REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

ESTATE OF MA. ROSARIO S. CABRERA (also known as Rosario S. Cabrera and Maria Rosario S. Cabrera), REPRESENTED BY CO-EXECUTORS EDUARDO JULIAN C. PASCUAL AND ANDRES ELIGIO C. PASCUAL, Petitioner,	**CTA CASE NO. 8785** Members: **CASTAÑEDA, JR.,** *Chairperson,* **CASANOVA,** *and* **COTANGCO-MANALASTAS,** ***JJ.***
- versus -	
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 29 2016 9:10am

x- -x

RESOLUTION

CASANOVA, *J.*:

For resolution is respondent's **Motion for Reconsideration**, filed on May 20, 2016, with petitioner's **Comment**, filed through registered mail on June 17, 2016 and received by the Court on June 23, 2016.

Respondent moves for reconsideration of the Court's Decision dated May 4, 2016[1] (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED** to

[1] Docket, pp. 1354-1363.

REFUND to petitioner the amount of **₱713,429.60**, representing its overpaid estate tax.

SO ORDERED."[2]

Respondent maintains his position that petitioner is not entitled to refund of alleged erroneously paid estate tax in the amount of ₱713,429.60 based on the following arguments:

1. The recommendation by the Revenue District Office for the refund of petitioner's alleged overpayment of estate tax in the amount of ₱713,429.60 is not yet conclusive or final;

2. The principle of *solutio indebiti* may not be applicable in this case; and

3. Claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State.

Petitioner, on the other hand, avers that respondent's contentions deserve scant consideration and do not merit the reversal or setting aside of the assailed Decision. It argues that respondent's motion should be denied for the following reasons:

1. A final recommendation by the BIR is not a requisite for the filing of a claim for refund and acquisition of jurisdiction by the Court of Tax Appeals;

2. The principle of *solutio indebiti* clearly applies in the case of claims for refund of tax erroneously paid;

3. The presumption in favor of the government ceases to apply when a right to refund has been established and it becomes the duty of the government to return what has been erroneously and excessively given to it; and

4. Respondent's filing of a Motion for Reconsideration is an unfair tactic aimed to prevent or delay petitioner's recovery of its erroneously paid estate taxes.

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[2] Docket, p. 1362.

The Motion for Reconsideration lacks merit.

The first and third arguments of respondent are mere rehash of the arguments raised in his Memorandum[3] which have been sufficiently passed upon and fully discussed in the assailed Decision.

We emphasize that the Court can act on a judicial claim for refund of erroneously or illegally collected internal revenue taxes even if respondent failed to act on petitioner's administrative claim for as long as it complies with the requirements under Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

In the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. CBK Power Company Limited*[4], the Supreme Court clarified that the law does not require respondent to act upon the administrative claim before petitioner can file its judicial claim for refund. Section 229, as worded, only requires that an administrative claim be filed prior to the judicial claim. The Supreme Court held:

> "Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner."

On the second argument, the Supreme Court reiterated in *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*[5] that under the principle of *solutio indebiti*, once a taxpayer fully complied with the requirements of law for refund cases, respondent must return anything it has received, to wit:

> "The Court reminds the CIR that substantial justice, equity and fair play take precedence over technicalities and legalisms. The government must keep in mind that it has no

[3] Docket, pp. 1345-1349.
[4] G.R. Nos. 193383-84 and G.R. Nos. 193407-08, January 14, 2015.
[5] G.R. No. 206526, January 28, 2015.

right to keep the money not belonging to it, thereby enriching itself at the expense of the citizen or entities who have complied with the requirements of the law in order to forward the claim for refund. Under the principle of *solutio indebiti* provided in Article 2154 of the Civil Code, the CIR must return anything it has received."

Lastly, while claims for tax refund are strictly construed against the taxpayer and liberally in favor of the State, petitioner has overcome the burden of showing that he has strictly complied with the conditions for the grant of the tax refund.

Considering the foregoing, the Court finds no cogent reason to reverse or modify the assailed Decision promulgated on May 4, 2016.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice