REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER SECOND DIVISION

UNITED COCONUT PLANTERS BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 7614

Members:

CASTAÑEDA, *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

SEP 17 2010

3:36 p.m.

x- x

DECISION

UY, J.:

Before this Court is a Petition for Review filed on April 16, 2007, seeking the refund or the issuance of tax credit certificate in favor of petitioner, United Coconut Planters Bank in the total amount of ₱ 43,484,162.00, allegedly representing its unutilized creditable withholding tax for taxable year 2004.

THE FACTS

Petitioner United Coconut Planters Bank is a domestic corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at UCPB Building, Makati Avenue, Makati City.[1]

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[1] Exhibits "L" and "L-1". Par. 2.1, Conditionally Admitted Facts, Joint Stipulation of Facts & Issues (JSFI), Docket, p. 497.

Respondent, Commissioner of Internal Revenue, is the chief of the Bureau of Internal Revenue (BIR), the government agency charged with the assessment and collection of all national internal revenue taxes, fees and charges and the enforcement of all forfeitures, penalties, and fines connected therewith, with office address at the BIR National Office Building, Diliman, Quezon City.[2]

Petitioner, being in the banking business, allegedly had to continuously dispose real properties acquired as payments for unpaid principal and interests by defaulting clients/borrowers during the taxable year 2004. These sales of real properties considered as ordinary assets are subject to 6% creditable withholding taxes, while some clients designated as Top Ten Thousand Corporations are required under existing BIR regulations to deduct 2% creditable withholding tax on their income payments, i.e., interests, service charges, etc. for services rendered by petitioner. Rentals derived from leases of petitioner's properties are likewise subjected to 5 % creditable withholding taxes by its lessees[3].

On April 15, 2005, petitioner, through the BIR's Electronic Filing and Payment System (EFPS), filed its original Annual Income Tax Return (ITR) for the year ended December 31, 2004.[4] During the filing of the said return, petitioner allegedly had difficulty accomplishing the ITR through the EFPS thus resulting in errors and the submission of an ITR which was not entirely filled up. Petitioner subsequently had to re-file its Annual ITR on the same day to complete the necessary details and this re-filed ITR was allegedly captured by the BIR's system as an amended return.[5]

Subsequently, on May 19, 2005 and October 13, 2006, petitioner filed Amended Annual Income Tax Returns, both reflecting losses and excess tax

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[2] Par. 1.1, Admitted Facts, JSFI, Docket, pp. 493 to 494.
[3] Par. 3.1, Petitioner's Memorandum, p. 851
[4] Exhibit "A". Par. 2.2, Conditionally Admitted Facts, JSFI, Docket, p. 497.
[5] Par. 5, Petition for Review, p. 2, Docket, p. 2

credits.[6] Considering that petitioner has been incurring and posting net losses for the past several years including the taxable year 2004, it was allegedly not liable for income taxes for 2004, and therefore, the taxes withheld by various payors of petitioner for the year 2004 in the total amount of ₱ 43,484,162.00 was not applied against any income taxes and allegedly became excess tax payments.

On March 27, 2007, through a Letter dated March 20, 2007, petitioner filed with the BIR Large Taxpayers Audit and Investigation Division I, an administrative claim for the issuance of tax credit certificates or refund of excess creditable withholding tax for 2004, in the total amount of ₱ 43,484,162.00.[7]

In view of respondent's inaction on its administrative claim and considering that the period to file a judicial claim for refund was expiring on April 15, 2007 (a Sunday), petitioner filed the instant Petition for Review on April 16, 2007.[8]

An Answer[9] was filed by respondent on May 23, 2007, interposing the following counter-arguments:

> "5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;
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> 6. The amount of P43,484,162.00 being claimed by petitioner as alleged unutilized creditable withholding tax for taxable year 2004 was not properly documented;
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> 7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;
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> 8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 27 March 2007, the date when it filed its administrative claim for refund. The said period is yet to expire on 25 July 2007. Hence, the 30-day period within

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[6] Exhibits "C" and "D"; Par. 2.3, Conditionally Admitted Facts, JSFI, Docket, p. 497.
[7] Exhibit "K"; Par. 2.4, Conditionally Admitted Facts, JSFI, Docket, p. 498.
[8] Par. 1.7, Admitted Facts, JSFI, Docket, p. 496.
[9] Docket, pp. 419 to 423.

which to file the petition for review before this Honorable Court is yet to expire on 24 August 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

During trial, both parties presented their respective evidence. Petitioner presented a court-commissioned Independent Certified Public Accountant (ICPA), Joseph Cedric V. Calica, together with witnesses Donabel R. Aala[10] and Crisologo F. Sagnip[11] to prove its case. On the other hand, a sole witness, Meliza C. Wepee[12] testified for respondent. After the termination of the parties' presentation of evidence, they were directed to file their respective Memorandum in the Resolution dated July 22, 2009 within thirty (30) days from notice. [13]

Prior thereto, petitioner allegedly received a Letter dated January 28, 2009 from the OIC, Head Reveneu Executive Assistance of the BIR Large Taxpayers Service, Romulo L. Aguila, Jr. effectively denying petitioner's administrative claim for taxable year 2004.[14]

Thereafter, this case was submitted for decision on October 5, 2009[15] after the filing of petitioner's Memorandum on September 28, 2009 and respondent's Memorandum on September 23, 2009.

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[10] Transcript of stenographic notes (TSN), hearings held on October 17, 2007 and December 5, 2007; Exhibit "Z".
[11] TSN, hearings held on August 4, 2008, October 15, 2008, and January 21, 2009; Exhibits "UU", "VV", and "AAA".
[12] TSN, hearing held on June 17, 2009; Exhibit "1".
[13] Docket, p. 827.
[14] Par. 3.13, Petitioner's Memorandum, Docket, p. 854
[15] Docket, p. 882.

Hence, this Decision.

THE ISSUES

In the parties' Joint Stipulation of Facts and Issues,[16] they submitted the following Issues[17] for this Court's resolution:

> "3.1 Whether or not Petitioner is entitled to its claim for refund or tax credit of its unutilized creditable withholding taxes in the amount of Php 43,484,162.00, for the calendar year 2004.
>
> 3.2 Whether or not petitioner has unutilized creditable withholding tax in the amount of Php 43,484,162.00 as of December 31, 2004, which is a proper subject of a claim for refund/issuance of a tax credit certificate pursuant to Section 76 of the 1997 Tax Code.
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> 3.3 Whether or not petitioner's unutilized creditable withholding taxes for calendar year 2004 in the amount of Php 43,484,162.00 are duly substantiated by documentary evidence.
>
> 3.4 Whether or not the income upon which the subject unutilized creditable withholding taxes were withheld were declared as part of petitioner's gross revenue in its Annual Income Tax Return for calendar year 2004; and
>
> 3.5 Whether or not petitioner's unutilized creditable withholding taxes for calendar year 2004 were carried over and claimed as 'prior year's excess tax credits' during the succeeding taxable year."

We summarize the foregoing issues into one pivotal issue: "Whether or not petitioner is entitled to a refund or issuance of tax credit certificate in the amount of ₱ 43,484,162.00, representing unutilized creditable withholding taxes for taxable year 2004."

Petitioner's arguments

Petitioner submits that it incurred/paid creditable withholding taxes in taxable year 2004 in the total amount of ₱ 43,484,162.00 while it was unable to apply or utilize the said creditable withholding taxes during the taxable year 2004. According to

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[16] JSFI, Docket, pp. 493-500,
[17] Stipulated Issues, Docket, p. 499.

petitioner, it clearly indicated the option to apply for the refund/issuance of tax credit certificate in its amended 2004 Annual Income Tax Return, thereby making the said amount proper subject of the instant claim under Section 76 of the Tax Code.

Further, petitioner contends that the income from which the said excess creditable withholding taxes were declared as part of its gross income in the said 2004 Annual Income Tax Return, and that its unutilized creditable withholding taxes for taxable year 2004 in the amount of ₱ 43,484,162.00 was not carried over and claimed as "prior year's excess tax credits" during the succeeding taxable years. Thus it is entitled to the refund/issuance of tax credit certificate for its excess creditable withholding taxes for taxable year 2004 in the amount of ₱ 43,484,162.00 as duly substantiated by documentary evidence.

Respondent's counter-arguments

On the other hand, respondent contends that investigation/verification disclosed that petitioner carried-over its excess income tax for the year 2004 to the next quarter/s of the year 2005, as shown in all the originally filed Quarterly and Annual Income Tax Returns for the said year; that the amount of ₱ 67,660,606.00, per amended Income Tax Return for the year 2004 which was filed on May 19, 2005, including the amount of ₱ 43,484,162.00, the amount being claimed, were carried over to all the Quarterly and Annual Income Tax Returns originally filed by petitioner for the year 2005.

Respondent stresses that although petitioner ticked the box "to be issued a tax credit certificate" in the Amended Income Tax Returns filed for the year 2004, the same was negated by the carrying-over of the excess credit to all the Quarterly and Annual Income Tax Returns originally filed for the year 2005.

THE COURT'S RULING

The petition lacks merit.

The present claim for refund or issuance of tax credit certificate in the amount of ₱ 43,484,162.00 pertains to creditable taxes withheld for the first three (3) quarters and last quarter of taxable year 2004 in the respective amounts of ₱ 17,777.231.00 and ₱ 25,706,931.00, as reflected in petitioner's third amended Annual Income Tax Return for taxable year 2004.

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides:

> "**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*)

Based on the foregoing provision, in case the taxpayer is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, it is allowed two (2) options, namely: (a) to carry-over the excess credit; or (b) to be credited or refunded with the excess amount paid.

The first option works by applying the excess amount, as shown on the Final Adjustment Return (or Annual Income Tax 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 taken, actually or constructively, it becomes irrevocable for that taxable period.[18] The phrase "for that taxable period" refers to the taxable year when the excess income tax credit, subject of the option, was acquired by the taxpayer.[19]

As regards the second option, any tax on income that is paid in excess of the amount due the government of a given taxable year, may be refunded or credited, provided the concerned taxpayer properly and timely applies for refund or issuance of tax credit certificate.

In exercising its option, the taxpayer-corporation must signify in its Annual Income Tax 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. In order to facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[20]

A perusal of petitioner's original Annual Income Tax Return[21] for taxable year 2004, filed through the BIR's Electronic Filing and Payment System on April 15, 2005, shows that there was no overpayment indicated therein; thus, no box in the said Return was marked to indicate the choice in case of overpayment of income tax.

In its first, second, and third amended Annual Income Tax Returns for taxable year 2004, petitioner marked the option "To be issued a Tax Credit Certificate" with respect to the following income tax overpayment reflected in each of the returns:

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[18] *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.
[19] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.
[20] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.
[21] Exhibit "A".

		1st Amendment (Exhibit "B")[22]	2nd Amendment (Exhibit "C")[23]	3rd Amendment (Exhibit "D")[24]
Tax Due		₱ -	₱ -	₱ -
Less:	Tax Credits			
	Prior Year's Excess Credits	₱ 24,309,839.70	₱ 24,309,840.00	₱ 22,223,304.00
	Creditable Taxes Withheld for the First Three Quarters	17,830,127.66	17,830,128.00	17,777,231.00
	Creditable Taxes Withheld for the Fourth Quarter	25,682,358.07	25,520,638.00	25,706,931.00
	Total Tax Credits	₱ 67,822,325.43	₱ 67,660,606.00	₱ 65,707,466.00
Tax Overpayment		₱ (67,822,325.43)	**₱ (67,660,606.00)**	₱ (65,707,466.00)

However, while it signified its intention to be issued a tax credit certificate in the foregoing amended Annual Income Tax Returns, petitioner, in its original Quarterly Income Tax Returns, and in its original and amended Annual Income Tax Return, for taxable year 2005, carried over the amount of ₱ 67,660,606.00 as "Prior Year's Excess Credits", as shown below:

Original Quarterly Income Tax Returns for 2005:

		1st Quarter, 2005 (Exhibit "I-1")[25]	2nd Quarter, 2005 (Exhibit "I-3")[26]	3rd Quarter, 2005 (Exhibit "I-5")[27]
Tax Due		₱ -	₱ -	₱ -
Less:	Tax Credits:			
	Prior Year's Excess Credits	**₱ 67,660,606.00**	**₱ 67,660,606.00**	**₱ 67,660,606.00**
	Creditable Tax Withheld for the Previous Quarter(s)	-	16,920,759.00	53,037,410.00
	Creditable Tax Withheld Per BIR Form No. 2307 for this Quarter	16,920,759.00	36,116,651.00	36,310,799.00
	Total Tax Credits	₱ 84,581,365.00	₱ 120,698,016.00	₱ 157,008,815.00
Tax Overpayment		₱ (84,581,365.00)	₱ (120,698,016.00)	₱ (157,008,815.00)

Original and Amended Annual Income Tax Return for 2005:

		Original ITR, 2005 (Exhibit "M")[28]	Amended ITR, 2005 (Exhibit "N")[29]
Tax Due		₱ 9,392,960.98	₱ 9,392,960.98
Less:	Tax Credits:		
	Prior Year's Excess Credits	**₱ 67,660,606.00**	**₱ 67,660,606.00**

[22] This was filed on April 15, 2005 through the Electronic Filing and Payment System (EFPS) of the BIR.
[23] This was filed on May 19, 2005 through the EFPS of the BIR.
[24] This was filed on October 13, 2006 through the EFPS of the BIR.
[25] This was filed on May 30, 2005 through the EFPS of the BIR.
[26] This was filed on August 26, 2005 through the EFPS of the BIR.
[27] This was filed on November 25, 2005 through the EFPS of the BIR.
[28] This was filed on April 17, 2006 (8:40 p.m.) through the EFPS of the BIR.
[29] This was filed on April 17, 2006 (9:12 p.m.) through the EFPS of the BIR.

	Creditable Taxes Withheld for the First Three Quarters	89,348,209.00	89,348,209.00
	Creditable Taxes Withheld for the Fourth Quarter	10,402,807.00	10,402,807.00
	Tax Paid in Return Previously Filed, if this is an Amended Return	-	158,018,661.02
	Total Tax Credits	₱ 167,411,622.00	₱ 325,430,283.02
Tax Overpayment		₱ (158,018,661.02)	₱ (316,037,322.04)

Such being the case, petitioner's chosen option to be issued a tax credit certificate is actually negated by its very act of carrying over the excess amount of ₱ 67,660,606.00 as excess tax credits, including the amount of ₱ 43,350,766.00 (₱ 17,830,128.00 and ₱ 25,520,638.00) representing withholding tax paid in taxable year 2004, as reflected in its <u>second</u> amended Annual Income Tax Return,[30] to the succeeding taxable quarters/year of 2005. This very act of petitioner should be construed as having actually chosen instead the option to carry-over, insofar as said excess withholding tax paid for taxable year 2004 (*i.e.*, ₱ 43,350,766.00) is concerned.

And as mentioned earlier, in view of the exercised option by petitioner to carry over its excess tax credits, such option became irrevocable pursuant to Section 76 of the NIRC of 1997 thereby prohibiting petitioner from applying for a refund of the same excess income tax credits for the next succeeding taxable years. Consequently, petitioner's unutilized excess tax credits will remain in its account and will be carried over and applied against its income tax liabilities for the succeeding taxable years until fully utilized.[31]

However, as We have noted earlier, the present claim in the amount of ₱ 43,484,162.00 was lifted from petitioner's <u>third</u> amended Annual Income Tax

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[30] Exhibit "C".
[31] *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010.

Return for taxable year 2004[32] consisting of petitioner's creditable taxes withheld for the first three quarters and last quarter of 2004 in the amounts of ₱ 17,777,231.00 and ₱ 25,706,931.00, respectively.

Since We have considered only the amount of ₱ 43,350,766.00, the amount reflected on the <u>second</u> amended Annual Income Tax Return for taxable year 2004,[33] as having been carried-over to the succeeding quarters/year of 2005, it would appear that there is a balance of ₱ 133,396.00 between aforesaid carried over amount of ₱ 43,350,766.00 and the subject claim for refund of ₱ 43,484,162.00 computed as follows:

Creditable Taxes Withheld for the First Three Quarters	₱ 17,777,231.00
Creditable Taxes Withheld for the Fourth Quarter	25,706,931.00
Claimed Creditable Taxes Withheld for the year 2004 as reflected in the present Petition for Review	₱ 43,484,162.00
Less: Creditable Withholding Taxes carried over to the succeeding quarters/year of 2005	43,350,766.00
Creditable Taxes Withheld for 2004 not carried over to succeeding quarters/year of 2005	**₱ 133,396.00**

The question now is whether this difference can still qualify to be the subject of an application for refund or issuance of a tax credit certificate thereby creating a situation where there will be a partial carry-over of tax credits and partial option to claim for refund or issuance of tax credit.

The answer is in the negative.

To consider the remaining balance of ₱ 133,396.00 of the present claim as an amount available for refund or issuance of a tax credit certificate would be contrary to the provisions of Section 76 of the NIRC of 1997 and a departure from the ruling in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[34] that the *"two options under Section 76 are alternative in nature"* and that the *"choice*

[32] Exhibit "D".
[33] Exhibit "C".
[34] G.R. No. 178490, July 7, 2009.

of one precludes the other." Thus, once there is a finding that a portion of the excess amount, as shown on the final adjustment return, has been carried over, the remaining amount that had not been carried over, can no longer be the subject of a claim for refund. In other words, there can never be a partial carry-over and a partial granting of refund.

In this connection, although it may be argued that petitioner's <u>third</u> Amended Annual Income Tax Return for taxable year 2004 had the effect of abandoning or superseding its <u>second</u> Amended Annual Income Tax Return for the same taxable year, petitioner cannot escape the legal consequences brought about by the carrying over of the excess amount of withholding tax reflected in its <u>second</u> Amended Annual Income Tax Return for 2004, in its original Quarterly Income Tax Returns, and in its original and amended Annual Income Tax Return, for taxable year 2005.

Such being the case, the supposed remaining balance of ₱ 133,396.00 of the present claim should be treated as no longer available for refund or issuance of a tax credit certificate.

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
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.

ERNESTO D. ACOSTA
Presiding Justice