REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SANTIAGO LAND DEVELOPMENT CORPORATION,
Petitioner,

- versus -

C.T.A. CASE NO. 6278

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
SEP 06 2001

x - x

RESOLUTION

Before Us is a "Motion to Dismiss" filed by Respondent on May 18, 2001 on the ground of lack of cause of action. Petitioner's Opposition thereto was filed on May 28, 2001.

In his motion, Respondent contended that since the Petitioner has opted to carry-over and apply its 1998 excess credits against 1999 tax liability, such option to carry-over is irrevocable and the alleged 1998 unutilized/excess tax credits cannot be claimed as refundable nor an application thereto for the issuance of tax credit certificate be allowed since the options are in the alternative and the choice of one precludes the other citing the case of **Philippine Bank of Communications vs. Commissioner of Internal Revenue G.R. No. 112024, January 28, 1999.** He further asserted that notwithstanding the fact that based on Petitioner's 1999 Income Tax Return, its 1998 excess tax credits was not utilized, Petitioner has no right to claim for refund said 1998 excess tax credits nor to claim for the issuance of tax credit certificate, as the option to carry-over has already been made.

On the other hand, Petitioner claims that it had not made the option to carry over and apply its 1998 excess creditable withholding taxes against income taxes due for the succeeding taxable year, though, it had intended to exercise the option. It further argued that such intention to carry over and apply the excess income taxes should not be interpreted as actually making/exercising the option. Moreover, it could not have made such option to carry-over the said tax credits to the succeeding year, 1999, precisely because Petitioner incurred a loss in that year.

We resolve in favor of Respondent.

Pursuant to Section 76 of the Tax Code of 1997, pertinent portion of which is hereunder quoted as follows:

> "xxx xxx xxx
>
> 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. <u>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.</u>" (Underscoring supplied)

It is a well-settled principle in statutory construction that "when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it says" (Handbook on Statutory Construction by Ruperto G. Martin, 1972 Edition, page 2).

The aforequoted provision is clear and unambiguous and thus, leaves no room for any other interpretation than what it literally conveys, that is, when an option has been exercised, the same shall be irrevocable for that taxable period. Considering that Petitioner has already signified its option to carry-over to the succeeding year its unutilized creditable taxes withheld for the taxable year 1998, it is thus, barred to pursue the instant claim for refund.

Finally, Respondent's "Motion to Dismiss" should have been anchored not on lack of cause of action but failure to state a cause of action, however, this Court is not precluded from making an order of dismissal when the complaint discloses facts sufficient to defeat the claim. **(The Philippine Banking Corporation vs. CIR, CTA Case No. 6280 dated August 16, 2001)**

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 a cause of action.

SO ORDERED.

AMANCIO Q. SAGA
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge