REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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RELIANCE COMMERCIAL ENTERPRISES, INC.,
Petitioner,

C.T.A. CASE NO. 6848

Members:

- versus -

ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
AUG 17 2006

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DECISION

ACOSTA, E., PJ.:

The instant Petition for Review seeks the refund or issuance of a tax credit certificate in the amount of P1,186,944.00 allegedly representing excess/unutilized creditable withholding taxes for the fiscal year ended September 30, 2001.

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office address at 5/F Comfoods Building, Sen. Gil Puyat Ave., corner Pasong Tamo St., Makati City. Respondent, on the other hand, is the Commissioner of Internal Revenue duly appointed and empowered to perform the duties of his office, including, among others, the duty to act on and approve claims for refund or tax credits as provided by law, with office at the BIR National Office Building, Diliman, Quezon City.

Petitioner is registered with the Bureau of Internal Revenue (BIR) with Taxpayer's Identification Number 049-000-140-421 and adopts a fiscal year from October 1 to September

30 for purposes of keeping its books of accounts and filing its annual income tax return (*par. 8, Admitted Facts*).

On January 15, 2002, petitioner filed with the BIR its income tax return for the fiscal year ended September 30, 2001 (*Exhibit C*) declaring no income tax liability (at the regular rate of 32%) as it incurred a net loss in the amount of P8,086,461.00 (*Exhibit C-4*). Since petitioner's return reflected a gross loss in the amount of P295,412.*00 (Exhibit C-2*), petitioner also did not declare a minimum corporate income tax (MCIT) liability considering that the MCIT is computed based on gross income. Consequently, petitioner's prior year's excess credits in the amount of P7,198,040.00 and creditable taxes withheld during the year in the amount of P1,186,944.00 totaling P8,384,984.00 remained unutilized as of the end of fiscal year ended September 30, 2001, as shown below:

Sales/Revenues/Receipts/Fees		P 15,260,089.00
Less:	Cost of Sales/Services	40,709,923.00
Gross Loss from Operation		P 25,449,834.00
Add:	Non-Operating & Other Income	25,154,422.00
Total Gross Loss		P 295,412.00
Less:	Deductions	7,791,049.00
Net Loss		P 8,086,461.00
Income Tax Due		P -
Less:	Tax Credits	
	Prior Year's Excess Credits	7,198,040.00
	Creditable Taxes Withheld for the First Three Quarters	924,869.00
	Creditable Taxes Withheld for the Fourth Quarter	262,075.00
Income Tax Overpayment		P 8,384,984.00

Petitioner opted to carry-over the excess tax credits of P8,384,984.00 to the succeeding taxable year/quarter by putting an "x" mark on the corresponding box in the return. However, in its amended income tax return for the same fiscal year 2001 filed on May 16, 2002 (*Exhibit QQ*), petitioner revised its chosen option from "*To be carried as tax credit next year/quarter*" to "*To be refunded*" and removed the prior year's excess credits of P7,198,040.00, thereby reducing the income tax overpayment to P1,186,944.00.

On January 14, 2004, petitioner filed with the BIR a written claim for cash refund or issuance of a tax credit certificate corresponding to its unutilized excess creditable withholding taxes for the fiscal year 2001 in the amount of P1,186,944.00 (*Exhibit TT*).

As the two-year prescriptive period for the filing of a judicial claim under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, was about to lapse without action on the part of the respondent, petitioner elevated its case before Us on January 15, 2004.

Respondent, in his Answer filed on February 23, 2004, interposed the following Special and Affirmative Defenses:

4. Assuming without admitting that petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;

5. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable;

7. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit;

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 204 in relation to Section 229 of the 1997 Tax Code, as amended; and

9. Claims for refund are construed strictly against the claimant for the same partake (of) the nature of exemption from taxation (**Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970, 31 SCRA 95**) and as such, they are looked upon with disfavor (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**).

During the trial on the merits, petitioner presented documentary and testimonial evidence. Respondent, on the other hand, submitted this case for decision, as there was no report of investigation (*Records, page 263*).

After having received the memoranda of both parties, this Court considered the case submitted for decision on April 28, 2006.

The issues posed for this Court's resolution are as follows:

1. Whether or not the petitioner is entitled to the refund of P1,186,944.00 representing excess and unutilized creditable withholding tax for fiscal year ending September 30, 2001;

2. Whether or not petitioner has an unutilized/excess creditable withholding tax in the amount of P1,186,944.00 for fiscal year ending September 30, 2001;

3. Whether or not the income from which the taxes were withheld were included as part of the gross income in the petitioner's 2001 income tax return;

4. Whether or not the petitioner's claim for refund/tax credit allegedly representing unutilized/excess creditable withholding tax for fiscal year ending September 30, 2001 in the amount of P1,186,944.00 is substantiated by documentary evidence; and

5. Whether or not the petitioner's alleged unutilized/excess withholding tax for fiscal year ending September 30, 2001 was carried over to the succeeding years/quarters.

Petitioner anchors its claim on Section 76 of the NIRC of 1997 in relation to Sections 204(C) and 229 of the same Code, which We all quote herein below for easy reference:

"**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 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 in 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 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 cash refund or issuance of a tax credit certificate shall be allowed therefor."

"**SEC. 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."

"**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, 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 two (2) years 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."

Petitioner maintains that Section 76 of the NIRC of 1997 only considers the choice of carrying-over excess/unutilized creditable withholding tax as irrevocable "once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made". The law seeks to prohibit the double claiming of the excess/unutilized creditable withholding tax for a given year – *i.e.* the taxpayer attempts to carry-over and apply the tax against the income tax due in the succeeding year and, at the same time, attempts to claim such creditable withholding tax for refund in the year that it has been paid. However, the law uses the words "carry-over and apply" – meaning that the choice is only irrevocable once the taxpayer has both carried over and applied such amount against the income tax due in the succeeding year. Without the application of the creditable withholding tax against the tax due in the succeeding year, there would be no double claiming of the excess creditable withholding tax. This construction is reasonable in view of the right granted under Section 6 of the 1997 Tax Code. Otherwise, the right to amend returns in order to correct errors would be rendered nugatory.

We disagree.

It is explicitly stated under Section 76 of the NIRC of 1997, as amended, that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed ***(PHILAM ASSET MANAGEMENT, INC. vs. COMMISSIONER OF INTERNAL REVENUE, G.R. Nos. 156637/162004, December 14, 2005***). It is not necessary that said excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as the taxpayer had elected to carry-over said amount to the succeeding taxable year, that choice is irrevocable for that taxable period (***HONDA CARS PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 75365, September 29, 2005***). The "taxable period" referred to under Section 76 is that taxable period which the taxpayer made the choice of carry over and not to the next taxable year when the said excess or unutilized tax credits be carried over (***SC & C COSMETECH CO., INC. vs. COMMISSIONER OF INTERNAL REVENUE, CTA Case No. 6650, June 6, 2005***).

In the case at bench, petitioner's 2001 income tax return filed on January 15, 2002 (*Exhibit* C) shows that petitioner marked the option "To be carried over as tax credit next year/quarter". Evidently, petitioner elected the option of carry-over insofar as its excess tax credits for fiscal year 2001 in the amount of P1,186,944.00 is concerned. However, petitioner argues that it amended its 2001 income tax return on May 16, 2002 and this time indicated the option "To be refunded" *(Exhibit QQ*). Petitioner avers that this amendment superseded its original chosen option of carry over in accordance with Section 6 of the NIRC of 1997.

We disagree.

The amendment of returns allowed by Section 6 of the NIRC of 1997 does not extend to changing a taxpayer's chosen option under Section 76 of the same Code. To do so would render Section 76 ineffectual (***SUBIC BAY DISTRIBUTION, INC., petitioner, vs. THE COMMISSIONER OF INTERNAL REVENUE, C.T.A. Case No. 6640. November 3, 2004***).

As earlier stated, petitioner's original option of carry-over is irrevocable pursuant to Section 76 of the NIRC of 1997. Consequently, petitioner is precluded from claiming a cash refund or tax credit certificate corresponding to its excess tax credits for fiscal year 2001 in the amount of P1,186,944.00. Nonetheless, the amount will not be forfeited in the government's favor, because petitioner may still claim it as tax credits in the succeeding taxable years until the same is fully utilized.

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
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 before the case was assigned to the writer of the opinion of the Court's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division