REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

CALAMBA STEEL CENTER INC. (formerly JS STEEL CORPORATION), ***Petitioner,***	**C.T.A. EB NO. 288** **(C.T.A. CASE NO. 5520)** Present:
-versus-	ACOSTA, Presiding Justice CASTAÑEDA, JR., BAUTISTA, UY, CASANOVA, and PALANCA-ENRIQUEZ, JJ.
COMMISSIONER OF INTERNAL REVENUE, ***Respondent.***	**Promulgated:** JAN 14 2008

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DECISION

PALANCA-ENRIQUEZ, J.:

Time and again, we are faced with another case for a tax refund which has always been misunderstood by taxpayers. Sad to note, the case at bench is but one of the many suits illustrative of this predicament. Harsh as it is, but tax refunds are in the nature of tax exemptions, hence, it should be construed *strictissimi juris* against the taxpayer.

Pursuant to *Section 76 of the National Internal Revenue Code (hereafter "NIRC") of 1997, as amended*, a taxable corporation with excess quarterly income tax payments as shown on its final adjustment return may apply for either a tax refund which may be issued in the form of cash or tax credit certificate; or a tax credit which shall be carried over the next year or quarter. 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 tax credit certificate shall be allowed therefor.

THE CASE

This is a Petition for Review filed by Calamba Steel Center Inc., (formerly known as JS Steel Corporation, hereafter "petitioner") under *Section 11 of Republic Act No. 9282 (An Act Expanding the Jurisdiction of the Court of Tax Appeals)*, in relation to *Rule 43* of the *Revised Rules of Court,* which seeks the reversal of the Decision dated April 13, 2007 and Resolution dated June 6, 2007 rendered by the First Division of this Court in C.T.A. Case No. 5520, the respective dispositive portions of which read as follows:

> "**WHEREFORE,** premises considered, petitioner's claim for refund of excess or unutilized creditable withholding taxes for the taxable year 1995 is hereby **DENIED**.
>
> **SO ORDERED.**"
>
> "Accordingly, there being no new matters sufficient to amend or alter the Decision assailed, the Motion for Reconsideration is hereby **DENIED.**
>
> **SO ORDERED.**"

<u>THE FACTS</u>

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

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with business address at Barangay Saimsim, Calamba, Laguna. It is engaged in the business of manufacturing steel blanks for use by various manufacturers of automotive, electrical, electronics, industrial and household appliances.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue who holds office at the 5th Floor of the BIR National Office Building, located at Agham Road, Diliman, Quezon City, where she may be served with summons and other legal processes.

Petitioner claims that for the year 1995, several of its clients withheld taxes from their income payments and remitted the same to the Bureau of Internal Revenue (hereafter "BIR") in the sum of P3,159,687.00. Petitioner allegedly was not able to utilize the excess tax paid for on its behalf by the withholding agents due to its loss positions for the three (3) quarters of 1996,

On April 10, 1997, petitioner filed a formal request with the BIR for the refund of the amount of P3,159,687.00 with the BIR. On April 18, 1997, petitioner filed a Petition for Review before this Court, docketed as C.T.A. Case No. 5520.

After trial on the merits, on January 12, 2000, the First Division rendered a decision denying the petition due to insufficiency of evidence. Thereafter, on February 2, 2000, petitioner filed a Motion for Reconsideration which was denied in a Resolution dated April 25, 2000.

On June 21, 2000, petitioner filed a Petition for Review with the Court of Appeals, which rendered judgment on January 10, 2002 affirming the decision dated January 12, 2000 of the First Division and denying petitioner's claim.

Aggrieved, on March 14, 2002, petitioner filed a Petition for Review before the Supreme Court.

On April 28, 2005, the Supreme Court rendered its Decision partially granting the petition and remanded the case to this Court for the determination of the amount to be refunded on the basis of petitioner's 1996 final adjustment return.

Pursuant to the said Decision of the Supreme Court, trial ensued before this Court. On August 16, 2006, the case was deemed submitted for decision.

On April 13, 2007, the First Division rendered its Decision denying petitioner's claim for refund.

Not satisfied, on May 3, 2007, petitioner filed a Motion for Reconsideration, which the First Division denied in a Resolution dated June 6, 2007.

On July 2, 2007, petitioner filed the instant Petition for Review.

On July 24, 2007, We required respondent to file her comment on the petition, within ten (10) days from notice.

On August 22, 2007, respondent filed her Comment. Thereafter, on September 6, 2007, petitioner filed its Reply.

Hence, the petition is now deemed submitted for decision.

ISSUES

Petitioner raises the following issues for our consideration:

I

THE FIRST DIVISION OF THE CTA ERRED WHEN IT FAILED TO CONSIDER THAT PETITIONER IS ENTITLED TO REFUND FOR ITS EXCESS/OVERPAID INCOME TAX DURING THE TAXABLE YEAR 1995 IN THE AMOUNT OF P3,159,687.00.

II

THE FIRST DIVISION OF THE CTA ERRED WHEN IT FAILED TO CONSIDER THAT THE APPLICABLE LAW IN THIS CASE IS THE 1977 NIRC (AND NOT THE 1997 NIRC) AND THAT THE CASE OF PHILIPPINE BANK OF COMMUNICATIONS VS. COMMISSIONER OF INTERNAL REVENUE IS NOT APPLICABLE IN THIS CASE, INSTEAD, THE DOCTRINE IN THE CASE OF CIR VS. ISUZU PHILS. CORP., CTA EB NO. 168, 27 JULY 2006, SHOULD BE APPLIED IN THE PRESENT CASE.

III

THE FIRST DIVISION OF THE CTA ERRED WHEN IT FAILED TO CONSIDER THAT PETITIONER DID NOT USE ITS EXCESS INCOME TAX DURING THE CY 1995 IN CY 1996 AND IN THE SUBSEQUENT YEARS.

IV

THE FIRST DIVISION OF THE CTA ERRED WHEN IT FAILED TO CONSIDER THAT PETITIONER'S ENTITLEMENT TO REFUND IS ALREADY SETTLED AND WAS ALREADY DECIDED WITH FINALITY BY THE HONORABLE SUPREME COURT IN CALAMBA STEEL CENTER, INC. v. CIR., G.R. NO. 151857, PROMULGATED 28 APRIL 2005. THE INSTANT CASE WAS REMANDED BY THE SUPREME COURT TO THE HONORABLE CTA FIRST DIVISION SOLELY FOR THE PROPER COMPUTATION OF THE AMOUNT TO BE REFUNDED TO PETITIONER.

V

THE FIRST DIVISION OF THE CTA FAILED TO CONSIDER THAT THE RESPONDENT NEVER RAISED THE DEFENSE THAT PETITIONER'S CHOICE TO CARRY-OVER THE EXCESS/UNUSED WITHHOLDING TAXES IS IRREVOCABLE. HENCE, SAID DEFENSE IS ALREADY WAIVED.

VI

THE FIRST DIVISION OF THE CTA FAILED TO CONSIDER THAT PETITIONER'S INCOME FROM SALE OF REAL PROPERTY AMOUNTING P855,000.00 (WHEREIN THE AMOUNT OF P64,125.00 WAS WITHHELD) WAS PROPERLY REPORTED AS PART OF ITS OTHER INCOME FOR THE TAXABLE YEAR CY1995.

Petitioner's Arguments

According to petitioner, its entitlement to refund is already res judicata considering that when this case was elevated to the Supreme Court in *Calamba Steel Center, Inc. vs. Commissioner of Internal Revenue, G.R. No. 151857*, the Supreme Court ruled that petitioner is entitled to a refund and remanded the case to this Court for the determination of the amount to be refunded. Petitioner submits that the only issue to be resolved is the amount to be refunded since it has already proved that it has excess tax credits which were unutilized.

Petitioner further contends that the *NIRC of 1977* is the applicable law in this case, particularly *Section 69* thereof, and maintains that under said provision, even if petitioner initially opted to carry over its excess credits in 1995 to 1996, the exercise of said option could still be revoked. Petitioner likewise avers that under the said provision, the taxpayer has the absolute right to choose whether to ask for a refund or to carry over to the succeeding taxable year excess taxes paid and such option may be changed or altered at its instance. Invoking the decision of this Court in *Commissioner of Internal Revenue vs. Isuzu Philippines Corporation, C.T.A. EB No. 168, July 27, 2006*, petitioner avers that applying *Section*

69 of the NIRC of 1977, this Court ruled therein that Isuzu Philippines Corporation is still entitled to refund notwithstanding the fact that it initially opted to carry over its excess credits to the succeeding taxable years. Finally, petitioner avers that since petitioner did not use its excess credits in 1995 for its tax liability for the year 1996 and in the subsequent years because it incurred losses in 1996 to 1998, it should be entitled to the refund sought for.

Respondent's Counter-arguments

On the other hand, respondent contends that the First Division did not err in denying petitioner's claim for refund since its 1995 excess credits had already been carried over up to the year 1998, hence, it is precluded from filing a claim for refund of its 1995 excess tax credits. The option to carry over or to claim as refund the excess credits is in the alternative. Petitioner cannot opt to carry over, and at the same time get a tax refund at the same time for the same excess income taxes paid.

THE COURT *EN BANC'S* RULING

The petition lacks merit.

After a careful examination of the arguments raised in the instant petition, the Court *En Banc* finds that the issues raised by petitioner are a mere rehash of its Motion for Reconsideration filed in C.T.A. Case No. 5520 and present no new arguments nor new matters which have not been considered and passed upon by the First Division in the assailed Decision and Resolution. Nevertheless, the Court *En Banc* will discuss them in seriatim.

At the outset, it must be stressed that in its Decision dated April 13, 2007, the First Division fixed the amount of P2,715,422.04 as the sum to be refunded to petitioner on the basis of the evidence presented. Such finding cannot be set aside as it was reached taking into account the evidence adduced by the petitioner in the determination of the refundable amount. Hence, the factual issues with regard to the computation of the amount that may be refunded as raised by petitioner had already been settled.

We now proceed to the resolution of the issue which arises from the parties' conflicting interpretations of the applicable law to petitioner's claim.

We agree with petitioner that unlike the provisions of Section 76 of the NIRC of 1997, as amended, which contains an irrevocability clause in relation to the option of carry over, *Section 69 of the NIRC of 1977* does not have a similar clause. However, it must be noted that under the old Tax Code, the carrying forward of any excess or overpaid income tax for a given taxable year is limited to the succeeding taxable year only.

Significantly, record shows that petitioner carried over its excess income tax to the succeeding taxable years until 1998 where the applicable law then was already the NIRC of 1997, as amended. The evidence shows that the claimed amount was already carried over by petitioner to the succeeding taxable years. It must be stressed that the First Division took judicial notice of the records of another decided case involving the same parties, but referring to taxable year 1997, where the income tax returns for the years 1997 and 1998 were presented *(Exhibits "A" and "C", respectively, of C.T.A. Case No. 6071)*. Record further shows that petitioner repetitively exercised the option of carry over from the year 1995 to 1998. To further carry over to 1998 the 1995 excess tax credits is violative of *Section 69 of the NIRC of 1977*. Worst, when the 1995 excess tax credits were carried forward until the 1998 taxable year, it fell under the coverage of the *NIRC of 1997, as amended,* which took effect on January 1, 1998, and which contains an irrevocability clause.

Even assuming for the sake of argument that petitioner was not able to actually apply the excess tax credits from 1995 against any tax liabilities for the succeeding taxable years because it was in a net loss position during the taxable year of 1996, the claim should still be denied. The Court cannot grant the refund sought for by petitioner because in the year 1998, petitioner had a minimum corporate income tax (MCIT) liability amounting to P710,523.00, wherein petitioner had utilized part of its excess credits from the previous year. Hence, pursuant to Section 76 of the NIRC of 1997, as amended, the new law that now covers the accumulated excess tax credits of petitioner, it cannot now claim for tax refund as such was already partly utilized. Thus, the choice to carry over opted by petitioner in its 1998 income tax return has now been irrevocable.

Considering the well settled rule that the option to carry-over the tax credit, once exercised is irrevocable, petitioner is now barred from filing a claim for cash refund or for the issuance of a tax credit certificate corresponding to its unutilized tax credit for the year 1995.

As aptly ruled by the First Division:

"After a meticulous examination of all the pertinent documents, We found that petitioner's 1996 Income Tax Return (Exhibit CE-2) shows that the 1995 overpaid income tax in the amount of P3,159,687.00 (subject of claim in the instant case) was carried over to 1996 as 'prior year's excess credit' but remained unutilized since petitioner suffered a loss in 1996.

In 1996, the overpaid income tax of petitioner amounted to P6,617,410.00 comprising of the prior year's excess credit of P3,159,687.00 and current year's tax credits in the amount of P3,457,723.00 which was again carried over to 1997 as 'prior year's excess credit'.

The 1997 Income Tax Return of the petitioner reflects that it incurred an overpaid income tax of P10,250,857.00 which comprised of the prior years' excess credit of P6,617,410.00 and the current year's tax credits of P3,633,447.00. The amount of P3,633,447.00 was the subject of a claim for refund in CTA Case No. 6071 and this Court found that the amount of P3,633,447.00 was partly utilized to pay for the 1998 Minimum Corporate Income Tax (MCIT) liability of petitioner in the amount of P710,523.00 thereby leaving an excess tax credit of P2,922,924.00. This Court ruled therein that the excess tax credit of P2,922,924.00 could no longer be claimed as refund because it was carried-over to the succeeding year 1999 as evidenced by the 'x' mark in the box corresponding to the option 'To be carried as tax credit next year' in its 1998 return. Said decision was affirmed by the Court of Appeals on May 31, 2004 with final judgment on July 28, 2005 and a writ of execution was received by respondent on April 4, 2006.

Clearly from the foregoing, petitioner availed of the automatic carry-over insofar as its 1995 substantiated excess creditable withholding taxes of P2,715,422.04 is concerned. It follows therefore that petitioner's claim for refund for the year 1995 must be denied because petitioner cannot be allowed to avail of a tax refund and a tax credit at the same time for the same excess income taxes."

Petitioner's invocation of the ruling of this Court in *Commissioner of Internal Revenue vs. Isuzu Philippines Corporation (C.T.A. EB No. 168, July 27, 2006)* is misplaced. In that cited case, Isuzu carried over its excess tax credits only once, from 1997 to 1998, but for the year 1999 it no longer carried over its excess tax credits as prior year's excess credits. Comparably, in the case at bench, petitioner repetitively chose the option "to be applied as credit to next year" under the option box in its income tax returns from 1995 to 1998, clearly manifesting its intention to carry over its excess credits to succeeding taxable years. In the aforecited case of Isuzu, the refund was allowed because Isuzu carried over its excess credits only once and it has not been utilized, unlike in the present case, it was carried over for three years and worst, part of it was utilized for the payment of its MCIT liability during taxable year 1997. Furthermore, in the case of Isuzu, the applicable law is *Section 69 of the NIRC of 1977* when it carried over its excess credits from 1997 to 1998, while in this case, the carrying over extended up to the taxable year of 1998, when the *1997 NIRC of 1997, as amended,* was already in effect.

Petitioner's allegation that when the Supreme Court remanded the case to this Court, what was left to do was only the computation of the refundable amount cannot be sustained. The decision of the Supreme Court in *Calamba Steel Center Inc. vs. Commissioner of Internal Revenue (G.R. No. 151857, April 28, 2005),* in pertinent part, reads as follows:

> "In brief, we hold that petitioner is entitled to a refund, however, the amount must still be proved in proper proceedings before the CTA.
>
> WHEREFORE, the Petition is hereby ***PARTLY GRANTED,*** and the assailed Decision ***SET ASIDE***. The case is ***REMANDED*** to the Court of Tax Appeals for the proper and immediate determination of the amount to be refunded to petitioner on the basis of the latter's 1996 final adjustment return. No pronouncement as to costs.
>
> SO ORDERED."

Clearly, the Supreme Court held that petitioner is entitled to a refund, but the amount must still be proved in proper proceedings before this Court. Thus, the case was remanded to this Court for the determination of the amount to be refunded. Trial was conducted before this Court, and from the evidence adduced by the parties, it has been clearly established that petitioner had already exercised another alternative in utilizing its excess tax credits. In fact, as a caveat, the Supreme Court categorically ruled:

"xxx. As a caveat, the Court stresses that the recognition of the entitlement to a tax refund does not necessarily mean the automatic payment of the sum claimed in the final adjustment return of the taxpayer. The amount of the claim must still be proven in the normal course."

Lastly, petitioner's contention that the defense that its choice to carry-over the excess/unused withholding taxes is irrevocable is already considered waived since respondent never raised such defense, is devoid of merit. The moment the Court acquires jurisdiction, We have full authority to look into the nature and merits of the case. Thus, the Court is now empowered to scrutinize all the evidence available in order to arrive at a just and fair judgment. Even granting that respondent failed to raise petitioner's option of carry-over as a defense, as a general rule, the Government cannot be estopped from collecting taxes by the mistake, negligence, or omission of its agents because upon taxation depends the Government's ability to serve the people for whose benefit taxes are collected. To safeguard such interest, neglect or omission of government officials entrusted with the collection of taxes should not be allowed to bring harm or detriment to the people, in the same manner as private persons may be made to suffer individually on account of his own negligence, the presumption being that they take good care of their personal affairs. This should not hold true to government officials with respect to matters not of their own personal concern. This is the philosophy behind the government's exception, as a general rule, from the operation of the principle of estoppel *(Republic vs. Caballero, 79 SCRA 177).*

Finding no reversible error, the Court *En Banc* has no alternative, but to sustain the findings and conclusion of the First Division of this Court denying the claim for refund.

WHEREFORE, premises considered, the present Petition for Review is hereby **DENIED DUE COURSE,** and accordingly **DISMISSED,** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice