REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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SC & C COSMETECH CO., INC.,
Petitioner,

C.T.A. CASE NO. 6650

Members:

\- versus -

ACOSTA, *Chairman*
BAUTISTA, and
CASANOVA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

JUN 06 2005

x - x

DECISION

***CASANOVA, C., J.*:**

Claiming that it is entitled to a refund and/or issuance of a tax credit certificate on its alleged unutilized creditable withholding taxes for the year 2000 in the total amount of THREE MILLION ONE HUNDRED FIVE THOUSAND SEVEN HUNDRED TWENTY THREE PESOS (₱3,105,723.00), petitioner filed before the Court the present action. After issues had been joined and trial on the merits proceeded, the case was submitted for Decision on February 24, 2005.

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Based on the Joint Stipulation of Facts and Issues[1] and evidence on hand, the established facts are as follows:

Petitioner is a domestic corporation primarily engaged in the business of manufacturing cosmetics and pharmaceutical products exclusively for Johnson & Johnson (Phils.), Inc.

For the year 2000, Johnson & Johnson (Phils.), Inc. withheld quarterly the taxes due on its income payments to petitioner in the aggregate amount of ₱3,767,088.81 and issued the corresponding Certificates of Creditable Tax Withheld at Source. The taxes withheld are summed up in the following manner:[2]

First Quarter:	Income Payment	Tax Withheld For the Quarter
January	265,467.00	
February	1,717,015.00	
March	7,409,153.00	923,916.35
Second Quarter		
April	2,400,870.00	
May	2,953,678.00	
June	3,650,377.00	790,049.25
Third Quarter		
July	1,411,430.00	
August	5,498,082.00	
September	6,925,774.00	1,138,352.86
Fourth Quarter		
October	7,742,717.00	
November	247,668.00	
December	3,486,650.00	914,770.35
Total Amount	43,708,881.00	3,767,088.81

However, petitioner did not mark any of the boxes found in Line 31 of the said return to signify its choice whether to be refunded, to be issued a tax credit certificate or to be carried over as tax credit next year/quarter in case of tax overpayment.

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1 Docket, pp. 142-144.
2 Exhibits "A-2" up to "A-5".

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On January 22, 2003, petitioner through its counsel, filed a claim for refund or issuance of a tax credit certificate for year 2000 with the Revenue District No. 52 of the Bureau of Internal Revenue.[3] It alleged that in the year 2000: (1) despite of having incurred a net loss in the amount of P2,202,010.00, it has a minimum corporate income tax ("MCIT") in the amount of ₱661,366.00 as imposed by law; (2) it has an unutilized creditable withholding tax or excess prepaid tax in the amount of ₱3,767,089.81; and (3) if the MCIT in the amount of ₱661,366.00 is to be deducted from its unutilized creditable withholding tax in the amount of ₱3,767,089.81, an excess prepaid tax in the amount of ₱3,105,723.00 would be due in its favor.

Without waiting for the respondent to decide on its protest and in order to preserve its claim for refund as provided in Section 229 of the National Internal Revenue Code of 1997 ("Tax Code"), as amended, petitioner filed the present Petition for Review on April 10, 2003.

Both parties agreed and stipulated on the following issues:

1. Whether the income payments from which the taxes were withheld were included in petitioner's gross income for taxable year 2000;

2. Whether petitioner has excess/unutilized creditable withholding tax for taxable year 2000;

3. Whether petitioner has carried over to the succeeding taxable year(s) the alleged excess/unutilized creditable withholding tax for taxable year 2000;

4. Whether petitioner's claim for refund of the alleged excess/unutilized creditable withholding tax for taxable year 2000 was duly substantiated;

5. Whether petitioner is entitled to the refund or issuance of a tax credit certificate in the sum of ₱3,105,723.00 as alleged excess utilized (sic) creditable withholding tax on income payments for taxable year 2000.

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3 Exhibit "D" (inclusive of submarkings).

After a careful scrutiny of the evidence on record, the Court must deny the present Petition for Review. Tax refunds are in the nature of tax exemptions. The same are regarded as in derogation of sovereign authority and shall be construed *strictissimi juris* against the person claiming such exemption. In terms of evidence, the taxpayer has the burden of proving that it is entitled to the claim for refund.[4]

In the present case, petitioner is seeking for a refund or issuance of a tax credit certificate for its alleged unutilized creditable withholding taxes for the year 2000. Section 76 of the Tax Code clearly provides 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
> (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. <u>Once the option to carry-over and apply the excess quarterly income tax against income 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 Ours)*

Based on the above law, petitioner has the option to either carry-over and apply the excess quarterly income tax against income due for the taxable quarters of the succeeding taxable year or to have such excess amount paid credited or

4 *BPI-Family Savings Bank vs. Court of Appeals, et al.*, 330 SCRA 507 [2000].

refunded. If the option to carry-over the amount is exercised, the same shall be irrevocable.

In its 2000 Annual Income Tax Return filed on April 10, 2001 *(Exhibit A)*, petitioner did not mark any box found in Line 31 therein to signify its option. Legibly printed on the first page of the income tax return (BIR Form 1702) are the required data that petitioner must fill in all applicable spaces. Likewise, in Line 31 thereof, petitioner was instructed to mark the appropriate box of its choice whether to be refunded, to be issued a tax credit certificate or to be carried over as tax credit next year/quarter in case of overpayment.

The Court takes notice that the standard BIR Form 1702 (July 1999 format which petitioner used in its 2000 Annual Income Tax Return) has page four (4) which provided the taxpayers guidelines and instructions to observe and follow[5] and which petitioner did not include in all the income tax returns it presented to the Court as evidence. Pertinent portion thereof reads:

> **"Tax Refund/Credit**
>
> "An excess of the total tax credits/payments over the actual income tax due computed in the final adjusted return may be refunded or issued with the Tax Credit Certificate to the taxpayer or credited against his estimated income tax liabilities for the quarters of the succeeding taxable years. The taxpayer shall exercise his option by marking with an 'x' the appropriate box, which option shall be considered irrevocable for that taxable period. Thus, once the taxpayer opted to carry-over and apply the excess income tax against income tax due for the succeeding taxable y ear, no application for cash refund or issuance of a tax credit certificate shall be allowed. **In case the taxpayer fails to signify his choice, the excess payment shall be automatically carried-over to the next taxable period.**"

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[5] Section 2 of Rule 129 of the Revised Rules of Court provides: "A court may take judicial notice of matters which are of public knowledge, or are capable of unquestionable demonstration, or ought to be known to judges because of their judicial functions."

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Since petitioner did not signify its choice by marking with an "X" the box corresponding to the option to be refunded or issued a tax credit certificate, petitioner is deemed to have elected the option to carry-over. However, petitioner amended its 2000 income tax return almost two years later or on March 27, 2003 *(Exhibit B)* to indicate its choice to be issued a tax credit certificate. But in the meantime, on April 15, 2002, petitioner already filed its income tax return for the year 2001 *(Exhibit E)* and marking therein two (2) options. It chose to be refunded for its 1999 excess tax credits amounting to P2,225,683.00 while it opted to carry over as next year/quarter's tax credit the 2000 excess tax credits of P3,767,089.00. Yet, petitioner applied its tax due for the period in the amount of P426,891.00 against its total tax credits/payments for the same year of P11,275,453.00 thereby declaring an excess tax credit for the year 2001 in the sum of P10,848,562.00.

However, on April 15, 2003 when petitioner filed its income tax return for the year 2002, it again carried over the 1999 excess tax credits which in the 2001 tax return it already opted to be refunded. It likewise carried over the 2000 excess tax credits. But this time, petitioner indicated that it be issued a tax credit certificate for these 1999 and 2000 excess tax credits. As for its excess tax credits for the year 2001 amounting to P4,855,790.00 petitioner chose the option "to be carried over as tax credit next year/quarter". Again, petitioner applied its 2002 tax due of P641,372.00 against its total tax credits/payments for the same year of P18,303,461.00, thus, leaving a total tax credit for the year 2002 in the amount of P17,662,089.00 *(Exhibit G).*

Based on the foregoing facts, petitioner reflected the amount of P2,887,050.00 as its 1999 excess tax credits which it carried over to the year 2000

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(Exhibit A). But in the year 2001, it changed its option to be refunded of its 1999 excess tax credits but not in the amount of P2,887,050.00 but only of P2,225,683.00 (*Exhibit E*). Came 2002, petitioner still carried over the 1999 excess tax credits of P2,225,683.00 *(Exhibit G).* The 1999 total excess tax credits even formed part of the total tax credits/overpayment being applied against its tax due for the years 2000, 2001 and 2002 under the principle of first in first out. In taxable year 2003, petitioner declared as 1999 excess tax credits only the amount of P1,818,587.00 *(Exhibit I)* thereby giving the impression that the tax due for the year 2002 was applied against the 1999 tax credits which it already opted to be refunded but actually carried over to the years 2000, 2001, 2002 and 2003.

To understand a little of petitioner's confusing income tax returns submitted in evidence, this Court has made a summary of petitioner's different declarations/computations as follows:

ORIGINAL RETURNS

Taxable Year 2000 (Exhibit A)			Breakdown of Excess Tax Credits at the end of the year
Minimum Corporate Income Tax Due		P 661,366.00	
Less: Tax Credits			
Prior Year's Excess Credits (1999)		P 2,887,050.00	P 2,225,684.00 (2,887,050.00 less 661,366.00)
Creditable Taxes Withheld			
First Three Quarters	P 2,852,319.00		
Fourth Quarter	914,770.00	3,767,089.00	3,767,089.00
Total Tax Credits		P 6,654,139.00	
Tax Overpayment		P 5,992,773.00	P 5,992,773.00

Taxable Year 2001 (Exhibit E)			
Minimum Corporate Income Tax Due		P 426,891.00	
Less: Tax Credits			
Prior Year's Excess Credits			
1999	P 2,225,683.00		P 2,225,683.00
2000	3,767,089.00	P 5,992,772.00	3,767,089.00
Creditable Taxes Withheld			
First Three Quarters	P 3,045,904.00		
Fourth Quarter	2,236,777.00	5,282,681.00	4,855,790.00 (5,282,681.00 less 426,891.00)
Total Tax Credits		P 11,275,453.00	

Tax Overpayment		P 10,848,562.00	P10,848,562.00

Taxable Year 2002 (Exhibit G)

Minimum Corporate Income Tax Due		P 641,372.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 2,225,683.00	
2000	3,767,089.00	
2001	4,855,790.00	P 10,848,562.00
Creditable Taxes Withheld		
First Three Quarters	P 5,031,463.00	
Fourth Quarter	2,423,436.00	7,454,899.00
Total Tax Credits		P 18,303,461.00
Tax Overpayment		P 17,662,089.00

AMENDED RETURNS

Taxable Year 2000 (Exhibit B)

			Breakdown of Excess Tax Credits at the end of the year
Minimum Corporate Income Tax Due		P 661,366.00	
Less: Tax Credits			
Prior Year's Excess Credits (1999)		P 2,887,050.00	P 2,887,050.00
Creditable Taxes Withheld			
First Three Quarters	P 2,852,319.00		
Fourth Quarter	914,770.00	3,767,089.00	3,105,723.00 (3,767,089.00 less 661,366.00)
Total Tax Credits		P 6,654,139.00	
Tax Overpayment		P 5,992,773.00	P 5,992,773.00

Taxable Year 2001 (Exhibit C)

Minimum Corporate Income Tax Due		P 426,891.00	
Less: Tax Credits			
Prior Year's Excess Credits (1999)		P 2,886,850.00	P 2,459,959.00 (2,886,850.00 less 426,891.00)
Creditable Taxes Withheld			
First Three Quarters	P 3,045,904.00		
Fourth Quarter	2,236,777.00	5,282,681.00	5,282,681.00
Total Tax Credits		P 8,169,531.00	
Tax Overpayment		P 7,742,640.00	P 7,742,640.00

Taxable Year 2002 (Exhibit F)

Minimum Corporate Income Tax Due		641,372.00	
Less: Tax Credits			
Prior Year's Excess Credits			
1999	P 2,459,959.00		P 1,818,587.00 (2,459,959.00 less 641,372.00)
2001	5,282,681.00	P 7,742,640.00	5,282,681.00
Creditable Taxes Withheld			
First Three Quarters	P 5,031,463.00		
Fourth Quarter	2,423,436.00	7,454,899.00	7,454,899.00

