REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

*EN BANC*

**COMMISSIONER OF INTERNAL REVENUE,**
Petitioner,

- versus -

**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,**
Respondent.

**CTA EB NO. 1503**
(CTA Case No. 8785)

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

Promulgated:
JUL 25 2017 3:15p.m.

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# DECISION

**RINGPIS-LIBAN, *J.*:**

## The Case

Before the Court is a Petition for Review seeking the nullification of the Decision[1] (assailed Decision) dated May 04, 2016 and Resolution[2] (assailed Resolution) dated July 29, 2016 of the Court of Tax Appeals Second Division (Second Division), granting Respondent's claim for refund in the amount of ₱713,429.60, representing its overpaid estate tax.

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[1] Penned by Associate Justice Caesar A. Casanova, with Associate Justice Juanito C. Castañeda, Jr. and Associate Justice Amelia R. Cotangco-Manalastas concurring. Docket, pp. 1354-1363.

[2] *Id.*, pp. 1388-1391.

## The Facts

The facts as found by the Second Division are as follows:

[Respondent] is the Estate of the late Ma. Rosario S. Cabrera (also known as Rosario S. Cabrera and Maria Rosario S. Cabrera) who passed away on September 22, 2011, and is represented by the co-executors Eduardo Julian C. Pascual and Andres Eligio C. Pascual who were appointed as joint executors by the Regional Trial Court (RTC) Branch 92 of Quezon City in an Order dated February 21, 2013. The Estate is registered with Revenue District Office No. 39 with Tax Identification No. (TIN) 418-524-583.

On the other hand, [petitioner] Commissioner of Internal Revenue (CIR) is the officer vested by law with authority to refund overpaid as well as erroneously or illegally collected internal revenue taxes.

When Ms. Rosario S. Cabrera died on September 22, 2011, she left behind several real and personal properties. In her holographic will, she named Mr. Eduardo Julian C. Pascual and Mr. Andres Eligio C. Pascual as the joint executors of her properties.

On March 22, 2012, [respondent] filed the estate tax return and paid the tax due thereon in the amount of ₱15,444,178.18, computed as follows:

| | |
|---|---|
| Real Properties | ₱ 63, 079,710.00 |
| Personal Properties | 19,735,200.68 |
| Gross Estate | 82,814,910.68 |
| Less: Deductions | 169,017.77 |
| Estate after Deductions | 82,645,890.91 |
| Less: Standard Deduction | 1,000,000.00 |
| Medical Expenses | 500,000.00 |
| Net Taxable Estate | 81,145,890.91 |
| **Estate Tax Payable** | **₱ 15,444,178.18** |

Out of the amount paid, [respondent] seeks the refund of ₱713,430.00, representing erroneously paid estate tax. The overpayment arose on account of the difference in the valuation of the real properties covered by Transfer Certificate of Title (CTC) [sic] No. 27569-R and TCT No. 27568-R. Accordingly, instead of dividing the value of properties covered by said certificates among

> the four registered owners thereof, [respondent] erroneously divided the same by three, which resulted to an overstatement of the value of said properties.
>
> By such reason, [respondent] filed before the Office of the CIR, Revenue Region No. 7 and Revenue District Office No. 39, its administrative claim for refund on March 14, 2014.
>
> In view of [petitioner's] inaction, [respondent] filed the instant Petition for Review on March 21, 2014.[3]

## The Ruling of the Second Division

On May 04, 2016, the Second Division promulgated the assailed Decision granting the Petition for Review, the dispositive portion of which reads:

> **WHEREFORE**, the instant Petition for Review is hereby **GRANTED**. Accordingly, [petitioner] is **ORDERED** to **REFUND** to [respondent] the amount of **₱713,429.60**, representing its overpaid estate tax.[4]

Aggrieved, Petitioner filed a Motion for Reconsideration on May 20, 2016, which the Second Division denied in the assailed Resolution, thus:

> **WHEREFORE**, premises considered, [petitioner's] **Motion for Reconsideration** is hereby **DENIED** for lack of merit.[5]

On August 26, 2016, Petitioner filed a Motion for Extension of Time to File Petition for Review,[6] which the Court granted in a Resolution dated September 01, 2016.[7]

On September 13, 2016, Petitioner filed the present Petition for Review *via* registered mail.[8]

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[3] *Id.*, pp. 1354-1356.
[4] *Id.*, p. 1362.
[5] *Id.*, p. 1391.
[6] Rollo, pp. 1-3. Record shows that petitioner received the assailed Resolution on August 12, 2016; Docket, p. 1387.
[7] *Id.*, p. 4-A.
[8] *Id.*, pp. 5-12.

On October 11, 2016, the Court issued a Resolution[9] which ordered Respondent to comment on the Petition for Review. Respondent filed on November 02, 2016 its Comment.[10]

On November 28, 2016, the Court issued a Resolution[11] submitting the case for decision.

## **The Issues**

Petitioner raises the following grounds in support of its petition:

1. THE RECOMMENDATION BY THE REVENUE DISTRICT OFFICE FOR THE REFUND OF RESPONDENT'S ALLEGED OVERPAYMENT OF ESTATE TAX IN THE AMOUNT OF P713,429.60 IS NOT YET CONCLUSIVE OR FINAL.

2. THE PRINCIPLE OF *SOLUTIO INDEBITI* IS NOT APPLICABLE IN THIS CASE.

3. RESPONDENT IS NOT ENTITLED TO REFUND REPRESENTING ALLEGED ERRONEOUSLY PAID ESTATE TAX IN THE AMOUNT OF P713,429.60.[12]

## **The Ruling of the Court**

The petition is bereft of merit.

The issues raised in the petition are mere reiterations of the same issues which had already been duly considered, passed upon and resolved by the Second Division in the assailed Decision and assailed Resolution. Petitioner's first and second arguments are mere rehash of his arguments in his Memorandum dated July 06, 2015[13] and Motion for Reconsideration dated May 19, 2016.[14] Nevertheless, for emphasis, we shall discuss the same again. The second and third issues shall be discussed jointly.

***The law does not require Petitioner to act upon Respondent's administrative***

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9 *Id.*, pp. 34-35.
10 *Id.*, pp. 36-49.
11 *Id.*, pp. 51-52.
12 *Id.*, p. 7.
13 Docket, pp. 1345-1349.
14 *Id.*, pp. 1364-1369.

***claim before it can file its judicial claim for refund***

Under the law, a taxpayer is given the remedy of refund, in case of erroneous payment or illegal collection of internal revenue taxes. The filing of a claim however is subject to a two-year prescriptive limit. Secs. 204(C) and 229 of the 1997 NIRC respectively provide:

> "Sec. 204. Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. — The Commissioner may —
>
> xxx
>
> (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 <u>within two (2) years</u> 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.
>
> Sec. 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 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.
>
> In any case, **no such suit or proceeding shall be filed after the expiration of <u>two (2) years</u> from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax,

> where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."[15]

From the express provisions above quoted, it appears that both the claim for refund with the CIR (*i.e.,* administrative claim) and the appeal to this Court (*i.e.,* judicial claim) must be done within the two-year prescriptive period.

Hence, if the two-year prescriptive period is about to expire, and the CIR has not acted upon the claim yet, the taxpayer may already file an appeal with this Court without waiting for the CIR's action. This has been the ruling laid consistently by the Supreme Court in a long line of cases to be discussed below.

As early as 1960, the Supreme Court, in *Allison J. Gibbs v. Collector of Internal Revenue*[16] citing *P.J. Kiener Co. vs. David (92 Phil. 945)* and *College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Interval Revenue (1032 Phil. 912)*, ruled:

> "In fine, a taxpayer who has paid the tax, whether under protest or not, and who is claiming a refund of the same, must comply with the requirements of both sections, that is, **he must file a claim for refund with the Collector of Internal Revenue within 2 years from the date of his payment of the tax, as required by said Section 306 of the National Internal Revenue Code, and appeal to the Court of Tax Appeals within 30 days from receipt of the Collector's decision or ruling denying his claim for refund, as required by said Section 11 of Republic Act No. 1125**. <u>**If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.**</u> This is so because of the positive requirement of Section 306 and the doctrine that delay of the Collector in rendering decision does not extend the peremptory period fixed by the statute."[17]

The decision in *PJ Kiener* and *College of Oral and Dental Surgery* was also cited in *Collector of Internal Revenue v. J. N. Sweeney*[18], where the Supreme Court emphasized that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to court:

> "As to the propriety of taking the case to the Court of tax [sic] Appeals before respondents received any advice as to the action taken, if any, on their petition for refund, this question has already

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[15] *Emphasis and underscoring supplied.*
[16] G.R. No. L-13453, February 29, 1960.
[17] *Emphasis supplied.*
[18] G.R. No. L-12178, August 21, 1959.

been ruled upon by Us to the effect that taxpayers need not wait for the action of the Collector of Internal Revenue on the request for refund before taking the matter to court. In the case of P.J. Kiener Co. vs. David, 92 Phil., 945, (49 Off. Gaz., 1852), we said:

> . . Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon claim *or that in the Taxpayer shall not go to court before he is notified of the Collectors' action.* Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the claimant may, indeed should, within the statutory period of the two years proceed with his suit *without waiting for the Collector's decision....* (Emphasis supplied)

And in the case of College of Oral and Dental Surgery vs. Court of Tax Appeals and Collector of Interval Revenue, (1032 Phil., 912; 54 Off. Gaz., 7055), we ruled:

> This Court, construing the aforequoted provisions of law (referring to section 306 of the National Internal Revenue Code) in an identical case, made the pronouncement that although the filing of the claim with the Collector of Internal Revenue is intended as a notice to said official that unless the tax or penalty alleged to have been erroneously or illegally collected is refunded court action will follow, this does not imply that the taxpayer must wait for the action of the Collector before bringing the matter to court (P. J. Kiener Co., Ltd. vs. David, L-5163, April 22, 2953, penned by Mr. Justice Pedro Tuason). Indeed, it must be observed that under said provisions, the taxpayer's failure to comply with the requirement regarding the institution of the action or proceeding in court within 2 years after the payment of the taxes bars him from the recovery of the same, irrespective of whether a claim for the refund of such taxes filed with the Collector or Internal Revenue is still pending action of the latter."

*Gibbs* was reiterated in *Commissioner of Internal Revenue v. Victorias Milling Co., Inc.*[19], to wit:

[19] G.R. No. L-24108, January 3, 1968 *citing* Gibbs v. Collector, L-13453, Feb. 29, 1960 *citing* College of Oral and Dental Surgery v. Court of Tax Appeals, 102 Phil. 912; Collector v. Court of Tax Appeals, L-11494, Jan. 28, 1961.

> "We have repeatedly held that the claim for refund with the Bureau of Internal Revenue and the subsequent appeal to the Court of Tax Appeals must be filed within the two-year period. 'If, however, the Collector takes time in deciding the claim, and the period of two years is about to end, the suit or proceeding must be started in the Court of Tax Appeals before the end of the two-year period without awaiting the decision of the Collector.'"

The most recent of these long-line of cases is *CBK Power Company Limited v. Commissioner of Internal Revenue*[20], cited by the Court in Division in the assailed Resolution, *viz*:

> "In the case of *CBK Power Company Limited vs. Commissioner of Internal Revenue* and *Commissioner of Internal Revenue vs. CBK Power Company Limited*, the Supreme Court clarified that **the law does not require [petitioner] to act upon the administrative claim before [respondent] 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.'" [21]

Note that the rule is different when it comes to refund of excess and unutilized Input VAT. Unlike in the case of refund of erroneously or illegally collected taxes under Sections 204 and 229 as discussed above, the two-year prescriptive period under Section 112 of the 1997 NIRC applies only to the administrative claim for refund.[22]

Thus, Petitioner cannot insist that Respondent's judicial claim was premature for the reason that the refund of Respondent's alleged overpayment is not yet conclusive and final, the same still subject to review by the Assessment Division.

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[20] G.R. Nos. 193383-84, January 14, 2015.
[21] Docket, p. 1390; *Emphasis supplied.*
[22] Commissioner of Internal Revenue v. Aichi Forging Company of Asia, G.R. No. 184823, October 06, 2010.

As pointed out by the Second Division in the assailed Decision, Respondent filed its estate tax return and paid the tax due thereon on March 22, 2012. Counting from such date, Respondent had until March 22, 2014 within which to file its administrative and judicial claims for refund. Respondent then filed its administrative claim for refund on March 14, 2014. If Respondent waited for the resolution of the same, then it is very probable that the CIR's decision will be issued after March 22, 2014. At that point in time, Respondent would already be barred from recovering the erroneously paid estate tax for it would not be allowed anymore under the law to institute an action or proceeding in court.[23] Upon the expiration of the said period, petitioner loses its right to seek judicial redress on the claim. Thus, to uphold Petitioner's argument would render the taxpayer's remedy of refund as meaningless and nugatory.

***Respondent has sufficiently established its entitlement to a refund of its erroneously paid estate tax and thus solutio indebiti applies.***

We find no cogent reason to disturb the findings found by the Second Division. Respondent was able to prove its entitlement to its claim for refund amounting to ₱713,429.60 representing erroneously paid estate tax.

First, as discussed above, Respondent's administrative and judicial claims were timely filed, that is, within two years from its payment of estate tax on March 22, 2012.

Second, as painstakingly explained by the Second Division, the ₱713,429.60 to be refunded was a result of an erroneous computation of the value of the real properties covered by TCT Nos. 27569-R and 27568-R in Schedule 1 of Respondent's Estate Tax Return. TCT Nos. 27569-R and 27568-R are registered in the names of Lourdes, Concesa, Rosario and Paz, all surnamed Cabrera. Therefore, Respondent's interest, with respect to the real properties is limited only to ¼ of the same. Yet although it was stated in the Schedule that only 25% of the real properties is owned by Respondent, the value of the properties were divided by three instead of by four. Therefore, the correct valuation of all properties owned by Respondent should have been Php59,512,560.00.[24]

The Second Division then concluded:

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[23] College of Oral and Dental Surgery v. Court of Tax Appeals, G.R. No. L-10446, January 28, 1958.

[24] Docket, pp. 1358-1359.

"Effecting the adjustment, [respondent], indeed, erroneously paid estate tax amounting to ₱713,429.00, on the overvaluation of the real properties, as determined below:

| | |
|---|---|
| Real Properties | ₱ 59,512,560.00 |
| Personal Properties | 19,735,200.68 |
| Gross Estate | 79,247,760.68 |
| Less: Deductions | 169,017.77 |
| Estate after Deductions | 79,078,742.91 |
| Less: Standard Deduction | 1,000,000.00 |
| Medical Expenses | 500,000.00 |
| Net Taxable Estate | ₱ 77,578,742.91 |
| | |
| Estate Tax Payable | ₱ 14,730,748.58 |
| Less: Payment | 15,444,178.18 |
| **Estate Tax Overpayment** | **₱ 713.429.60** |

"[25]

Petitioner cannot now shield itself from the principle that claims for refund are to be construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority, for Respondent was able to successfully overcome this burden.

Moreover, as pointed out by the Second Division in its July 29, 2016 Resolution, since the Respondent was able to comply with the requirements of law for refund of cases, Petitioner must now return the payment it has received under the principle of *solutio indebiti:*

> "[t]he Supreme Court reiterated in *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue* that under the principle of *solution 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 right to keep the money not belonging to it, thereby enriching itself at the expense of the law-abiding 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.'"[26]

[25] *Id.*, pp. 1359-1360.
[26] *Id.*, p. 1390-1391.

Refund is "the return of money to a person who overpaid, such as a taxpayer who overestimated tax liability"[27]. This remedy is anchored on the principle that no one shall unjustly enrich at the expense of another, which is in turn based on the principle of *solutio indebiti* embodied in the New Civil Code, particularly Article 2154, to wit:

> "SECTION 2. - Solutio Indebiti
>
> 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. (1895)"[28]

Any tax that is not due but otherwise paid to the government, as in the case of erroneously or excessively paid taxes, is not a property of the government but a property right which is protected by the Constitution. It is but logical that in cases of erroneously paid taxes, the taxpayer must be able to refund the money which is his. By the concept of unjust enrichment, the taxpayer is entitled to recover it.[29]

To borrow the beautifully crafted words of J. Panganiban –

> "If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments. When it is undisputed that a taxpayer is entitled to a refund, the State should not invoke technicalities to keep money not belonging to it. No one, not even the State, should enrich oneself at the expense of another."[30]

**WHEREFORE**, premises considered, the Petition for Review is hereby **DENIED** for lack of merit. The Decision dated May 04, 2016 and the Resolution dated July 29, 2016 of the Second Division in CTA Case No. 8785 are hereby **AFFIRMED.**

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27 Black's Law Dictionary, 9th edition, 2009.
28 Civil Code of the Philippines, Republic Act No. 386, Art. 2154 (1949).
29 *See* Gonzalo Puyat & Sons, Inc. v. City of Manila, G.R. No. L-17447, April 30, 1963.
30 BPI-Family Savings Bank, Inc. v. Court of Appeals, G.R. No. 122480, April 12, 2000.

**SO ORDERED.**

Ma. Belen S.

**MA. BELEN M. RINGPIS-LIBAN**
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

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

Catherine T. Manahan
**CATHERINE T. MANAHAN**
Associate Justice

**<u>CERTIFICATION</u>**

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

**ROMAN G. DEL ROSARIO**
Presiding Justice