REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION
****

GEORGE T. OLIVO and CASH WORLD LENDING, INC., Petitioners,	**CTA CASE NO. 8755**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
COMMISSIONER OF INTERNAL REVENUE and Revenue District Officer, LEONORA R. RUIZOL, of the Revenue District No. 36, Puerto Princesa City, Respondents.	**Promulgated:** DEC 15 2014 4:20 p.m.

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DECISION

CASANOVA, *J.*:

This is a claim for refund or issuance of tax credit certificate (TCC) in the amount of Four Million Fifty Seven Thousand One Hundred Eighty-Seven and 92/100 Pesos (₱4,057,187.92) allegedly representing Cash World Lending, Inc.'s erroneously paid penalty and surcharges on the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the sale of real properties.

Petitioner Cash World Lending, Inc. ("petitioner-Cash World") is a domestic corporation duly organized under Philippine laws, having its principal office located at Ground Floor, Hamilton Centre, No. 9598 Kamagong Street, Makati City.[1]

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[1] Parties, Petition for Review, Docket, p. 7; and Exhibit "P-1"

Petitioner George T. Olivo ("petitioner Olivo") is the original owner of several parcels of land, under Transfer Certificates of Title (TCT) Nos. 25032[2], 25033[3] and 25034[4], located at the Barrio of Sicsican, City of Puerto Princesa, Palawan. He is impleaded as a nominal party for being the predecessor-in-interest of petitioner-Cash World Lending, Inc.[5]

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws and, in particular, decide claims for refund of internal revenue taxes. She may be served with summons, notices and other court processes at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Revenue District Officer, Leonora R. Ruizol ("respondent Revenue Officer"), of Revenue District Office (RDO) No. 36, Puerto Princesa City, is impleaded as the RDO in charge of the issuance of the questioned denial of petitioner-Cash World's application for tax refund or issuance of TCC for petitioner Olivo. She may be served with court processes and orders at the City Coliseum, San Pedro, Puerto Princesa City, Palawan.[6]

Petitioner Olivo, through his representative, Noe B. Indonito, entered into certain loan agreements with petitioner-Cash World, and mortgaged several parcels of land with TCT Nos. 25032, 25033 and 25034 as security thereof.

Due to his failure to settle the loans, petitioner-Cash World initiated extra-judicial foreclosure proceedings on the said parcels of land. The properties were sold in two (2) public auctions, the first on April 15, 1999 for TCT Nos. 25032 and 25033, and the other on August 2, 1999 for TCT No. 25034. The highest bidder was petitioner-Cash World. Accordingly, the Certificates of Sale[7] were issued and annotated at the back of the aforementioned TCTs on May 10, 1999, for the first two (2) titles, and on February 8, 2000 for the remaining title.

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[2] Exhibit "P-2"
[3] Exhibit "P-2-A"
[4] Exhibit "P-2-B"
[5] Parties, Petition for Review, Docket, p. 8
[6] *Ibid.*
[7] Exhibits "P-3" and "P-3-a"

However, before the expiration of the period within which to redeem the said properties, a certain claimant by the name of Lilia T. Ventura, filed a case for Annulment and/or Declaration of Nullity of Deed of Sale, Cancellation of TCT Nos. 25032, 25033 and 25034 with a Notice of *Lis Pendens* before the Regional Trial Court (RTC) of Palawan and Puerto Princesa City, Branch 51. The case was docketed as Civil Case No. 3344.

After the period of redemption had elapsed, petitioner-Cash World went to the RDO to pay the Capital Gains Tax and Documentary Stamp Tax and present the said Certificates of Sale issued in its name in an attempt to enable him to consolidate his ownership over the said properties. However, the receiving clerk required that the Certificates of Final Deed of Sale must first be submitted before ownership over the said properties be consolidated to petitioner-Cash World.

Thus, petitioner-Cash World proceeded to the then Clerk of Court and Ex-Officio Sheriff of the RTC of Palawan and Puerto Princesa City, Atty. Rhodora F. Espiritu-Babanga, for the Certificates of Final Deed of Sale. Petitioner-Cash World was then informed that the Certificates of Final Deed of Sale would only be issued after finality and, depending further on the outcome of the pending civil case.

Eventually, on January 5, 2011, a Certificate of Final Deed of Sale[8] for TCT No. 25034 was issued consolidating ownership thereof to petitioner-Cash World. Thereafter, on July 17, 2012, the remaining Certificates of Final Deed of Sale[9] for TCT Nos. 25032 and 25033 were finally issued.

On April 26, 2012, petitioner-Cash World commenced to process the transfer of title for TCT No. 25034. It paid the corresponding CGT and DST on behalf of petitioner Olivo.[10] Having a tax base of ₱15,000,000.00, petitioner-Cash World paid the amounts of ₱1,184,425.05 for the property's CGT and ₱307,113.01 for its DST, both inclusive of penalties. The imposed surcharge, interest, and compromise penalty were reckoned from the date of the finality of judgment. Consequently, on May 10, 2012, petitioner-Cash World was issued a Certificate Authorizing Registration[11] (CAR).

[8] Exhibit "P-4-b"
[9] Exhibits "P-4" and "P-4-a"
[10] Paragraph 2, Joint Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket p. 107
[11] Exhibit "P-5"

Likewise, on July 25, 2012, petitioner-Cash World paid the CGT and DST for the remaining parcels of land with TCT Nos. 25032 and 25033.[12] However, the imposed surcharge, interest, and compromise penalty were reckoned from one (1) month after the expiration of the redemption period, and not on the finality of judgment like in the previous transaction. For TCT No. 25032, with a tax base of ₱9,000,000.00, petitioner-Cash World was assessed in the amounts of ₱1,994,254.77 for CGT and ₱509,848.15 for its DST, both inclusive of penalties. As to TCT No. 25033, with a tax base of ₱11,000,000.00, petitioner-Cash World was assessed in the amounts of ₱2,432,978.81 for CGT and ₱620,106.19 for its DST, both inclusive of penalties. On July 27, 2012, Certificates Authorizing Registration[13] were issued to petitioner-Cash World for TCT Nos. 25032 and 25033, respectively.

On August 23, 2012, petitioner-Cash World filed an Application for Tax Credit/Refunds[14], together with its Letter Request, before the BIR, Revenue District No. 36, for the alleged overpayment of CGT and DST for the transfer of properties covered by TCT Nos. 25032 and 25033 in the total amount of ₱4,057,187.92.[15]

On October 15, 2012, petitioner-Cash World received a letter[16] dated October 3, 2012 from respondent Revenue Officer denying the letter request by quoting the opinion of the Chief Legal Division.[17] The letter states that petitioner-Cash World's contention that it is the finality of judgment of the case for the nullification of Deed of Sale that should be the point of consideration in determining the amount of CGT and DST, has no leg to stand on.

Thereafter, petitioner-Cash World sent another letter[18] dated November 21, 2012 to respondent Revenue Officer to inquire as to whether the letter was a mere update on its request for refund or the final decision on the matter as the same was not in accordance with the format prescribed by Revenue Regulations No. 12-99.[19]

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[12] Par. 3, Joint Stipulation of Facts, JSFI, Docket p. 107
[13] Exhibits "P-6" and "P-7"
[14] Exhibits "P-8" and "P-8-a"
[15] Par. 4, Joint Stipulation of Facts, JSFI, Docket p. 108
[16] Exhibit "P-9"
[17] Par. 5, Joint Stipulation of Facts, JSFI, Docket p. 108
[18] Exhibit "P-10"
[19] Par. 6, Joint Stipulation of Facts, JSFI, Docket p. 108

On January 21, 2013, petitioner-Cash World received a letter[20] dated January 8, 2013, stating that the entire records were forwarded to the Office of the Regional Director.[21]

Claiming respondent's inaction thereof, petitioner-Cash World filed on January 7, 2014 the instant Petition for Review[22] with the Court of Tax Appeals (CTA).

On February 19, 2014, respondent filed her Answer[23], interposing the following special and affirmative defenses, to wit:

> "9. RESPONDENT hereby adopts by way of reference all of the allegations in the foregoing paragraphs insofar as the same are material and relevant, and alleges that:
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> 10. A claim for tax refund is in the nature of tax exemption and should be construed strictissimi juris against the person or entity claiming it. The burden of proof to establish the factual basis or the sufficiency and competency of the supporting documents of the claim for tax refund rests on the claimant;
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> 11. In the instant case, the allegations of the petitioner in support of their claim for tax refund do not permit the granting thereof. Moreover, records show that the capital gains tax and documentary stamp tax paid by the petitioner do not appear to have been erroneously paid;
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> 12. **Section 2 of Revenue Regulation No. 9-2012** provides the period within which to pay the applicable taxes for properties sold during involuntary/foreclosure sale, thus:
>
> > 'Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property/ies within the applicable Statutory Redemption Period. - In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the Capital Gains Tax (CGT) imposed under

[20] Exhibit "P-11"
[21] Par. 7, Joint Stipulation of Facts, JSFI, Docket p. 108
[22] Docket pp. 6-18
[23] Docket pp. 68-72

Sections 24(D)(1) and 27(D)(5) of the Tax Code, in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is an ordinary asset (sic); the Value-added Tax (VAT) imposed under Section 106 of the Tax Code and RR 16-20058 *[sic]*, as amended; and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.

<u>The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from the expiration of the applicable statutory redemption period; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year</u>.

<u>If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner/mortgagor on or before the 20th day or 25th day, whichever is applicable, of the month following the month when the right of redemption prescribes</u>.

The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.'

13. Clearly, based on the afore-quoted revenue regulation, the filing of the applicable return and the remittance of the tax due thereon shall be reckoned from the expiration of the applicable statutory redemption period of the involuntary/foreclosure sale;

14. Accordingly, petitioner's contention that the point of consideration in determining the CGT and DST on the foreclosure sale of the subject properties is the finality of the

> judgment of the case for nullification of the Deed of Sale has no legal basis." *(Citations and Emphases Omitted)*

On June 17, 2014, both parties filed their Joint Stipulations of Facts and Issues[24]. Shortly thereafter, a Pre-Trial Order[25] was issued by this Court on June 20, 2014.

Thereafter, trial ensued.

After presentation of its lone witness, Mr. Marcelo B. Boncan, petitioner-Cash World filed its Formal Offer of Documentary Evidence[26] on July 7, 2014, offering Exhibits "P-1" to "P-12-a", inclusive of sub-markings. Acting thereon, this Court in the Resolution[27] dated August 18, 2014, admitted all the exhibits offered save for exhibit "P-3-b" for petitioner-Cash World's failure to present the original copy of the document for comparison. Further, considering the open court manifestation made by respondent's counsel during the June 30, 2014 hearing that respondent has no witness to present, this Court, upon motion of the parties' respective counsel, granted the parties a period of thirty (30) days from notice to submit their respective memorandum.

On September 25, 2014, petitioner-Cash World submitted its Memorandum[28] while respondent submitted her Memorandum[29] on October 14, 2014.

Accordingly, in the October 16, 2014 Resolution[30], the instant case was deemed submitted for decision.

As stipulated by the parties, the following issues[31] are submitted for this Court's resolution:

1. Whether or not this Court has jurisdiction to entertain the instant Petition for Review; and

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[24] Docket pp. 107-110
[25] *Ibid.*, pp. 112-115
[26] *Id.*, pp. 117-121
[27] *Id.*, pp. 125-126
[28] *Id.*, pp. 127-141
[29] *Id.*, pp. 145-153
[30] *Id.*, p. 154
[31] Issues, JSFI, Docket p. 108

2. Whether or not petitioner-Cash World is entitled to a refund in the amount of ₱4,057,187.92.

Petitioner-Cash World mainly claims that one (1) month after the lapse of the foreclosed properties' period of redemption, it was not yet the owner of the said parcels of land since there was still a pending case for the annulment of TCT Nos. 25032, 25033 and 25034 in the name of petitioner Olivo. As such, the date from which to count the penalties and surcharges of the CGT and DST should be on the finality of judgment. Petitioner-Cash World further asserts that, in denying its administrative claim for refund, respondent failed to state the facts, applicable laws and regulations in her decision as prescribed under Revenue Regulations No. 12-99. Lastly, petitioner-Cash World claims that respondent is estopped in imposing another reckoning point different from that on which it has previously based its assessment. Such evident disparity, to the mind of petitioner-Cash World, is utterly inequitable.

On the other hand, respondent insists that this Court has no jurisdiction to entertain the instant petition considering that petitioner-Cash World failed to file a written claim for refund with the CIR before seeking judicial intervention thereof. Respondent claims that even though under the CARs, the subject taxes were duly paid, the same, however, would not prove that they were paid by petitioner-Cash World. Being the seller of the properties, it is petitioner Olivo, who is statutorily liable for the payment of the subject taxes and is the proper person to file the required claim for refund. Respondent, likewise, assails the authority of Marcelo B. Boncan as the signatory of the letter request dated August 22, 2012 and Application for Tax Credit/Refund since there is no showing that he is authorized to file said letters on behalf of petitioner-Cash World. Lastly, respondent cites that under Section 2 of Revenue Regulations No. 9-2012, the filing of the applicable return for the CGT and DST shall be reckoned from the expiration of the applicable statutory redemption period of the involuntary/foreclosure sale.

After due consideration, this Court finds merit in the instant Petition for Review.

This Court has jurisdiction to entertain the instant Petition for Review.

The CTA, being a court of special jurisdiction, can take cognizance only of matters that are clearly within its jurisdiction.[32] Section 7(a)(1)(2) of R.A. No. 1125[33], as further amended by R.A. No. 9282, provides that:

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

Clearly, both the decisions and inactions by respondent regarding claims for refund of internal revenue taxes, fees or other charges fall within the ambit of this Court's jurisdiction.

In the instant case, petitioner-Cash World's claim that respondent failed to state the legal basis in her decision in accordance with Section 3.1.6 of Revenue Regulations No. 12-99, as amended by Revenue Regulations No. 18-2013, is misplaced. Close scrutiny of the said Revenue Regulations reveals that Section 3.1.6 thereof pertains to the administrative decision by the CIR on **disputed assessment**. In fact, the entire Section 3 pertains to the due process requirement relative to the issuance of deficiency tax assessment. In other words, the administrative decision stated thereunder refers to the CIR's decision on a taxpayer's protest of its deficiency tax assessment, and not in cases

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[32] Allied Banking Corporation vs. CIR, G.R. No. 175097, February 5, 2010
[33] "An Act Creating the Court of Tax Appeals"

of refund, such as in the present case. Petitioner-Cash World's Petition for Review is premised on its claim for refund based on the allegation of erroneous/overpayment of penalties and surcharges, and not deficiency assessment. Tax refund is defined as the money that a taxpayer overpaid and is thus returned by the taxing authority,[34] while tax assessment is to ascertain the amount that each taxpayer has to pay.[35]

Likewise, respondent's assertion that petitioner-Cash World is not the statutory taxpayer who is entitled to claim refund thereof, must also fail. The term "taxpayer" under Section 22(N) of the NIRC of 1997, as amended, is broadly defined to mean as, any person subject to tax imposed by this Title (Tax on Income). It simply means any person who has been burdened to pay a tax. While it is true that imposition of CGT and DST are essentially addressed and directly brought to bear upon the **document** evidencing the transaction of the parties, however, generally in DST and in certain cases in CGT, either of the parties to the taxable document may be held liable for payment thereof.[36] Furthermore, Section 204 (C)[37] and Section 229[38] of the NIRC of 1997, as amended, which deals with refund of tax, do not impose any other requirements

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[34] Fort Bonifacio Development Corporation vs. CIR, et al., G.R. No. 173425, September 4, 2012 *citing* Garner, Black's Law Dictionary, 7th Edition, p. 1475

[35] Commissioner of Internal Revenue vs. Pascor Realty and Development Corporation, et. al., G.R. No. 128315, June 29, 1999

[36] *See* Revenue Regulations No. 9-00 dated August 31, 2000

[37] "**SEC. 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** - The Commissioner may -

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(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx"

[38] "**SEC. 229.** ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

nor impose further qualifications in addition to the said definition. It only requires that there should be an erroneous or illegal collection of tax or a penalty collected without authority, or sum excessively or wrongfully collected before a person may file a claim for tax refund or tax credit certificate.

In the same vein, respondent assails the authority of Mr. Marcelo B. Boncan to sign and represent petitioner-Cash World during its administrative claim for refund. However, this is Court is not persuaded.

The Supreme Court, in the case of *Inter-Asia Investments Industries, Inc. vs. Court of Appeals, et. al.*[39], explained that a corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that the authority to do so has been conferred upon him, including powers in the usual course of a particular business, or powers incidental thereto, or may be implied from, the powers intentionally conferred. Thus:

> "**The general rule is that, in the absence of authority from the board of directors, no person, not even its officers, can validly bind a corporation.** A corporation is a juridical person, separate and distinct from its stockholders and members, 'having x x x powers, attributes and properties expressly authorized by law or incident to its existence.'
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> Being a juridical entity, a corporation may act through its board of directors, which exercises almost all corporate powers, lays down all corporate business policies and is responsible for the efficiency of management, as provided in Section 23 of the Corporation Code of the Philippines:
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> > **SEC. 23.** ***The Board of Directors or Trustees.*** - Unless otherwise provided in this Code, the corporate powers of all corporations formed under this Code shall be exercised, all business conducted and all property of such corporations controlled and held by the board of directors or trustees x x x.
>
> Under this provision, the power and responsibility to decide whether the corporation should enter into a contract

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[39] G.R. No. 125778, June 10, 2003 *citing* People's Aircargo and Warehousing Co. Inc., vs. CA, et. al., G.R. No. 117847, October 7, 1998

that will bind the corporation is lodged in the board, subject to the articles of incorporation, bylaws, or relevant provisions of law. **However, just as a natural person may authorize another to do certain acts for and on his behalf, the board of directors may validly delegate some of its functions and powers to officers, committees or agents. The authority of such individuals to bind the corporation is generally derived from law, corporate bylaws or authorization from the board, either expressly or impliedly by habit, custom or acquiescence in the general course of business, viz:**

A corporate officer or agent may represent and bind the corporation in transactions with third persons to the extent that [the] authority to do so has been conferred upon him, and this includes powers as, in the usual course of the particular business, are incidental to, or may be implied from, the powers intentionally conferred, powers added by custom and usage, as usually pertaining to the particular officer or agent, and such apparent powers as the corporation has caused person dealing with the officer or agent to believe that it has conferred.

x x x

[A]pparent authority is derived not merely from practice. Its existence may be ascertained through (1) the general manner in which the corporation holds out an officer or agent as having the power to act or, in other words the apparent authority to act in general, with which it clothes him; or (2) **the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers. It requires presentation of evidence similar act(s) executed either in its favor or in favor of other parties. It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with power to bind the corporation.**"

Therefore, applying the ruling in the above cited case, Mr. Marcelo B. Boncan being the President[40] of Cash World Lending, Inc. is vested with apparent authority to sign the letter request dated August 22, 2012

[40] Exhibits "P-1" and "P-12"

and Application for Tax Credit/Refund on behalf of petitioner-Cash World.

Based on the foregoing, this Court has jurisdiction to entertain the instant appeal.

Petitioner-Cash World is entitled to a refund in the amount of ₱4,057,187.92

Documentary stamp tax is an excise tax levied on the exercise of a right or privilege to transfer obligations, rights or properties incident thereto.[41] Stated differently, it is a tax imposed upon the privilege, opportunity or facility offered at exchanges for the transaction of the business.[42] Examples of such privileges, the exercise of which, as effected through the issuance of particular documents, are subject to the payment of documentary stamp taxes are leases of land,[43] mortgages, pledges, and trusts,[44] and conveyances of real property.[45] The DST must be paid upon the issuance of the said instruments, without regard to whether the contracts which gave rise to them are rescissible, void, voidable, or unenforceable.

Capital gains tax is a tax imposed on the gains presumed to have been realized by the seller from the sale, exchange, or other disposition of capital assets located in the Philippines, including *pacto de retro* sales and other forms of conditional sale.[46]

Going back to the instant case, the issue at hand involves a question of when rather than what. Petitioner-Cash World seeks clarification on when should the penalties and surcharges for CGT and DST for TCT Nos. 25032 and 25033, be reckoned from. Should it be one (1) month after the lapse of the redemption period or upon the finality of judgment of the Annulment and/or Declaration of Nullity of Deed of Sale.

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[41] Michel J. Lhuiller Pawnshop, Inc. vs. CIR, G.R. No. 166786, September 11, 2006
[42] CIR vs. Manila Bankers' Life Insurance Corporation, G.R. No. 169103, March 16, 2011
[43] Section 194, National Internal Revenue Code of 1997, as amended
[44] Section 195, *Ibid.*
[45] Section 196, *Id.*
[46] BIR Website (http://www.bir.gov.ph/index.php/tax-information/capital-gains-tax.html)

Section 24(D)(1) and Section 196 of the NIRC of 1997, as amended, imposes the payment of CGT and DST over the transfer of a real property. Thus:

SEC. 24. Income Tax Rates –

xxx xxx xxx

(D) Capital Gains from Sale of Real Property. –

(1) In General. - The provisions of Section 39(B) notwithstanding, a final tax of six percent (6%) based on the gross selling price or current fair market value as determined in accordance with Section 6(E) of this Code, whichever is higher, is hereby imposed upon capital gains presumed to have been realized from the sale, exchange, or other disposition of real property located in the Philippines, classified as capital assets, including *pacto de retro* sales and other forms of conditional sales, by individuals, including estates and trusts: Provided, That the tax liability, if any, on gains from sales or other dispositions of real property to the government or any of its political subdivisions or agencies or to government-owned or controlled corporations shall be determined either under Section 24(A) or under this Subsection, at the option of the taxpayer;

xxx xxx xxx"

"**SEC. 196. Stamp Tax on Deeds of Sale and Conveyances of Real Property.** - On all conveyances, deeds, instruments, or writings, other than grants, patents or original certificates of adjudication issued by the Government, whereby any land, tenement, or other realty sold shall be granted, assigned, transferred or otherwise conveyed to the purchaser, or purchasers, or to any other person or persons designated by such purchaser or purchasers, there shall be collected a documentary stamp tax, at the rates herein below prescribed, based on the consideration contracted to be paid for such realty or on its fair market value determined in accordance with Section 6(E) of this Code, whichever is higher: Provided, That when one of the contracting parties is the Government the tax herein imposed shall be based on the actual consideration.

xxx xxx xxx"

In relation thereto, Revenue Regulations No. 9-2012[47] prescribes the time when the CGT and DST shall become due after failure of the owner/mortgagor to redeem the foreclosed property. Section 2 thereof reads:

> "**Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property/ies within the Applicable Statutory Redemption Period.** - In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the Capital Gains Tax (CGT) imposed under Sections 24 (D)(1) and 27(D)(5) of the Tax Code, in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is a capital asset; or the Creditable Withholding Tax (CWT) imposed under Section 57 of RR 2-98, as amended, if the property is an ordinary asset; the Value-added Tax (VAT) imposed under Section 106 of the Tax Code and RR 16-2005, as amended; and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.
>
> The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days **from the expiration of the applicable statutory redemption period**; or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that, for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.
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> xxx xxx xxx
>
> The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month

[47] "Implementing Sections 24 (D)(1), 27(D)(5), 57, 106 and 196 of the National Internal Revenue Code of 1997 on Non-Redemption of Properties Sold During Involuntary Sales", dated May 31, 2012

> **after the lapse of the applicable statutory redemption period.**
>
> xxx xxx xxx." *(Empahsis Ours)*

Furthermore, Revenue Regulations No. 4-99[48], as amended, states that in cases of non-redemption foreclosure sale, the Capital Gains Tax shall become due based on the bid price of the highest bidder, but the tax will be imposed **only upon the expiration of the one-year period of redemption, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period**. The corresponding Documentary Stamp Tax will be levied, collected and paid by the person making, signing, issuing, accepting or transferring the real property wherever the document is made, signed, issued, accepted or transferred where the property is situated in the Philippines.

Clearly, based on the foregoing, the CGT and DST should be paid within thirty (30) days and five (5) days, respectively, after the lapse of the redemption period. Consequently, any penalties and surcharges that may be imposed should, likewise, be counted from said period. The general rule is that tax collection cannot be suspended.

However, the peculiar circumstances in this case warrant special consideration. In the instant case, to prove that it attempted to pay the CGT and DST of the subject parcels of land after the expiration of the redemption period, petitioner-Cash World presented its President, Mr. Marcelo B. Bongan, as its lone witness to testify as to the events that transpired thereof. The relevant portions of his Judicial Affidavit[49] read:

> "xxx
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> 14. Q: What happened next, if any?
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> A: Prior to the expiration of the redemption period, a claimant over the property, in the person of Lilia T. Ventura filed a case before the Regional Trial Court of Palawan and Puerto Princesa City, Branch 51, docketed as

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[48] Relative to the payment of Capital Gains Tax and Documentary Stamp Tax on extrajudicial foreclosure sale of capital assets initiated by banks, finance and insurance companies, issued on March 16, 1999

[49] Exhibit "P-12" and "P-12-a"

> Civil Case No. 3344 against OLIVO for Annulment and/or Declaration of Nullity of Deed of Sale, Cancellation of TCT No. 25032, 25033 and 25034, etc. A Notice of Lis Pendens was annotated at the back of the three (3) TCTs.
>
> 15. Q: During the pendency of this case, what did Cash World do, if any?
>
> A: **After the expiration of the redemption period, CASH WORLD attempted to pay for the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST)** with the Revenue District Office in the area to consolidate its ownership over the realties. However, when it was presenting the Certificates of Sale, as issued to CASH WORLD, **the receiving clerk was insisting that what CASH WORLD had to submit was a Certificate of Final Deed of Sale.**
>
> 16. Q: With this development, what did Cash World do, if any?
>
> A: CASH WORLD went to the then Clerk of Court and Ex-Officio Sheriff of the Regional Trial Court of Palawan and Puerto Princesa City, Atty. Rhodora F. Espiritu-Babanga. To its dismay, it was informed that **the Certificates of Final Sale would only be issued after the finality of the pending case and if the same would be in favor of our co-Petitioner George Olivo.**
>
> xxx" *(Emphasis Ours)*

As testified by Mr. Marcelo B. Bongan, petitioner-Cash World attempted to pay the CGT and DST of the subject parcels of land so as to consolidate the ownership thereof. However, the receiving clerk of the RDO of the BIR required presentation of the Certificates of Final Sale before payment of the subject properties' CGT and DST can be accepted. Complying thereon, petitioner-Cash World proceeded to the then Clerk of Court, Atty. Rhodora F. Espiritu-Babanga, which then informed it that the Certificates of Sale shall only be issued after judgment on the Annulment and/or Declaration of Nullity of Deed of Sale case is rendered with finality. These are material allegations which attempt to show diligence on part of petitioner-Cash World by not pursuing its duty to consolidate ownership over the subject properties. Unfortunately, inspite of having the opportunity to refute Mr. Bongan's allegations, respondent opted not to object thereto or present any controverting evidence.[50]

Settled is the rule that, to be credible, testimonial evidence should come not only from the mouth of a credible witness. The testimony must also be credible, reasonable and in accord with human experience;[51] and since good faith is presumed,[52] this Court gives credence to petitioner-Cash World's claim.

Thus, based on the foregoing testimony, petitioner-Cash World was placed in a conundrum of whether adhering to the strict interpretation of the law or relying on the representations made by the said public officials. This is a predicament which procedural rules precisely try to avoid. While it is true that like all rules, they are required to be followed except only when for the most persuasive of reasons, they may, however, be relaxed to relieve a litigant of an injustice not commensurate with the degree of his thoughtlessness in not complying with the procedure prescribed by law.[53]

As held in the case of *Zacarias Cometa and Herco Realty & Agricultural Corporation vs. Court Of Appeals and Jose Franco*[54], the Supreme Court explained that a law should not be interpreted as to cause injustice, accordingly:

> "Paraphrasing what we trenchantly pointed out in *Hermoso vs. CA*, **we test a law by its result. A law should not be interpreted so as to cause an injustice**. There are laws which are generally valid but may seem arbitrary when applied in a particular sense because of its peculiar circumstances. We are not bound to apply them in servile subservience to their language. More explicitly -
>
> > . . . **we interpret and apply the law not independently of but in consonance with justice**. Law and justice are inseparable, and we must keep them so. To be sure, there are some laws that, while generally valid, may seem arbitrary when applied in a

[50] Transcript of Stenographic Notes dated June 30, 2014, pp. 10-11
[51] People vs. Padrones, G.R. No. 150234, September 30, 2005
[52] Government Service Insurance System vs. Spouses Labung-Deang, G.R. No. 135644, September 17, 2001; Bermudez vs. Gonzales, G.R. No. 132810, December 11, 2000
[53] Asian Spirit Airlines vs. Spouses Bautista, G.R. No. 164668, February 14, 2005
[54] G.R. No. 141855, February 6, 2001

> particular case because of its peculiar circumstances. **In such a situation, we are not bound, because only of our nature and functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.**
>
> **As judges, we are not automatons. We do not and must not unfeelingly apply the law as it is worded, yielding like robots to the literal command without regard to its cause and consequence.** 'Courts are apt to err by sticking too closely to the words of the law,' so we were warned, by Justice Holmes again, 'where these words import a policy that goes beyond them.' While we admittedly may not legislate, we nevertheless have the power to interpret the law in such a way as to reflect the will of the legislature. While we may not read into the law a purpose that is not there, we nevertheless have the right to read out of it the reason for its enactment. In doing so, we defer not to 'the letter that killeth' but to the 'the spirit that vivifieth,' to give effect to the lawmaker's will." *(Emphases Ours)*

It must be stressed that petitioner-Cash World in the instant case paid the properties' CGT and DST, respectively; it did not violate any law or regulation by failing to pay the prescribed tax due. What petitioner-Cash World is disputing, was the unfair reckoning point of the penalties and surcharges. Respondent Revenue Officer reckons the penalties and surcharges of the parcel of land with TCT No. 25034 from the pending case's finality of judgment,[55] while reckoning the penalties and surcharges of TCT Nos. 25032 and 25033 from one (1) month after the expiration of the period of redemption.[56] Clearly, the evident disparity exhibited by respondent Revenue Officer is disconcerting especially since the two transactions were just months apart. Since the respondent received something that she was not entitled to, she has to return the same. The government should not use technicalities to hold on to money that does not belong to it. Only a preponderance of evidence is needed to grant a claim for tax refund based on excess payment.[57]

[55] Exhibit "P-5"
[56] Exhibits "P-6" and "P-7"
[57] Southern Philippines Power Corporation vs. CIR, G.R. No. 179632, October 19, 2011

WHEREFORE, premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner-Cash World Lending, Inc. the amount of Four Million Fifty Seven Thousand One Hundred Eighty-Seven and 92/100 Pesos (₱4,057,187.92) representing erroneously paid penalty and surcharges on the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the sale of real properties.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

We Concur:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson, Second Division

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice