REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE, *Petitioner,*	CTA EB No. 1286 (CTA CASE No. 8755)
	Present: DEL ROSARIO, P.J, CASTAÑEDA, JR., BAUTISTA,
-versus-	UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, COTANGCO-MANALASTAS, and
GEORGE T.OLIVO and CASH WORLD LENDING INC., *Respondents.*	RINGPIS-LIBAN, *JJ.* Promulgated: SEP 02 2016

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DECISION

MINDARO-GRULLA, J.:

Submitted for decision of this Court *En Banc* is a Petition for Review filed by the Commissioner of Internal Revenue under *Section 3(b), Rule 8 of the 2005 Revised Rules of the Court of Tax Appeals*[1], *as amended*, seeking the

[1] RULE 8, Sec 3. *Who may appeal; period to file petition.-*

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> (b) A party adversely affected by a decision or resolution of a Division of the Court on a motion for reconsideration or new trial may appeal to the Court by filing before it a petition for review within fifteen days from receipt of a copy of the questioned decision or resolution. Upon proper motion and the payment of the full amount of the docket and other lawful fees and deposit for costs before the expiration of the reglementary period herein fixed, the Court may grant an additional period not exceeding fifteen days from the expiration of the original period within which to file the petition for review. (Rules of Court, Rule 42, sec. 1a)

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reversal of the Decision dated 15 December 2014[2] and the Resolution dated 27 February 2015[3] rendered by the Second Division of this Court in the case entitled "George T. Olivo and Cash World Lending, Inc. vs. Commissioner of Internal Revenue and Revenue District Officer, Leonora R. Ruizol, of Revenue District No. 36-Puerto Princesa City, docketed as CTA Case No. 8755", the dispositive portions of which, respectively, read as follows:

Decision dated December 15, 2014:

> "**WHEREFORE,** premises considered, the Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED** to **REFUND** or to **ISSUE A TAX CREDIT CERTIFICATE** to petitioner-Cash World Lending, Inc. the amount of Four Million Fifty Seven Thousand One Hundred Eighty Seven and 92/100 Pesos (P4,057,187.92) representing erroneously paid penalty and surcharges in the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the sale of real properties.
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> **SO ORDERED.**"

Resolution dated February 27, 2015:

> "**WHEREFORE**, premises considered, respondents' Motion for Reconsideration is **DENIED** for lack of merit.
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> **SO ORDERED**."

The following facts of the case as recited by the Court in Division in its Decision[4] and as established by evidence on record[5], read as follows:

> "Petitioner (Cash World Lending, Inc) is a domestic corporation duly organized under Philippines laws, having its principal office located at the Ground Floor, Hamilton

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[2] Penned by Associate Justice Caesar A. Casanova, concurred in by Associate Justice Juanito C, Castaneda and Associate Justice Amelia Cotangco-Manalastas, En Banc Docket, p. 41.
[3] Id., pp.43-44
[4] Supra note 2.
[5] Joint Stipulation of Facts and Issues dated June 4, 2014, Division Docket pp. 107-110.

Centre, No. 9598 Kamagong Street , Makati City.

Petitioner George T. Olivo is the original owner of several parcels of land, under Transfer Certificate of Title (TCT) Nos. 25032 and 25034, located at the Barrio of Sicsican, City of Puerto Princesa, Palawan. He is impleaded as a nominal party for being the predecessor-in-interest of petitioner Cash World Lending, Inc.

Respondent Commissioner of Internal Revenue (CIR) is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), vested by law in general to implement and enforce the provisions of the National Internal Revenue Code (NIRC) and other tax laws and, in particular, decide claims for refund of internal revenue taxes. She may be served with summons, notices and other court processes at her office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Respondent Revenue District Officer, Leonora R. Ruizol of Revenue District Office No. 36, Puerto Princesa City, is impleaded as the RDO in charge of the issuance of the questioned denial of petitioner Cash World's application for tax refund or issuance of TCC for petitioner Olivo. She may be served with court processes and orders at the City Coliseum, San Pedro, Puerto Princesa, Palawan City.

Petitioner Olivo, through his representative, Noe B. Indonito, entered into certain loan agreements with petitioner Cash-World, and mortgaged several parcels of land with TCT Nos. 25032, 25033 and 25034 as security thereof.

Due to his failure to settle the loans, petitioner Cash World initiated extra-judicial foreclosure proceedings on the said parcels of land. The properties were sold in two (2) public auctions, the first on April 15, 1999 for TCT Nos. 25032 and 25033, and the other on August 2, 1999 for TCT No. 25034. The highest bidder was petitioner Cash World. Accordingly the Certificates of Sale were issued and annotated at the back of the aforementioned TCTs on 10 May 1999 for the first two titles, and on February 8, 2000 for the remaining title.

However, before the expiration of the period within which to redeem the said properties, a certain claimant by the name of Lilia T. Ventura, filed a case for Annulment and/or Declaration of Nullity of Deed of Sale, Cancellation of TCT Nos. 25032, 25033 and 25034 with a Notice of *Lis Pendens* before the Regional Trial Court of Palawan and Puerto Princesa City, Branch 51. The case was docketed as Civil Case No. 3344.

After the period of redemption had elapsed, petitioner Cash World went to the RDO to pay the Capital Gains Tax and Documentary Stamp Tax and present the said Certificates of Sale issued in its name in an attempt to enable him to consolidate his ownership over the said properties. However, the receiving clerk required that the Certificates of Final Deed of Sale must first be submitted before ownership over said properties be consolidated to petitioner Cash World.

Thus, petitioner Cash World proceeded to the then Clerk of Court and Ex-Officio Sheriff of the RTC of Palawan and Puerto Princesa City, Atty. Rhodora F. Espiritu-Babanga, for the Certificates of Final Deed of Sale. Petitioner Cash World was then informed that the Certificates of Final Deed of Sale would only be issued after the finality and, depending on the outcome of the civil case.

Eventually, on January 5, 2011, a Certificate of Final Deed of Sale for TCT No. 25034 was issued consolidating ownership thereof to petitioner Cash World. Thereafter, on 17 July 2012, the remaining Certificates of Final Deed of Sale for TCT Nos. 25032 and 25033 were finally issued.

On April 26, 2012, petitioner Cash World commenced to process the transfer of title for TCT No. 25034. It paid the corresponding CGT and DST on behaf of petitioner Olivo. Having a tax base of P15,000,000.00, petitioner Cash World paid the amounts of P1,184,425.05 for the property's CGT and P307, 113.01 for its DST, both inclusive of penalties. The imposed surcharge, interest, and compromise penalty were reckoned from the date of finality of judgment. Consequently, on May 10, 2012, petitioner Cash World was issued a Certificate Authorizing Registration (CAR).

Likewise, on July 25, 2012, petitioner Cash World paid the CGT and DST for the remaining parcels of land with TCT Nos. 25032 and 25033. However, the imposed surcharge, interest, and compromise penalty were reckoned from one (1) month after the expiration of the redemption period, and not on the finality of judgment like in the previous transaction. For TCT No. 25032, with a tax base of P9,000,000.00, petitioner was assessed in the amounts of P1,994,254.77 for CGT and P509,848.15 for its DST, both inclusive of penalties. As to TCT No. 25033, with a tax base of P11,000,000.00, petitioner Cash World was assessed in the amounts of P2,432,978.81 for CGT and P620,106.19 for its DST, both inclusive of penalties. On July 27, 2012, Certificates Authorizing Registration were issued to petitioner Cash World for TCT Nos. 25032 and 25033, respectively.

On August 23, 2012, petitioner Cash World filed an Application for Tax Credit/Refunds, together with its Letter Request, before the BIR, Revenue District No. 36, for the alleged overpayment of CGT and DST for the transfer of properties covered by TCT Nos. 25032 and 25033 in the total amount of P4,057,187.92.

On October 15, 2012, petitioner Cash World received a letter dated October 3, 2012 from respondent Revenue Officer denying the letter request by quoting the opinion of the Chief Legal Division. The letter states that petitioner Cash World's contention that it is the finality of judgment of the case for nullification of Deed of Sale that should be the point of consideration in determining the amount of CGT and DST, has no leg to stand on.

Thereafter, petitioner Cash-World sent another letter dated November 21, 2012 to respondent Revenue Officer to inquire as to whether the letter was a mere update on its request for refund or the final decision on the matter as the same was not in accordance with the format prescribed by Revenue Regulations No. 12-99.

On January 21, 2013, petitioner Cash World received a letter dated January 8, 2013, stating that the entire records were forwarded to the Office of the Regional Director.

Claiming respondent's inaction thereof, petitioner Cash World filed on January 7, 2014 the instant Petition for Review with the Court of Tax Appeals (CTA).

On February 9, 2014, respondent filed her Answer, interposing the following special and affirmative defenses, to wit;

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10. A claim for tax refund is in the nature of a tax exemption and should be construed strictissimi juris against the person or entity claiming it. The burden of proof to establish the factual basis or the sufficiency and competency of the supporting documents of the claim for tax refund rests on the claimant;

11. In the instant case, the allegations of the petitioner in support of their claim for tax refund do not permit the granting thereof. Moreover, records show that the capital gains tax and documentary stamp tax paid by petitioner do not appear to have been erroneously paid;

12. Section 2 of Revenue Regulation(s) No. 2-2012 provides the period within which to pay the applicable taxes for properties sold during involuntary/foreclosure sale, thus:

'Section 2. Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property/ies within the applicable Statutory Redemption Period- In case of non-redemption of properties sold during involuntary sales, regardless of the type of proceedings and personality of mortgagees/selling persons or entities, the Capital Gains Tax (CGT) imposed under Sections 24(D)(5) of the Tax Code, in relation to Section 57 of the Tax Code and RR 2-98, as amended, if the property is an ordinary asset (sic); the Value-added Tax imposed under Section 106 of the Tax Code and RR 16-20058 *[sic]*, as amended, and the Documentary Stamp Tax (DST) imposed under Section 196 of the Tax Code shall become due.

The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then file the CGT return and remit the said tax to the Bureau within thirty (30) days from the expiration of the applicable statutory redemption period: or file the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period, provided that for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.

If the property sold through involuntary sale is under the circumstances which warrant the imposition of VAT, the said tax must be paid to the Bureau by the VAT-registered owner /mortgagor on or before the 20th day or 25th day, whichever is applicable of the month following the month when the right of redemption prescribes.

The DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.'

> 13. Clearly, based on the afore-quoted revenue regulation, the filing of the applicable return and the remittance of the tax due thereon shall be reckoned from the expiration of the applicable statutory redemption period of the involuntary /foreclosure sale;
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> 14. Accordingly, petitioner's contention that the point of consideration in determining the CGT and DST on the foreclosure sale of the subject properties is the finality of the judgment of the case for nullification of the Deed of Sale has no legal basis."

After trial on the merits, the Court in Division gave both parties a period of thirty (30) days from notice within which to submit their respective memorandum. Cash World submitted its Memorandum on September 25, 2014[6], while the CIR submitted her Memorandum on October 14, 2014[7]. Accordingly, in the October 16, 2014 Resolution[8], the instant case was deemed submitted for decision.

The Court in Division thereafter rendered the assailed Decision dated December 15, 2014, which ruled that Cash World is entitled to a refund in the amount of P4,057,187.92 representing erroneously paid penalty and surcharges in the Capital Gains Tax (CGT) and Documentary Stamp Tax (DST) for the sale of real properties.

The CIR's Motion for Reconsideration filed on February 27, 2015 was denied thru the assailed Resolution, hence, this Petition.

We rule to DENY the Petition for Review.

In the instant Petition for Review, the CIR maintains that the Court in Division erred in ruling that the Court of

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[6] Petitioner Cash World's Memorandum dated September 22, 2014, Division Docket pp. 127-141.
[7] Respondent CIR's Memorandum dated October 12, 2014, Division Docket pp.145-153.
[8] Id., p.154

Tax Appeals has jurisdiction to entertain the petition for review filed by Cash World.

In sum, Section 7(a)(1)(2) of R.A 1125[9], 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)*.

Cash World filed an application for tax refund together with a letter request on August 23, 2012 from the Bureau of Internal Revenue[10] 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 Nos. 25032 and 25033. It received a letter from the Revenue District Officer[11], 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[12] 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

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[9] 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;"

[10] BIR Form 1914, (Application for Tax Credits and Refunds) and Cash World's First Letter Request signed by Marcelo B. Boncan, Exhibits "P-8" and "P-8a", Division Docket, pp. 56-58.

[11] Letter Reply dated October 3, 2012 from Revenue District Officer Leonora R. Ruizol, Exhibit "P-9", Division Docket, p.59.

[12] Cash World's Second Letter Request signed by Marcelo B. Boncan, Exhibit "P-10", Division Docket, pp. 60-61

Chief Assessment Division for appropriate action or decision[13].

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.

Based on the foregoing facts, it can already be inferred that there is an implied denial of Cash World's administrative claim for refund. Thus, it therefore places the matter within the exclusive appellate jurisdiction of this Court.

Incidentally, the assertion by the CIR that Cash World is not the statutory taxpayer entitled to claim the refund is misplaced. The Court in Division cited Section 22(N)[14] of the National Internal revenue Code (NIRC) of 1997 which broadly defined the term "taxpayer" to mean as **"any person subject to tax**."

To further elucidate, in the case of *Commissioner of Internal Revenue v. Procter and Gamble Phil. Mfg. Corp.*,[15] the Supreme Court ruled as follows:

> A "person liable for tax" has been held to be a "person subject to tax" and properly considered a "taxpayer". The **terms "liable for tax" and "subject to tax" both connote a legal obligation or duty to pay a tax.**

Suffice it to say that the person liable to pay the capital gains tax is the seller or the person who is presumed to

[13]Letter Reply dated January 8, 2013 from Revenue District Officer Leonora R. Ruizol, Exhibit "P-11", Division Docket p.62.

[14] Section 22. *Definitions. - When used in this Title:*

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(N) The term 'taxpayer' means any person subject to tax imposed by this Title.

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[15] Internal Revenue v. Procter and Gamble Phil. Mfg. Corp, G.R. No. L-66838 December 2, 1991

have realized an income or gain from the transaction, the BIR and this Court, however, always acknowledged the validity of an agreement whereby buyers assumed payment of all transfer taxes as having the force of law between the parties[16]. Cash World has no obligation to pay the capital gains tax, but, nonetheless, voluntarily undertook payment of all transfer taxes, and clearly, the absence of any objection from Mr. George T. Olivo should be taken as a form of his consent.

Notably, the Court in Division emphasized that Sections 204(C)[17] and 229[18] of the NIRC of 1997, as amended, provide no other requirements or further qualifications in connection with refund of taxes other than the **existence of internal revenue taxes alleged to have been erroneously or illegally assessed or collected**[19]**.** *(Emphasis supplied).*

On another note, the Court En banc also disagrees with the CIR's position that the doctrine of apparent authority finds no application in the case at bar and that Mr. Marcelo B. Boncan, as President, has no authority to file the administrative claim for refund on behalf of Cash World.

The CIR failed to consider in its entirety the Supreme Court case of *Inter-Asia Investments Industries Inc. vs. CA*, cited by the Court in Division. The CIR apparently focused

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[16] BIR Ruling No. 038-2000 dated September 11, 2000.

[17] Section 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

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(C) **Credit or refund taxes erroneously or illegally received or penalties imposed without authority**, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: Provided, however, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

[18] Section 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter **alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected**, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

[19] Supra note 2, pp. 31-32

only on the context of requiring presentation of evidence of similar acts executed in favor of the corporate officer or agent in order to establish apparent authority, but neglected the fact that the **vesting of a corporate officer with power to bind the corporation** *(emphasis supplied)* is equally important.[20]

It must be emphasized that under the doctrine of apparent authority, acts and contracts of the agent, as are within the apparent scope of the authority conferred on him, although no actual authority to do such acts or to make such contracts has been conferred, bind the principal. The principals' liability, however, is limited only to third persons who have been led reasonably to believe by the conduct of the principal that such actual authority exists, although none was given. In other words, apparent authority is determined only by the acts of the principal and not by the acts of the agent[21].

In *People's Aircargo and Warehousing Co., Inc. v. Court of Appeals*[22], the Supreme Court held:

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> the doctrine of apparent authority is applied when the petitioner, through its president Antonio Punsalan Jr., entered into the First Contract without first securing board approval. **Despite such lack of board approval, petitioner did not object to or repudiate said contract, thus**

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[20] "Apparent authority is derived not merely from practice. Its existence may be ascertained through

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> (2) the acquiescence in his acts of a particular nature, with actual or constructive knowledge thereof, within or beyond the scope of his ordinary powers.
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> It requires presentation of evidence similar act(s) executed either in its favor or in favor of other parties. **It is not the quantity of similar acts which establishes apparent authority, but the vesting of a corporate officer with power to bind the corporation.**"

[21] Violeta Tudtud Banate v. Philippine Countryside Rural Bank, G.R No. 163825, July 13, 2010.

[22] People's Aircargo and Warehousing Co., Inc. v. Court of Appeals, G.R. No. 117847, October 7, 1998, 297 SCRA 170, 184-185, citing Francisco v. Government Service Insurance System, Nos. L-18287 and L-18155, March 30, 1963, 7 SCRA 577, 583; and Maharlika Publishing Corporation v. Tagle, No. L-65594, July 9, 1986, 142 SCRA 553, 566.

> **"clothing" its president with the power to bind the corporation.** *(emphasis supplied)*

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In view of the foregoing, the authority of Mr. Marcelo B. Boncan, as President, to act for and to bind Cash World may be presumed from acts of recognition, when the power, such as the signing of the letter request and filing the application for tax refund, was exercised without any objection from its board or shareholders.

Lastly, this Court finds no merit in the CIR's argument that Cash World is not entitled to the tax refund of P4,057,187.92.

In the instant case, the crux of the issue is whether or not the reckoning point in computing the penalties and surcharges for the CGT and DST should have been from the expiration of the redemption period or from the finality of judgment of the case for Annulment and/or Declaration of Nullity of Deed of Sale, Cancellation of TCT Nos. 25032, 25033 and 25034.

As a rule, where the right of redemption exists, the certificate of title of the mortgagor shall not be cancelled, but the certificate of sale and the order confirming the sale shall be registered by brief memorandum thereof made by the Register of Deeds upon the certificate of title. In the event wherein the property is redeemed, the certificate or deed of redemption shall be filed with the Register of Deeds, and a brief memorandum thereof shall be made by the Register of Deeds on the certificate of title[23].

Accordingly, in a foreclosure sale, there is no actual transfer of the mortgaged real property until after the expiration of the one-year redemption period as provided in Act No. 3135 and title thereto is consolidated in the name of the mortgagee in case of non-redemption. In the interim, the mortgagor is given the option whether or not to redeem the real property. **The issuance of the Certificate of Sale does not by itself transfer ownership.** *(Emphasis supplied)*

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[23] Section 63, Presidential Decree No. 1529, "*Amending and Codifying the Laws relative to Registration of Property and for other Purposes*", June 11, 1978.

Corollary thereto, Section 2 of Revenue Regulation 9-2012[24] provides that in case of non-redemption, the CGT and DST shall become due and should be paid within thirty (30) days and five (5) days respectively after the lapse of the redemption period.

Likewise, in a case previously ruled by this Court[25], Revenue Regulation No. 4-99[26], which further amends RMO No. 6-92 **has curbed the inequity of imposing a capital gains tax even before the expiration of the redemption period since there is yet no transfer of title** *(Emphasis supplied)* and no profit or gain is realized by the mortgagor

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[24] Section 2. *Taxability of Owner's/Mortgagor's Failure to Redeem his Foreclosed/Auctioned Off Property/ies within the applicable Statutory Redemption Period-*

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The buyer of the subject property, who is deemed to have withheld the CGT or CWT due from the sale, shall then **file the CGT return and remit the said tax to the Bureau within thirty (30) days from the expiration of the applicable statutory redemption period**: or file **the CWT return and remit the said tax to the Bureau within ten (10) days following the end of the month after expiration of the applicable statutory redemption period**, provided that for taxes withheld in December, the CWT return shall be filed and the taxes remitted to the Bureau on or before January 15 of the following year.

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The **DST return shall be filed and the said tax paid to the Bureau within five (5) days after the close of the month after the lapse of the applicable statutory redemption period.**'

[25] Spouses Alfredo & Imelda Diaz v. BIR, C.T.A. Case No. 6244, March 5, 2003.

[26] BIR Revenue Regulation No. 4-99, March 16, 1999

SEC. 3. **CAPITAL GAINS TAX.**

(1) In case the mortgagor exercises his right of redemption within one year from the issuance of the certificate of sale, no capital gains tax shall be imposed because no capital gains has been derived by the mortgagor and no sale or transfer of real property was realized. x x x

(2) In case of non-redemption, the capital gains [tax] on the foreclosure sale imposed under Secs. 24(D)(1) and 27(D)(5) of the Tax Code of 1997 shall become due based on the bid price of the highest bidder but **only upon the expiration of the one-year period of redemption provided for under Sec. 6 of Act No. 3135, as amended by Act No. 4118, and shall be paid within thirty (30) days from the expiration of the said one-year redemption period**.

SEC. 4. **DOCUMENTARY STAMP TAX.**

(1) In case the mortgagor exercises his right of redemption, the transaction shall only be subject to the P15.00 documentary stamp tax imposed under Sec. 188 of the Tax Code of 1997 because no land or realty was sold or transferred for a consideration.

(2) In case of non-redemption, the **corresponding documentary stamp tax shall be levied, collected and paid by the person making, signing, issuing, accepting, or transferring the real property wherever the document is made, signed, issued, accepted or transferred** where the property is situated in the Philippines. x x x (Emphasis supplied.)

at the time of foreclosure sale **but only upon expiration of the redemption period.**

In view of the above-cited provisions, it is indeed true that the reckoning period for computing the CGT and DST should be from the expiration of the redemption period, and any penalties and surcharges that should arise therefrom must also be reckoned from the same period.

However, after careful consideration of all the facts and evidence presented, this Court is compelled to strain away from the strict application of this rule. It is noteworthy that the paramount consideration of this Court remains to be the ascertainment of truth, and to apply a strict construction of the technicalities of law for purposes of justifying collection of taxes would constitute a miscarriage of justice.

It is undisputed that Cash World complied with the requisites of the law and the revenue regulation. It assumed and paid the corresponding taxes after the expiration of the period for redemption in an attempt to consolidate title over the subject real estate properties. Unfortunately, due to the existence of the pending nullification case, it was prevented from fully complying with the mandate of the law because a Certificate of Final Deed of Sale is required.

The existence of the pending case created a hindrance on the absolute transfer of title under Cash World's name. The decision to be rendered in the nullification case is determinative of "who" has absolute right over the subject real estate properties. Notably, if a decision is rendered nullifying the sale between Mr. George T. Olivo and Cash World, clearly, there is no title that can be transferred considering that the former did not own the subject real estate properties.

Cash World may not be faulted for the delay which was definitely not under its control. It was constrained to wait for the resolution of the nullification case.

Records reveal that in TCT No. 25034, the reckoning period used by the Revenue District Officer in computing the penalties and surcharges was from the finality of judgment of the nullification case[27], but for the parcels of land with TCT Nos. 25032 and 25033, the same Revenue District Officer deemed it proper to compute the penalties and surcharges one (1) month after the expiration of the redemption period[28]. A period of only two (2) months have lapsed when Cash World filed for issuance of a CAR for TCT Nos. 25032 and 25033.

The insistence of the CIR that the penalties and surcharges should have been strictly in accordance with the revenue regulation baffles this Court as it contradicts the very action exhibited by the Revenue District Officer. The Court En Banc would have agreed otherwise if the penalties and surcharges for the first transaction have already been based from the applicable statutory period provided for by the revenue regulation, regrettably, such was not the case.

We therefore reiterate the case cited by the Court in Division[29]. In *Zacarias Cometa and Herco Realty & Awicultural Corporation vs. Court Of Appeals and Jose Franco*, the Supreme Court ruled as follows:

> "Paraphrasing what we trenchantly pointed out in *Hermoso vs. CA*, we test a law by its result. A law should not be interpreted so as to cause an injustice. **There are laws which are generally valid but may seem arbitrary when applied in a particular sense because of its peculiar circumstances**. We are not bound to apply them in servile subservience to their language. More explicitly-
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> . . . **we interpret and apply the law not independently of but in consonance with justice**. 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. In such a situation, we are not bound, because only of our nature and

[27] Certificate Authorizing Registration for TCT No. 25034 dated May 10, 2012, Exhibit "P-5", Division Docket, p.53

[28] Certificate Authorizing Registration for TCT Nos. 25032 and 25033 dated July 27, 2012, Exhibits "P-6" and "P-7", Division Docket, pp. 54-55.

[29] Supra note 2, pp. 39-40

> functions, to apply them just the same, in slavish obedience to their language. What we do instead is find a balance between the word and the will, that justice may be done even as the law is obeyed.
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> 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.
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While it is true that tax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same,[30] the same strict construction of the law do not warrant application in this case because the defenses raised by the CIR were general and standard arguments to oppose any claim for refund. The CIR simply dwelled on the minor inconsistencies from Cash World's evidence.

The CIR stated in her Petition for Review that she opted not to present any evidence *believing* that the burden of proof to establish the factual basis or sufficiency and competency of the supporting documents of the claim for tax refund rests on Cash World[31]. This mindset ignores the rule that the CIR has an equally important responsibility of contradicting petitioner's claim by presenting proof readily on hand once the burden of evidence shifts to its side.

Accordingly, in the case of *Vitarich vs. Losin*[32], citing the explanation of the Supreme Court in *Jison vs. Court of Appeals*:

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> Simply put, he who alleges the affirmative of the issue has the burden of proof, and upon the plaintiff in a civil case, the burden of proof never parts. **However, in the course of trial in a civil**

[30] Phil. Geothermal, Inc. v. Commissioner of Internal Revenue, 503 Phil. 278, 286, 2005.
[31] En Banc Docket, p.9
[32] Vitarich Corporation vs. Chona Losin, G.R. No. 181560, November 15, 2010.

> **case, once plaintiff makes out a *prima facie* case in his favor, the duty or the burden of evidence shifts to defendant to controvert plaintiffs prima facie case, otherwise, a verdict must be returned in favor of plaintiff.** *(emphasis supplied)*

xxx xxx xxx

Indubitably, in a recent case of *Winebrenner and Inigo Insurance Brokers Inc. vs. Commisioner of Internal Revenue* [33] the Supreme Court held:

> "It must be emphasized that once the requirements laid down by the NIRC have been met, a claimant should be considered successful in discharging its burden of proving its right to refund. Thereafter, **the burden of going forward with the evidence, as distinct from the general burden of proof, shifts to the opposing party, that is, the CIR**. *(emphasis supplied)*

xxx xxx xxx

Applying this in the case at bar, Cash World was able to present both testimonial and documentary evidence necessary to establish prima facie its right to the refund. Cash World, as claimant, though having a heavy burden of showing entitlement, need only prove preponderance of evidence in order to recover the erroneously paid taxes.

In light of the factual circumstances, Cash World having complied with the requirements for refund provided for under the NIRC, and 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 thus the claim for refund is contrary to law, rules and regulation, the burden of proof of establishing the propriety of the claim for refund has been sufficiently discharged. Hence, the grant of refund is proper.

Moreover, this Court maintains that substantial justice, equity and fair play take precedence over technicalities and

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[33] Winebrenner and Inigo Insurance Brokers Inc. v. CIR, G.R. No. 206526, January 28, 2015

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.

It is a long standing principle in our legal system that no one should unjustly enrich himself at the expense of another. This is known as the principle of *solutio indebiti,* and the pertinent laws governing this principle are found in Articles 2142[34] and 2154[35] of the New Civil Code of the Philippines. It must be stressed that this applies not only to individuals but to the State as well.

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. Hence, under the principle of *solutio indebiti*, the Government has to restore to Cash World the sums representing erroneous payments of taxes[36].

Under the premises, We find no cogent reason to deviate from the rulings of the Court in Division.

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.

SO ORDERED.

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

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[34] Art. 2142. Certain lawful, voluntary and unilateral acts give rise to the juridical relation of quasi-contract to the end that **no one shall be unjustly enriched or benefited at the expense of another**.

[35] Art. 2154. If **something is received when there is no right to demand it, and it was unduly delivered through mistake, the obligation to return it arises**.

[36] Filinvest Development Corporation v. Commissioner of Internal Revenue, G.R. No. 146941, August 9, 2007.

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

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

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

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation among the members of the Court En Banc before the case was assigned to the writer of the opinion of the Court En Banc.

ROMAN G. DEL ROSARIO
Presiding Justice