Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

BENGUET MANAGEMENT CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6890

Members:

Castañeda, Jr., *Chairman*
Uy, and
Palanca-Enriquez, *JJ.*

Promulgated:
JAN 09 2006

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DECISION

UY, *J*.:

This Petition for Review seeks the refund of alleged excess credits or unutilized creditable withholding income in the amount of P5,700,272.00 for the calendar year 2001.

The summary of admitted facts, as stipulated by the parties in their Joint Stipulation of Facts *(Records, pp. 53)*, and as culled from the evidence presented by the petitioner, are as follows:

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office and registered address at Km. 78

Maharlika Highway, Bo. San Benito, Alaminos, Laguna, while respondent is the public officer charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable taxes under the provisions of the National Internal Revenue Code, with office address at the Bureau of Internal Revenue National Office Building, Diliman, Quezon City, where he may be served with summons.

In a letter dated November 25, 2002, and filed with RDO No. 55, San Pablo City, on November 27, 2002, petitioner requested for tax refund amounting to P5,700,272.00, representing creditable withholding tax/income tax overpayments for the year 2001.

It is a specialty contractor engaged primarily in the foundry business and it was also in the real estate business during the year calendar year 2001.

Petitioner filed a tentative annual income tax return on April 15, 2002 showing a net loss of P27,958,221.00 and tax overpayment amounting to P6,249,534.00 for the calendar year 2001 (*Exhibit "A", Records, pp. 83-85).*

Petitioner filed an amended ITR for CY 2001 on November 20, 2002 which showed a net loss of P218,187,525.00, but the reported overpayment was the same amount of P6,249,534.00 *(Exhibit "B", Records, pp. 88-90).*

Petitioner filed its tentative annual ITR for CY 2002 on April 24, 2003 and its amended annual ITR for CY 2002 on October 9, 2003.

Petitioner filed a request for a tax refund with the respondent, through the Revenue District Officer of RDO 55 – San Pablo City, in the amount of P5,700,272.00 representing its alleged creditable withholding tax/income tax overpayments for the calendar year 2001 on November 27, 2002, which was within the 2-year period prescribed by law for claiming tax refund and respondent has not yet acted on petitioner's claim for refund.

Petitioner filed the instant judicial recourse on March 15, 2004, which is within the 2-year period prescribed in Sec. 229 of the Tax Code for claiming a tax refund judicially.

In his Answer filed on May 17, 2004, respondent, raises the following Special and Affirmative Defenses, to wit:

> "4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. Petitioner, which has the burden of proving its entitlement to the tax refund, has failed to establish any clear interest in or right over the alleged unutilized creditable withholding income tax for CY 2001;
>
> 6. Petitioner must show that it has complied with the provisions of Section 204 (C) in relation to Section 229, both of the Tax Code;
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> 7. Furthermore, 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 or credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. (Asiatic Petroleum Co. {P.I.} v. Llanes 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670);
>
> 8. Claims for refund are construed strictly against the claimant for the same partake in the nature of exemption from taxation (Records, pp. 34-37)."

During the course of the trial, petitioner presented its comptroller as its lone witness, Ms. Lina G. Fernandez. Likewise, petitioner offered as part of its evidence Exhibits "A" to "L", composed primarily of the petitioner's income tax returns, both original and amended, for the calendar years 2001 to 2003 and the Certificates of Creditable Tax Withheld at Source.

On the other hand, respondent during the June 1, 2005 trial, manifested that he will not be presenting any witness and submitted the case for decision *(Records, page 158)*.

The following issues were submitted by the parties in their Joint Stipulation of Facts and Issues:

1. Whether the income payments that were subjected to creditable expanded withholding tax were declared by petitioner as part of the gross income for CY 2001;

2. Whether the fact of withholding is established by copies of withholding tax statements/returns;

3. Whether the creditable income tax was not utilized as credit against income tax liability for the taxable year when the same was deducted and withheld (CY 2001) or in the succeeding taxable quarters/years;

4. Whether the administrative claim for refund that was filed with Respondent's office and the Petition for Review were filed within the 2-year period prescribed in Sections 204 and Sec. 229 of the Tax Code; and

5. Whether or not petitioner is entitled to a refund or a tax credit in the amount of P5,700,272.00 allegedly representing unutilized creditable withholding income tax for CY 2001.

Petitioner claims that it is entitled to the refund of its unutilized creditable withholding income for the calendar year 2001 amounting to P5,700,272.00 since it answered all in the affirmative the basic issues of a) whether the income that were subjected to expanded withholding tax were declared as part of its gross income for calendar year 2001; b) whether the fact of withholding is established by copies of withholding tax statements or returns; and c) whether the creditable tax was not used as credit against income tax in 2001 or in succeeding quarters/years.

We agree with petitioner that the fact of withholding of its claimed creditable withholding taxes was established through the presentation of the Certificates of Creditable Tax Withheld at Source (*Exhibits I-1 to I-27*), Withholding Tax Remittance Returns (*Exhibit J-1 and J-2*), deposit slip (*Exhibit J-1-b*), Capital Gains Tax Return (*Exhibits J-2-a and J-2-b*), but only with respect to creditable withholding taxes amounting to P5,611,433.41 instead of the reported amount of P5,700,272.00, to wit:

Creditable taxes on sales of goods/services As evidenced by Certificates of Tax Withheld at Source (Exhibits I-1 to I-27)	P 260,069.41
Creditable tax on sale of land to St. Louis University as evidenced by Exhibits J-1 and J-1-b	4,050,000.00
Creditable tax on sale of land to Arcman Corp. as evidenced by Exhibits J-2, J-2-a and J-2-b	1,301,364.00
	P 5,611,433.41

Likewise, petitioner proved that the income related to creditable withholding taxes of P5,611,433.41 formed part of the gross revenues declared by petitioner in its amended income tax return for taxable year 2001 (*Exhibit B*). As can be seen in the said return, petitioner's declared revenues from sales of goods amounted to P49,070,470.00 *(Exhibit B-3*).

While the income amount of P25,910,149.36 (*Exhibit I*) pertaining to the creditable withholding taxes of P260,069.41 was lower than the income of P49,070,470.00 reported in the return, such discrepancy was merely brought about by timing difference between the point at which petitioner recognized/recorded its income and the time in which the corresponding creditable taxes were withheld by petitioner's customers (*TSN, November 24, 2004, pages 28-29).* Apparently, the petitioner follows the accrual method of accounting, wherein all revenues whether collected or not were booked in the records of petitioner, while the schedule in Exhibit "I" shows the revenues that were collected during the year.

As to petitioner's gain from sale of properties in the amount of P73,857,360.42 (*Exhibit J*) related to the creditable withholding taxes of P5,351,364.00 (the sum of P4,050,000.00 and P1,301,364.00), the same was also reflected by petitioner in its amended 2001 income tax return (*Exhibit B-4*).

Further, considering that it was in a net loss position for both calendar years 2001 and 2002, petitioner was not able to use as credit the unutilized creditable withholding taxes subject of this case.

However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits *(Annexes C to E, Petition for Review, Records, pp. 10-12).* As petitioner's own evidence would show (original/tentative annual ITR for CY 12/2001, Exhibit "A"), the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002 filed on June 11, 2002 *(Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review).* When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits *(Quarterly Income Tax Return for 2nd Quarter of 2002, Annex D, Petition for Review).* For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits *(Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E, Petition for Review).* The total amount of P5,700,272.00 subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 *(Exhibit A-1).*

Under Section 76 of the National Internal Revenue Code (NIRC) of 1997, it is provided that:

> "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
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> (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." *(Underscoring Ours)*

We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year ***(Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, April 3, 2003 and Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, May 16, 2003).***

Although petitioner did not indicate any chosen option in its 2001 income tax return filed on April 15, 2002, it nevertheless actually carried over the claimed excess credits to the succeeding quarters of 2002, as discussed above. Besides, if the taxpayer fails to signify his option by marking with an "x" the appropriate box in the return, "the excess payments shall be automatically carried-over to the next taxable period" *(BIR Form No. 1702, p. 4)*. And under the law, once the option of carry over has been exercised, it becomes irrevocable pursuant to Section 76 of the 1997 NIRC above quoted.

In this case, petitioner actually exercised the right to carry over its excess credits to the succeeding taxable quarters. Thus, it can no longer claim for a cash refund or issuance of a tax credit certificate for the subject period.

It is noteworthy that when petitioner filed its amended return for the subject period on November 20, 2002, it still reflected the amount P6,249,534.00, as total overpayment to which the claimed amount of P5,700,272.00 formed a part of *(Exhibit B-1)*.

When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year's excess credits *(Exhibit F, Records, pp. 91-93)*. The fact that petitioner amended its 2002 tax return on October 9, 2003 *(Exhibit G, Records, pp. 94-96)* does not alter the fact that petitioner in fact carried over the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits.

Otherwise stated, petitioner may have amended its 2001 income tax return on October 9, 2003 *(Exhibit G)* but this amendment did not undo the act/s already made or exercised. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return.

Any taxpayer can easily aver mistake or error in its declaration and amend its return not only once but several times, as the case may be. It is Our considered view that the amendment of returns allowed by Section 6 of the 1997 Tax Code does not extend to changing of taxpayer's chosen option, much more, an actual exercise of such option under Section 76 of the same Code.

Thus, taking into account that petitioner actually carried over its prior year's excess tax credits of P6,249,534 for the calendar year 2001 to the taxable quarters of the succeeding taxable year 2002 *(Annexes C to E, Petition for Review)*, as well as to its original annual corporate income tax return for calendar year 2002 *(Exhibit F)*, it is already barred from claiming a refund or a tax credit certificate corresponding to the unutilized tax credits for the year 2001.

Tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be considered *strictissimi juris* against the person or entity claiming the refund ***(Commissioner of Internal Revenue vs. Procter and Gamble Philippines Mfg. Corp., 204***

SCRA 377; Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc. 309 SCRA 87).

IN VIEW OF THE FOREGOING, the Petition for Review is hereby ***DISMISSED*** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Chairman

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.
Associate Justice
Chairman

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairman'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's Division.

ERNESTO D. ACOSTA
Presiding Justice