,

CTA *EB* NO. 2099
(CTA Case No. 9288)

-versus-

**COMMISSIONER OF INTERNAL
REVENUE,**

X-----X
COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

CTA *EB* NO. 2102
(CTA Case No. 9288)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, *and*
MODESTO-SAN PEDRO, *JJ.*

-versus-

SAN MIGUEL PAPER PACKAGING CORPORATION, Promulgated:
Respondent. OCT 07 20

Respondent.

OCT 07 2020

X

DECISION

MODESTO-SAN PEDRO, J.:

The Case

For resolution are the Petitions for Review, respectively, filed by San Miguel Paper Packaging Corporation (“SMPPC”) on 1 August 2019,¹ and by 

¹ Petition for Review, *Rollo*, EB No. 2099, pp. 9-105, with annexes.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 2 of 22

the Commissioner of Internal Revenue (“CIR”) on 5 August 2019,² pursuant to *Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals (“RRCTA”).*³

Both parties seek the modification of the Decision, promulgated on 14 November 2018, and Resolution, dated 2 July 2019, by the Court of Tax Appeals (“CTA”) Special Third Division (hereinafter referred to as “Court in Division”) ordering the CIR to partially refund or to issue a tax credit certificate in favor of SMPPC in the amount of ₱3,631,519.37, representing illegally assessed and collected interest, surcharge, and compromise penalty for taxable year (“TY”) 2009.

The Parties

SMPPC is a domestic corporation with business address at 8380 Dr. A Santos Ave., Sucat, Parañaque City. It is registered with the Securities and Exchange Commission as a wholly-owned subsidiary of San Miguel Corporation (“SMC”) and is primarily engaged in manufacturing, marketing, selling, and distribution of corrugated fibreboard containers.

On the other hand, the CIR is the chief of the Bureau of Internal Revenue (“BIR”) who is vested with the authority 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 of 1997, as amended (hereinafter referred to as the “Tax Code”), or other laws or portions thereof administered by the BIR. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

The Facts

On 26 February 2014, SMPPC received a Formal Letter of Demand (“FLD”)/Assessment Notices, dated 26 February 2014, assessing it for deficiency taxes in the aggregate amount of ₱14,084,851.56, inclusive of penalties computed up to 31 January 2014.⁴

Included in the FLD is the BIR’s assessment for deficiency documentary stamp tax (“DST”) in the amount of ₱6,870,619.75 arising from advances obtained by SMPPC from its related parties as reflected in Note 18 of its 2009 Audited Financial Statements (“AFS”)⁵ computed as follows: 

² Petition for Review, *Rollo*, EB No. 2102, pp. 7-63, with annexes.

³ A.M. No. 05-11-07-CTA, 22 November 2005.

⁴ Decision, *Rollo*, EB No. 2099, pp. 66-90; *Rollo*, EB No. 2102, pp. 27-52.

⁵ *Ibid.*

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 3 of 22

Advances from Related Parties (AFS Note 18)		₱ 663,080,000.00
Documentary Stamp Tax Due (₱1/₱200)		3,315,400.00
Add Penalties:		
Surcharge	₱ 828,850.00	
Interest (1-6-2010 to 1-31-2014)	2,701,369.75	
Compromise Penalty	25,000.00	3,555,219.75
Total Deficiency Documentary Stamp Tax		₱ 6,870,619.75

On 14 March 2014, SMPPC paid under protest the alleged deficiency taxes, interests, and penalties imposed by the BIR on the FLD amounting to ₱14,084,851.56. Thereafter, it filed a letter, dated 31 March 2014, informing the BIR that it intends to file a claim for refund on the payment made. The letter was received by the BIR on 9 May 2014.⁶

On 15 December 2015, SMPPC filed an administrative claim for refund or issuance of a tax credit certificate (“TCC”) in the amount of ₱6,946,919.37 alleging erroneous and/or illegally collected DST for TY 2009.⁷

Due to the BIR’s inaction on its administrative claim for refund/TCC, petitioner filed the original Petition for Review on 9 March 2016.⁸

On 14 November 2018, the Court in Division issued the assailed Decision which partially granted the original Petition for Review and ordered the BIR to refund or issue a TCC in favor of SMPPC in the amount of ₱3,631,519.37. The dispositive portion is hereby quoted, as follows:

“WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱3,631,519.37, representing illegally assessed and collected interest, surcharge, and compromise penalty for taxable year 2009, broken down as follows:

Surcharge	₱ 828,850.00
Interest	2,777,669.37
Compromise	25,000.00
Total	₱ 3,631,519.37

SO ORDERED.”⁹ 

⁶ *Ibid.*

⁷ *Ibid.*

⁸ *Ibid.*

⁹ *Ibid.*

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 4 of 22

The Court in Division ruled that SMPPC is liable for DST on its advances from related parties but ordered the refund or issuance of TCC in relation to the interests and penalties charged to SMPPC since it was able to prove that it relied, in good faith, on BIR Ruling [DA (C-035) 127-08], which ruled that inter-office memoranda are not subject to DST. Likewise, the Court in Division ordered the refund or issuance of TCC in relation to the compromise penalty paid by SMPPC since the CIR failed to prove that it agreed on paying the same.

Aggrieved, SMPPC and the CIR, respectively, filed their Motions for Partial Reconsideration on 3 December 2019 and 4 December 2018.¹⁰ Both Motions were denied for lack of merit by the Court in Division in its Resolution, dated 2 July 2019.¹¹

Following receipt of the assailed Resolution, both SMPPC and the CIR, respectively, filed their Petitions for Review on 1 August 2019¹² and 5 August 2019¹³ which were both within the extended period granted by the CTA *En Banc*.¹⁴

Subsequently, the CTA *En Banc* ordered both cases to be consolidated on 7 August 2019.¹⁵

On 24 September 2019, the CIR filed his Comment (Re: Petition for Review),¹⁶ while SMPPC filed its Comment on the Petition for Review in CTA EB No. 2102 on 25 September 2019.¹⁷

On 23 October 2019, the Court *En Banc* issued a Resolution submitting the cases for decision.¹⁸ Hence this Decision.

The Issues¹⁹

The following are the issues raised by SMPPC for the resolution of the CTA *En Banc*, to wit: 

¹⁰ Resolution, *Rollo*, EB No. 2099, pp. 91-100; *Rollo*, EB No. 2102, pp. 54-63.

¹¹ *Ibid*.

¹² Petition for Review, *Rollo*, EB No. 2099, pp. 9-105, with annexes.

¹³ Petition for Review, *Rollo*, EB No. 2102, pp. 7-63, with annexes.

¹⁴ Minute Resolution, *Rollo*, EB No. 2099, p. 8; Minute Resolution, *Rollo*, EB No. 2102, p. 6.

¹⁵ Minute Resolution *Rollo*, EB No. 2099, p. 106.

¹⁶ Comment (Re: Petition for Review), *Rollo*, EB No. 2099, pp. 111-122.

¹⁷ Comment on the Petition for Review in CTA EB No. 2102, *Rollo*, EB No. 2099, pp. 123-203, with annexes.

¹⁸ Resolution, *Rollo*, EB No. 2099, pp. 205-206.

¹⁹ Petition for Review, *Rollo*, EB No. 2099, pp. 9-105, with annexes; Petition for Review, *Rollo*, EB No. 2102, pp. 7-63, with annexes.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 5 of 22

The main issue for resolution is:

WHETHER SMPPC IS ENTITLED TO A REFUND OF THE AMOUNT OF ₱3,315,400.00, REPRESENTING ERRONEOUSLY AND/OR ILLEGALLY COLLECTED BASIC DEFICIENCY DST FOR TY 2009.

The corollary issues for resolution are:

a) WHETHER SMPPC IS LIABLE FOR THE SUBJECT BASIC DST IN THE AMOUNT OF ₱3,315,400.00.

b) WHETHER THE DECISION OF THE SUPREME COURT IN THE FILINVEST CASE AND REVENUE MEMORANDUM CIRCULAR (“RMC”) NO. 48-2011 MAY BE APPLIED RETROACTIVELY AGAINST SMPPC WITH RESPECT TO ADVANCES RECEIVED IN 2009.

c) ASSUMING THE DECISION IN THE FILINVEST CASE MAY BE APPLIED RETROACTIVELY, WHETHER THE ADVANCES SUBJECT OF THE INSTANT CASE ARE COVERED BY THE AFORESAID DECISION.

d) WHETHER DST MAY BE IMPOSED ON THE ADVANCES TO SMPPC FROM RELATED PARTIES ON THE BASIS OF A MERE NOTE APPEARING IN ITS AFS.

e) WHETHER THE RIGHT OF THE GOVERNMENT TO ASSESS SMPPC FOR DEFICIENCY DST ON ADVANCES MADE IN 2009 HAS PRESCRIBED.

Meanwhile, the CIR raised the following issue and corollary issues for resolution, as follows:

WHETHER THE COURT IN DIVISION VIOLATED ESTABLISHED JURISPRUDENCE WHEN IT ORDERED THE CANCELLATION OF THE DEFICIENCY INTEREST, SURCHARGE AND COMPROMISE PENALTY PAID BY SMPPC. 

a) WHETHER THE IMPOSITION OF INTEREST, SURCHARGE, AND COMPROMISE PENALTY HAVE FACTUAL AND LEGAL BASES.

b) WHETHER SMPPC'S RELIANCE IN GOOD FAITH MUST BE RELATIVELY APPLIED.

Arguments of the Parties

SMPPC's Arguments²⁰

SMPPC faults the Court in Division for relying on the case of *Commissioner of Internal Revenue v. Filinvest Development Corporation (hereinafter referred to as "Filinvest Case")*.²¹ It explains that, contrary to the claim of the Court in Division, judicial decisions, considering that they become part of the legal system, can only be applied prospectively, citing the case of *Co vs. Court of Appeals, et. al.*²² and *Columbia Pictures, Inc., et. al. v. Court of Appeals, et. al., (hereinafter referred to as the "Columbia Case")*.²³

It insists that only judicial decisions that ascertains the contemporaneous legislative intent of the law can be applied retroactively. SMPPC explains that, in the *Filinvest Case*, the Supreme Court did not discuss the legislative intent of Section 180 [now Section 179] of the National Internal Revenue Code of 1997, as amended (hereinafter referred to as the "Tax Code") but merely applied the law to the facts of the said case.

However, assuming that the Court in Division is correct in ruling that judicial decisions should be retroactively applied, it explains that this is not applicable in this case since there was a prior ruling or previous doctrine that the *Filinvest Case* overruled. Hence, the *Filinvest Case* falls under the exception to the rule on retroactivity of judicial decisions as discussed in the case of *Visayas Geothermal Power Company v. Commissioner of Internal Revenue*.²⁴ SMPPC explains that the prior rulings overturned by the *Filinvest Case* include the Court of Appeals case of *Commissioner of Internal Revenue v. APC Group, Inc.*,²⁵ the CTA case of *Commissioner of Internal Revenue v. Belle Corporation*,²⁶ *BIR Ruling No. [DA (C-035) 127-08]* dated 8 August 2008, and Supreme Court Resolution in the case of *Commissioner* 

²⁰ Petition for Review, *Rollo*, EB No. 2099, pp. 9-105, with annexes.

²¹ GR Nos. 163653 & 167689, 19 July 2011.

²² GR No. 100776, 28 October 1993.

²³ GR No. 110318, 28 August 1996.

²⁴ GR No. 197525, 4 June 2014.

²⁵ CA-GR No. 69869, 29 November 2002.

²⁶ CTA EB Case No. 147, 13 October 2006.

*of Internal Revenue v. APC Group, Inc.*²⁷ It explains that these rulings affirmed the non-taxability of memos and vouchers evidencing inter-company advances.

SMPPC argues that the aforementioned rulings fall under the definition of prior or old ruling warranting the prospective application of the *Filinvest Case*. It further explains that applying the case prospectively is in line with the principles of fairness and justice.

Even assuming that the *Filinvest Case* should be retroactively applied, SMPPC argues that the facts in the said case are not applicable to the current case. Unlike in the *Filinvest Case* where the DST liability was based on instructional letters and journal and cash vouchers, in this case, the BIR assessed DST to SMPPC on the basis of its Notes to the AFS which it explains is not a debt instrument that should be subjected to DST.

Furthermore, SMPPC alleges that **RMC No. 48-2011**²⁸ should not be applied in this case since rulings or circulars cannot be applied retroactively without impairing the rights of the taxpayer.

Lastly, SMPPC argues that the DST assessment against it had already prescribed. It alleges that the 10-year prescriptive period cannot be applied in this case since there is no taxable document involved. It opines that the reckoning date of the assessment period should start from 5 January 2010, or when the interest on the said assessment began to run, counting (3) three years from said date, it is evident that the assessment already prescribed.

Given the foregoing reasons, SMPPC insists that it is entitled to the full refund amount of ₱3,315,400.00 in addition to ₱3,631,519.37 which was already awarded by the Court in Division.

CIR's Arguments²⁹

The CIR contends that the Court in Division erred in ordering the refund of the deficiency interest, surcharge, and compromise penalty paid by SMPPC on the ground that the latter allegedly relied in good faith on previous court decisions and BIR Rulings that it is not liable to pay DST on its advances from related parties. *h*

²⁷ GR No. 162185, 17 May 2004.

²⁸ 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, 6 October 2011.

²⁹ Petition for Review, *Rollo*, EB No. 2102, pp. 7-63, with annexes; Comment (Re: Petition for Review), *Rollo*, EB No. 2099, pp. 111-122.

The CIR argues that, as early as 15 July 1999, he already issued **BIR Ruling 108-99** which ruled that inter-office memos evidencing lendings or borrowings extended by a corporation to its affiliates are akin to promissory notes subject to DST. Furthermore, he insists that, in the **Filinvest Case**, the Supreme Court upheld the interest and surcharge against Filinvest even if it relied on a previously issued BIR Ruling in not paying DST.

Furthermore, he alleges that **Sections 247 to 249 of the Tax Code** do not admit an exemption from imposition of deficiency and delinquency interests and other penalties for non-payment of taxes. On this note, he argues that SMPPC cannot simply invoke good faith to escape liability from paying said interests and penalties on the DST assessment.

The CIR insists that the imposition of compromise penalty against SMPPC is valid pursuant to **Revenue Memorandum Order (“RMO”) No. 19-2007**³⁰ which mandates the payment of said penalty for certain violations under the Tax Code, such as failure to pay the correct internal revenue taxes. Hence, the imposition of the compromise penalty against SMPPC is valid.

Finally, the CIR rebuts the arguments raised by SMPPC saying that the ruling in the **Filinvest Case** is deemed constituted as part of the Tax Code and can be prospectively applied only in cases when the new case overrules an old doctrine of the Supreme Court. He also insists that the DST assessment may be imposed based on a mere Note in the AFS, as in this case. Considering the same, since SMPPC failed to prove that it paid the DST during the time provided by law, the assessment against SMPPC should stand.

SMPPC’s Counter-Arguments³¹

SMPPC counters the arguments raised by the CIR. It explains that the CTA in the case of **Brewery Properties, Inc. v. Commissioner of Internal Revenue (hereinafter referred to as “Brewery Case”)**,³² which involves the same issues as this case, granted the refund of surcharge, interest, and compromise penalty on the basis that the taxpayer was found to have acted in good faith. Hence, it argues that the ruling in the said **Brewery Case** should constitute binding precedent over this case.

SMPPC adds that the BIR Ruling cited by the CIR was decided on 15 July 1999 or very much later than **BIR Ruling No. [DA (C-035) 127-08]** dated 8 August 2008. It clarifies that, during the time it obtained its advances from

³⁰ SUBJECT : The Consolidated Revised Schedule of Compromise Penalties for Violations of the National Internal Revenue Code, 8 August 2007.

³¹ Comment on the Petition for Review in CTA EB No. 2102, *Rollo*, EB No. 2099, pp. 123-203, with annexes.

³² CTA Case No. 8892, 30 September 2016.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 9 of 22

related parties, the governing BIR Ruling was ***BIR Ruling No. [DA (C-035) 127-08]***.

SMPPC also avers that the CIR erred in citing the *Filinvest Case* to prove its point that it is not entitled to refund of interest and penalties since the good faith defense was never an issue in the said case.

Finally, it opines that the arguments raised by the CIR that it should be liable to pay interest and penalties despite their reliance in good faith that it is not liable to DST is contrary to the rulings of the Supreme Court supported by American jurisprudence. SMPPC also argues the CIR's contention that it should be made liable for compromise penalty is without merit.

The Ruling of the Court En Banc

After reviewing the arguments raised by the parties, the CTA *En Banc* finds no cogent reason to warrant the reversal of the assailed Decision and Resolution.

The Court in Division correctly applied the *Filinvest Case* in resolving the original Petition for Review.

SMPPC contends that the *Filinvest Case* should be applied prospectively. It cites the case of *Co vs. Court of Appeals, et. al.*,³³ where the Supreme Court ruled that judicial decisions form part of the legal system. On this basis, it alleges that the rule on non-retroactivity of newly enacted laws is, likewise, applicable to judicial decisions.

The CTA En Banc finds the position of SMPPC without merit.

*Article 8 of the Civil Code*³⁴ provides that “[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” This provision has been interpreted in several Supreme Court decisions, one of which is the case of *Philippine International Trading Corporation v. Commission on Audit*,³⁵ where the Supreme Court also discussed the history and rationale of the retroactive application of judicial decisions, to wit: 

³³ GR No. 100776, 28 October 1993.

³⁴ An Act to Ordain and Institute the Civil Code of the Philippines (“Civil Code of the Philippines”), Republic Act No. 386, 18 June 1949.

³⁵ GR No. 205837, 21 November 2017.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 10 of 22

“Article 8 of the Civil Code declares that “[j]udicial decisions applying or interpreting the laws or the Constitution shall form a part of the legal system of the Philippines.” While decisions of the Court are not laws pursuant to the doctrine of separation of powers, they evidence the laws' meaning, breadth, and scope and, therefore, have the same binding force as the laws themselves.

Article 4 of the Civil Code, on the other hand, enunciates the rule on non-retroactivity of laws, in that “(l)aws shall have no retroactive effect, unless the contrary is provided.”

In respectively arguing for and against the prospective application of the Decision in G.R. No. 183517, both PITC and the COA invoke Co v. Court of Appeals that cited, among others, the following ruling in People v. Jabinal:

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 a part of the legal system x x x.' The interpretation upon a law by this Court constitutes, in a way, a part of the law as of the date that law was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the law thus construed intends to effectuate. x x x. (Emphasis supplied.)

PITC argues, however, that the COA erred in relying on the second sentence in the above excerpt from Jabinal, which PITC dismissed as a "simple statement" that was "just an obiter dictum or an incidental remark that this Honorable Court made in passing."

PITC's misinformed argument deserves scant consideration.

It was in the 1956 case of Senarillos v. Hermosisima that the above pronouncement first came to light. In said case, Senarillos was the Chief of Police of Sibonga, Cebu and he served as such until his suspension by the municipal mayor on January 2, 1952. Senarillos was investigated and tried by a "police committee" composed of three councilors of the municipal council. The committee then rendered an adverse decision on April 15, 1952 that was approved by the municipal council. Upon Senarillos's petition, the Court of First Instance of Cebu ordered his reinstatement. The Court affirmed the judgment of the trial court, ruling that the committee had no jurisdiction to investigate Senarillos as the investigation of police officers under Republic Act No. 557 must be conducted by the municipal council itself as laid down in Festejo v. Mayor of Nabua that was promulgated on December 22, 1954.

The Court declared in Senarillos:

That the decision of the Municipal Council of Sibonga was issued before the decision in Festejo v. Mayor of Nabua was rendered, would be, at the most, proof of good faith on the part of the police committee, but 

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 11 of 22

can not sustain the validity of their action. It is elementary that the interpretation placed by this Court upon Republic Act [No.] 557 constitutes part of the law as of the date it was originally passed, since this Court's construction merely establishes the contemporaneous legislative intent that the interpreted law carried into effect. (Emphasis supplied.)

The above ruling had since become the established doctrine on the matter of the effectivity of judicial interpretations of statutes.

In *Columbia Pictures, Inc. v. Court of Appeals*, we expounded on the import of our ruling in *Senarillos* in relation to the rule of non-retroactivity of laws. Thus:

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. x x x.

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The reasoning behind *Senarillos vs. Hermosissima* 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, x x x.

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

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 12 of 22

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, citations omitted.)

Applying the foregoing disquisition to the present case, the Court disagrees with PITC's position that the Decision in G.R. No. 183517 should be applied prospectively.

As the COA correctly argued, the Decision in G.R. No. 183517 neither reversed an old doctrine nor adopted a new one. The Court merely construed therein the meaning and application of Section 6 of Executive Order No. 756 by taking into consideration the rationale behind the provision, its interplay with pre-existing retirement laws, and the subsequent enactments and statutes that eventually repealed the same. Prior to the Decision in G.R. No. 183517, there was no other ruling from this Court that explained the nature of the retirement benefits under Section 6 of Executive Order No. 756. Thus, the Court's interpretation of the aforesaid provision embodied in the Decision in G.R. No. 183517 retroacts to the date when Executive Order No. 756 was enacted."

As discussed in the aforementioned case, a judicial decision becomes part of the law it interprets. Hence, its effectivity retroacts to the date when the law was originally passed. Clearly, SMPPC is mistaken to say that judicial decisions can only be applied prospectively. To reiterate, judicial decisions are merely interpretations to make laws clearer.³⁶ It is not considered as a new or separate law but a part of the law it interprets.

The only exception to the retroactivity of judicial decisions is when the said decision overrules an existing doctrine. In this case, the judicial decision which introduces the new doctrine will be applied prospectively and will not affect the parties, who in good faith, relied on the old doctrine. The aforementioned exception was reiterated by the Supreme Court in the *Columbia Case* citing the case of *People vs. Jabinal*,³⁷ to wit:

"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 

³⁶ *Columbia Pictures, Inc., et. al. v. Court of Appeals*, G.R. No. 110318, 28 August 1996.

³⁷ L-30061, 27 February 1974.

interpretation legis vim obtinet" — the interpretation placed upon the written law by a competent court has the force of law. . . ., **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...**³⁸

On this ground, SMPPC argues that the old doctrine discussed in the *Columbia Case* should not be limited to judicial decisions of the Supreme Court but also includes minute resolutions of the Supreme Court, decisions of lower courts, as well as, administrative issuances.

The argument of SMPPC is bereft of merit.

As already ruled by the Supreme Court in the case of *San Roque Power Corp. v. Commissioner of Internal Revenue*,³⁹ only final decisions of the Supreme Court are considered binding precedents, which includes neither decisions of lower courts nor minute resolutions of the Supreme Court, to wit:

We further held in said case that Article 8 of the Civil Code enjoins adherence to judicial precedents. **The law requires courts to follow a rule already established in a final decision of the Supreme Court. Contrary to the petitioner's view, the decisions of the CTA are not given the same level of recognition.**

This is because decisions of lower courts are merely persuasive in character and do not have the same weight as the decisions of the Supreme Court as discussed in *United Coconut Planters Bank v. Spouses Uy*,⁴⁰ to wit:

In other words, the doctrine of stare decisis becomes operative only when judicial precedents are set by pronouncements of this Court to the exclusion of lower courts. **It is true regardless whether the decisions of the lower courts are logically or legally sound as only decisions issued by this Court become part of the legal system. At the most, decisions of lower courts only have a persuasive effect.** Thus, respondents are correct in contesting the application of the doctrine of stare decisis when the CA relied on decisions it had issued.

Meanwhile, minute resolutions of the Supreme Court do not have the same formalities as those required in Supreme Court decisions as provided under *Section 14, Article VIII of the Constitution*. The difference between a decision and minute resolution was discussed in the case of *Deutsche Bank* 

³⁸ Emphasis supplied.

³⁹ GR No. 203249, 23 July 2018.

⁴⁰ GR No. 204039, 10 January 2018.

*AG v. Commissioner of Internal Revenue*⁴¹ citing the case of *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*⁴² to wit:

At the outset, this Court's minute resolution on Mirant is not a binding precedent. The Court has clarified this matter in *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*, as follows:

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XXX

XXX

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. (Emphasis supplied)

Even if we had affirmed the CTA in Mirant, the doctrine laid down in that Decision cannot bind this Court in cases of a similar nature. There are differences in parties, taxes, taxable periods, and treaties involved; more importantly, the disposition of that case was made only through a minute resolution.

However, the rule on administrative issuances are slightly different in a sense that, absent any judicial decision contrary to the administrative directive issued, the same may be relied upon in good faith, and anyone who adhered to the said administrative issuance will not be affected by subsequent judicial decisions as ruled in the case of *Philippine International Trading Corporation v. Commission on Audit*,⁴³ citing the case of *Co vs. Court of Appeals*,⁴⁴ to wit:

PITC's position cannot be legally supported by our decision in Co. In Co, the Court gave prospective effect to its ruling in Que v. People — that even checks to guarantee the performance of an obligation were covered by Batas Pambansa Blg. 22 — as the accused in Co relied on an official opinion of the Minister of Justice that such checks were not within the ambit of Batas Pambansa Blg. 22. In this instance, there is *fr*

⁴¹ GR No. 188550, 19 August 2013.

⁴² GR No. 167330, 18 September 2009.

⁴³ GR No. 205837, 21 November 2017.

⁴⁴ GR No. 100776, 28 October 1993.

no previous administrative interpretation issued by a competent body that PITC could claim to have relied on in good faith.

As for administrative directives issued by the BIR, the Supreme Court, in the case of *Team Energy Corp. v. Commissioner of Internal Revenue*,⁴⁵ elaborated the rule on non-retroactivity of BIR issuances, to wit:

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 adversely prejudice a taxpayer who, in good faith, relied on the BIR regulation or ruling prior to its reversal. Section 246 provides as follows:

Section 246. Non-retroactivity of Rulings. — Any modification or reversal of any of the rules and regulations promulgated in accordance with the preceding Sections or any of the rulings or circulars promulgated by the Commissioner shall not be given retroactive application if the revocation, modification or reversal will be prejudicial to the taxpayers, except in the following cases:

- (a) Where the taxpayer deliberately misstates or omits material facts from his return or any document required of him by the Bureau of Internal Revenue;
- (b) Where the facts subsequently gathered by the Bureau of Internal Revenue are materially different from the facts on which the ruling is based; or
- (c) Where the taxpayer acted in bad faith. (Emphasis supplied)

Thus, a general interpretative rule issued by the Commissioner may be relied upon by the taxpayers from the time the rule is issued up to its reversal by the Commissioner or this Court. Section 246 is not limited to a reversal only by the Commissioner because this Section expressly states, "Any revocation, modification or reversal" without specifying who made the revocation, modification or reversal. Hence, a reversal by this Court is covered by Section 246.

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Thus, the only issue is whether BIR Ruling No. DA-489-03 is a general interpretative rule applicable to all taxpayers or a specific ruling applicable only to a particular taxpayer.

BIR Ruling No. DA-489-03 is a general interpretative rule because it is a response to a query made, not by a particular taxpayer, *φ*

⁴⁵ GR No. 197760, 13 January 2014.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)

Page 16 of 22

but by a government agency tasked with processing tax refunds and credits, that is, the One Stop Shop Inter-Agency Tax Credit and Drawback Center of the Department of Finance. This government agency is also the addressee, or the entity responded to, in BIR Ruling No. DA-489-03. Thus, while this government agency mentions in its query to the Commissioner the administrative claim of Lazi Bay Resources Development, Inc., the agency was, in fact, asking the Commissioner what to do in cases like the tax claim of Lazi Bay Resources Development, Inc., where the taxpayer did not wait for the lapse of the 120-day period.

Clearly, BIR Ruling No. DA-489-03 is a general interpretative rule. Thus, all taxpayers can rely on BIR Ruling No. DA-489-03 from the time of its issuance on 10 December 2003 up to its reversal by this Court in *Aichi* on 6 October 2010, where this Court held that the 120-130 day periods are mandatory and jurisdictional.”

As discussed, a BIR issuance may be given the same weight as an old doctrine enough to warrant the prospective application of a judicial decision **only if it is a general interpretative rule** or an issuance not specifically addressed to a particular taxpayer but applicable to all taxpayers affected by the said directive.

In this case, SMPPC admitted to have relied on ***BIR Ruling No. [DA (C-035) 127-08]*** in not paying DST on its advances from related parties. The said BIR Ruling is quoted as follows:

“BIR RULING [DA-(C-035) 127-08]

SGV & Co.
6760 Ayala Avenue
Makati City

Attention: Atty. Romulo S. Danao, Jr.
Partner, Tax Services

Gentlemen :

This refers to your letter dated April 23, 2008 stating that **your clients, Star Accounts Management Services, Inc., Star Two Holdings, Inc., Star (SPV-AMC) Philippines, Inc., Star Two (SPV-AMC), Inc., Star Three (SPV-AMC), Inc., Star Properties (SPV-AMC) Philippines, Inc., Star Asset Management NPL, Inc., Star Asset Management ROPOAS, Inc., Starcredit Phils., Inc., and Onshore Strategic Assets (SPV-AMC), Inc. are member companies of the Star Group;** that to partly fund their operations, the said member companies of Star Group have received loans and advances from their affiliate, **Standard Bank Plc (SBP);** and that these loans and advances are covered by inter-office memoranda.”⁴⁶ 

⁴⁶ Emphasis supplied.

However, after scrutinizing the quoted portion of said Ruling, this Court rules that ***BIR Ruling No. [DA (C-035) 127-08]*** is not a general interpretative rule since it is addressed to specific taxpayers, none of which is SMPPC. Hence, ***BIR Ruling No. [DA (C-035) 127-08]*** does not provide sufficient basis to warrant the prospective application of the ***Filinvest Case***.

Furthermore, the Court cannot subscribe to the argument of SMPPC that the ***Filinvest Case*** cannot be given retroactive effect since it did not ascertain the contemporaneous legislative intent of Section 180 [now Section 179] of the Tax Code but merely applied the law to the facts of the said case. Contrary to the allegation of SMPPC, the ***Filinvest Case*** interpreted Section 180 of the Tax Code, particularly on the scope of the word “loan agreements”. We echo our ruling in the case of ***San Miguel Holdings Corp., v. CIR***,⁴⁷ to wit:

“In the *Filinvest* case, the Supreme Court interpreted Section 180 of the Tax Code (now Section 179 of the NIRC of 1997), particularly on the scope of the word 'loan agreements,' as being subject to DST. The Supreme Court held that loan agreement includes "instructional letters, as well as, the journal and cash vouchers evidencing the advances of [Filinvest] extended to its affiliates." Section 180 was inserted in the NIRC through the enactment of RA No. 7660 on December 23, 1994. This provision is, up until now, still in our statute books. Relative thereto, the same Section 180 was also carried in RA No. 8424, otherwise known as the "Tax Reform Act of 1997"; and while the said Section 180 was later amended through the enactment of RA No. 9243 on February 17, 2004, the imposition of DST on loan agreements was 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 becomes part of the NIRC as of said date, i.e., December 23, 1994, up to the present time.”⁴⁸

Likewise, the CTA *En Banc* disagrees with the contention of SMPPC that the ***Filinvest Case*** is not applicable to the case at bar since the BIR assessed SMPPC for deficiency DST based on its Notes to AFS and not on instructional letters, journal vouchers and/or cash vouchers.

As ruled by the Court in Division, ***Section 6 of Revenue Regulations ("RR") No. 9-94***⁴⁹ imposes DST even though no formal agreement or promissory note was executed to cover the credit or loan extended to another party.⁵⁰ The rationale behind the said rule boils down to the nature of DST.

⁴⁷ CTA EB Case Nos. 1935 and 1941, 25 June 2020.

⁴⁸ Emphasis supplied.

⁴⁹ SUBJECT: Republic Act No. 7660, An Act Rationalizing Further the Structure and Administration of the Documentary Stamp Tax, Amending for the Purpose Certain Provisions of the National Internal Revenue Code, as Amended, 8 March 1994.

⁵⁰ 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 or used in the Philippines shall be subject to the 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.

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)
Page 18 of 22

which is a tax 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.⁵¹ It is an excise tax since it is levied on the exercise by persons of privileges conferred by law.⁵² Its imposition is actually on the transaction entered into by the parties and not on the document evidencing said transaction.⁵³ Hence, even assuming that the assessment is based on a mere Note to the AFS, the fact that SMPPC entered into loan transactions with its related parties is sufficient reason for it to be liable for DST.

Furthermore, even assuming that the existence of loan documents is required before DST can be imposed, SMPPC is still liable to pay the said tax since it already admitted through its own witness that its advances from related parties are covered by vouchers and board resolution or memos, to wit:

"ATTY. MULI:

Q: Now I ask you, Mr. Witness, in what form are these advances, are they written?

MR. SARINAS:

A: This is in a form of vouchers and board resolution or memos."⁵⁴

Based on the foregoing reasons, the CTA *En Banc* finds that the Court in Division correctly applied the *Filinvest Case* in the resolution of the original Petition for Review. Contrary to the position of SMPPC, the application of the *Filinvest Case* did not violate the rule on non-retroactivity of laws and rulings because its interpretation of Section 180 of the Tax Code is deemed constituted as part of the Tax Code as of 23 December 1994 up to the present.⁵⁵

The Court in Division correctly applied RMC No. 48-2011 in resolving the case herein.

In this case, SMPPC further alleges that the Court in Division erred in applying RMC No. 48-2011 in the case at bar. It insists that the application of *2*

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, as amended.

⁵¹ Philippine Home Assurance, et al. vs. Court of Appeals, et al., G.R. No. 119446, 21 January 1999.

⁵² Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, G.R. Nos. 164155 and 175543, 25 February 2013.

⁵³ Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 194065, 20 June 2016.

⁵⁴ Decision, *Rollo*, EB No. 2099, pp. 66-90; *Rollo*, EB No. 2102, pp. 27-52.

⁵⁵ San Miguel Holdings Corporation v. CIR, CTA EB Case Nos. 1935 and 1941, 25 June 2020.

said RMC is against the rule on non-retroactivity of rulings and circulars. The CTA *En Banc* is not convinced.

The Supreme Court in the case of *Philacor Credit Corporation vs. Commissioner of Internal Revenue*⁵⁶ had already ruled that BIR Rulings and Regulations interpreting the provisions of the Tax Code, similarly to judicial decisions, may be applied to transactions that took place before its effectivity, to wit:

"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 no on their assignment or transfer: x x x"⁵⁷

On the basis of the foregoing, the CTA *En Banc* finds no error in the assailed Decision and Resolution of the Court in Division.

The Court in Division correctly found that the CIR's right to assess had not yet prescribed during the issuance of the FLD

Based on the discussion above, the CTA *En Banc* finds no merit in the contention of SMPPC that it is not liable to pay DST on account that the assessment against it had already prescribed.

Since it is without dispute that SMPPC failed to file a DST return in relation to its advances from related parties, the three-year assessment period under Section 203 is not applicable to this case. Instead, it is the ten-year assessment period under *Section 222(a) of the Tax Code* which is controlling, to wit:

“SEC. 222. Exceptions as to Period of Limitation of Assessment and Collection of Taxes.-

⁵⁶ G.R. No. 169899, 6 February 2013

⁵⁷ Emphasis supplied.

DECISION

CTA *EB* NOS. 2099 & 2102 (CTA Case No. 9288)

Page 20 of 22

(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.”⁵⁸

As found by the Court in Division, the date of the discovery of the non-filing of the DST Return was on 6 January 2010. Hence, the CIR had until 6 January 2020 within which to assess petitioner for deficiency DST. Therefore, the right of the CIR to assess petitioner was yet to prescribe when the latter received the FLD on 26 February 2014.

The Court in Division correctly ordered the refund of interest, surcharge, and penalty in favor of SMPPC

The CIR alleges that the Court in Division erred in ordering the refund of the deficiency interest, surcharge, and compromise penalty paid by SMPPC on account of good faith. The contention of the CIR is without merit.

In the case of *Tambunting Pawnshop, Inc., v. Commissioner of Internal Revenue*,⁵⁹ the Supreme Court ruled that “good faith and honest belief that one is not subject to tax on the basis of previous interpretations of government agencies tasked to implement the tax law are sufficient justification to delete the imposition of surcharges and interest”.

Applying the aforementioned jurisprudence in this case, considering that SMPPC, in not paying the DST due on its advances from related parties, relied in good faith on **BIR Ruling No. [DA (C-035) 127-08]**, the CTA *En Banc* rules that SMPPC is not liable for imposition of surcharges and interest.

Moreover, SMPPC is not subject to compromise penalty since as discussed in the case of *Wonder Mechanical Engineering Corporation vs. The Court of Tax Appeals, et al.*,⁶⁰ “compromise penalty cannot be imposed without an agreement or conformity of a taxpayer.” In this case, the CIR failed to show proof that SMPPC agreed to pay any compromise penalty as ruled by the Court in Division in the assailed Decision and Resolution, therefore it cannot be made liable to pay said penalty. 

⁵⁸ Emphasis supplied.

⁵⁹ GR No. 179085, 21 January 2010.

⁶⁰ G.R. Nos. L-22805 & L-27858. 30 June 1975.

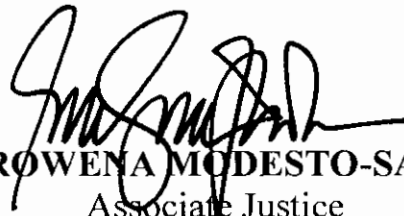
DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)
Page 21 of 22

WHEREFORE, considering the foregoing, the Petition for Review in CTA EB No. 2099 filed by San Miguel Paper Packaging Corporation and the Petition for Review in CTA EB No. 2102 filed by the Commissioner of Internal Revenue are both **DENIED** for lack of merit.

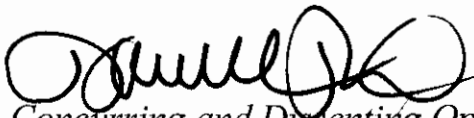
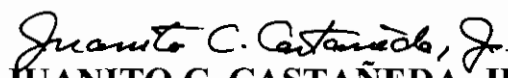
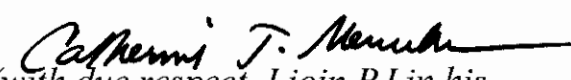
Accordingly, the Decision promulgated on 14 November 2018, and Resolution, dated 2 July 2019 rendered by the Court in Division in CTA Case No. 9288 are **AFFIRMED**.

SO ORDERED.



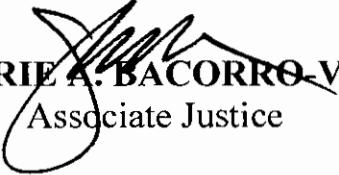
MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:


(See Concurring and Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice
JUANITO C. CASTAÑEDA, JR.
Associate Justice
ERLINDA P. UY
Associate Justice
MA. BELEN M. RINGPIS-LIBAN
Associate Justice
(with due respect, I join PJ in his
Concurring and Dissenting Opinion)
CATHERINE T. MANAHAN
Associate Justice

DECISION

CTA EB NOS. 2099 & 2102 (CTA Case No. 9288)
Page 22 of 22



JEAN MARIE A. BACORRO-VILLENA
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 cases were 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

EN BANC

SAN MIGUEL PAPER
PACKAGING CORPORATION,
Petitioner,

CTA EB NO. 2099
(CTA Case No. 9288)

-versus-

COMMISSIONER OF INTERNAL
REVENUE,
Respondent,

X-----X
COMMISSIONER OF INTERNAL
REVENUE,
Petitioner,

CTA EB NO. 2102
(CTA Case No. 9288)

Present:

-versus-

DEL ROSARIO, *P.J.*,
CASTANEDA, JR.,
UY,
RINGPIS-LIBAN,
MANAHAN,
BACORRO-VILLENA, and
MODESTO-SAN PEDRO, *JJ.*

SAN MIGUEL PAPER
PACKAGING CORPORATION,
Respondent.

Promulgated:

X-----X
2:45 p.m.

OCT 07 2020

CONCURRING AND DISSENTING OPINION

DEL ROSARIO, P.J.:

I concur with the *ponencia* in denying the Petition for Review filed by the Commissioner of Internal Revenue (CIR) in CTA EB No. 2102 for lack of merit.

With due respect, I am constrained to withhold my assent on the denial of the Petition for Review filed by San Miguel Paper Packaging Corporation (SMPPC) in CTA EB No. 2099.

on

CONCURRING AND DISSENTING OPINION

CTA EB Nos. 2099 & 2102

Page 2 of 5

I humbly submit that the doctrine laid down in *Commissioner of Internal Revenue vs. Filinvest Development Corporation*¹ cannot be applied retroactively to the prejudice of taxpayers who relied thereon in good faith.

In the present case, there is no denying that SMPPC relied in good faith on *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 Plc to member companies of Star Group, which are covered by inter-office memoranda, are not subject to Documentary Stamp Tax (DST) under Section 179 of the National Internal Revenue Code (NIRC) of 1997, as amended.

But more than that, SMPPC also relied in good faith on the judicial interpretation then prevailing prior to the promulgation by the Supreme Court of its decision in *Filinvest* on July 19, 2011. In *Filinvest*, the Supreme Court laid down the doctrine that instructional letters, journal and cash vouchers evidencing advances extended to affiliates qualify as loan agreements upon which DST may be imposed. In contrast, the prevailing judicial interpretation prior to *Filinvest* is that inter-company advances covered by mere inter-office memos were **not loan agreements subject to DST** under Section 179 of the NIRC of 1997, as amended.

To be specific, SMPPC relied on the following:

- (i) The final and executory decision in *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** (i.e., that inter-office memo covering advances granted by an affiliate company is not subject to DST) is in accordance with law; and,
- (ii) The final and executory decision in *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) declared that **BIR Ruling No. 116-98 dated July 30, 1998** (i.e., that inter-company advances made by Belle to its affiliates is not subject to

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



DST) is consistent with the provisions of the NIRC of 1997.

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 prior to *Filinvest*. 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:

"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.

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 laid down by the CA in *APC Group* and the CTA in *Belle Corporation*, respectively, was effectively over-ruled on July 19, 2011 when the Supreme Court promulgated *Filinvest*, the same should not be applied retroactively to the prejudice of taxpayers who relied thereon in good faith.

Note that, jurisprudentially, a Supreme Court pronouncement reversing a BIR Ruling favorable to a taxpayer would not as a rule cause any prejudice to the latter. In the consolidated cases of

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



CONCURRING AND DISSENTING OPINION

CTA EB Nos. 2099 & 2102

Page 4 of 5

Commissioner of Internal Revenue vs. San Roque Power Corporation,³ *Taganito Mining Corporation vs. Commissioner of Internal Revenue*,⁴ and *Philex Mining Corporation vs. Commissioner of Internal Revenue*,⁵ the Supreme Court, citing the case of *Commissioner of Internal Revenue vs. Philippine Health Care Providers, Inc.*,⁶ held that the reversal of a general interpretative rule should be applied prospectively, thus:

"Taxpayers should not be prejudiced by an erroneous interpretation by the Commissioner, particularly on a difficult question of law. The abandonment of the *Atlas* doctrine by *Mirant* and *Aichi* is proof that the reckoning of the prescriptive periods for input VAT tax refund or credit is a difficult question of law. The abandonment of the *Atlas* doctrine did not result in *Atlas*, or other taxpayers similarly situated, being made to return the tax refund or credit they received or could have received under *Atlas* prior to its abandonment. This Court is applying *Mirant* and *Aichi* prospectively. **Absent fraud, bad faith or misrepresentation, the reversal by this Court of a general interpretative rule issued by the Commissioner, like the reversal of a specific BIR ruling under Section 246, should also apply prospectively.** As held by this Court in *CIR v. Philippine Health Care Providers, Inc.*:

In *ABS-CBN Broadcasting Corp. v. Court of Tax Appeals*, this Court held that under Section 246 of the 1997 Tax Code, **the Commissioner of Internal Revenue is precluded from adopting a position contrary to one previously taken where injustice would result to the taxpayer.** Hence, where an assessment for deficiency withholding income taxes was made, three years after a new BIR Circular reversed a previous one upon which the taxpayer had relied upon, such an assessment was prejudicial to the taxpayer. To rule otherwise, opined the Court, would be contrary to the tenets of good faith, equity, and fair play.

This Court has consistently reaffirmed its ruling in *ABS-CBN Broadcasting Corp.* in the later cases of *Commissioner of Internal Revenue v. Borroughs, Ltd.*, *Commissioner of Internal Revenue v. Mega Gen. Mdsg. Corp.*, *Commissioner of Internal Revenue v. Telefunken Semiconductor (Phils.), Inc.*, and *Commissioner of Internal Revenue v. Court of Appeals*. **The rule is that the BIR rulings have no retroactive effect where a grossly unfair deal would result to the prejudice of the taxpayer, as in this case.**

More recently, in *Commissioner of Internal Revenue v. Benguet Corporation*, wherein the taxpayer was entitled to tax

³ G.R. No. 187485, February 12, 2013, 690 SCRA 336 (2013).

⁴ G.R. No. 196113, February 12, 2013, 690 SCRA 336, (2013).

⁵ G.R. No. 197156, February 12, 2013, 690 SCRA 336, (2013).

⁶ G.R. No. 168129, 24 April 2007, 522 SCRA 131, 142-143.

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CONCURRING AND DISSENTING OPINION

CTA EB Nos. 2099 & 2102

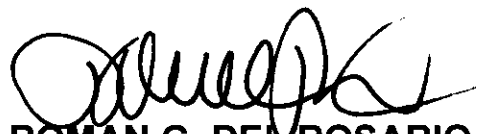
Page 5 of 5

refunds or credits based on the BIR's own issuances but later was suddenly saddled with deficiency taxes due to its subsequent ruling changing the category of the taxpayer's transactions for the purpose of paying its VAT, this Court ruled that applying such ruling retroactively would be prejudicial to the taxpayer." (*Boldfacing supplied*)

If a taxpayer can rely in good faith on an erroneous "favorable" ruling of the BIR without suffering any legal prejudice (that is - - by applying a new ruling reversing a previous favorable 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.

In view of the foregoing, SMPPC is entitled to a refund of the basic **DST paid** on advances for taxable year 2009 in the amount of Php3,315,400.00, in addition to the surcharge, interest and compromise penalty in the amount of Php3,631,519.37.

All told, I VOTE to: (i) GRANT the Petition for Review filed by San Miguel Paper Packaging Corporation in CTA EB No. 2099; (ii) DENY the Petition for Review filed by the Commissioner of Internal Revenue in CTA EB No. 2102; and, (iii) ORDER the Commissioner of Internal Revenue to refund to San Miguel Paper Packaging Corporation the basic Documentary Stamp Tax paid by it for the taxable year 2009 in the amount of Php3,315,400.00, plus surcharge, interest and compromise penalty in the amount of Php3,631,519.37.


ROMAN G. DEL ROSARIO
Presiding Justice