**REPUBLIC OF THE PHILIPPINES**
**COURT OF TAX APPEALS**
**QUEZON CITY**

***EN BANC***

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| HON. KIM S. JACINTO-HENARES, COMMISSIONER OF INTERNAL REVENUE, *Petitioner,* | CTA EB No. 1571 (CTA CASE No. 8609) |
| | *Present*: DEL ROSARIO, P.J., CASTAÑEDA, JR., UY, FABON-VICTORINO, MINDARO-GRULLA, RINGPIS-LIBAN, and MANAHAN, *JJ.* |
| -versus- | |
| PHILIPPINE PLAZA HOLDINGS, INC., *Respondent.* | Promulgated: JUN 10 2019 4:23 p.m. |

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## RESOLUTION

***MINDARO-GRULLA, J.:***

Submitted for resolution on March 4, 2018 of this Court En Banc is the Commissioner of Internal Revenue's (CIR) Motion for Reconsideration (Re: Decision dated August 3, 2018) seeking for the reversal of the Decision[1] promulgated on August 3, 2018, the dispositive portion of which reads as follows:

Decision dated August 3, 2018:

> "**WHEREFORE**, the petition is **DENIED**. The Amended Decision dated August 12, 2016 and Resolution dated November 23, 2016 of the Second Division of this Court in CTA Case No. 8609 are hereby **AFFIRMED**. No pronouncement as to costs.
>
> **SO ORDERED**."

[1] En Banc Docket, pp. 225-248.

In the Motion, the CIR insists that this Court has no jurisdiction to entertain the Petition for Review filed by respondent Philippine Plaza Holdings, Inc. (PPHI)

The Motion for Reconsideration must fail. We do not find the reasons raised by the CIR meritorious enough to warrant the attention of the members of this Court, as they are merely reiterations of the arguments it previously raised before this Court. Nonetheless, the Court shall 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 respondent. We reiterate our ruling and emphasize the pertinent portions thereof, to wit;

> "We acknowledge that the very provision of the NIRC of 1997 that the CIR relies on is unequivocal with regard to its power to decide on claims for refund of internal revenue taxes. Section 4 of the NIRC, as amended, provides as follows:
>
> 'SEC. 4. Power of the Commissioner to Interpret Tax Laws and to Decide Tax Cases. – x x x
>
> The **power to decide** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties imposed in relation thereto, or other matters arising under this Code or other laws or portions thereof administered by the Bureau of Internal Revenue is **vested in the Commissioner, subject to the exclusive appellate jurisdiction of the Court of Tax Appeals**"
>
> As an administrative agency, the power to implement and interpret a law which the CIR has been entrusted to enforce has the force of law and is entitled to respect. However, such authority, no matter how vast, does not automatically give them vested discretion or right on how such rules and regulations should be implemented.

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Moreover, a reading of the provision above limits such authority when the law subjected such power to the review and appellate jurisdiction of this Court. Section 7(a)(1) 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**.

Notably, in the case of *Vda. De San Agustin vs. Commissioner of Internal Revenue*[3], as cited by the Court in Division, it reiterated the doctrine embodied in the case of *Roman Catholic Archbishop of Cebu vs. Commissioner of Internal Revenue*[4], which provides as follows:

'***<u>To hold that the taxpayer has now lost the right to appeal from the ruling on the disputed assessment but must prosecute his appeal under section 306 of the Tax Code, which requires a taxpayer to file a claim for refund of the taxes paid as a condition precedent to his right to appeal, would in effect require of him to go through a useless and needless ceremony that would only delay the disposition of the case</u>***, for the Collector (now Commissioner) would certainly disallow the claim for refund in the same way as he disallowed the protest against the assessment. The law, should not be interpreted as to result in absurdities.

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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;"

[3] Vda. De San Agustin vs. Commissioner of Internal Revenue, G.R. No. 138485. September 10, 2001.

[4] Roman Catholic Archbishop of Cebu vs. Commissioner of Internal Revenue, G.R. No. L-16683, January 31, 1962.

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> The Court sees no cogent reason to abandon the above *dictum* and to require a useless formality that can serve the interest of neither the government nor the taxpayer. The tax court has aptly acted in taking cognizance of the taxpayer's appeal to it.'
>
> In the case at bar, records reveal that PPHI filed an Application for Abatement[5] of the Value-Added Tax (VAT) Surcharge in the amount of P807,851.22. In a letter dated September 25, 2012[6], the CIR denied its application."

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

Likewise, it bears emphasis that PPHI's filing of an administrative claim would be deemed a futility because the same office where such administrative claim will be filed is the same office which denied the application for abatement. Evidently, a ruling in favor of PPHI is not to be expected.

Lastly, as to the issue of refund, PPHI, 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

[5]Exhibit "P-8", Division Docket, pp. 491.
[6]Exhibit "P-9", Division Docket, p.482.

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> 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*[7], 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).

While it is true that PPHI belatedly filed its tax return, it is also undisputed that there were repeated attempts to timely file such tax return. Regrettably, due to a system error in the BIR-EFPS facility, PPHI was prevented from fully complying with the mandate of the law and was constrained to pay the VAT Surcharge. Records even reveal that the CIR acknowledged the fact that there has been a system error and that PPHI exerted diligent efforts to timely file its tax return.[8]

In light of the factual circumstances, PPHI 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

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[7] Republic of the Philippines, represented by the Chief of Philippine National Police vs. De Guzman, G.R. No. 175021, June 15, 2011.
[8] En Banc docket, pp. 243-245.

the records that the corresponding taxes have been erroneously paid and that the claim for refund is PPHI's attempt to circumvent well-established rules, as well as a violation of doctrine of exhaustion of administrative remedies, this Court cannot give evidentiary value to mere speculations and conjectures without the necessary evidence or documents to support it.

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[9].**

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 (Re: Decision dated August 3, 2018) is hereby **DENIED** for lack of merit.

**SO ORDERED.**

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

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[9] Zacarias Co meta and Herco Realty & Agricultural Corporation vs. Court Of Appeals and Jose Franco, G.R. No. 141855. February 6, 2001.

WE CONCUR:

**ROMAN G. DEL ROSARIO**
Presiding Justice

**JUANITO C. CASTAÑEDA, JR.**
Associate Justice

**ERLINDA P. UY**
Associate Justice

**ESPERANZA R. FABON-VICTORINO**
Associate Justice

(On Leave)
**MA. BELEN M. RINGPIS LIBAN**
Associate Justice

(I reiterate my Dissenting Opinion)
**CATHERINE T. MANAHAN**
Associate Justice