Republic of the Philippines
Supreme Court
Cagayan de Oro City

FIRST DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, First Division, issued a Resolution dated **March 6, 2023** *which reads as follows:*

"G.R. No. 239260 ***(Brewery Properties, Inc. v. Commissioner of Internal Revenue).*** — Tax refunds are in the nature of tax exemptions, and hence, construed *strictissimi juris*. Tax refunds derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State. Consequently, a taxpayer must justify its claim for refund by words too plain to be mistaken and too categorical to be misinterpreted.[1]

The Case

This Petition for Review on *Certiorari*[2] under Rule 45 of the Rules of Court assails the Decision[3] dated 23 April 2018 of the Court of Tax Appeals (CTA) *En Banc* in CTA EB No. 1609 (CTA Case No. 8892), which denied the Petition for Review filed by petitioner Brewery Properties, Inc.

Antecedents

Petitioner Brewery Properties Inc. (petitioner), is a duly registered domestic corporation engaged in owning, using, improving, developing, selling, exchanging, leasing and holding for investment or otherwise, real estate of all kinds, including buildings and other structures. It is a wholly-owned subsidiary of San Miguel Brewery Inc. (SMBI). It was previously a wholly-owned subsidiary of San Miguel Corporation (SMC) until the latter's domestic beer business was assigned to SBMI.[4]

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1 *Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*, 695 Phil. 493, 504 (2012).

2 *Rollo*, 51-95.

3 Id. at 11-45. Penned by Associate Justice Juanito C. Castañeda, Jr. and concurred in by Presiding Justice Roman G. Del Rosario and Associate Justices Lovell R. Bautista, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Ma. Belen M. Ringpis-Liban, and Catherine T. Manahan. Associate Justices Erlinda P. Uy and Caesar A. Casanova on leave.

4 Id. at 12-13.

On 15 July 2011, the Bureau of Internal Revenue (BIR) issued a Notice of Informal Conference to petitioner, informing the latter that, in connection with the examination of its internal revenue tax liabilities for taxable year 2009, it found certain deficiency taxes due from petitioner, and inviting petitioner to an informal conference.[5]

A Preliminary Assessment Notice (PAN)[6] dated 19 October 2011 was thereafter issued by the BIR, informing petitioner that there were deficiency taxes due from it, including documentary stamp tax (DST) in the amount of ₱672,953.23 (inclusive of surcharge, interest and penalty) on "Advances from Affiliates."

On 06 January 2012, the BIR issued to petitioner a Formal Letter of Demand (FLD)[7] with corresponding Assessment Notices for deficiency income tax, value-added tax (VAT), and DST in the aggregate amount of ₱6,291,601.67, requesting petitioner to pay the same on or before 31 January 2012. The assessment is broken down as follows:

TAX TYPE	TOTAL AMOUNT DUE
Income Tax	₱3,914,712.77
VAT	1,676,229.29
DST (Advances from Affiliates)	700,659.61
Total	**₱6,291,601.67**[8]

Petitioner filed a Letter/Protest dated 08 February 2012 with the BIR. Not fully convinced, the BIR issued a Final Decision on Disputed Assessment (FDDA)[9] on 14 September 2012, stating that there is still deficiency DST for the advances from SMC and SMBI, *viz.*:

> "DOCUMENTARY STAMP TAX
>
> As disclosed in **Note 6 (Related Party Transactions) of the Audited Financial Statements** (Letters b & c):
>
> b. Due to San Miguel Corporation (SMC) amounted to ₱1,941,888.00 which represents advances made by SMC for payment of documentary stamp tax and SEC filing fees.
>
> c. The Company obtained non-interest bearing advances from San Miguel Brewery Inc. (SMBI) amounting to ₱80,217,126.00 which were used to acquire a certain parcel of land in Bacolod City."[10]

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5 Id. at 13.
6 Id. at 161-167.
7 Id. at 168-174.
8 Id. at 13.
9 Id. at 157-160.
10 Emphasis supplied.

On 24 September 2012, petitioner **paid under protest** to the BIR the amount of ₱760,609.96[11] for deficiency DST and penalties, as stated in the FDDA. The payment was made through the BIR Electronic Filing and Payment System (EFPS). Subsequently, on 27 September 2012, petitioner sent a Letter to the BIR informing the latter that it had paid under the protest the amount of ₱760,609.96.[12]

Petitioner filed with the BIR the Letter/Claim for Refund on 30 June 2014, asking for the refund or the issuance of a tax credit certificate of the amount of ₱760,609.96, representing the DST and penalties collected for taxable year 2009 and paid in 2012.[13]

Thereafter, on 18 September 2014, petitioner filed a petition for review on its claim for refund before the CTA. Petitioner asserted that at the time it received the advances, the prevailing rule, as laid down in court decision and BIR issuances, was that inter-company advances covered by mere inter-office memos were not loan agreements subject to DST under the NIRC.[14]

For its part, the BIR cited *Commissioner of Internal Revenue (CIR) vs. Filinvest Development Corporation*[15] *(Filinvest)* where the Supreme Court ruled that intercompany advances, even if not covered by a loan agreement or evidenced by a promissory note, are subject to DST. Based on the interpretation of Section 180 [now Section 179] in *Filinvest*, petitioner is liable for DST for its Advances from Affiliates. Respondent also argued that the petition is premature, considering that petitioner has not established that it complied with all the administrative requirements leading up to the filing of the petition.[16]

Ruling of the CTA First Division

After trial on the merits, the CTA First Division held that petitioner was liable for DST on its Advances from Affiliates in 2009. The court ruled that in the *Filinvest* case, which was promulgated in 2011, what was interpreted by the Supreme Court is Section 180 of the NIRC, particularly on the scope of the word "loan agreements" as being subject to DST, in 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 Republic Act (RA) No. 7660 on 23 December 1994, and it is still currently in our statute books. Thus, this interpretation in the *Filinvest* case constituted as part of the NIRC as of said

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[11] The said amount of ₱760,609.96 is composed of the following: *(a)* basic DST – ₱410,796.00; *(b)* surcharge - ₱102,699.00; *(c)* interest – ₱231,114.96; and *(d)* compromise penalty – ₱16,000.00.
[12] *Rollo*, p. 14.
[13] Id. at 15.
[14] Id. at 15-17.
[15] 669 Phil. 223 (2011).
[16] *Rollo*, p. 15.

date, *i.e.,* 23 December 1994, up to the present time. Therefore, this interpretation applies to petitioner's Advances from Affiliates for taxable year 2009.[17]

As regards the claim for refund of interest and surcharge, the CTA First Division ruled in favor of petitioner. It considered petitioner's good faith and honest belief that it was not subject to tax based on its reliance on BIR Ruling [DA (C-035) 127-08], as confirmed in petitioner's Letter/Protest dated 08 February 2012. With respect to compromise penalty, the court held that it was improperly imposed because petitioner's payment under protest signifies that there was no agreement between the parties. Hence, the dispositive of its Decision dated 30 September 2016 reads:

> "**WHEREFORE**, in light of the foregoing considerations, the instant Petition for Review is **PARTLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the aggregate amount of P349,813.96, representing the following:
>
> | **Penalties erroneously paid by petitioner** | **Amount** |
> |---|---|
> | Surcharge | ₱102,699.00 |
> | Interest | 231,114.96 |
> | Compromise penalty | 16,000.00 |
> | **Total** | **₱349,813.96** |
>
> **SO ORDERED.**[18]

Petitioner filed a motion for partial reconsideration, particularly on the ruling on the refund of the DST. Respondent likewise filed its motion for partial reconsideration with respect to the portion ordering respondent to refund or issue a tax credit certificate to petitioner in the amount ₱349,813.96 for surcharge, interest, and compromise penalty. On 27 February 2017, the CTA First Division denied both motions for lack of merit.[19]

In its *Concurring and Dissenting Opinion*, CTA Presiding Justice Roman G. Del Rosario took the position that petitioner is not entitled to a refund because the DST and penalties in the FDDA had long become final and executory. He summarized the following relevant dates: *(1)* **19 September 2012** – petitioner received the FDDA signed by then CIR Kim S. Jacinto-Henares; *(2)* **24 September 2012** – petitioner paid the DST and penalties amounting to ₱760,609.96, as indicated in the FDDA; and *(3)* **30 June 2014** – petitioner filed its administrative claim for refund asserting that the DST and penalties had been erroneously and/or illegally collected by the Government. Under Section 228 of the NIRC, petitioner has thirty (30) days

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[17] Id. at 19.
[18] Id.
[19] Id.

from receipt of the FDDA to appeal the assessment to the CTA. **The FDDA likewise states that should petitioner disagree, it may appeal the decision to the CTA within thirty (30) days from its receipt; otherwise, the deficiency tax assessment shall become final, executory and demandable.**[20]

According to Presiding Justice Del Rosario, since petitioner received the FDDA on 19 September 2012, petitioner had only until 19 October 2012 to file an appeal before the CTA to question the FDDA. Records reveal that no appeal to the CTA was filed by petitioner on or before 19 October 2012 to question the FDDA. The fact that petitioner paid the assessment under protest on 24 September 2012 was not sufficient to toll the running of the 30-day period within which to contest the validity of the FDDA before the CTA. Considering that petitioner did not exercise the remedy of appeal as provided under Section 228, the FDDA became final, executory and demandable.[21]

Petitioner filed a petition for review before the CTA *En Banc*.

Ruling of the CTA *En Banc*

On 23 April 2018, the CTA *En Banc* issued a Decision denying the petition for review for lack of merit. The CTA *En Banc* explained that a DST is actually an excise tax because it is imposed on the transaction rather than on the document. While respondent based the DST imposition on the information obtained from the notes to the audited financial statements of petitioner, the latter does not deny the existence of the subject transactions to which respondent imposed the DST, nor does petitioner deny that it is a party to said transactions. Otherwise, it would be relatively easy for any taxpayer to circumvent the law on DST by simply hiding the corresponding and/or supporting document/s. Also, "loan" and "loan agreements" are embraced in the term "debt instruments" under Section 179 of the NIRC. Thus, a 'loan' or 'simple loan' defined under Article 1933 of the Civil Code being a contract of loan or a loan agreement, falls under the purview of 'debt instrument'.[22]

In his *Dissenting Opinion*,[23] Presiding Justice Del Rosario restated his earlier position that petitioner is not entitled to the refund sought on the ground because FDDA had long become final and executory. Petitioner's payment under protest did not toll the 30-day period to appeal the assessment to the CTA.

Hence, this Petition for Review on *Certiorari* under Rule 45 filed by petitioner.

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[20] Id. at 46-47.
[21] Id. at 48.
[22] Id. at 38-40.
[23] Id. at 46-49.

Issues

Petitioner invokes that the CTA *En Banc* erred:

> (i) IN HOLDING THAT THE DECISION OF THE SUPREME COURT IN "COMMISIONER OF INTERNAL REVENUE VS. FILINVEST DEVELOPMENT CORPORATION", G.R. NOS. 163531 AND 167689, 19 JULY 2011, AND RMC NO. 48-2011 MAY BE USED AS BASIS IN THE IMPOSITION OF DST ON THE PETITIONER WITH RESPECT TO ADVANCES EXTENDED TO IT IN 2009.
>
> (ii) IN HOLDING THAT DST MAY BE IMPOSED ON THE SUBJECT ADVANCES TO THE PETITIONER ON THE BASIS OF A MERE NOTE APPEARING IN ITS AUDITED FINANCIAL STATEMENTS.
>
> (iii) IN HOLDING THAT PETITIONER WAS SUFFICIENTLY INFORMED OF THE FACTUAL BASIS OF THE DST ASSESSMENT, AS MANDATED BY SECTION 228 OF THE NIRC, WHICH REQUIRES THAT THE TAXPAYER MUST BE INFORMED OF THE FACT "ON WHICH THE ASSESSMENT IS MADE".
>
> (iv) IN NOT GRANTING TO THE PETITIONER THE REFUND OF THE AMOUNT OF ₱410,796.00, REPRESENTING ITS PAYMENT FOR THE BASIC DEFICIENTY DST ASSESSMENT FOR THE TAXABLE YEAR 2009.

Among others, petitioners contended that: *(1)* the *Filinvest*[24] case (promulgated in 2011) and RMC No. 48-2011 (issued in 2011) should not have been applied retroactively to cash advances extended to petitioner's related parties in 2009; *(2) Co vs. Court of Appeals,*[25] which espoused the principle of prospectivity of judicial decisions, should have considered by the court; *(3)* even assuming that the *Filinvest* case may be applied retroactively, the same may not be invoked against petitioner because the facts involved in *Filinvest* are different from those involved in the instant case, *i.e.,* in the *Filinvest* case, the documents were instructional letters and journal and cash vouchers; whereas in this case, the BIR relied on a mere note to audited financial statements which are not documents, much less debt instruments; and *(4)* petitioner was not sufficiently informed of the facts on which the assessment was made, as required by Section 228 of the NIRC; hence, the deficiency DST assessment is void.

On the contrary, respondent, through the Office of the Solicitor General (OSG), argues that: *(1)* there is no provision for payment under protest under

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[24] 669 Phil. 223 (2011).
[25] 298 Phil. 211 (1993).

the NIRC; and *(2)* petitioner failed to follow the proper remedy to contest the FDDA within 30 days form receipt thereof; thus, it has lost its remedy to contest the illegality of the tax as assessed by respondent.

Ruling of the Court

We rule in favor of respondents.

At the outset, it must be pointed out that petitioner availed of the wrong remedy. Section 228 of the NIRC governs the rules on protesting an assessment, while Section 229 provides the rules on refund of tax erroneously or illegally collected. Under Section 228, a taxpayer has **30 days** from receipt of the disputed assessment to appeal to the CTA. Otherwise, the assessment shall become final, executory, and demandable. Meanwhile, under Section 229, a taxpayer is allowed to claim a refund within **two years** from its payment of the tax erroneously or illegally collected.

Since petitioner received the FDDA on 19 September 2012, petitioner had only until 19 October 2012 to file an appeal before the CTA to question the FDDA. Considering that petitioner did not exercise the remedy of appeal as provided in Section 228, the FDDA became final, executory and demandable. Petitioner is thereby precluded from questioning the legality or validity of the assessment in the guise of claiming a refund of the DST and penalties it paid under protest. Simply put, petitioner's administrative claim for refund is not a valid substitute for the lost remedy of appeal to question the final decision of the CIR on the disputed assessment. Conversely, the validity of the said deficiency DST and penalties pursuant to a final and executory FDDA may not be assailed nor be the subject of a claim for refund under Section 229.

As clearly indicated in the FDDA, should petitioner disagree with the assessment, it may appeal the decision to the CTA within 30 days from its receipt; otherwise, the deficiency tax assessment shall become final, executory and demandable.

In *Dr. Felisa L. Vda. San Agustin, in substitution of Jose Y. Feria, in his capacity as Executor of Jose San Agustin vs. CIR*,[26] which involves an assessment case for deficiency estate tax, including surcharge, interest and penalties, the Supreme Court upheld the CTA's decision granting the taxpayer therein a refund of the assessed deficiency estate tax upon reversing the CIR's decision assessing and requiring full payment from the taxpayer.

We note that in its Resolution dated 27 February 2017, the CTA First Division stated that there is no law prohibiting the refund of what has been paid by virtue of the said assessment. According to the CTA, since it was not

[26] 417 Phil. 292, (2001).

prohibited, it is allowed. **To be clear, this Court does *not* prohibit the payment of taxes under protest. Nonetheless, to validly claim a refund, the disputed assessment must have been appealed before the CTA within the 30-day period from receipt of the FDDA, especially when the cited ground for refund is the erroneous or illegal assessment. The failure to appeal the disputed assessment to the CTA within the 30-day period will render it final, executory and demandable.**

It bears stressing that petitioner's claim is one for tax refund. Tax refunds derogate the State's power of taxation; thus, they must be construed strictly against the taxpayer and liberally in favor of the State.[27] Consequently, a taxpayer must justify its claim for refund by words too plain to be mistaken and too categorical to be misinterpreted.[28]

Parenthetically, if petitioner's present claim for refund will be permitted, effectively, this Court granted it additional two-year period to challenge the validity of FDDA and allowed it to enjoy two administrative recourses with the BIR, namely: protest on the assessment and administrative claim for refund. As pointed out by Presiding Justice Del Rosario, the proper remedy for the petitioner was to appeal the FDDA before the CTA within the 30-day period and pray for the cancellation of the FDDA and the refund of the deficiency DST and penalties that it paid under protest.

In any case, even if petitioner's remedy of claiming refund will be given due course, its arguments will still fail, as will be discussed below *in seriatim*.

The Filinvest case and RMC No. 48-2011 apply as legal bases in the imposition of DST on petitioner

Contrary to the stance advanced by petitioner, the CTA *En Banc* did not retroactively apply the *Filinvest* case.

It must be noted that the Supreme Court's interpretation of a statute constitutes part of the law as of the date it was originally passed since it merely establishes the contemporaneous legislative intent that the interpreted law carried into effect.[29] This pronouncement, first enunciated in *Senarillos vs. Hermosisima*,[30] had since become the established doctrine on the matter of the effectivity of judicial interpretations of statutes. In *Columbia Pictures vs.*

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[27] *Gulf Air Company, Philippine Branch (GF) v. Commissioner of Internal Revenue*, G.R. No. 695 Phil. 493, 504 (2012).
[28] Id.
[29] *Victorias Milling Co., Inc. vs. Intermediate Appellate Court, et al.*, 277 Phil. 1, 9 (1991).
[30] 100 Phil. 501 (1956).

Court of Appeals,[31] the Court expounded on the import of the ruling in *Senarillos* in relation to the rule on nonretroactivity of laws, *viz*:

> 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, 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 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.[32]

Hence, for all intents and purposes, there was no retroactive application, so to speak, of the *Filinvest* ruling to the case of petitioner considering that the Court's interpretation of Section 180 [now Section 179] of the NIRC in the *Filinvest* case constituted **part of the law as of the date it was originally passed in 1997.**

Further, as aptly observed by the CTA *En Banc*, RMC No. 48-2011 merely circularized the decision in the *Filinvest* case. It used the term *"Circularization"* in its subject matter and it merely quoted the "relevant excerpts" from the *Filinvest* case, and enjoined all employees of the BIR engaged in the audit of review of cases to assess deficiency DST, if warranted, on the kinds of transactions as ruled in the *Filinvest*.

No previous doctrines overruled
by the ruling in Filinvest

Let us now examine whether there were previous doctrines that petitioner relied upon in good faith which were overruled by the Filinvest ruling; thus, the *Filinvest* ruling should be applied prospectively.

Petitioner contends that there were previous doctrines that inter-company loans and advances covered by inter-office memoranda are not subject to DST. It cited the following: *(1)* Decision of the Court of Appeals (CA) in *Commissioner of Internal Revenue vs. APC Group, Inc.*, CA-G.R. No. 69869, 29 November 2002; *(2)* Decision of the CTA *En Banc* in

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[31] 29 Phil. 875, 905-908 (1996, cited in *Philippine International Trading Corp. v. Commission on Audit*, 821 Phil. 144 (2017).

[32] Emphasis in the original. Internal citations omitted.

Commissioner of Internal Revenue vs. Belle Corporation, CTA EB No. 147, 13 October 2006; *(3)* BIR Ruling [DA(C-035)127-08] dated 8 August 2008; and *(4)* Resolution of the Supreme Court dated 17 May 2004 in G.R. No. 162185 entitled *Commissioner of Internal Revenue vs. APC Group Inc.*

First, the CA and CTA Decisions cited by petitioner do not constitute precedents, and do not bind this Court or the public.[33] Be it noted that CA and CTA Decisions are appealable to this Court, which may affirm, reverse or modify the CA and CTA decision as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system.[34]

Second, the Court is not bound by BIR Rulings. BIR Rulings are the official position of the Bureau to queries raised by taxpayers and other stakeholders relative to clarification and interpretation of tax laws.[35] These are administrative opinions interpreting a provision of a tax law. As the Court has consistently ruled, these administrative interpretations or rulings placed upon a statute by the executive officers, whose duty is to enforce it, are not conclusive and will be ignored if judicially found to be erroneous as the courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[36]

Hence, petitioner cannot validly invoke BIR Ruling [DA(C-035)127-08] considering that it is not the party who sought for an opinion concerning the interpretation of a tax provision. Said BIR Ruling was issued as a response to the specific query made by a particular taxpayer on behalf of its client.[37]

Third, as regards this Court's Resolution in *Commissioner of Internal Revenue vs. APC Group Inc.* (G.R. No. 162185) promulgated on 17 May 2004, petitioner argued that is a previous doctrine that was overruled in the *Filinvest* decision. In said Resolution, the Court found no reversible error committed by the CA in declaring the non-taxability of memos and vouchers evidencing inter-company advances. Petitioner claims that although contained in a Minute Resolution, the same may qualify as a previous doctrine that was overruled by this Court.

The binding nature of a minute resolution and its ability to establish a lasting judicial precedent have already been settled in *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*[38] where the Court

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[33] *San Roque Power Corp. v. Commissioner of Internal Revenue*, 836 Phil. 529, 538 (2018).
[34] Id.
[35] https://www.bir.gov.ph/index.php/tax-information.html [date last accessed: 02 March 2022]
[36] *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916, 929 (1999).
[37] *Rollo*, 33.
[38] 716 Phil. 676 (2013).

explained that a minute resolution constitutes *res judicata* only insofar as it involves the "same subject matter and the same issues concerning the same parties[.]" However, if other parties and another subject matter (even if there are the same parties and issues) are involved, the minute resolution is not a binding precedent.[39] The case of *APC Group* cited by petitioner and the *Filinvest* case involve different parties and subject matters. The *APC Group* case involved memos and vouchers as evidence of inter-company advances. On the other hand, the *Filinvest* case concerned instructional letters and journal and cash vouchers evidencing advances extended by its affiliates.

In *Phil. Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[40] the Court clarified why a minute resolution has no binding precedent:

> 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.[41]

The case of *Co vs. Court of Appeals*[42] invoked by petitioner finds no application in this case. The said case involves a criminal prosecution where conviction of the accused rests on proof beyond reasonable doubt, and with all doubts to be resolved in favor of the accused. The retroactive effect of penal laws finds basis under Article 22 of the Revised Penal Code (RPC) insofar as they favor the persons guilty of a felony. Conversely, the *Filinvest* case involved an interpretation of a provision of the tax code which is only civil in nature.

Petitioner was sufficiently informed of the basis of the DST Assessment

Records show that the written notice requirements under Section 228 of the NIRC was complied with. The Details of Discrepancy attached to the PAN and FAN clearly stated the factual and legal bases of the DST assessment. It was shown that the factual basis of the assessment was the "advances from

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[39] Id. at 687.
[40] 616 Phil. 387, 421 (2009).
[41] As cited in *Eizmendi, Jr. v. Fernandez*, G.R. No. 215280, 27 November 2019.
[42] 298 Phil. 221 (1993).

San Miguel Corporation of ₱1,941,880.00 and from San Miguel Brewery, Inc. of ₱80,217,126.00 for a total of ₱82,159,014.00.

Finally, as pointed out by the CTA *En Banc,* DST is imposed on the transaction rather than on the document. While it is true that BIR's assessment was based on the Notes to the audited financial statements, the existence of the relevant transactions, *i.e.,* advances from petitioner's affiliates, was undisputed. Clearly, petitioner was afforded due process of law.

WHEREFORE, the instant Petition is **DENIED.** Accordingly, the CTA *En Banc* Decision dated 23 April 2018 is **AFFIRMED.**

SO ORDERED."

By authority of the Court:

LIBRADA C. BUENA
Division Clerk of Court

by:

MARIA TERESA B. SIBULO
Deputy Division Clerk of Court

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APR 0 4 2023

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