REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

AYALA CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7754

Members:

ACOSTA, *Chairperson*
UY, *and*
FABON-VICTORINO, *JJ.*

Promulgated:
MAR 16 2011 ; 11:04 am

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DECISION

Fabon-Victorino, J.:

This is a petition for review falling under the jurisdiction of the Court in Division filed by petitioner Ayala Corporation, assailing the inaction of respondent Commissioner of Internal Revenue (CIR) on its request for issuance of Tax Credit Certificate (TCC) for its alleged excess and unutilized creditable taxes withheld for the year 2005 in the amount of P39,358,887.04.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 33rd Floor, Tower One & Exchange Plaza, Ayala

Triangle, Ayala Avenue, Makati City.[1] It is the holding company of the Ayala Group with principal business interests in real estate and hotels, financial services and bancassurance, telecommunications, electronics and information technology, utilities, automotive, international operations and others.[2] It is a registered taxpayer with Tax Identification No. 000-153-610-000.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, vested with authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.[3]

On April 11, 2006, at 2:39 p.m., petitioner, through the Electronic Filing and Payment System (EFPS), filed with the Bureau of Internal Revenue (BIR), its Annual Income Tax Return[4] for taxable year 2005 with Filing Reference No. 120600001007815. The said return reflected a net loss in the amount of P2,316,424,615.00 but with a minimum corporate income tax (MCIT) due of P5,612,835.72. Petitioner likewise reported a total

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 77.
[2] Item 1, Notes to Parent Company Financial Statements, Exhibit "L-6".
[3] Par. 2, Admitted Facts, JSFI, Docket, pp. 77 - 78.
[4] Exhibits "J" and "1".

amount of P53,637,880.00 tax credits consisting of the prior year's excess credit in the amount of P14,080,672.00 and creditable taxes withheld during the year in the amount of P39,557,208.00. The withholding tax credit of P53,637,880.00 was applied against the MCIT liability of P5,612,835.72 which resulted in excess tax credit in the sum of P48,025,044.28, computed as follows:

Sales/Revenues/Receipts/Fees		P 178,719,667.00
Less:	Cost of Sales/Services	239,899,045.00
Gross Income from Operation		P (61,179,378.00)
Add:	Non-Operating & Other Income	341,821,164.00
Total Gross Income		P 280,641,786.00
Less:	Deductions	2,597,066,401.00
Taxable Income		**P(2,316,424,615.00)**
Minimum Income Tax Due		P 5,612,835.72
Less:	Tax Credits	
	Prior Year's Excess Credits	P 14,080,672.00
	Creditable Tax Withheld for the First Three Quarters	10,485,075.00
	Creditable Tax Withheld for the Fourth Quarter	29,072,133.00
	Total Tax Credits	P 53,637,880.00
Tax Overpayment		**P(48,025,044.28)**

Petitioner opted to carry-over the income tax overpayment of P48,025,044.28 as tax credit to the succeeding year/quarter by marking the box corresponding to the said choice in the return.[5]

On the same day at 3:07 pm, petitioner filed through the BIR's EFPS its first amended Annual Income Tax Return[6] for taxable

[5] Line 30, Exhibit "1".

year 2005 with Filing Reference No. 120600001008092. The return showing exactly the same figures as the first return filed minutes earlier, reflected the same income tax overpayment of P48,025,044.28 which petitioner also marked "To be carried over as tax credit next year/quarter[7].

On April 18, 2006, petitioner filed with the BIR's Large Taxpayers Division a manually-prepared copy of its original Annual Income Tax Return[8] for taxable year 2005. This time however, none of the choices provided for in the return in case of overpayment, i.e. "To be refunded", "To be issued a Tax Credit Certificate" or "To be carried-over as tax credit to next year/quarter", was marked. While there were some changes in the figures reflected in the return, the bottom line figure reflected an excess tax credit of Php 48,025,044.00 or a difference of .28 centavos from the two (2) returns filed on April 11, 2006.[9]

On May 31, 2006 at 10:14 a.m., petitioner filed its second amended Annual Income Tax Return[10] for taxable year 2005 with Filing Reference No. 120600001088006. The return was an exact

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[6] Exhibits "K" and "2."
[7] Line 30, Exhibit "2".
[8] Exhibits "K-1" and "K-2".
[9] Exhibit J (or 1) and Exhibit K (or 2).
[10] Exhibits "L" and "3".

replica of the two (2) returns filed on April 11, 2006[11] except for the tax rate and significant modification as to the intention of petitioner "To be issued a Tax Credit Certificate"[12] as regards the income tax overpayment of P48,025,044.28.

On June 2, 2006, petitioner filed with the BIR's Large Taxpayers Division a copy of its manually-prepared amended Annual Income Tax Return[13] for taxable year 2005, indicating both options (i) to be issued a TCC for its 2005 excess creditable withholding taxes, and, (ii) to carry over to the succeeding taxable year/quarter its 2005 excess creditable withholding taxes.

On November 20, 2006, petitioner filed with respondent a letter[14] requesting for issuance of TCC for its alleged excess and unutilized creditable taxes withheld for the year 2005 amounting to P39,358,887.04.

On April 9, 2008, petitioner filed the instant Petition for Review allegedly due to respondent's inaction on its claim.[15]

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[11] Exhibit J (or 1) and Exhibit K (or 2).
[12] Line 30, Exhibit "3".
[13] Exhibit "L-4".
[14] Exhibit "A".
[15] JSFI , Admitted Facts, No. II, docket page 78.

In the Answer filed on May 21, 2008, respondent counters that the petition should be dismissed for lack of merit submitting that: 1) petitioner's claim is subject to administrative routine investigation/examination by the BIR; 2) in this action, the burden of proof is on petitioner to establish its right to refund/TCC, and failure to discharge this burden is fatal to its claim; 3) pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, and existing jurisprudence, petitioner has lost its right to the relief sought as it has chosen to carry-over excess credit amounting to P48,025,044.28 in its original Annual Income Tax Return of 2005; and, 4) that claims for refund/TCC are construed strictly against claimant petitioner as it is in the nature of an exemption from taxation which is looked upon with disfavor.

In support of its case, petitioner presented the Manager of its Corporate Accounting Division, Maria Susana C. Bables, who is tasked with overseeing the general accounting operations of petitioner, including the tax compliance aspect of the business, and in whose custody petitioner's tax returns and financial records and reports remain.

Ms. Bables testified that this case arose from petitioner's filing of a request for issuance of TCC for its excess and unutilized creditable withholding taxes for CY 2005 in the amount of P39,358,887.04. These creditable withholding taxes originated from the withholding tax on petitioner's sale of services, lease of properties, and other income in 2005.

According to her, petitioner is the holding company of the Ayala Group of Companies which has principal business interest in real estate and hotels, financial services and bank assurance, telecommunications, electronics and information technology, utilities, automotive, international operations and others. It was incorporated for the primary purpose of taking over, carrying on, undertaking and acquiring the business, assets and goodwill of the general partnership known as Ayala y Compania (Ayala and Company) and to assume all the obligations and liabilities of the said partnership, actual or contingent.[16]

She further testified that petitioner had gross revenues of P178,719,667.00 in 2005. This amount consisted of revenues from sale of services and lease of properties. In addition to the gross revenues of P178,719, 667.00, petitioner had taxable non-operating and other income in the total amount of P341,821,164.00 in 2005.[17]

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[16] Exh. B to B-1.
[17] Exhs. L to L-1.

For the year 2005, petitioner was liable for MCIT of P5,612,835.72.[18] After deducting petitioner's MCIT of P5,612,835.72 from its total tax credit of P53,637,880.00 for the same year, it had an excess tax credit of P48,025.044.28 as of December 31, 2005.[19] This amount was the sum of the creditable taxes withheld during the four (4) quarters of 2005 in the amount of P39,557,208.00 and the remainder of "prior year's excess credits" in the amount of P8,467,836.28.

On April 11, 2006 at around 2:30 p.m., petitioner filed a tentative Annual Income Tax Return for CY 2005 through EFPS. As there was no confirmation issued by the EFPS, petitioner re-sent the same return to be sure that it was properly filed. The second filing generated an EFPS confirmation stating that the income tax return was filed on April 11, 2006 at 3:07 p.m., with Filing Reference No. 120600001008092.[20]

Recently, petitioner discovered that the first return was successfully filed through the EFPS on April 11, 2006 at 2:39 p.m. with Filing Reference No. 1200001007815.[21] Except for the filing

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[18] Exh. L-2.
[19] Exh. L-3.
[20] Exh. K.
[21] Exh. J.

number, the two (2) Annual Income Tax Returns filed on April 11, 2006 are identical in all respects.

On May 31, 2006, petitioner filed an Amended Annual Income Tax Return[22] for 2005 to emphasize the exercise of its option to be issued a TCC for its excess withholding tax credit for 2005 in the amount of P39,557,208.00, and to carry over to the succeeding taxable year the remainder of petitioner's "prior year's excess credits" in the amount of P8,467,836.28. This was just a reiteration of the manually prepared Annual Income Tax Return for 2005,[23] filed on April 18, 2006. In the returns filed through the EFPS, petitioner "was not allowed" to mark more than one option box, prompting petitioner to mark the box pertaining to the carry-over option due to its intention to carry over the amount of P8,467,836.28 as "prior year's excess credits" in petitioner's Annual Income Tax Return for 2006.

In the manually-prepared Final Amended Income Tax Return for CY 2005 filed on June 2, 2006,[24] petitioner marked two (2) options, "To be issued a Tax Credit Certificate", which pertains to the creditable withholding taxes incurred by the petitioner during the four (4) quarters of 2005; and "To be carried over as tax credit

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[22] Exhibit L and 3.
[23] Exhibit K-1.
[24] Exhibit L-4.

next year/quarter", which pertains to the remainder of the prior year's excess credit that were carried over from 2004.[25]

However, in the Final Amended Annual Income Tax Return for CY 2005 filed through the EFPS on May 31, 2006, petitioner marked the option " To be Issued a Tax Credit Certificate", as it intended to request for a TCC for the creditable withholding taxes incurred during the four (4) quarters of 2005. Precisely, when petitioner filed its Annual Income Tax Return for 2006 through the EFPS on April 12, 2007, it did not carry over the excess withholding tax credit for 2005 in the amount of P39,557,208.00 as part of its "prior year's excess credits".

On November 20, 2006, petitioner filed with respondent an administrative claim[26] for refund of excess and unutilized creditable withholding taxes for 2005 as it did not have any intention to carry over the 2005 withholding tax credit to the succeeding year.

Anent the reduced amount of claim of only P39,358,887.04 as against the total excess credit indicated in the Annual Income Tax Return for 2005 of P39,557,208.00, the witness explained that at the time the administrative claim for refund/TCC was filed,

[25] Exhibits L, L-4 and L-5.
[26] Exh. A.

petitioner was yet to receive from its withholding agents the copies of the Certificates of Creditable Tax Withheld at Source for the remaining P198,320.96.

The Court commissioned Independent Certified Public Accountant (ICPA) Ma. Milagros F. Padernal also appeared for petitioner. She testified that on March 2, 2009, she submitted a Report on petitioner's claim for refund or issuance of TCC in the amount of P39,358,887.04, representing petitioner's excess and unutilized creditable withholding taxes for 2005. Based on petitioner's Second and Final Amended Annual Income Tax Return for 2005, petitioner had a total tax credit of PHP53,637,880.00.[27] It carried over the remainder of prior year's excess credit in the amount of PHP8,467,836.00 to its Annual Income Tax Return for 2006 and applied it to partially settle its income tax liability for 2006.[28]

According to this witness, petitioner opted to claim for refund the creditable withholding taxes accumulated during the four (4) quarters of 2005 amounting to P39,358,887.04. Petitioner clarified that the amount of claim was reduced from P39,557,208.00 to P39,358,887.04 as the copies of the Certificates of Creditable Tax

[27] Exh. L.
[28] Exh. E.

withheld at Source supporting the amount of P198,320.96 were yet to be secured from the withholding agents as of the date of filing of the administrative claim for refund/TCC on November 20, 2006.

She confirmed that petitioner's creditable withholding taxes for 2005 in the total amount of P39,358,887.04 are duly supported by Certificates of Creditable Tax Withheld at Source.[29] She confirmed as well that the related income corresponding to the creditable withholding taxes being claimed for refund/TCC were reported as part of petitioner's gross income subject to income tax in 2005.[30]

She further manifested that the examination of petitioner's Annual Income Tax Return for 2006 reveals that the creditable withholding taxes being claimed for refund/tax credit for 2005 in the amount of P39,358,887.04 were not presented as credits against petitioner's income tax liability for 2006.[31] From petitioner's Annual Income Tax Returns for 2003, 2004 and 2005 she learned that the prior year's excess credits reported in petitioner's 2005 Annual Income Tax Return amounting to PHP14,080,672.00 represent the excess and unutilized withholding tax credits of petitioner for 2003 and 2004 in the amounts of PHP1,239,928.00 and

[29] Exhs. F-1 to F-5, G-1 to G-11, H-1 to H-8, and I-1 to I-30.
[30] Exh. LL, page 3, A10.
[31] Exh. E.

PHP12,840,744.00, respectively. And out of the prior year's excess credits reported in petitioner's 2005 Annual Income Tax Return amounting to PHP14,080,672.00, the amount of PHP5,612,835.72 was applied against petitioner's income tax liability for 2005.[32] The related income corresponding to the creditable withholding taxes subject of the claim for refund/TCC were reported as part of petitioner's gross income subject to income tax in 2003 and 2004.[33]

Finally, the ICPA certified that all the documents supporting petitioner's claim for refund of excess and unutilized creditable withholding taxes for calendar year 2005 are faithful reproductions of the originals.

In a Resolution dated September 03, 2009, Exhibits A to QQ, inclusive of sub-markings, formally offered by petitioner were admitted in evidence.

On the other hand, respondent presented its lone witness, Joseph Christian B. Santos from the Large Taxpayer Audit and Investigation Division I of the BIR. He testified that he was assigned to investigate and verify the internal revenue tax liabilities of various large taxpayers. On June 7, 2006, he was assigned to

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[32] Exh LL, page 5, A12.
[33] Exh. LL, page 6, A14.

investigate all internal revenue taxes for calendar year 2005,[34] including that of petitioner.

He explained that petitioner's claim for refund/TCC was denied on the ground that when it submitted its Annual Income Tax Return for the taxable year 2005 on April 11, 2006 at 2:39 p.m., it already exercised its option to have the subject amount "carried over as tax credit next year/quarter." Under Section 76 of the Tax Code, 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 the taxable period and no application for cash refund or issuance of a tax credit shall be allowed therefor.

He confirmed that petitioner filed two (2) more Amended Income Tax Returns. The first was dated April 11, 2006 at 3:07 p.m., where it indicated that the subject amount would be "carried over as tax credit next year/quarter", and the second was dated May 31, 2006 at 10:14 a.m., where petitioner opted "To be issued a tax credit certificate."[35]

On cross examination, he clarified that based on his study of petitioner's supporting CWT Certificates for CY 2005, its creditable

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[34] Exh. 4.
[35] Exhs. 2 and 3.

withholding tax for 2005 was duly substantiated by Form 2307 or CWT Certificates and that the income that were made subject to CWT were from the year 2005 and were reported as part of petitioner's gross revenue for that year. His investigation of the documents for the CY 2005 also revealed that petitioner had a deficiency tax due in the amount of 14.7 Million Pesos which it had already paid.

Further, he is not aware that petitioner filed manually prepared returns for 2005 as he was not furnished copies of the same. He based his examination only on petitioner's officially filed returns for 2005. In fact, in conducting the audit for 2005 on petitioner's tax liabilities for the said year, he did not check its manual files for that year.

Aside from testimonial evidence, respondent also presented documentary exhibits marked as Exhibits 1 to 5, which were admitted in the Resolution dated January 13, 2010.

On April 14, 2010, the instant Petition for Review was submitted for decision after respondent filed its Memorandum on February 15, 2010, and petitioner on April 12, 2010.

In their Joint Stipulation of Facts and Issues[36], the parties agreed to submit the following issues for the resolution of the Court:

> "1. Whether or not petitioner's withholding tax credits for CY 2005 are duly substantiated by documentary evidence.
>
> 2. Whether or not the income from which the subject creditable income taxes were withheld was reported as part of petitioner's revenues in its Annual Income Tax Return for CY 2005.
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> 3. Whether or not petitioner carried over and applied its excess creditable withholding taxes for CY 2005 against its income tax liability in the succeeding taxable year/s.
>
> 4. Whether or not petitioner filed its administrative and judicial claims for refund of excess creditable withholding taxes for CY 2005 within the two-year prescriptive period provided in Section 204(C) of the National Internal Revenue Code (the "Tax Code").
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> 5. Whether or not petitioner may amend the option indicated in its Annual Income Tax Return from carrying over its unutilized income tax credits to claiming a Tax Credit Certificate therefor.
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> 6. Whether or not petitioner exhausted administrative remedies before filing the Petition for Review with the Court of Tax Appeals.
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> 7. Whether or not petitioner is entitled to its claim for refund or issuance of TCC for its excess and unutilized creditable withholding taxes for CY 2005 in the amount of P39,358,887.04."

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[36] Docket, pp.78 - 79.

THE COURT'S RULING

Under the obtaining circumstances and considering that timeliness of the filing of this case for refund/TCC is paramount in the resolution of the case, the fourth and sixth issues which are interrelated shall be jointly discussed.

Sections 204(C) and 229 of the NIRC of 1997, as amended are the provisions pertinent to the instant case, and they read as follows:

> **"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 stamped 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.
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> "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 therefore, 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."

From the foregoing provisions, the two-year prescriptive period is reckoned from the filing of the final adjusted return,[37] which involves the claim for refund of excess creditable income taxes withheld both in the administrative and judicial levels. The present claim covers the taxable year 2005 for which petitioner filed its original Annual Income Tax Return on April 11, 2006.[38] Reckoned from the said date, both the administrative claim filed by petitioner on November 20, 2006,[39] and the judicial claim via the

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[37] CIR vs. Primetown Property, G.R. No. 162155, August 28, 2007.
[38] Exhibits "J" and "1".
[39] Exhibit "A"; Par. 3, Admitted Facts, JSFI, Docket, p. 78.

instant Petition for Review filed on April 9, 2008, are well within the two-year prescriptive period.

The Court is also convinced that petitioner had exhausted all available administrative remedies prior to the filing of the instant petition. Petitioner timely filed a letter-claim for issuance of TCC with respondent on November 20, 2006. It seasonably assailed respondent's inaction on its claim when it filed the instant petition for review with this Court on April 9, 2008 or before the two-year prescriptive period expired. Jurisprudence has it that when the two-year period is about to prescribe and the claim for refund/TCC has not been acted upon by respondent, for the protection of his interest, the taxpayer should file a petition for review with the Court of Tax Appeals within the said two-year period; otherwise, if the decision of respondent was adverse and it was made after the two-year period, he could no longer appeal the same to the Court of Tax Appeals.[40] In CIR v. Far East Bank,[41] the High Court ruled that the taxpayer timely filed its administrative and judicial claim within the two-year period from the date of the filing of the return.

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[40] Commissioner of Internal Revenue vs. Hitachi Computed Products (Asia) Corporation, CA-G.R. SP No. 63340, February 7, 2002 citing Gibbs vs. Collector of Internal Revenue and Court of Tax Appeals, 107 Phil 232, Johnson Lumber Co. vs. CTA, 101 Phil 151.
[41] G.R. No. 173854, March 15, 2010.

On the remaining issues, petitioner invokes Section 76 of the NIRC of 1997, as amended, which provides as follows:

> "**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:
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> "(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.
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> "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.** (Emphasis supplied)

Under Section 76 of the NIRC, in case of overpayment of income taxes, a taxable corporation has two options, it may file a claim for refund or issuance of tax credit for the excess payment or carry-over the same to the succeeding taxable years or quarters until fully utilized.[42]

Under the first option, any tax on income that is paid in excess of the amount due the government may be refunded, provided that the claim is filed within the two-year prescriptive period.

The second option allows a corporation to carry-over the excess payments to the succeeding years or quarters. However, once the carry-over option is opted, actually or constructively, it becomes irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor. The availment of one remedy precludes the other.[43]

To exercise any of the options, the corporation must indicate in its annual corporate adjustment return its choice by marking the particular box provided in the BIR form – either to carry over the excess credit **or** to claim a refund/credit. To facilitate tax collection, these remedies are in the alternative and the choice of one, as earlier stated, precludes the other.[44]

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[42] Belle Corporation v. CIR , G.R. No. 181298, January 14, 2011.
[43] Id.
[44] Philippine Bank of Communications vs. Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999 .

The record shows that petitioner originally elected to have its excess tax credit of P48,025,044.28 as of December 31, 2005, the present claim of P39,358,887.04 included, to be carried-over to the succeeding year/quarter.[45] As the option to carry-over under Section 76 of the NIRC of 1997, as amended, is irrevocable, petitioner cannot file a claim for cash refund or issuance of a tax credit certificate for its alleged unutilized tax credit for taxable year 2005 in the amount of P39,358,887.04 without infringing the law.

The controlling factor for the operation of the *irrevocability rule* is the act of choosing one from the two options provided in the BIR form; and once the taxpayer had chosen a remedy, it could no longer opt for another. Consequently, after the taxpayer chose to carry-over its excess tax credit to the following taxable period, the question of whether it actually carried-over the excess tax credit is of no moment. 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."[46]

A fortiori, when petitioner opted to carry over its excess tax credit for taxable year 2005 to the succeeding taxable years or

[45] Exhibit "1". Line 30.
[46] CIR vs. BPI, G.R. No. 178490, July 07, 2009.

quarters, such exercise became irrevocable. Therefore, petitioner is bound by that choice. It cannot be allowed to look at the opposite direction and opt to enjoy the other remedy. Under the law, petitioner is mandated to carry-over its excess payment to the succeeding taxable years or quarters until the same is fully utilized or applied against its succeeding tax liabilities.

In its first Annual Income Tax Return[47] for Taxable year 2005 filed through EFPS on April 11, 2006, at 2:39 p.m., petitioner indicated its option to carry-over its claimed 2005 excess tax credit to the succeeding taxable period. The same intention appears in the Annual Income Tax Return[48] for taxable year 2005 that it filed minutes later on the same day, also through EFPS. Having chosen such remedy, it is now precluded from asking for a refund or issuance of a TCC pursuant to Section 76 of the NIRC of 1997, as amended.

Obviously, the amended Annual Income Tax Return[49] for taxable year 2005, in which petitioner marked the option "To be issued a Tax Credit Certificate,"[50] was prepared and filed for the purpose of abandoning the first remedy chosen, i.e., to carry-over,

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[47] Exhibits "J" and "1".
[48] Exhibits "K" and "2."
[49] Exhibit L and 3.
[50] Line 21, Exhibit "3".

which is not permissible. The amendment of returns allowed by the NIRC, does not extend to changing the taxpayer's option chosen under Section 76 of the same Code simply because it is irrevocable. To do so will render the irrevocability clause under the said provision nugatory[51].

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

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ERNESTO D. ACOSTA
Presiding Justice

ERLINDA P. UY
Associate Justice

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[51] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.

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