REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
Quezon City

THIRD DIVISION

STABLEWOODS PHILIPPINES, INC.,[Formerly:ROLLS-ROYCE PHILIPPINES,INC. (Formerly ORCA ENERGY,INC.)]
Petitioner,

-versus- **CTA Case No. 7704**

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS,JJ

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 31 2011
11:45 a.m.

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DECISION

COTANGCO-MANALASTAS *J.:*

STATEMENT OF THE CASE

Petitioner, by way of this Petition for Review, is seeking refund or issuance of tax credit certificate in the amount of P65,085.905.82, representing its alleged excess creditable withholding tax (CWT) for taxable year 2005.

STATEMENT OF FACTS

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with Securities and Exchange Commission (SEC) Registration No. AS096-002540. Its registered address is at Suite 208, 2nd Floor, The Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City.[1] Petitioner's primary purpose is:

> "To engage, construct, erect, assemble, commission, operate, maintain and rehabilitate gas turbine and other power generating plants and related facilities for the conversion into electricity and other forms of energy of coal, distillate and other fuel provided by and under contract with the government of the Philippines or any subdivision, instrumentality or agency thereof, or any government-owned or controlled corporation or other entity; and to render advice and consultancy services in connection with the construction, erection, assembly, commissioning, operation, maintenance and rehabilitation of such plants; provided that in no event shall the corporation itself engage in the general supply or distribution of electricity in retail or in the business of a public utility or furnish services or engage in industries or activities reserved by the constitution or by law to corporation wholly or partially owned by Filipino citizens."[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

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[1] Exhibit "A"; Par. 3, Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 152
[2] Exhibit "A-1"

On April 7, 2006, petitioner electronically filed its Annual Income Tax Return (ITR) for taxable year 2005, which reflected a tax overpayment in the amount of P76,245,344.99.[3]

An administrative claim for refund of the excess Creditable Withholding Tax (CWT) in the year 2005 was filed by petitioner with the BIR Revenue Region No. 8 (Makati City) on November 24, 2006.[4] However, respondent failed to act on the said application for refund, prompting petitioner to file the present Petition for Review before this Court on November 13, 2007.

In her Answer[5] filed on January 4, 2008, respondent raised the following Special and Affirmative Defenses:

> "5. Granting but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;
>
> 6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;
>
> 8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;
>
> 9. In an action for tax credit or refund, the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban,*

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[3] Exhibit "C-1"; Par. 6, Facts, JSFI, docket, 153
[4] Exhibits "I" and "I-1"
[5] Docket, pp. 95-97

> *Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;
>
> 10. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor. (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On January 24, 2008, a Notice of Pre-Trial Conference was issued by this Court, setting the case for Pre-Trial Conference on February 28, 2008, and requiring both parties to be present at the pre-trial and to file with this Court and serve on the adverse party their pre-trial briefs.[6]

Petitioner filed its Pre-trial Brief on February 21, 2008;[7] while respondent filed her Pre-trial Brief on February 27, 2008.[8]

On March 14, 2008, petitioner filed a Motion to Amend Caption[9], praying that the Court allow the amendment of the caption of the instant case from "Orca Energy, Inc. vs. Commissioner of Internal Revenue" to "Rolls-Royce Philippines, Inc. (formerly Orca Energy, Inc.) vs. Commissioner of Internal Revenue". In a Resolution dated April 24, 2008, this Court granted petitioner's motion.[10]

On May 9, 2008, the parties filed their Joint Stipulation of Facts and Issues[11], which this Court approved in a Resolution dated May 23, 2008. In the same Resolution, the pre-trial was considered terminated.[12]

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[6] Docket, p. 100
[7] Docket, pp. 101-110
[8] Docket, pp. 111-116
[9] Docket, pp. 118-120
[10] Resolution dated April 24, 2008, docket, p. 132
[11] Docket, pp. 151-155
[12] Docket, p. 157

On May 26, 2009, petitioner again filed a Motion to Amend Caption[13], where it prayed that the Court allow the amendment of the caption of the instant case from "Rolls-Royce Philippines, Inc. (formerly Orca Energy, Inc.) vs. Commissioner of Internal Revenue" to "Stablewood Philippines, Inc., [formerly Royce-Royce Philippines, Inc. (formerly Orca Energy, Inc.)] vs. Commissioner of Internal Revenue". In a Resolution dated June 23, 2009, this Court again granted, among others, petitioner's Motion to Amend Caption.[14]

During trial, petitioner presented testimonial and documentary evidence to prove its case.

On November 5, 2009, respondent's counsel manifested that he will no longer present controverting evidence and instead requested a period of thirty (30) days to file respondent's Memorandum.[15]

The case was submitted for decision on February 24, 2010, taking into consideration respondent's Memorandum[16] filed on January 21, 2010 and petitioner's Memorandum[17] filed on February 17, 2010.

STATEMENT OF ISSUES

The parties submitted the following issues[18] for this Court's resolution:

[13] Docket, pp. 1418-1421
[14] Docket, pp. 1440-1441
[15] Docket, pp. 1583-1584
[16] Docket, pp. 1599-1604
[17] Docket, pp. 1608-1679
[18] Docket, pp. 153-154

"A.

WHETHER OR NOT THE INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN PETITIONER'S GROSS INCOME FOR THE YEAR 2005.

B.

WHETHER OR NOT PETITIONER HAS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE YEAR 2005 IN THE AMOUNT OF PHP65,085,905.82.

C.

WHETHER OR NOT PETITIONER CARRIED OVER TO THE SUCCEEDING TAXABLE YEARS THE ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE YEAR 2005.

D.

WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM THE REFUND OF THE ALLEGED EXCESS/CREDITABLE WITHHOLDING TAX IN THE YEAR 2005 IS DULY SUBSTANTIATED.

E.

WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND HAS PRESCRIBED.

F.

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE AGGREGATE AMOUNT OF PHP65,085,905.82 REPRESENTING ALLEGED UNUTILIZED CREDITABLE WITHHOLDING TAX ON INCOME PAYMENT IN THE YEAR 2005."

The above-enumerated issues can be summarized into a single issue, to wit:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P65,085,905.82, representing petitioner's alleged excess/unutilized creditable withholding tax for taxable year 2005."

DISCUSSION/RULING

Petitioner claims that it is entitled to a refund in the amount of P65,085,905.82, representing its alleged excess/unutilized creditable withholding tax for taxable year 2005.

Pertinent to the resolution of the issue are Sections 76, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997, which are all quoted hereunder for ready reference, to wit:

> "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 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 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**." *(Emphasis supplied)*
>
> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx 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 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**. xxx" (*Emphasis supplied)*

"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." (*Emphasis supplied)*

Furthermore, in accord with the Supreme Court ruling in *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[19], petitioner has two years from the filing of the Final Adjustment Return within

[19] G.R. No. 96322, December 20, 1991

which to file a claim for refund of excess creditable income taxes withheld both in the administrative and judicial levels.

Records indicate that petitioner filed its 2005 Annual Income Tax Return[20] on April 7, 2006. Thus, it had until April 7, 2008, within which to file its administrative and judicial claims. Petitioner filed its administrative claim for refund on November 24, 2006.[21] Then on November 13, 2007, petitioner filed its Petition for Review before this Court. Hence, both the administrative and judicial claims were filed within the two-year prescriptive period, pursuant to Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended.

However, despite the fact that petitioner timely filed its claim for refund, this Court still has to deny the claim on the basis of Section 76 of the National Internal Revenue Code of 1997.

Section 76 of the NIRC of 1997 offers two options to a corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. These options are (1) filing a claim for tax refund (either in the form of cash or tax credit certificate) or (2) availing of a tax credit.

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.

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[20] Exhibits "C" and "C-1"
[21] Exhibit "I"

The second option works by applying the refundable amount, as shown on the Final Adjustment Return of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. However, once the carry-over option is chosen, actually or constructively, it becomes irrevocable for that taxable period.[22] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[23]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[24]

On April 7, 2006, petitioner electronically filed its Annual ITR for taxable year 2005, which reflected tax overpayment of P76,245,344.99, computed as follows:[25]

Sales/Revenues/Receipts/Fees	P 205,106,798.00
Less: Cost of Sales/Services	237,531,140.00
Gross Income from Operation	(32,424,342.00)
Add: Non-Operating and Other Income	347,303,861.00
Total Gross Income	314,879,519.00
Less: Deductions	384,282,955.00
Taxable Income	(69,403,436.00)
Minimum Corporate Income Tax (MCIT)	6,297,590.38

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[22] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007

[23] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009

[24] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.* G.R. No. 112024, January 28, 1999

[25] Exhibits "C" to "C-4", docket, pp. 454-511

Less: Tax Credits	
Prior Year's Excess Credits	17,457,029.55
Creditable Tax Withheld for the First Three Quarters	65,085,905.82
Creditable Tax Withheld for the Fourth Quarter	-
Total Tax Credits	82,542,935.37
Tax Payable/(Overpayment)	**P(76,245,344.99)**

According to petitioner, the tax overpayment of P76,245,344.99 consisted of (a) the amount of P11,159,439.17, representing the balance after deducting the MCIT of P6,297,590.38 from the prior year's excess credits of P17,457,029.55; and (b) the amount of P65,085,905.82 creditable taxes withheld during the year 2005, as shown below:[26]

MCIT due for 2005		P 6,297,590.38
Less: Prior Year's Excess Credits		17,457,029.55
Balance of Prior Year's Excess Credits		P11,159,439.17
Add: Creditable Taxes Withheld -2005		
Creditable Tax Withheld for the First Three Quarters	P65,085,905.82	
Creditable Tax Withheld for the Fourth Quarter	-	65,085,905.82
Excess Creditable Taxes Withheld as of December 31, 2005		P76,245,344.99

A scrutiny of the reprint of petitioner's Annual Income Tax Return for taxable year 2005[27] clearly shows that petitioner marked the choice "To be issued a Tax Credit Certificate"[28].

Even though petitioner elected the option "To be issued a Tax Credit Certificate" insofar as its excess tax credits as of December 31, 2005 in the amount of P76,245,344.99 (including the subject claim of P65,085,905.82), however, petitioner carried over the said amount in its Quarterly Income Tax

[26] Exhibit "EE", Part II, No. 23, docket, p. 811
[27] Exhibit "D", docket, pp. 540-545
[28] Exhibit "D-1", docket, p. 541

Returns for the first[29], second[30], and third[31] quarters of the succeeding taxable year 2006. Thus, petitioner's original chosen option to refund (in the form of tax credit certificate) the amount of P65,085,905.82 is actually negated by its very act of carrying over said excess amount to the succeeding taxable quarters of 2006.

Inasmuch as petitioner exercised the option of carry-over with respect to its claimed excess tax credits of P65,085,905.82, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended. Consequently, petitioner cannot seek the refund of the amount of P65,085,905.82 even if the same was not utilized in the succeeding year 2006. Petitioner's only recourse is to apply the excess amount of P65,085,905.82 to the succeeding quarters/years until it is fully utilized.

The High Tribunal's ruling in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[32] corroborates the foregoing in this wise:

> "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'."

[29] Exhibit "AAA", Item No. 29A, docket, p. 1496
[30] Exhibit "BBB", Item No. 29A, docket, p. 1499
[31] Exhibit "CCC", Item No. 29A, docket, p. 1502
[32] G.R. No. 178490, July 7, 2009

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

AMELIA COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

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's Division.

ERNESTO D. ACOSTA
Presiding Justice