REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

THIRD DIVISION

UNITED COCONUT PLANTERS BANK, *Petitioner,*	**C.T.A. CASE NO. 7903**
	Members:
-versus-	BAUTISTA, Chairperson, PALANCA-ENRIQUEZ, and COTANGCO-MANALASTAS, JJ.
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** SEP 18 2012 3:20 p.m.

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DECISION

PALANCA-ENRIQUEZ, J.:

"Once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized" *(Commissioner of Internal Revenue vs. Philippine American Life and General Insurance Company, 631 SCRA 551-552)*.

THE CASE

This is a Petition for Review filed by United Coconut Planters Bank (hereafter "petitioner UCPB") praying for the issuance of a TCC in the amount of P45,481,271.00, representing petitioner's unutilized creditable withholding taxes for the year 2006.

THE PARTIES

Petitioner UCPB is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at the UCPB Building, Makati Avenue, Makati City, where it may be served with summons and other processes of this Court.

On the other hand, respondent Commissioner of Internal Revenue (hereafter "CIR") is the chief of the BIR, the government agency charged with the assessment and collection of all national internal revenue taxes, fees and charges and enforcement of all forfeitures, penalties, and fines connected therewith, and may be served with summons and other court processes at the BIR National Office Building, Diliman, Quezon City.

THE FACTS

The facts, as culled from the records, are, as follows:

On April 13, 2007, petitioner filed its Annual Income Tax Return for the year ended December 31, 2006 reflecting a net loss of P3,969,423,202.00, prior year's excess credits of P111,173,011.00, creditable tax withheld for the first, second, third and fourth quarters of 2006 in the total amount of P45,481,271.00 (P36,193,133.00 + P9,288,138.00), and a total tax credit of P156,654,282.00. Petitioner ticked the box "To be issued a Tax Credit Certificate" as regards its over payment.

On April 16, 2007, at 3:34 p.m. and on April 16, 2007, at 4:40 p.m., petitioner filed its Amended Annual Income Tax Returns for the year ended December 31, 2006, both reflecting the same above data contained in the Original Annual Income Tax Return for the year ended December 31, 2006, but with attachments.

On May 30, 2007, petitioner filed its Quarterly Income Tax Return for the first quarter of taxable year 2007, reflecting prior year's excess credits of P156,654,282.00.

On August 29, 2007, petitioner filed its Quarterly Income Tax Return for the second quarter of taxable year 2007, reflecting prior year's excess credit of P156,654,282.00.

On November 19, 2007, petitioner filed its Amended Quarterly Income Tax Returns for the first and second quarters of taxable year 2007, both reflecting prior year's excess credits of P111,173,011.00.

On November 29, 2007, petitioner filed its Quarterly Income Tax Return for the third quarter of taxable year 2007, reflecting prior year's excess credits of P111,173,011.00.

On March 27, 2009, petitioner filed with the BIR Large Taxpayers Audit and Investigation Division 1 an administrative claim for issuance of TCC of excess creditable withholding tax for the year 2006 in the total amount of P45,481,271.00.

To date, respondent has not acted on petitioner's claim for issuance of TCC of excess creditable withholding tax.

On April 8, 2009, petitioner filed the instant petition for review.

In her answer, respondent, by way of special and affirmative defenses, alleged that:

> "7. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 8. Petitioner failed to demonstrate that the tax subject in the case at bar was erroneously or illegally collected.

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9. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

10. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with provisions of law.

11. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of Forty Five Million Four Hundred Eighty One Thousand Two Hundred Seventy One Pesos (P45,481,271.00) representing alleged unutilized creditable withholding tax for the taxable year 2006.

12. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;

b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

c.) That the income upon which the taxes were withheld were included in the return of the recipient.

13. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

14. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

> 15. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption (Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005). The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted *(Sea-Land Service vs. Court of Appeals, 357 SCRA 444)*."

Petitioner presented Mary Claire D. Cantor, Emmanuel Y. Mendoza, and Jennifer Anne Z. Coronel, as witnesses, and documentary evidence, marked as *Exhibits "A" to "WW"*, inclusive of their submarkings, which were all admitted by the Court in a Resolution dated June 28, 2011, after petitioner filed a Motion for Reconsideration.

On the other hand, respondent's counsel manifested that she will not present any evidence and moved that she be granted a period of 30 days to file her Memorandum. Counsel for petitioner moved for the same period.

Accordingly, both parties were granted thirty (30) days from October 12, 2011 to file their simultaneous memoranda, afterwhich, the case shall be deemed submitted for decision.

Both parties having filed their respective memorandum after the "Motions for Extension of Time to File Memorandum" and "Motion to

Admit Attached Memorandum were granted by the Court, the case was deemed submitted for decision on January 2, 2012.

ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are:

I

WHETHER OR NOT THE ADMINISTRATIVE CLAIM FOR REFUND WAS FILED WITHIN THE PERIOD PRESCRIBED BY LAW.

II

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OR TAX CREDIT OF ITS UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE CALENDAR YEAR 2006.

III

WHETHER OR NOT PETITIONER HAS UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE AMOUNT OF PH45,481,271.00 AS OF DECEMBER 31, 2006, WHICH IS A PROPER SUBJECT OF A CLAIM FOR REFUND/ISSUANCE OF A TAX CREDIT CERTIFICATE PURSUANT TO SECTION 76 OF THE 1997 TAX CODE.

IV

WHETHER OR NO PETITIONER'S UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEAR 2006 IN THE AMOUNT OF PH45,481,271.00 ARE DULY SUBSTANTIATED BY DOCUMENTARY EVIDENCE.

V

WHETHER OR NOT THE INCOME UPON WHICH THE SUBJECT UNUTILIZED CREDITABLE WITHHOLDING TAXES WERE WITHHELD WAS DECLARED AS PART OF PETITIONER'S GROSS REVENUE IN ITS ANNUAL INCOME TAX RETURN FOR CALENDAR YEAR 2006.

VI

WHETHER OR NOT PETITIONER'S UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR CALENDAR YEAR 2006 WERE CARRIED OVER AND CLAIMED AS "PRIOR YEAR'S EXCESS CREDITS" DURING THE SUCCEEDING TAXABLE YEAR.

Principal Issue

The foregoing issues boil down to the principal issue of whether or not petitioner is entitled to a claim for refund or issuance of a TCC of its unutilized creditable withholding taxes for calendar year 2006 in the amount of P45,481,271.00.

THE COURT'S RULING

The petition is without merit.

Section 76 of the NIRC of 1997, as amended, provides:

"SEC. 76. Final Adjustment Return. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on

> the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of the tax still due; or
>
> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

The above provision gives two options to a taxable corporation whose total quarterly income tax payment in a given taxable year exceeds its total income tax due. These options are (1) be credited or refunded either in the form of cash or credit certificate with the excess amount paid; or (2) carry over the excess credit to the succeeding taxable year.

The first option works simply by applying for a cash refund or tax credit certificate with the BIR for any tax on income that is paid in excess of the amount due to the government. The second option, on the other hand, works by applying the refundable amount, as shown on the Final Adjustment

Return, of the given taxable year, against the income tax liabilities of the succeeding taxable year.

Records show that petitioner's Annual Income Tax Return for the year ended December 31, 2006 (both original and amended) reflects a net loss of P3,969,423,202.00, prior year's excess credits of P111,173,011.00, creditable taxes withheld for the first, second, third and fourth quarters of 2006 in the total amount of P45,481,271.00 (P36,193,133.00 + P9,288,138.00), and a total tax credit of P156,654,282.00 *(Exhibits "B", "C" and "D")*.

Since petitioner incurred a net loss for taxable year 2006, on March 27, 2009, petitioner filed a petition for issuance of a TCC of its creditable taxes withheld for the first, second, third and fourth quarters of 2006 in the total amount of P45,481,271.00 *(Exhibit "A")*. In effect, petitioner availed of the first option provided in *Section 76 of the NIRC of 1997, as amended.*

However, a perusal of petitioner's Quarterly Income Tax Return for the first quarter of taxable year 2007 *(Exhibit "K")* shows that petitioner carried over its unutilized creditable withholding taxes for the preceding years in the total amount of P156,644,282.00, which included the unutilized

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creditable withholding tax for taxable year 2006 in the amount of P45,481,271.00, subject of the present petition for issuance of a TCC.

Also, a perusal of petitioner's Quarterly Income Tax Return for the second quarter of taxable year 2007 *(Exhibit "M")* shows that petitioner carried over its unutilized creditable withholding tax for the preceding years in the total amount of P156,644,282.00, which again included the unutilized creditable withholding tax for taxable year 2006 in the amount of P45,481,271.00, subject of the present petition for issuance of a TCC.

It bears stressing that the last paragraph of *Section 76 of the NIRC of 1997, as amended,* provides that once the option to carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a TCC shall be allowed therefore.

Thus, in the recent case of *Mirant (Philippines) Operations Corporation (formerly: Southern Energy Asia-Pacific Operations (Phils.) Inc.) vs. Commissioner of Internal Revenue, 652 SCRA 89-93*, the Supreme Court ruled, as follows:

"Once exercised, the option to carry over is Irrevocable

"xxx xxx

The last sentence of Section 76 is clear in its mandate. Once a corporation exercises the option to carry-over and apply the excess quarterly income tax against the tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period. Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment.

In the recent case of *Commissioner of Internal Revenue v. PL Management International Philippines, Inc. (G.R. No. 160949, April 4, 2011)*, the Court discussed the irrevocability rule of Section 76 in this wise:

The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC of 1985, which provides:

Section 79. Final Adjustment Return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:

(a) Pay the excess tax still due; or

(b) Be refunded the excess amount paid, as the case may be.

In case the corporation is entitled to a refund of the excess estimated quarterly income taxes-paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

<u>As can be seen, Congress added a sentence to Section 76 of the NIRC of 1997 in order to lay down the irrevocability rule, to wit:</u>

<u>xxx Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered</u>

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irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue (514 Phil. 147, 157 [2005])*, the Court expounds on the two alternative options of a corporate taxpayer whose total quarterly income tax payments exceed its tax liability, and on how the choice of one option precludes the other, viz:

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.

The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.

These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue *(361 Phil. 916 [1999])*, the Court ruled that a corporation must signify its intention - whether to request a tax refund or claim a tax credit - by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.

One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. xxx

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands (G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231)*, the Court, citing the aforequoted pronouncement in Philam Asset Management, Inc., points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes irrevocable. The Court explains:

Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.'

The last sentence of Section 76 of the NIRC of 1997 reads: 'Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.' The phrase 'for that taxable period' merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase 'for that taxable period' as a prescriptive period for the irrevocability rule. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in Philam, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, i.e., to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI."

Pursuant to the above ruling of the Supreme Court, the Congress laid down the irrevocability rule that once the taxpayer opted to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding years, such option to carry over shall be considered irrevocable. Meaning, the taxpayer can no longer change its mind and opts to claim for refund or request for issuance of TCC as regards the excess creditable withholding tax carried-over.

Such option is irrevocable for the whole amount of excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized *(Commissioner of Internal Revenue vs. The Philippine American Life and General Insurance Company, supra)*.

To reiterate, *Section 76* is clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the irrevocability rule *(Commissioner of Internal Revenue vs. Bank of the Philippines Islands 592 SCRA 231)*. Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. *Section 76 of the NIRC of 1997* is explicit in stating that once the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor' *(supra)*.

Applying the foregoing rulings to the instant case, considering that petitioner opted to carry-over its unutilized creditable withholding tax of P45,481,271.00 for taxable year 2006 to the first and second quarters of taxable year 2007 when it had actually carried-over said excess creditable withholding tax to the first and second quarters in its Quarterly Income Tax Returns for taxable year 2007, said option to carry-over becomes irrevocable. Petitioner's effort to subsequently amend its first and second Quarterly Income Tax Returns for taxable year 2007 by removing the unutilized creditable withholding tax of P45,481,271.00 for taxable year 2006 from the prior year's excess credit of P156,654,282.00 carried-over to taxable year 2007, will not change the fact that petitioner had already opted the carry-over option and said choice is irrevocable. As previously mentioned, whether or not petitioner applied for the tax credit is irrelevant and would not change the carry-over option already made.

Thus, the present petition praying for issuance of a TCC of its unutilized creditable withholding tax for taxable year 2006 in the amount of P45,481,271.00 must perforce be denied in view of the irrevocability rule on carry-over option of unutilized creditable withholding tax.

WHEREFORE, premises considered, the present Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

A T T E S T A T I O N

I attest 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's Division.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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.

ERNESTO D. ACOSTA
Presiding Justice