REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

GEORGE T. OLIVO and CASH WORLD LENDING INC.,
Respondent.

CTA EB No. 1286
(CTA CASE No. 8755)

Present:
DEL ROSARIO, P.J.,
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN, and
MANAHAN, *JJ.*

Promulgated:
MAR 17 2017 3:51 p.m.

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R E S O L U T I O N

MINDARO-GRULLA, J.:

Submitted for resolution of this Court *En Banc* is the Commissioner of Internal Revenue's Motion for Reconsideration (Re: Decision dated 02 September 2016) seeking for the reversal of the Decision[1] promulgated on September 2, 2016, the dispositive portion of which reads as follows:

Decision dated September 2, 2016:

> "**WHEREFORE**, the petition is **DENIED**. The Decision of the Second Division of this Court in CTA Case No. 8755 dated December 15, 2014, and its Resolution dated February 27, 2015, are **AFFIRMED**. No pronouncement as to costs.

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[1] En Banc Docket, pp. 58-78.

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SO ORDERED."

The CIR, in her (now, his) motion, contends that this Court erred in granting Cash World's claim for refund because it failed to utterly discharge its burden to establish its entitlement thereto. Further, the CIR insists that this Court has no jurisdiction to entertain the Petition for Review filed by Cash World.

The Court En Banc finds the motion bereft of merit. There is no compelling reason to reverse or modify the assailed Decision. The issues raised herein have already been exhaustively addressed. Nonetheless, the Court still deems it appropriate to pass upon the arguments.

In the assailed Decision, it has already been settled that this Court has jurisdiction to entertain the Petition for Review filed by Cash World. We reiterate our ruling and emphasize the pertinent portions thereof, to wit;

> "xxx Section 7(a)(1)(2) of R.A 1125[2], as further amended by R.A 9282, expressly provides that the Court of Tax Appeals has exclusive appellate jurisdiction to **review decisions and inactions by the CIR in cases involving refunds of internal revenue taxes, fees, and other charges and penalties in relation thereto.** (Emphasis supplied).
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> Cash World **filed an application for tax refund together with a letter request** on August 23, 2012 from the Bureau of Internal Revenue for erroneously paid surcharges and interests imposed on the Capital Gains Tax and Documentary Stamp Tax for the sale of real properties covered by TCT

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[2] Section. 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;

(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.** (Emphasis Supplied)

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> Nos. 25032 and 25033. **It received a letter from the Revenue District Officer, denying its application for a tax refund/credit based on the opinion of its Legal Division**. It however deemed proper to send a second letter request dated November 21, 2012 to the Revenue District Office to clarify whether the response was a mere update or a final decision.
>
> **Without formally acting on the clarification sought in the second letter request**, the Revenue District Officer responded to Cash World advising it that the entire record was forwarded to the Office of the Regional Director of the Chief Assessment Division for appropriate action or decision.
>
> A close scrutiny of the foregoing circumstances would show that **Cash World's application for tax refund/tax credit is a futility because the same Legal Division of the Regional Office where the entire docket was forwarded to is the same office which opined that the administrative claim for refund is contrary to law, rules and regulations. Evidently, a ruling in favor of Cash World is not to be expected**". (Emphasis supplied)

xxx xxx xxx

Under the premises, it can already be inferred that there is an implied denial of Cash World's administrative claim for refund. Consequently, the matter falls within the exclusive appellate jurisdiction of this Court.

As to the issue of refund, Cash World, as claimant, though having a heavy burden of showing entitlement, need only prove by preponderance of evidence in order to recover the erroneously paid taxes. Section 1, Rule 133 of the Revised Rules of Court provides the guidelines in determining preponderance of evidence:

> "SECTION 1. Preponderance of evidence, how determined.— **In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence**. In determining

> where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number".

Relevantly thereto, in the case of *Republic of the Philippines, represented by the Chief of National Police of the Philippines vs. De Guzman*[3], citing the explanation of the Supreme Court in the case of *Encinas vs. National Bookstore, Inc.*, expounding the concept of preponderance of evidence as follows:

> "Preponderance of evidence" is the weight, credit, and value of the aggregate evidence on either side and is usually considered to be synonymous with the term "greater weight of the evidence" or "greater weight of the credible evidence." Preponderance of evidence is a phrase which, in the last analysis, means probability of the truth. **It is evidence which is more convincing to the court as worthy of belief than that which is offered in opposition thereto.** (Emphasis Supplied).

Based on the foregoing, Cash World was able to present both testimonial and documentary evidence necessary to establish prima facie its right to the refund. Furthermore, without the CIR showing contrary evidence other than the bare assertion that it does not appear from the records that the corresponding taxes have been erroneously paid and that the claim for refund is contrary to law, rules and regulation, this Court cannot give evidentiary value to mere speculations and conjectures without the necessary evidence or documents to support it.

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[3] Republic of the Philippines, represented by the Chief of Philippine National Police vs. De Guzman, G.R. No. 175021, June 15, 2011.

A blanket statement with regard to the failure of Cash World to discharge its burden in claiming a tax refund absent any logical argument or specific evidence to counter the same is unacceptable. It bears stressing that petitioner, as the Commissioner of the Bureau of Internal Revenue, is vested with vast and ample power to obtain information under Section 5 of the NIRC of 1997[4], in fact, as the Commissioner of the BIR, she (now, he) ought to know the tax records of all taxpayers, and could have easily disproved the claimants' allegations. That he chose not to present any contradictory evidence amounts to a waiver of that right.

We agree that "tax refunds or tax credits - just like tax exemptions - are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit".[5] "This is the reason why a claimant must positively show compliance

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[4] *SEC. 5. Power of the Commissioner to Obtain Information, and to Summon, Examine, and Take Testimony of Persons.* - In ascertaining the correctness of any return, or in making a return when none has been made, or in determining the liability of any person for any internal revenue tax, or in collecting any such liability, or in evaluating tax compliance, the Commissioner is authorized:

(A) To examine any book, paper, record, or other data which may be relevant or material to such inquiry;

(B) To obtain on a regular basis from any person other than the person whose internal revenue tax liability is subject to audit or investigation, or from any office or officer of the national and local governments, government agencies and instrumentalities, including the Bangko Sentral ng Pilipinas and government-owned or -controlled corporations, any information such as, but not limited to, costs and volume of production, receipts or sales and gross incomes of taxpayers, and the names, addresses, and financial statements of corporations, mutual fund companies, insurance companies, regional operating headquarters of multinational companies, joint accounts, associations, joint ventures of consortia and registered partnerships, and their members;

(C) To summon the person liable for tax or required to file a return, or any officer or employee of such person, or any person having possession, custody, or care of the books of accounts and other accounting records containing entries relating to the business of the person liable for tax, or any other person, to appear before the Commissioner or his duly authorized representative at a time and place specified in the summons and to produce such books, papers, records, or other data, and to give testimony;

(D) To take such testimony of the person concerned, under oath, as may be relevant or material to such inquiry; and

(E) To cause revenue officers and employees to make a canvass from time to time of any revenue district or region and inquire after and concerning all persons therein who may be liable to pay any internal revenue tax, and all persons owning or having the care, management or possession of any object with respect to which a tax is imposed.

The provisions of the foregoing paragraphs notwithstanding, nothing in this Section shall be construed as granting the Commissioner the authority to inquire into bank deposits other than as provided for in Section 6(F) of this Code.

[5] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (now Team Energy Corporation}, G.R. No. 180434, January 20, 2016.

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with the statutory requirements provided for under the NIRC in order to successfully pursue one's claim".[6] However, once the taxpayer was able to sufficiently prove its entitlement to a refund, it thus behooves the government to refund what the taxpayer is entitled to.

In the case of *Filinvest Development Corporation vs. Commissioner of Internal Revenue*[7], the Supreme Court held:

> "In the field of taxation where the State exacts strict compliance upon its citizens, the State must likewise deal with taxpayers with fairness and honesty. The harsh power of taxation must be tempered with evenhandedness."

Given the circumstances at bar, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged by Cash World. Hence, the grant of refund is proper.

Let the petitioner be reminded that substantial justice, equity and fair play take precedence over technicalities and legalisms. To deny the claim for refund where an erroneous collection of taxes clearly exists would be tantamount to unjust enrichment on the part of the government. 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 particular case because of its peculiar circumstances. Accordingly, it is the duty of this Court to find a balance between the word and the will, and to ensure 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[8].**

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[6] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No.206526, January 28, 2015.
[7] Filinvest Development Corporation vs. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.
[8] Zacarias Co meta and Herco Realty & Agricultural Corporation vs. Court Of Appeals and Jose Franco, G.R. No. 141855. February 6, 2001.

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In view of the foregoing, this Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, the Commissioner of Internal Revenue's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

ESPERANZA R. FABON-VICTORINO
Associate Justice

Ma. Belen
MA. BELEN M. RINGPIS-LIBAN
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice