REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

STATELAND, INC., Petitioner,	CTA EB No. 1148 (CTA CASE No. 8457)
- versus -	Present: DEL ROSARIO, *PJ;* CASTAÑEDA, JR. BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 18 2017 11:37 a.m.

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RESOLUTION

***Fabon-Victorino, J.*:**

For Court action is the Omnibus Motion for Clarification and Partial Reconsideration [Re: Modify Dispositive Portion of Decision] dated July 25, 2016, filed by petitioner.

Rather than pursuing its previous position for the grant of its claim for refund of alleged excess payment of creditable withholding taxes (CWT), petitioner instead seeks to modify only the dispositive portion of the assailed Decision of July 4, 2016 to the effect that it is entitled to carry-over the amount of CWT denied for refund.

Petitioner claims that reference is made to the body of the decision for proper construction of the court's judgment to settle any ambiguity. Petitioner is of the opinion that the body of the assailed Decision indicates that it is entitled to the subject unutilized CWT which remains in its account until it is fully utilized. However, it was not decreed in the dispositive portion of the assailed Decision.

According to petitioner, it should be allowed to carry-over its unutilized CWT notwithstanding the denial of its claim for refund for to deny it is confiscatory and will constitute unjust enrichment on the part of the government.

Besides, the conditions for entitlement for refund, which petitioner admittedly failed to prove, are not required in the case of carry-over of the same CWT. In any event, it was able to establish, both in the administrative and judicial proceedings, that it complied with the requirements for the carry-over of CWT, namely, the fact of withholding and payment of its CWT, and such CWT remains unutilized.

Moreover, petitioner's Withholding Tax Remittance Returns (BIR Form 1606) clearly show the fact of withholding and remittance of its CWT to the BIR. Even the Court, in the assailed Decision, was convinced that the CWT in the amount of P11,570,181.00 was withheld and remitted to the BIR. More importantly, the said amount remains unutilized since the entirety of the amount subject of the refund was removed from the entry of "Prior year's credit" as shown in its 2009 and 2010 Income Tax Returns.

Further, the irrevocability rule in the last sentence of Section 76 of the Tax Code only pertains to the taxpayer's choice in its Annual Income Tax Return (ITR) - either to carry over the excess credit or to apply for refund or tax credit. But the irrevocability rule does not apply in case of unsuccessful claim for refund and petitioner taxpayer seeks to carry-over the excess and unutilized CWT. Per prevailing jurisprudence, the carry-over option does not prescribe and remains in the account of the taxpayer until fully utilized. Petitioner believes that the only purpose of the irrevocability rule is to prevent the taxpayer from availing both options simultaneously, to the detriment of the government, which is not obtaining in the present case.

Petitioner theorizes that a favorable ruling or judgment either from the BIR or from the Court is not warranted in the exercise of the option to carry-over CWT. While the option for refund is strictly construed against the taxpayer, such construction does not apply in case of the option to carry-over, as the taxpayer needs only to show the fact of withholding of the subject tax, which is obtaining in the present case.

By way of comment,[1] while respondent admits that petitioner was able to establish its CWT for taxable year 2009 in the amount of P11,570,181.00, the said amount cannot possibly revert back to petitioner's account for carry-over to the succeeding taxable years as discrepancy exists in its Certificates of Tax Withheld and in its ITR for 2009 on petitioner's income for the same year. Such discrepancy amounting to P129,928,217.22 is deemed an under-declared income. Since petitioner declared an incorrect income for 2009, it cannot opt to carry-over its alleged unutilized CWT for the same year.

In refutation, petitioner avers[2] that the CWT is deemed an advance payment of taxes determinable only at the end of the taxable year. As such, it is considered as an asset of petitioner which could be used to pay subsequent tax obligations.

Petitioner reiterates that there is no discrepancy on its income which could be deemed under-declaration of income per its CWT Returns and its ITR. In fact, no such finding appears in the BIR auditor's report on the conducted annual audit for the year 2009.

Even assuming that discrepancy in its income exists based on the CWT Returns and on its ITR, such has no bearing to the propriety of allowing petitioner to carry-over

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[1] Comment (To Petitioner's Motion for Partial Reconsideration dated July 25, 2016) dated September 15, 2016
[2] Reply to Comment dated October 1, 2016

the denied claim for refund since petitioner has proved that the legal requisites for such carry-over are present in this case.

It is elementary that a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an *appeal* by way of petition for review of a previous, unsuccessful administrative claim.[3] This is especially true for cases before the Court *En Banc*, wherein no trial for the determination of facts is conducted.

Equally settled principle is that matters that were neither alleged in the pleadings nor raised during the proceedings below cannot be ventilated for the first time on appeal and are barred by estoppel. To allow the contrary would constitute a violation of the other party's right to due process, and is contrary to the principle of fair play.[4]

Needless to say, issues and arguments not raised before the original tribunal cannot be raised for the first time on appeal. Thus, to entertain petitioner's new theory for the first time before the *Court En Banc* is unfair to the other party and is offensive to the rudimentary rules of fair play, justice and due process.[5] Jurisprudence has consistently rejected the pernicious practice of shifting to a new theory on appeal in the hope of a favorable result.[6]

The record is abundantly clear that the only issue stipulated upon by the parties for the consideration of the Court is "Whether or not petitioner is entitled to its claim for refund of its unutilized or excess payment of CWT for the taxable year ended 31 December 2009 in the amount of P11,570,181.00."

While a taxpayer claiming a tax credit or refund has the

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[3] Atlas Consolidated Mining vs. Commissioner of Internal Revenue, G.R. No. 145526, March 16, 2007
[4] Commissioner of Internal Revenue vs. Puregold Duty Free, Inc., G.R. No. 202789, June 22, 2015
[5] Gerardo A. Carique vs. Philippine Scout Veterans Security and Investigation Agency, Inc., and/or Ricardo Bona and Severo Santiago, G.R. No. 197484, September 16, 2015
[6] Rizal Commercial Banking Corporation vs. Marcopper Mining Corporation, G.R. No. 170738, October 30, 2009

burden of proof to establish the factual basis of that claim,[7] it is likewise true that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to his side.[8]

Thus, due process requires that after petitioner has presented evidence to prove its claim, respondent must also be given equal opportunity to present countervailing evidence. For it is his duty to protect government resources from dissipation through refund of legally collected taxes. Note that taxes are the lifeblood of the government.

Since only the issue of petitioner's entitlement to a refund of unutilized CWT was raised in the court below, the new issue of its entitlement to carry-over the same CWT cannot be raised at this point simply because respondent was not given its day in court on the matter. It has been ruled that substantial justice does not allow new issues raised for the first time on appeal, because if the new issue had been raised and threshed out in the first opportunity before the lower court, either party would have fully presented its evidence and legal arguments in support of its position and to contravene or rebut those of the opposing party.[9]

By veering away from the original position at this stage of the case, petitioner is effectively depriving respondent of the opportunity to present evidence to contravene this new relief. Precisely the Court merely hinted the possibility on the part of petitioner to carry over its alleged unutilized CWT until fully utilized, an option and relief available under the rules, but under certain conditions. Significantly, to carry-over the subject CWT is not among the relief prayed for by petitioner in its initiatory pleading.

On another point, while petitioner was able to establish the fact of withholding of the amount of P11,571,816.18,

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[7] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Paseo Realty & Development Corporation v. Court of Tax Appeals, et al., 483 Phil. 254 (2004)
[8] Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue, G.R. No. 206526, January 28, 2015
[9] Commissioner of Internal Revenue vs. Mirant Pagbilao Corporation (Formerly Southern Energy Quezon, Inc.), G.R. NO. 159593, October 16, 2006

nonetheless, it does not automatically follow that exactly the same amount can be carried over to the succeeding periods until fully utilized. In the assailed Decision of July 4, 2016, the Court observed a discrepancy in the total amount of P129,928,217.22 between petitioner's income based on the certificates of tax withheld, and those declared in its ITR for the same year. Petitioner's income in 2009 based on the certificates of tax withheld amounted to P296,344,363.22, while its income for the same year as reported in its Annual ITR was only in the amount of P166,416,146.00. This discrepancy cannot simply be ignored.

The CWT which petitioner now seeks to carry-over, depends on its income for 2009 from which taxes were withheld. Thus, the amount to be carried-over depends on whether the correct amount of tax was withheld from petitioner's income. If the tax withheld was incorrect, the amount of excess CWT to be carried-over will likewise change.

In fine, before any carry-over can be made, petitioner must present proof to reconcile this discrepancy before the proper forum but certainly not before the Court *En Banc.*

WHEREFORE, the Omnibus Motion for Clarification and Partial Reconsideration [Re: Modify Dispositive Portion of Decision] dated July 25, 2016 filed by petitioner, is hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

burden of proof to establish the factual basis of that claim,[7] it is likewise true that the CIR has the equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to his side.[8]

Thus, due process requires that after petitioner has presented evidence to prove its claim, respondent must also be given equal opportunity to present countervailing evidence. For it is his duty to protect government resources from dissipation through refund of legally collected taxes. Note that taxes are the lifeblood of the government.

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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

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

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

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice