REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PL MANAGEMENT INTERNATIONAL PHILS., INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6292

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 14 2001

x - x

RESOLUTION

This "Motion to Dismiss" filed by Respondent on May 15, 2001, seeks for the dismissal of the instant Petition for Review on the ground of lack of cause of action.

Respondent asseverates that Petitioner can no longer refund the alleged 1998 unutilized creditable withholding tax for the reason that Petitioner had already exercised the option to carry over its excess tax credit to the next succeeding year, as evidenced by the 1998 Corporate Annual Income Tax Return, wherein Petitioner put a check (/) mark in the box corresponding to the phrase "To be carried as tax credit next year." Respondent, in saying so, cites as legal basis Section 76 of the 1997 Tax Code which provides that if a corporation exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

On June 15, 2001, Petitioner filed its Opposition thereto and mentioned cases which allows refund of the excess tax credit once the "carrying over" was not availed of. Both parties then submitted their respective memorandum (on the Motion to Dismiss) to support their contentions.

The controversy at bar is not one of first impression. In fact this Court, in a resolution dated August 16, 2001, has already ruled, thus:

> "Section 76 of the Tax Reform Act of 1997 provides in part:
>
> > **"Section 76**. *Final Adjustment Return.* – x x x
> >
> > 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 certificates shall be allowed therefor**." (Emphasis supplied)
>
> The foregoing provision of law is clear and leaves no room for doubt. It cannot be interpreted otherwise than that an option once exercised, the same shall be considered irrevocable. Since Petitioner has already signified its intention to carry-over to the succeeding year its unutilized creditable taxes withheld for 1998, then it is no longer allowed to pursue the instant claim for refund." (**The Philippine Banking Corporation (now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA resolution, CTA Case No. 6820, August 16, 2001**).

The aforequoted ruling holds true to the case at bar. Petitioner is not entitled to the tax refund herein prayed for because it had already exercised the option to carry-over said excess tax credit to the succeeding taxable year. However, let it be stressed that Petitioner is not left without recourse. The option to carry over the excess income tax due is not necessarily limited to the next succeeding taxable year. Section 76 of the Tax Reform Act allows the perpetual carry over until the excess tax credit is fully utilized.

Thus, even though Petitioner suffered a loss on its business operation where the carrying over became futile, it can then automatically apply the excess tax due against the tax liability for the next succeeding taxable years when proper.

WHEREFORE, in view of the foregoing, Respondent's Motion to Dismiss is hereby **GRANTED**. The instant Petition for Review is accordingly **DISMISSED** for failure to state cause of action.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge