REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- *versus* –

SPOUSES EDUARDO X. GENATO and LYDIA M. GENATO, CONDOMINIUM PUSHERS, INC. and LANDMART PHILIPPINES, INC.
Respondents.

CTA EB No. 1695
(CTA Case Nos. 8919 & 8920)

Present:

Del Rosario, P.J.,
Castañeda, Jr.,
Bautista,
Uy,
Casanova,
Fabon-Victorino,
Mindaro-Grulla,
Ringpis-Liban, and
Manahan, JJ.

Promulgated:

MAY 24 2018 2:37 p.m.

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RESOLUTION

CASTAÑEDA, JR., J.:

Submitted for resolution of the Court En Banc is the *Motion for Reconsideration (of the Decision dated 12 January 2018)*[1] filed via registered mail by the Commissioner of Internal Revenue (CIR) on February 13, 2018 with *Comment/Opposition (Re: Motion for Reconsideration)*[2] filed by respondents, Spouses Eduardo X. Genato and Lydia M. Genato,

[1] Court *En Banc*'s Docket, pp. 90-94.
[2] *Id.*, pp. 99-103.

Condominium Pushers, Inc., and Landmart Philippines, Inc. on April 12, 2018.

In its *Motion*, petitioner seeks reconsideration of the Decision of the Court *En Banc* promulgated on January 12, 2018, ("Assailed Decision")[3] denying his Petition for Review for lack of merit and accordingly, affirming the judgment of the First Division ("Court in Division") of this Court in CTA Case Nos. 8919 & 8920.

In seeking the reversal of the Assailed Decision, petitioner raises the following grounds, to wit:[4]

a. The subject rescission was made in bad faith;

b. Rescission has the effect of withdrawing the capital gains tax returns;

c. In rescission, there must be proof that the object and consideration of the contract were returned to its rightful owner.

To substantiate its claim of bad faith in the execution of the subject rescission, petitioner asserts that when respondents learned about the imposition of the donor's tax on the excess of the book value of the shares of stock over the value of the real properties transferred, they resorted to the execution of the Affidavit of Rescission and the series of event will lead one to conclude that rescission was resorted to in order to escape or avoid payment of donor's tax.[5] Petitioner also avers that such rescission was executed without stating the meritorious reason or ground therefor.[6]

Citing Section 6 of the National Internal Revenue Code of 1997, as amended as its legal basis, petitioner posits that the execution of the Affidavit of Rescission has the effect of withdrawing the capital gains tax returns filed by respondents.[7]

Finally, petitioner postulates that in rescission, there must be proof that the object and consideration of the contract were returned to its rightful owner.[8]

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[3] *Id.*, pp. 70-85.
[4] *Id.*, pp. 91-92.
[5] *Id.*, p. 91.
[6] *Id.*
[7] *Id.*, pp. 91-92.
[8] *Id.*, p. 92.

Respondents, in their *Comment/Opposition*, counter-argue that bad faith is never presumed and that petitioner failed to present any clear and convincing evidence to support his belated allegation of bad faith.[9] Respondents likewise contradict petitioner's assertion to the effect that rescission has the effect of withdrawal of tax returns. They maintain that the grant of refund does not necessarily imply that the tax return would be withdrawn.[10] According to respondents, a refund is made because taxes have been paid when they should not have been paid.[11] Respondents also contend that the law does not require that the person applying for refund first prove that the consideration was returned before a refund may be granted.[12]

The Court *En Banc* resolves to deny the *Motion*.

A careful evaluation of the arguments raised by petitioner in its *Motion* reveals that it failed to raise any new or substantial matter or any compelling reason that will justify modification much less reversal of the Court *En Banc*'s findings. These arguments are mere rehash of the matters which have already been thoroughly discussed and passed upon by the Court *En Banc* in the Assailed Decision.

By way of reiteration, the Court *En Banc* holds that petitioner's allegation that respondents' execution of the Affidavits of Rescission was attended with bad faith cannot be given credence because petitioner failed to present any evidence, much less a clear and convincing one, to substantiate such allegation. As this Court had plainly stated in the Assailed Decision, decision cannot be had on the basis of mere speculations and conjectures.

The Court *En Banc* also cannot subscribe to petitioner's view that the subject rescission has the effect of withdrawal of the returns filed. The filing of the present claim for refund does not amount to a request for the withdrawal of the said returns considering that a claim for refund of taxes paid and a request for the withdrawal of tax returns are two different and distinct matters.

Neither can this Court accept petitioner's argument that in rescission, there must be proof that the object and consideration of the contract were returned to its rightful owner. There is no established legal basis for such assertion.

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[9] *Id.*, pp. 100-101.
[10] *Id.*, p. 101.
[11] *Id.*
[12] *Id.*

WHEREFORE, petitioner's *Motion for Reconsideration* is **DENIED** for lack of merit.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

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

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice