Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

COMMISSIONER OF INTERNAL REVENUE, Petitioner,	CTA EB CASE NO. 784 (CTA Case No. 7057)
-versus-	Present: ACOSTA, P.J., CASTAÑEDA, JR. BAUTISTA UY CASANOVA PALANCA-ENRIQUEZ FABON-VICTORINO MINDARO-GRULLA COTANGCO-MANALASTAS, JJ.
GOULDS PUMPS (PHILS.) INCORPORATED, Respondent.	Promulgated: AUG 22 2012 2:10pm

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision is a Petition for Review for the Court *En Banc* under Rule 4, Section 2(a)(1), in relation to Rule 8, Section 4(b) of the 2005 Revised Rules of the Court of Tax Appeals (RRCTA)[1], as

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[1] Sec. 2. *Cases within the jurisdiction of the Court en banc.*- The Court en banc shall exercise exclusive appellate jurisdiction to review by appeal the following:

(a) Decisions or resolutions on motions for reconsideration or new trial of the Court in Division in the exercise of its exclusive appellate jurisdiction over:

(1) Cases arising from administrative agencies- Bureau of Internal Revenue, Bureau of Customs, Department of Finance, Department of Trade and Industry, Department of Agriculture;

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amended, of the Decision[2] dated February 4, 2011, rendered by the Third Division[3] of this Court in CTA Case No. 7057, and its Resolution[4] dated May 23, 2011.

Petitioner Commissioner of Internal Revenue (CIR) assailed both the aforesaid Decision and Resolution, the dispositive portions of which, respectively, read as follows:

Decision dated February 4, 2011:

> *"WHEREFORE, the instant Petition for Review is hereby* ***PARTIALLY GRANTED****. The assessment for deficiency final withholding tax for fiscal year 2000 in the amount of P5,977,242.62 is hereby* ***CANCELLED****. However, the assessments for deficiency withholding tax on compensation and EWT tax issued by respondent against petitioner for fiscal year 2000 are hereby AFFIRMED with some modifications. Accordingly, petitioner is hereby ORDERED to PAY respondent the following deficiency withholding tax on compensation in the amount of P3,026,482.91 and deficiency EWT in the amount of P72,518.44, both inclusive of twenty-five percent (25%) surcharge imposed for late payment under Section 248 (A)(3) of the NIRC of 1997, as amended:*

Tax Type	*Basic Tax*	*25% Surcharge*	*Total*
Withholding Tax on Compensation	*P2,421,186.33*	*P605,296.58*	*P3,026,482.91*
Expanded Withholding Tax	*58,014.75*	*14,503.69*	*72,518.44*
Total	*P2,479,201.18*	*P619,800.27*	*P3,099,001.35*

Sec. 4. *Where to appeal; mode of appeal.-*
(a) xxx.
(b) An appeal from a decision or resolution of the Court in Division on a motion for reconsideration or new trial shall be taken to the Court by petition for review as provided in Rule 43 of the Rules of Court. The Court en banc shall act on the appeal.
(c) xxx.

[2] En banc Docket, pp. 16-45.

[3] Composed of Associate Justice Lovell R. Bautista, Associate Justice Olga Palanca-Enriquez and Associate Justice Amelia R. Cotangco-Manalastas.

[4] En banc Docket, pp. 47-51.

Likewise, petitioner is hereby ORDERED to PAY: (a) deficiency interest at the rate of 20% per annum on the total basic deficiency withholding tax on compensation and EWT of P2,479,201.08 computed from December 26, 2000 until full payment thereof pursuant to Section 249(B) of the NIRC of 1997 and (b) delinquency interest at the rate of 20% per annum on the total amount due of P3,099,001.35, and on the 20% deficiency interest which had accrued as afore-stated in (a) computed from January 2, 2004 until full payment thereof pursuant to Section 249 (C) of the NIRC of 1997.

SO ORDERED."

Resolution dated May 23, 2011:

"WHEREFORE, premises considered, respondent's Motion for Reconsideration is hereby DENIED for lack of merit.

SO ORDERED."

The antecedent facts are as follows:

On December 2, 2003, respondent Goulds Pumps (Phils.) Inc.[5] received from petitioner Commissioner of Internal Revenue (CIR)[6] a Final Assessment Notice dated October 17, 2003 in the total amount of ₱133,787,590,14, itemized as follows[7]:

Deficiency Tax	Amount
Income Tax	P 95, 201,001.15
Value-Added Tax	27,717,333.84
Withholding Tax on Compensation	4,221,581.25
Expanded Withholding Tax	634,659.80
Final Withholding Tax	5,977,242.62
Documentary Stamp Tax	35,771.48
TOTAL	P133,787,590.14

[5] Goulds Pumps (Phils.) Inc. was the petitioner while the Commissioner of Internal Revenue (CIR) was respondent in the Division. Before the Court *en banc*, Gould Pumps (Phils.) Inc. is the respondent while the Commissioner of Internal Revenue (CIR) is the petitioner.
[6] Ibid.
[7] Joint Stipulation of Facts and Issues, Division Docket, pp. 102-103.

Respondent Goulds Pumps (Phils.) Inc. protested the abovementioned assessment on December 30, 2003 and submitted additional documents[8] in support of the protest on February 27, 2004. Due to inaction of petitioner, respondent filed on September 24, 2004 a Petition for Review which was raffled to the former 1st Division[9] of this Court. Petitioner filed an answer, and thereafter, trial ensued.

However, on June 16, 2008, respondent Goulds Pumps (Phils.) Inc. filed a "Manifestation and Motion" stating that it availed of the tax amnesty program under Republic Act No. 9480[10], and that it had paid the amnesty tax. Respondent claimed that it was entitled to the immunities from the deficiency income tax, value-added tax, and documentary stamp tax assessments, including increments thereon for the taxable year 2000 in the total amount of ₱122,954,106.47.

On August 20, 2008, respondent filed its Amended Petition for Review before this Court's Division and incorporated the allegation pertaining to the availment of tax amnesty and retained the allegations

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[8] Ibid.
[9] This case was thereafter re-raffled to the 3rd division pursuant to CTA Administrative Circular No. 01-2010 "Implementing the fully Expanded Membership in the Court of Tax Appeals". Division Docket p. 758.
[10] An Act Enhancing Revenue Administration and Collection By Granting an Amnesty On all Unpaid Internal Revenue Taxes Imposed by the National Government For Taxable year 2005 and Prior Years.

pertaining to the assessment for deficiency expanded withholding tax, withholding tax on compensation and final withholding tax in the aggregate amount of ₱10,833,483.67, including the increments thereon.

Petitioner filed an amended answer and trial continued.

On October 7, 2008,[11] this Court's Division resolved that the petition for review filed by respondent Goulds Pumps (Phils.) Inc. on September 24, 2004 pertaining to the assessment for deficiency income, value-added tax, and documentary stamp tax is considered closed and terminated subject to the provision of the Tax Amnesty Law. Furthermore, this Court's Division resolved that the assessment for deficiency withholding tax on compensation, expanded withholding tax and final withholding tax in the amount of ₱10,833,483.67 remains, to wit:

Deficiency Tax	Amount
Withholding Tax on Compensation	4,221,581.25
Expanded Withholding Tax	634,659.80
Final Withholding Tax	5,977,242.62
TOTAL	P10,833,483.67

[11] Division Docket pp. 445-446.

After trial on the merits, this Court's Division rendered the assailed Decision.[12] Not satisfied, petitioner filed a Motion for Partial Reconsideration, which was denied in a Resolution[13] dated May 23, 2011, hence, this Petition for Review was filed before the Court *en banc*.

The CIR raised the assignment of errors, as follows:

1. The Third Division of this Honorable Court erred in holding that the right of petitioner to assess herein respondent for deficiency Expanded Withholding Tax (EWT) for the months of December 1999 to October 2000 has already prescribed; and

2. The Third Division of this Honorable Court erred in totally cancelling the assessed deficiency Final Withholding Tax (FWT) in the amount of ₱5,977,242.62, and partially cancelling the assessed deficiency Expanded Withholding Tax (EWT) on rental and local purchases of herein respondent for fiscal year 2000.

The issues for resolution are as follows:

1. Whether or not the Third Division of this Honorable Court erred in totally cancelling the assessed deficiency Final Withholding Tax (FWT) in the amount of ₱5,977,242.62, and partially cancelling the assessed deficiency Expanded Withholding Tax (EWT) on rental and local purchases of herein respondent for fiscal year 2000.

2. Whether or not the Third Division of this Honorable Court erred in holding that the right of petitioner to assess herein respondent for deficiency Expanded Withholding Tax (EWT) for the months of December 1999 to October 2000 has already prescribed."[14]

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[12] Supra, Note 2.
[13] Supra, Note 4.
[14] Ibid. p.8.

The CIR maintains that contrary to the findings of this Court's Division, respondent had failed to substantiate that it withheld its income payments on dividends and trademark/royalties which is subject to the final withholding tax. The CIR asserts that respondent failed to submit documentary evidence to prove the fact that said purchases of goods and services were supplied by Goulds Pumps (NY). Thus, there is no factual and legal basis in cancelling the assessment of expanded withholding tax thereon. The CIR assails the findings that the right to assess the expanded withholding tax for the months of December 1999 to October 2000 has prescribed.

Respondent, on the other hand, emphasizes that this Court's Division did not err based on the evidence presented.

The petition is without merit.

On the issue that this Court's Division erred in finding that the CIR's right to assess the expanded withholding tax for the months of December 1999 to October 2000 has prescribed, the same is without merit. The argument that the CIR had pleaded in their original answer respondent's underdeclaration of expanded withholding tax in the amount of ₱34,226,537.43 or more than 30% is prima-facie evidence of fraud, hence, the prescriptive period should be 10 years, is likewise without merit.

This Court's Division was correct when it held that:

> *"Fraud contemplated by law must be actual and not constructive. It must be intentional, consisting of deception, willfully and deliberately done or resorted to in order to induce another to give up some right.*
>
> *In the instant case, respondent presented Exhibits "1" to "16", inclusive of sub-markings, in support of the allegation in the Amended Answer and the testimony of Ms. Eulema R. de Vera. A careful review of the said evidence reveals that the same do not support or prove acts constituting fraud as alleged in the Amended Answer. Thus, respondent fails to prove that the alleged failure to withhold and/or underwithholdding of various income payments constitute fraud to qualify the period of prescription from 3 years to 10 years provided under Section 222(a) of the NIRC Of 1997, as amended. "*[15]

Moreover, after perusal of the records and argument pertaining to the expanded withholding tax on rental and local purchases, this Court's Division aptly ruled as follows:

> *"xxx, [S]ince petitioner was not able to show which portion of the income payments subject of deficiency EWT assessment for the entire fiscal year 2000 pertain to the prescribed months of December 1999 to October 2000, all of the subject income payments shall be considered as referring to the unprescribed month of November 2000.*
> *This Court shall now determine the merits of the deficiency EWT assessment for fiscal year 2000.*
>
> A. Rental
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> *Respondent assessed petitioner for deficiency EWT on rental expenses by comparing the following:*

	Rental
Per ITR/GL	*P3,446,253.00*
Alphalist	*3,397,293.49*
Difference	*P 48,959.51*

[15] Ibid. p 33.

Petitioner asserts that all rental payments for taxable year 2000 were subjected to creditable withholding tax.

The Court agrees with petitioner.

The Independent CPA presented the following reconciliation of petitioner's rent expense as declared in its Income Tax Return for FY 2000 and as reflected in its EWT returns for the same year, noting a discrepancy of P49,995.67: xxx.

The above discrepancy represents rental expenses of petitioner's Davao office for the months of October and November 2000 in the total amount of P50,000.00 (P25,000.00/month). The Independent CPA stated that he was unable to verify the amount of P50,000.00 due to the unavailability of the EWT returns filed by petitioner's Davao office for October and November 2000. However, petitioner proffered before this Court the Monthly Remittance Returns filed by its Davao office for the months of January to December 2000 and the corresponding Alphalist, which showed that its Davao office remitted to the BIR the five percent (5%) EWT due on the rental expense of P50,000.00 for the months of October and November 2000.

In fine, petitioner sufficiently proved that it withheld and remitted the EWT due on its rental payments for fiscal year 2000. Thus, respondent's deficiency EWT assessment on the rental amount of P48,959 .51 is improper and should be cancelled.

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C. Local Purchases

Respondent assessed petitioner for deficiency EWT in the amount of P33,597,430.46, representing petitioner's local purchases of goods/services. Petitioner explained that these purchases represent purchases of goods and services from Goulds Pumps (N.Y.), Inc., which is a company registered with the Philippine Economic Zone Authority (PEZA), as jointly stipulated by the parties. As such, said supplier is exempt from creditable withholding tax in accordance with Section 2.57.5(2) of Revenue Regulations No. 2-98.

xxx xxx xxx.

As aptly found by the Independent CPA from petitioner's related general and subsidiary ledgers, journal vouchers, and sales invoices issued by Goulds Pumps (N.Y.), Inc., the subject purchases in the amount of P33,597,430.46 were obtained by petitioner from Goulds Pumps (N.Y.), Inc.59 Undoubtedly, respondent's deficiency

> *EWT assessment on the amount of P33,597,430.46 is devoid of legal and factual bases and should therefore be cancelled.*
>
> *To recapitulate, respondent's deficiency EWT assessment for FY 2000 on petitioner's rental expense of P48,959.51 and local purchases of goods of P33,597,430.46 should be cancelled and withdrawn."*[16]

With regard to the final withholding tax, the CIR persistently argued that respondent failed to substantiate its claim during the administrative investigation and the disallowance of the remittance amounting to ₱2,400,000.00 was due to the failure to accompany the remittance return with official receipt duly issued by the accredited bank. However, this Court's Division correctly ruled that said argument is without merit. As pointed out by this Court's Division in its Resolution dated May 23, 2011:

> *"The alleged non–submission of complete documents at the administrative level will not bar this Court from receiving, evaluating and appreciating evidence. Once the claim for refund has been elevated to the court, the admissibility, materiality, relevancy, probative value and weight of evidence presented therein become subject to the rules of Court. Otherwise stated, judicial claims are being decided based on what has been presented and formally offered by party litigants during the trial of the case before the Court and not on the mere allegation of non-submission of complete documents before the BIR. In this Connection, it may not be amiss to mention that the question of whether or not the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgement of the Court.*

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[16] Ibid. pp. 35-40.

Thus, after careful scrutiny, this Court's Division was correct when it held that:

> *"Petitioner alleges that out of the P44,000,000.00 dividends paid in the year 2000, P24,000,000.00 was declared in 1999 and the remaining P20,000,000.00 was declared in the year 2000 for which 15% FWT was paid in the year the dividends were declared.*
>
> *The P3,000,000.00 remittance recognized by respondent pertains to the 15% FWT due on the P20,000,000.00 dividends declared by petitioner, in the year 2000 supported by BIR Form No. 1601-F.*
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> *The 15% FWT due on the P24,000,000.00 dividend declaration in 1999 is P3,600,000.00. Respondent disallowed the remittance amounting to P2,400,000.00 supported by BIR Form No. 1601 for failure to accompany the remittance return with the official receipt issued by an accredited bank. However, petitioner submitted to the Court as evidence the Bank of the Philippine Islands (BPI) official receipt dated December 27, 1999 showing the amount of P2,899,155.96, which included the P2,400,000.00 partial remittance of FWT related to the dividends declared in the year 1999.*

However, this Court's Division held that:

> *"The remaining P1,200,000.00 (P3,600,000.00 less P2,400,000.00) FWT due on dividends declared in the year 1999 was previously paid by petitioner in the year 1997 and applied against the tax due on dividends declared in 1999.*
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> *Petitioner's Cost Accountant, Ms. Anna Laurice Santos, in her Affidavit, stated that in May 1997, there was a recommendation to declare cash dividends amounting to P8 million based on the results of petitioner's operations. On the basis of this recommendation, petitioner's Treasurer remitted and paid the amount of P1.2 million to respondent in 1997 representing 15% FWT due on dividends of P8 million However, petitioner's Board of Directors did not approve the recommendation and decided to defer the declaration of cash dividends. As it turned out, the P8 million dividends were eventually declared in 1999. Hence, the amount ofP1.2 million FWT on the P8 million deferred dividends, which was already paid to respondent in 1997, was considered as an advance tax payment and was credited against the final withholding tax on the same P8 million dividend, when it was eventually declared in 1999.*

> *Petitioner's total tax remittance for the month of May 1997 amounted to P1,456,097.7 of which P1.2 million represented FWT on dividends recommended but not declared nor paid in May 1997, as evidenced by BIR Form No. 1743W filed by petitioner on June 24, 1997. Likewise, petitioner submitted a copy of voucher dated June 24, 1997, which showed a breakdown of the amount of different taxes paid in 1997 inclusive of the P1.2 million FWT on dividends. xxx.*
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> *In order to prove that the advance payment of FWT on dividends of P1.2 million was not previously applied against any FWT on dividends, petitioner presented its audited financial statements for the year 1998 and 1997 showing that from 1997 up to its declaration of dividend in the amount of P24 million in 1999, it did not declare dividends.*
>
> *Moreover, to prove that the 1.2 million advance FWT payment was not applied against any withholding tax liability of petitioner, it presented the Monthly Remittance Returns of Income Taxes Withheld from June 1997 up to October 1999. These returns showed that petitioner did not apply the advance payment of P1.2 million as credit against any tax due until November 1999."*

Based on the foregoing, this Court's Division considered the tax remittance in the amount of ₱1,465,097 (inclusive of a FWT on supposed dividends to be declared in 1997) as advance payment and credited the same to the final withholding tax due on dividends declared in 1999 for the remaining ₱1,200,000.00 (₱3,600,000.00 less ₱2,400,000.00). Stated differently, respondent erroneously paid a final withholding tax in 1997, but instead of filing or claiming a refund respondent just offset and credited the same for the final withholding tax on dividends declared in 1999 and paid in 2000, which should not be allowed. Under the final withholding tax system, the amount of income tax withheld by the withholding agent is constituted as a full and final payment of the income tax due from the payee on the said income. It is not creditable. In case of overpayment or erroneous payment thereon, the withholding agent has the right to file the claim for refund.[17]

In fine, the right of a withholding agent to claim a refund does not entitle the same to credit or offset to other tax liabilities. In the case of South African Airways vs. Commissioner of Internal Revenue[18], citing the case of Philex Mining Corporation vs. Commissioner of Internal Revenue[19], the Supreme Court instructively held that:

> *"In several instances prior to the instant case, we have already made the pronouncement that taxes cannot be subject to compensation for the simple reason that the government and the taxpayer are not creditors and debtors of each other. There is a material distinction between a tax and debt. Debts are due to the Government in its corporate capacity, while taxes are due to the Government in its sovereign capacity. We find no cogent reason to deviate from the aforementioned distinction.*
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> *Prescinding from this premise, in Francia v. Intermediate Appellate Court, we categorically held that taxes cannot be subject to set-off or compensation, thus:*
>
> > *We have consistently ruled that there can be no off-setting of taxes against the claims that the taxpayer may have against the government. A person cannot refuse to pay a tax on the ground that the government owes him an amount equal to or greater than the tax being collected. The collection of a tax cannot await the results of a lawsuit against the government.*

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[17] Commissioner of Internal Revenue vs. Smart Communications Inc., G.R. Nos. 179045-46, August 25, 2010.
[18] G.R. No. 180356, February 16, 2010.
[19] G.R. No. 125704, August 28, 1998, 294 SCRA 687, 695-696.

> *The ruling in Francia has been applied to the subsequent case of Caltex Philippines, Inc. v. Commission on Audit, which reiterated that:*
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> > *. . . a taxpayer may not offset taxes due from the claims that he may have against the government. Taxes cannot be the subject of compensation because the government and taxpayer are not mutually creditors and debtors of each other and a claim for taxes is not such a debt, demand, contract or judgment as is allowed to be set-off."*

Evidently, the alleged erroneous payment of the final withholding tax by respondent in 1997 cannot be used to offset or be treated as advance tax payment for taxation purposes to the succeeding final withholding tax which respondent may be held liable. Concomitantly, the erroneous payment of the final withholding tax in 1997 cannot be offset against the FWT tax on the ₱24,000,000.00 dividends declared in 1999.

Further, it was erroneous for petitioner to include the dividends payable in fiscal year 1999 as part of the deficiency final withholding tax assessment for the fiscal year 2000. Nonetheless, the assessment of deficiency 15% final withholding tax of ₱3,600,000.00 (₱2,400,000.00 of which was proven to have been paid while the amount of ₱1,200,000.00 was offset against the erroneous FWT paid in 1997 as found by this Court's Division) on the ₱24,000,000.00 dividends declared in 1999, has prescribed. The withholding tax return or Monthly Remittance

Return of Income Taxes Withheld[20] for the P24,000,000.00 dividend was filed on December 27, 1999,[21] thus, the FAN received by respondent on December 2, 2003,[22] with regard to the deficiency FWT thereon was way beyond the three year prescriptive period.[23]

WHEREFORE, the petition is **DENIED.** The Decision of the Third Division of this Court in CTA Case No. 7057, promulgated on February 4, 2011 and its Resolution, promulgated on May 23, 2011, are **AFFIRMED**. No pronouncement as to costs.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[20] Revenue Regulations No. 02-98
Section 2.58. Returns and Payment of Taxes Withheld at Source.
(A) Monthly return and payment of taxes withheld at source –
(1) WHERE TO FILE – xxxx.
(2) WHEN TO FILE –
(a) The withholding tax return, whether creditable or final, shall be filed and payments should be made within ten (10) days after the end of each month except for taxes withheld for December which shall be filed on or before January 25 of the following year.
(b) For large taxpayers, the filing of the return and the payment of tax shall be made within twenty five (25) days after the end of each month.
(c) xxx.

[21] Exhibit "E" and "F", pp. 136-140, Division Docket.

[22] Supra. Note 7.

[23] "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.

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
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 among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ERNESTO D. ACOSTA
Presiding Justice