CTA Form No. 8 (For DCC)

20-000146-0078

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10287

NOVABALA JV CORP.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF RESOLUTION

To:

OFFICE OF THE SOLICITOR GENERAL
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Makati City

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GREETINGS:

You are hereby notified by these presents that on **June 19, 2024,** a Resolution was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **June 20, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
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NOVABALA JV CORP.,
Petitioner,

-*versus*-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 10287

Members:

DEL ROSARIO, *P.J., Chairperson,*
MANAHAN, *and*
REYES-FAJARDO, *JJ.*

Promulgated:

JUN 19 2024; 3:00PM

x- -x

RESOLUTION

MANAHAN, *J.*:

For resolution of the Court are the following:

1. *Motion for Reconsideration (of the Decision dated 04 January 2024)* filed by respondent on January 30, 2024 ("respondent's *Motion*"),[1] with petitioner's *Comment (To the Motion for Reconsideration of the Commissioner of Internal Revenue*);[2] and

2. *Motion for Partial Reconsideration* filed by petitioner on January 31, 2024 ("petitioner's *Motion*"),[3] without respondent's comment.[4]

Both *Motions* assail the Court's *Decision* dated January 4, 2024 ("assailed *Decision*"),[5] the dispositive portion of which reads:

> **WHEREFORE**, in light of the foregoing considerations, the present *Petition for Review* is

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[1] Docket – Vol. III, p. 1591.
[2] Docket – Vol. III, p. 1617.
[3] Docket – Vol. III, p. 1598.
[4] Per *Records Verification* dated March 8, 2024.
[5] Docket – Vol. III, pp. 1561-1590.

> **PARTIALLY GRANTED.** Respondent is hereby ordered to refund petitioner the amount of **₱2,853,239.96**, representing the latter's excess creditable withholding taxes for taxable year 2018.
>
> **SO ORDERED.**

Respondent's *Motion* avers that petitioner failed to support its claim for refund of its creditable withholding taxes ("CWTs") for taxable year ("TY") 2018. According to respondent, petitioner's evidence did not show that the taxes withheld on the payments made by its client, Manila Water Company, Inc. ("MWCI"), were erroneously or illegally collected. Such taxes were legally due the government at the time they were remitted to the Bureau of Internal Revenue ("BIR"). This is because at the time of withholding, petitioner was not yet entitled to the tax exemption under its Board of Investments Certificate of Registration.

On the other hand, petitioner's *Motion* seeks that the Court reconsider its finding that it is not entitled to refund the amount of ₱17,527,898.00 representing excess CWTs for TY 2017. Petitioner insists that since the CWTs pertained to unearned revenue which were only recognized as revenue *after* 2018 pursuant to the percentage of completion method of accounting, the withholding thereof became erroneous after its taxpayer status changed to VAT-exempt on June 28, 2018. Petitioner further argues that the "irrevoca-bility rule" under Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, does not apply to it as it is not a "corporation liable to tax under Section 27 [of the NIRC]." Since it will no longer incur income tax, there is no reason to subject it to said rule. Strict application of the rule would amount to deprivation of the income tax holiday granted to it and would constitute unjust enrichment on the part of government.

Petitioner's *Motion* also points to the fact that it will no longer have business activity in view of the completion of the Manila Water Project. It seeks leave of Court to present as evidence the *Certificate of Completion and Hand Over Certificate - CERTIFICATE OF PHYSICAL COMPLETION* dated July 19, 2023 issued by MWCI.

We resolve.

First, the arguments raised in respondent's *Motion* has already been addressed in the assailed *Decision*. For clarity, the Court reiterates that petitioner's CWTs for TY 2018 were indeed legally due the government at the time they were withheld. Nonetheless, as they constituted *excess* CWTs for the said TY, refund is proper upon petitioner's compliance with the requisites for a valid claim of refund of unutilized excess CWTs. We quote the pertinent portion of the assailed *Decision*:[6]

> "Nonetheless, although petitioner is eligible to the grant of ITH only from June 28, 2018, its alleged erroneous payments for taxable years 2017 and 2018 may still be refunded as *excess* creditable income tax withheld, if compliance with the provisions of law governing the refund of excess and unutilized creditable withholding taxes (CWTs) is established. As explained by the Supreme Court in *Citibank, N.A. v Court of Appeals and Commissioner of Internal Revenue*:
>
> > "Withholding taxes are 'deposits' which are subject to adjustments at the proper time when the complete tax liability is determined.
> >
> > x x x As petitioner posted net losses in its 1979 and 1980 returns, it was not liable for any income taxes. Consequently and clearly, **the taxes withheld during the course of the taxable year, while <u>collected legally</u> under the aforesaid revenue regulation, <u>became untenable and took on the nature of erroneously collected taxes at the end of the taxable year</u>**." [*Emphasis added*]
>
> ...
>
> Accordingly, the present claim shall be tested against the requisites for a claim of refund or tax credit of *unutilized excess CWTs*, particularly under Sections 76, 204(C), and 229 of the NIRC, as well as pertinent revenue regulations.

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[6] Docket – Vol. III, pp. 1576-1578.

In the assailed *Decision*, the Court found that petitioner is compliant, viz: it indicated its option to be refunded in its Annual Income Tax Return ("ITR") for 2018 pursuant to Section 76 of the NIRC; its claim for refund was filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC; the fact of withholding was duly established; and, the income upon which the taxes were withheld was included in its return. Since respondent's *Motion* did not assail these findings, the Court has no reason to disturb the same.

Second, as regards petitioner's *Motion*, we emphasize that the withholding tax system is a method of collecting tax in advance.[7] Petitioner is on the same page with the Court when it conceded "that *at the time* when the income payments were made by Manila Water, the latter had the legal obligation to withhold because petitioner was *then* not exempt from income tax." Likewise, we agree that when petitioner's status changed to tax exempt, the unutilized excess CWTs pertaining to its subsequently earned revenues took the nature of erroneously collected taxes. After all, as already stated, such is the nature of withholding taxes, which can be likened to "deposits" subject to adjustments at the proper time when the complete tax liability is determined. It is for this reason that petitioner was able to successfully claim its CWTs for TY 2018 after opting for a refund.

However, with respect to its CWTs for TY 2017, petitioner made the option to carry-over and apply such CWTs against its income taxes for the quarters of the succeeding TYs. The real crux of the controversy therefore is **whether the irrevocability rule under Section 76 of the NIRC—which bars a taxpayer from claiming a refund once it opts to carry-over—*still* applies to the CWTs covered by petitioner's annual ITR for 2017 despite its subsequent tax exemption**.

We answer in the affirmative.

Section 76 of the NIRC, which expresses the irrevocability rules, is reproduced below for quick reference:

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[7] *LG Electronics Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 165451, December 3, 2014 [Per J. Leonen, Second Division]. *an*

> **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.
>
> ... ***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.[8]

Contrary to petitioner's assertion that the above provision does not apply because it is not a "corporation liable to tax under Section 27," petitioner was in fact a corporation liable to tax under Section 27 *at the time* it paid the taxes and filed its final adjustment return or annual ITR for TY 2017. As a corporation liable to tax during 2017, petitioner is *required* by Section 76 to file its annual ITR, and such ITR is necessarily subject to the requirements, conditions, and consequences imposed by law—including the irrevocability rule.

The controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option,[9] *i.e.* to carry-over.[10] Thus, petitioner's subsequent tax exemption does not retroactively lift the operation of the irrevocability rule, despite the fact that such exemption made the payment of CWTs erroneous. As held in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*:[11]

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[8] *Emphasis supplied.*
[9] *Rhombus Energy, Inc. v. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018 [Per J. Bersamin, Third Division].
[10] *University Physicians Services Inc. - Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018 [Per J. Martires, Third Division].
[11] G.R. No. 178490, July 7, 2009 [Per J. Chico-Nazario, Third Division].

> "...after the taxpayer opts to carry-over its excess tax credit to the following taxable period, ***the question of whether or not it actually gets to apply said tax credit is irrelevant.*** 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.'"

Besides, as already discussed, settled, and emphasized, it is not unusual for CWTs to partake the nature of erroneously collected tax at the close of the TY when a corporation's income tax liability is adjusted. It is precisely by reason of such erroneousness that the law entitles a corporate taxpayer to refund *or* carry-over, subject to the irrevocability rule. The law makes no distinction for erroneousness or overpayment arising from a subsequent tax exemption or incentive. When the law does not distinguish, courts should not distinguish.

That the taxpayer is precluded from being refunded does not mean that unjust enrichment results. This has likewise been already addressed by jurisprudence:

> "The Court addressed the very same argument in Philam, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because ***there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years.***"[12]

As to petitioner's claim that it no longer has the chance to utilize its excess CWTs in the succeeding TYs due to the completion of the project for which it was exclusively organized, the Court notes petitioner's admission that it has not applied for tax clearance and certificate of dissolution. Such being the case, the Court cannot grant the refund based on mere invocation of the principle *cessante ratione legis, cessat lex ipsa* (when the reason for a law ceases, the law itself ceases). It is settled that administrative rules and regulations have the force

[12] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009 [Per J. Chico-Nazario, Third Division].

and effect of law.[13] Unless declared invalid in an appropriate case by a competent court, they must be enforced accordingly. Petitioner's argument also overlooks the fact that the law has other reasons for imposing the irrevocability rule until dissolution, such as ensuring full settlement of tax liabilities, if any, and reducing government effort to collect taxes through more complicated remedies.[14]

The remedy of petitioner therefore is administrative, not judicial. To be entitled to the refund of its excess CWTs which it can no longer carry-over, it must first secure and submit the complete set of documentary requirements imposed by the BIR.

On this score, we find it instructive to highlight the amendment introduced by Republic Act No. 11976[15] to Section 76 of the NIRC:

> **SEC. 76. - *Final Adjustment Return.*** - ...
>
> ...
>
> Once the option to carry-over and apply the said excess income taxes paid against the 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: ***Provided, that in case the taxpayer cannot carry over the excess income tax credit due to dissolution or cessation of business, the taxpayer shall file an application for refund of any unutilized excess income tax credit, and the Bureau of Internal Revenue shall decide on the application and refund the excess taxes within two (2) years from the date of the dissolution or cessation of business.***[16]

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[13] *Caltex (Philippines), Inc. v. Court of Appeals*, G.R. No. 104781, July 10, 1998 [Per J. Romero, Third Division].

[14] *University Physicians Services Inc. - Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018 [Per J. Martires, Third Division].

[15] Otherwise known as the "Ease of Paying Taxes Act," January 5, 2024. The law took effect on January 22, 2024.

[16] *Emphasis supplied.*

Meanwhile, Revenue Regulations No. 5-2024 provide that the two-year period shall commence from the submission of BIR Form No. 1905 (Application for Registration Information Update/Correction/Cancellation) together with the complete documentary requirements for closure of business and refund of excess income taxes due to cessation or dissolution of business. The approved refund, if any, shall be released *only after* mandatory audit of all internal revenue tax liabilities covering the immediately preceding year and the short period return and full settlement of all tax liabilities relative thereto.

On a final note, the Court cannot concern itself with the wisdom or practicality of statutes. These are addressed not to the judiciary but to the legislative and executive departments, to which such function belongs in our scheme of government.[17] By the principle of separation of powers, courts may only step in when there is a violation of the Constitution or the law.

WHEREFORE, respondent's *Motion for Reconsideration (of the Decision dated 04 January 2024)* filed on January 30, 2024 and petitioner's *Motion for Partial Reconsideration* filed on January 31, 2024 are both **DENIED** for lack of merit.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

(*took no part*)
ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate Justice

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[17] *Teves v. The Commission on Elections*, G.R. No. 180363, April 28, 2009 [Per J. Ynares-Santiago, *En Banc*].