Total Tax Credits		P 15,197,539.00	
Tax Overpayment		P 14,556,167.00	P14,556,167.00

ORIGINAL 2003 RETURN (Exhibit I)

Minimum Corporate Income Tax Due		P 900,571.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 1,818,587.00	
2001	5,282,680.00	
2002	7,454,899.00	14,556,166.00
Creditable Taxes Withheld		
First Three Quarters	P 3,451,696.00	
Fourth Quarter	194,276.00	3,645,972.00
Tax Overpayment		P 17,301,567.00

AMENDED 2003 RETURN (Exhibit H)

Minimum Corporate Income Tax Due		918,284.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 1,818,587.00	
2001	5,282,680.00	7,101,267.00
Tax Overpayment		P 6,182,983.00

From the above declarations/computations, petitioner applied its minimum corporate income tax (MCIT) due for the period against the 1999 excess tax credits in its original income tax return for the year 2000. For the year 2001, petitioner applied its MCIT against the 2001 excess tax credits in its original income tax return. And for the year 2002, this Court cannot determine where the MCIT for the period was applied against though looking at the original return submitted by petitioner, the MCIT was applied against its total tax credits for the same year.

However, in its amended return for the year 2000, petitioner applied the MCIT against the current or 2000 tax payments. But in its 2001 amended tax return, petitioner applied the MCIT for the period against its 1999 excess tax credits.

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And in the year 2002 amended income tax return, petitioner again applied the MCIT for the period against its 1999 excess tax credits.

With respect to petitioner's 2003 income tax returns, the MCIT declared in the original return differs from what was reflected in its amended return. But it appears that it applied its MCIT due for the said year against its 1999 and 2001 excess tax credits.

From the foregoing evidence, it is undisputable that petitioner is confused on what is the proper thing to do. For one, it applied its MCIT either from its current or prior year's excess tax credits. Petitioner should have followed the first in first out principle. For another, despite the choice of to be refunded for its 1999 excess tax credits, petitioner still carried over the same to the succeeding years. Likewise, having opted to be issued a tax credit certificate for its 2000 excess tax credits, petitioner actually carried over the same to the succeeding years 2001 and 2002. When petitioner amended these returns, it no longer reflected the 2000 excess tax credits. But when it amended its 2003 tax returns, it again carried over the 2000 excess tax credits. Clearly, petitioner's interpretation of the law has gone haywire and this Court cannot countenance the same.

We now proceed to discuss in full petitioner's 2000 excess or unutilized tax credits amounting to P3,105,723.00, the subject claim for refund/tax credit, and which petitioner computed as follows:

Creditable Tax Withheld for the First Three Quarters	P2,852,319.00
Creditable Tax Withheld for the Fourth Quarter	914,770.00
Less: Tax Due (MCIT)	661,366.00
Total Overpayment	P3,105,723.00

However, petitioner declared in its 2000 Annual Income Tax Return, filed on April 10, 2001 with the Bureau of Internal Revenue, the following:[6]

Sales/Revenue/Fees	394,730,804.00
Less: Cost of Sales/Services	361,662,507.00
Gross Income from Operation	33,068,297.00
Add: Non-Operating & Other Income	1,403,024.00
Total Gross Income	**34,471,321.00**
Less: Deductions	36,909,405.00
Taxable Income	(2,438,084.00)
Tax Rate	0.32
Income Tax	(780,187.00)
Minimum Corporate Income Tax	661,366.00
Tax on Transactions under Regular Rate	661,366.00
Aggregate Income Tax Due	661,366.00
Less: Tax Credits/Payments	
Prior Year's Excess Credits	2,887,050.00
Creditable Tax Withheld for the First 3 quarters	2,852,319.00
Creditable Tax Withheld Per BIR Form No. 2307 for the 4th Quarter	914,770.00
Total Tax Credits/Payments	6,654,139.00
Overpayment	(5,992,773.00)
Total	**(5,992,773.00)**

Clearly from the above declaration, the excess 1999 tax credits of P2,887,050.00 formed part of the total tax credits/payments of P6,654,139.00 and which under the principle of first in first out, petitioner must first utilize against its tax due for the period.[7]

As discussed earlier, petitioner did not mark any option box in its original 2000 income tax return *(Exhibit A).* Under BIR Form 1702, in case the taxpayer fails to signify his choice, the excess payment shall be automatically carried-over to the next taxable period. And pursuant to Section 76 of the 1997 of the Tax Code afore-cited, once the option of carry over is exercised, the same becomes irrevocable.

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6 Exhibit "A".

7 JS Steel Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6071, February 19, 2002.

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But even assuming that the provision under BIR Form 1702 is not mandatory and We take petitioner's actual marking as the choice to be definitely binding, still, the instant claim should be denied.

In its amended 2000 income tax return *(Exhibit B)*, petitioner marked the option to be issued a tax credit certificate. Nevertheless, in its original 2001 income tax return filed on April 15, 2002, petitioner actually carried over the amount of P3,767,089.00 as its 2000 excess tax credits and even applied it against its tax due for the year 2001 under the principle of first in first out basis *(Exhibit E)*. Worse, petitioner even signified two choices, *i.e.,* to be refunded for its 1999 excess tax credits and to carry over its 2000 excess tax credits. On April 15, 2003, petitioner filed its 2002 income tax return *(Exhibit G)* showing therein the excess tax credits for the taxable years 1999, 2000 and 2001. In short, petitioner actually carried over all these prior years' excess tax credits, regardless of its choice of option to the contrary. For the taxable year 2003, petitioner filed its income tax return on April 15, 2004 *(Exhibit I)* carrying over the 1999, 2001 and 2002 excess tax credits. Surprisingly, in its amended 2003 income tax returns filed on May 27, 2004, petitioner again carried over the 2000 excess tax credits amounting to P3,105,723.00 although excluded from the tax overpayment for the period *(Exhibit H)*.

As for its overpayment or excess tax credits for the year 2001, this Court only ascertained petitioner's choice when the same was carried over to the year 2002 *(Exhibit G)*. The same were carried over to the succeeding year 2003 *(Exhibits H & I)*.

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Anent petitioner's several choices made per taxable year, the Supreme Court already ruled that the choices under Section 76 (then Section 69) is alternative not cumulative remedies under the law. The choice of one precludes the other.[8] With more reason that a taxpayer cannot make simultaneous choices for a particular taxable year as what the petitioner did in its 2001 *(Exhibit E)* and 2002 income tax returns *(Exhibit G)*. Moreover, the choice should pertain to the present year's overpayment and not to the prior years'. Hence, for the year 2000, this Court cannot determine by merely looking at petitioner's tax return, what was its intention for said year considering that it marked two option boxes but relative to its prior years' excess tax credits. An examination of its 2001 income tax return nonetheless enlightened Us since the 2000 tax credits of P3,767,089.00 was actually carried over by the petitioner to the said year *(Exhibit E)*. The same is true with the excess tax credits for the year 2001 since petitioner chose two options but pertaining to its prior years' excess tax credits and not to the current year's overpayment. But petitioner's income tax return for the year 2003 showed that petitioner carried over its 2002 tax credits *(Exhibits H & I)*.

Applying Section 76 of the Tax Code earlier quoted, petitioner's option to carry-over its excess tax credits shall be considered irrevocable for the taxable year 2000. It shall not be allowed subsequently to apply for a cash refund or for issuance of a tax credit certificate for that taxable period.

In a catena of cases, the Court has consistently ruled that 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 is

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8 Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241.

considered irrevocable and **no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**[9]

It is observed though that on July 29, 2003, petitioner simultaneously amended its 2001 and 2002 income tax returns *(Exhibits C and F, respectively)*, so as not to reflect the 2000 excess tax credits. And in its original income tax return for the year 2003 filed on April 15, 2004, petitioner did not declare its excess tax credits for the year 2000 *(Exhibit I)*. However, when it amended the said return on May 27, 2004 *(Exhibit H)*, petitioner again included as among the carried over prior years' excess tax credits, the amount of P3,105,923.00 which is the 2000 excess tax credits but excluded the same in computing the excess tax payment for the same period.

It bears reiterative stress that once the option to carry over and apply excess tax credits is exercised, it becomes irrevocable and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.

For the subject claim, petitioner carried over the excess tax credits to the succeeding year 2001 *(Exhibit E)*, contrary testimony of the petitioner notwithstanding. An amendment of the said return to show it was no longer carried over does not alter the fact that petitioner already opted to carry over the same and therefore, under the law, is already bound by the irrevocability rule. Besides, an amendment of the return allowed under Section 6 of the 1997 Tax Code does not

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9 *Subic Bay Distribution, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6640, November 3, 2004; *Family Medicare Services, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6543, June 7, 2004; Philippine Airlines, Inc. (PAL) vs. Commissioner of Internal Revenue, CTA Case No. 6327, August 28, 2003; Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, May 16, 2003; Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, April 4, 2003; *Pilipinas Transport Industries vs. Commissioner of Internal Revenue*, CTA Case No. 6073, March 1, 2002; *Pilipinas Hino, Inc. vs Commissioner of Internal Revenue*, CTA Case No. 6074, May 2, 2002; and, *Philippine Banking Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6280, August 16, 2001.

extend to changing of an option under Section 76 of the same Code, more so if said option was actually exercised.[10]

Yet, petitioner justified that its ever changing options for the excess tax credits of 1999, 2000, 2001 and 2002 is not prohibited by law. Petitioner submits that while it reported its 2000 excess tax credits in the 2001 income tax return "to be carried over", this option of carry over is valid only for the next taxable year 2002. Thus, according to the petitioner, it is not precluded from reinstating its option to be refunded its 2000 excess tax credits in its 2003 tax return.

We do not agree with the petitioner.

Nowhere is it provided under Section 76 that once the option of carry over is made, it is only valid for the <u>next taxable year.</u> To reiterate the pertinent provision of Section 76:

> Once the option to carry-over and apply the excess quarterly income tax against income 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.

Relying upon the ruling in the case of Commissioner of Internal Revenue vs. Citicorp Capital Phils., Inc., [11] petitioner maintains that the phrase "for that taxable period" qualifies the irrevocability of option to carry over excess tax credit.

We are not convinced. If the above interpretation is correct, then Section 69 should not have been amended to become the present Section 76. Further, the amendment "may by carried over and credited against the estimated quarterly income tax liabilities **for the taxable quarters of the succeeding taxable**

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10 Subic Bay Distribution, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6640, November 3, 2004.

11 CA-G.R. SP No. 68554, April 12, 2002.

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years" should not have been made if the irrevocability proviso applies only to the succeeding taxable year. We held[12] and still hold that under Section 76, the irrevocability rule when taken with the phrase "for that taxable period" refers to that taxable period which the taxpayer made the choice of carry over and not to the next taxable year when the said excess or unutilized tax credits be carried over. Otherwise put, "the taxable period" referred to under Section 76 and when applied in the case at bar, is the taxable year 2000 and the irrevocability applies to this taxable period and not to the succeeding year 2001 or 2002 as the petitioner implies.

As the option to carry-over the tax credit is irrevocable, petitioner cannot file a claim for cash refund or for the issuance of a tax credit certificate for the unutilized tax credit for year 2000. Therefore, the moment the petitioner opted to carry over its excess 2000 tax credits amounting to P3,105,723.00 to the taxable quarters of the succeeding taxable years, such option became irrevocable and petitioner is mandated to carry-over the same to the taxable quarters of the succeeding taxable years until the same is fully utilized[13] or applied against petitioner's succeeding tax liabilities.[14]

Since petitioner cannot claim for a refund or for the issuance of a tax credit certificate for its unutilized excess credit for year 2000, resolution of other issues must perforce be dispensed with.

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[12] United International Pictures AB vs. Commissioner of Internal Revenue, CTA Case No. 6240, Resolution, March 11, 2003.

[13] Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, March 1, 2002.

[14] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, CA-G.R. SP No. 70882, January 30, 2004.

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WHEREFORE, the Petition for Review is hereby ***DISMISSED*** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Division of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

LOVELL R. BAUTISTA
Acting Presiding Justice

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