REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHILAM ASSET MANAGEMENT, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6210

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

MAY 0 2 2002

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DECISION

This case involves a claim for refund filed by petitioner in the amount of P459,756.07 allegedly representing its unapplied creditable income tax for the taxable year 1998.

Petitioner is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines with principal office located at 5th Floor Philamlife-Salcedo Building, 126 L.P. Leviste Street, Salcedo Village, Makati City and the respondent is the head of the Bureau of Internal Revenue (BIR) and holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return (Exhibit "A" to Exhibit "A-43" with sub-markings) with the BIR for taxable year 1998, on 13 April 1999 wherein it declared a negative net taxable income or net loss in the amount of P1,504,951.00. It alleged that there being no income tax due thereon, the creditable income tax withheld for that year in the amount of P459,756.07, representing tax withheld by petitioner's withholding agents, Philam Fund, Inc. (PFI), Philam Bond Fund, Inc. (PBFI), and Philam Strategic Growth Fund, Inc. (PSGFI) on professional fees constitutes a valid claim for refund.

In its Annual Income Tax Return for 1999 (Exhibits II to II-2 with sub-markings), petitioner declared as part of its creditable income tax the amount of P459,756.07 representing its unapplied creditable withholding tax for the year 1998. Petitioner also accumulated creditable withholding taxes for the year 1999 in the amount of P915,995.00, against which its tax due of P80,042.00 was alleged to have been credited, thereby leaving the amount of P835,953.00, as its excess creditable withholding tax for the year 1999. The creditable withholding tax of the petitioner for the year 1998 in the amount of P459,756.07 remains unapplied.

In compliance with the mandatory requirement under the National Internal Revenue Code, petitioner filed with the Revenue District Office No. 50, Revenue Region No. 8, a written administrative claim for refund dated 14 November 2000 (Exhibit "HH" and sub-marking) categorically requesting that the amount of P459,756.07 be refunded. The BIR did not act on this request for refund, hence, petitioner instituted the instant petition for review on December 26, 2000.

In its Petition for Review, the petitioner alleged that although it declared its unapplied creditable tax for the year 1998 in its Annual Income Tax Return for the year 1999, the same was not applied to its tax liability for the said year and should, therefore, be refunded in full.

Respondent, on the other hand, raised in his Answer the following Special and Affirmative Defenses:

1. The petition has no legal basis as it does not even cite explicitly or by implication the pertinent statute and jurisprudence applicable to his cause of action, citing the ruling in the case of **China Banking Corporation vs. Commissioner of Internal Revenue** (CTA Case No.5683, 1 July 2000) involving a claim for refund of China Bank's alleged overpayment of the gross receipts tax, where the Honorable Supreme Court, in denying the petition for review filed by China Bank, has ruled that: "In going over the records of the case, this Court cannot initially fathom the nature of petitioner's claim for refund. Petitioner's sweeping statement that there was an erroneous computation in the gross receipts tax due has no legal anchor on which to stand on. Petitioner failed to allege in its pleading the legal basis of his petition other than the assertion that the gross receipts taxes were erroneously paid to the government";

2. It is incumbent upon herein petitioner to show that it complied with the provisions of Section 229 of the Tax Code as amended;

3. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Company vs. Commissioner of Internal Revenue, 67 SCRA 35);

4. One who claims to be exempt from payment of a particular tax must do so under clear and unmistakable terms found in the statute (Asiatic Petroleum vs. Llanes, 49 Phils. 466; Union Garment Co. vs. CTA, 4 SCRA 304);

5. In an action for refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to sustain the same is fatal to the action for refund. Furthermore, as pointed out in the case of William Li Yao vs. Collector (L-11875, 28 December 1963), amounts sought to be recovered or credited should be shown to be taxes which are erroneously or illegally collected; that is to say, their payment was an independent single act of voluntary payment of a tax believed to be due and collectible and accepted by the Government, which had therefor become part of the State moneys subject to expenditure and perhaps already spent or appropriated;

6. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence, not refundable.

Respondent further argues that petitioner can no longer claim its alleged 1998 unutilized creditable withholding tax for the simple reason that it had already exercised the option to carry over its excess tax credit to the next succeeding year, as evidenced by its 1999 Corporate Annual Income Tax Return, where the amount of P459,756.07, was reflected as "Prior years excess credits" in the said Corporate Annual Income Tax Return.

Respondent, cites as legal basis Section 76 of the 1997 Tax Code which provides that if a corporation exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate will be allowed as the options are in the alternative and the choice of one precludes the other.

Petitioner, on the other hand, counters that although it has declared its unapplied creditable tax for the year 1998 in its Annual Income Tax Return for the year 1999, the same was not applied to its tax liability for the said year as the same was instead credited against its creditable withholding tax for 1999 in the amount of P915,995.00, leaving an amount of P835,953.00 as its excess creditable withholding tax for the year 1999. Hence, the creditable withholding tax of the petitioner for the year 1998 in the amount of P449,756.07 remains unapplied, and should be refunded in full.

As jointly stipulated by the parties, the pertinent issues confronting this Court are:

1. Whether or not the petitioner has an unutilized withholding tax in the amount of Php 459,756.07 for calendar year ending 31 December 1998;

2. Whether or not the income from which the taxes were withheld were included as part of the gross income in petitioner's 1998 income tax return; and

3. Whether or not the alleged unutilized creditable withholding tax for taxable year 1998 in the amount of Php 459,756.07 was carried over and applied against its tax liability in the succeeding taxable years.

The facts cited above show compliance with the two-year period for filing an administrative claim for refund with this Court under Section 229 of the Tax Code.

However, after considering the attending facts, evidence, jurisprudence and laws applicable in this case, we resolve against the petitioner.

The issues presented by the parties may be summarized into one and that is: Whether or not petitioner is legally entitled to its claim for refund in the amount of P459,756.07 representing its alleged unutilized creditable tax.

It should be pointed out that the controversy is not one of first impression, and central to the dispute is Section 76 of the Tax Code of 1997 which provides, thus:

> **"Section 76. *Final Adjustment Return*.** x x x
>
> 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 certificates shall be allowed therefore."** (Emphasis supplied)

The aforequoted provision is clear and unambiguous leaving 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. (**Philippine Banking Corporation, now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue**, CTA Case No. 6820, 16 August 2001).

Despite the contention of the petitioner that the absence of any indicative mark in the option box "To be carried as tax credit next year/quarter" should be considered sufficient evidence to prove its lack of desire to take such option, the same holds no water in the face of contrary evidence. Although we acknowledge that in petitioner's 1998 ITR (Exhibit "A" to "A-43" with submarkings), there is no check in the box "to be carried as tax credit next year" and in the box "to be refunded" nor in the box "to be issued a tax credit certificate", the choice of the taxpayer to carry-over its 1998 excess credits to the succeeding year 1999 is very evident by a perusal of petitioner's 1999 Annual Corporate Income Tax Return (Exhibits "II" to "II-2" with sub-markings), wherein the amount of P459,756.00 as 1998 excess payment was reflected as its "prior year's excess tax credits".

The petitioner's declaration that the amount of P459,756.07 represents its 'Prior year's excess credit", is more than a sufficient manifestation of its decision to exercise the said option. In spite of its self-serving claim that its tax due for 1999 was instead charged against its creditable withholding tax for said year instead of its 1998 creditable income tax, the same is unavailing in view of the "first in first out" principle. The decision of petitioner to apply its 1998 creditable withholding taxes coupled with the sequence of events, from the time of its initial business losses until it finally chose to apply for a refund instead, reveals that the latter alternative was a mere afterthought, a final attempt to recover the said amount.

Considering that petitioner has already selected the option to carry-over to the succeeding year its unutilized creditable taxes for the taxable year 1998, it is thus, barred from pursuing the instant claim for refund.

To reiterate, there is no cloud of doubt that the provision in question does not require any further qualification regardless of whether or not the taxpayer actually applied the unutilized taxes against its tax liabilities in the succeeding taxable year. The rule is that, once the option to carry over has been made, as in the case at bar, the taxpayer may no longer apply for a refund of unutilized taxes for that taxable period.

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" **(Marin vs. Nacianceno, 19 Phil. 238).**

There is no doubt, therefore, what the legislature intended to give the taxpayer, that is, once the option to be carried over as tax credit to the next year has been made, such choice precludes the other. Beyond the words employed, if the meaning is plain and intelligible, neither officer nor court is to go in search of the legislative intent; but the legislature must be understood to intend what is plainly expressed, and nothing then remains but to give the intent effect. (**Bartlett and Waring vs. Morris**, 9 Port.266).

The Court wishes to emphasize that the case at bar does not involve a novel issue. In the cases of **Santiago Land Development Corporation vs. Commissioner of Internal Revenue**, CTA Resolution, CTA Case No. 6278, September 6, 2001; **BPI Family Savings Bank vs. Commissioner of Internal Revenue**, CTA Resolution, CTA Case No. 6277, September 17, 2001; and **PL Management International Phils., Inc. vs. Commissioner of Internal Revenue**, CTA Resolution, CTA Case No. 6292, September

14, 2001, this court ruled that Section 76 of the 1997 Tax Code is clear and leaves no room for doubt.

As to the other issues, we no longer find it necessary to discuss the same in view of the Court's denial of the instant claim for refund based on legal grounds.

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

I CONCUR:

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

CERTIFICATION

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

ERNESTO D. ACOSTA
Presiding Judge