REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

PHILIPPINE NATIONAL BANK, Petitioner,	**C.T.A. CASE NO. 6932**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** *and* **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** SEP 2 6 2007

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DECISION

CASTAÑEDA, JR., *J.*:

This is a Petition for Review seeking the refund of the amount of THIRTY NINE MILLION TWO THOUSAND EIGHT HUNDRED SEVENTY THREE PESOS (P39,002,873.00), representing petitioner's alleged excess payments of its income tax liability, particularly the creditable taxes withheld from its income from sales of acquired real properties, rental income and commissions, among others, for the taxable year 2001.

Philippine National Bank (Petitioner) is a domestic corporation organized and existing under and by virtue of the laws of the Republic of the

Philippines, with principal office at PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City.[1]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue vested by law with the authority to enforce and administer national internal revenue laws including, *inter alia*, the power to grant claims for refund for any internal revenue taxes erroneously or excessively paid, assessed or collected. He holds office at the Bureau of Internal Revenue (BIR) Building, Agham Road, Diliman, Quezon City.[2]

Petitioner filed on April 17, 2002 its Tentative Annual Income Tax Return (ITR)[3] with the BIR through the Electronic Filing and Payment System (EFPS). On April 30, 2002, it manually transmitted to the BIR's Large Taxpayers Document Processing and Quality Assurance Division a copy of the electronically filed Annual ITR, together with the attached required documents.

Petitioner then filed via EFPS an Amended Annual Income Tax Return and a Final Amended Annual Income Tax Return for the same taxable year on May 31, 2002[4] and July 29, 2003[5]. The same were manually filed together with its necessary attachments on June 3, 2002 and August 1, 2003, respectively.

On March 5, 2004, petitioner filed with respondent a claim for refund of the excess payment of its income tax liability which represents creditable

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[1] Paragraph 1, Joint Stipulation of Facts and Issues, CTA Records, page 759.
[2] Paragraph 2, Joint Stipulation of Facts and Issues, CTA Records, page 760.
[3] Exhibit "A".
[4] Exhibit "B".
[5] Exhibit "C".

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taxes withheld from its sale of acquired real properties, rental income and commissions, among others, amounting to P39,002,873.00.[6]

Due to respondent's failure to act on the claim and in order to preserve its rights to judicially pursue the said claim, petitioner filed this Petition for Review before this Court on April 13, 2004.

In his Answer, respondent alleged the following Special and Affirmative Defenses[7]:

> "3. He reiterates and repleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Petitioner's alleged claim for refund is subject to administrative investigation/examination by the respondent:
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> 5. The amount of Php39,002,873.00 being claimed by the petitioner as allegedly representing overpaid creditable withholding tax for the year 2001 was not properly documented.
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> 6. Petitioner, which has the burden of proving its entitlement to the tax refund, has failed to establish any clear right over the alleged overpaid creditable withholding tax for CY 2001.
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> 7. Petitioner must show that it has complied with the provisions of Section 204 (C) in relation to Section 229, both of the 1997 Tax Code.
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> 8. 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/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. An exemption from common the burden cannot be permitted to exist upon vague implications (Asiatic Petroleum Co. {P.I} v. Llanes, 49 Phil. 466 cited in

[6] Annex "D", Petition for Review; paragraph 3, Joint Stipulation of Facts and Issues, CTA Records, page 760.
[7] CTA Records, pages 742-743.

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Commissioner of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil. 670);

9. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation."

The parties, on September 24, 2004 entered into a Joint Stipulation of Facts and Issues.[8]

During trial petitioner presented testimonial and documentary evidence while respondent, through counsel, manifested that he is waiving his right to present evidence.[9]

Considering that petitioner had filed its Memorandum within the period given, this case was submitted for decision on July 11, 2007, without any Memorandum being filed by respondent.

Both parties agreed and stipulated on the following issues:[10]

1) Whether or not petitioner is entitled to the refund or issuance of tax credit certificate for the alleged unutilized creditable withholding taxes.

2) Whether or not petitioner filed its Annual Income Tax Return for the taxable year 2001.

3) Whether or not the administrative claim for refund and Petition for Review were filed within the two-year prescriptive period mandated by Sections 204 (C) and 229 of the National Internal Revenue Code (NIRC) of 1997.

4) Whether or not the income upon which the taxes were withheld formed part of the gross income of the petitioner bank.

5) Whether or not the alleged creditable withholding taxes amounting to P39,002,873.00 were unutilized or were not credited in the taxable years of 2001 and 2002. gr

[8] CTA Records, pages 759-762.
[9] Minutes of the April 25, 207 Hearing, CTA Records, page 884.
[10] Paragraphs 5-11, Joint Stipulation of Facts and Issues, CTA Records, pages 760-761.

6) Whether or not the Certificates of Creditable Withholding Taxes correctly and accurately reflect the alleged unutilized creditable withholding taxes in the amount of P39,002,873.00.

7) Whether or not the fact of withholding is established by a copy of the certificate issued by the payor to the payee showing the amount of taxes withheld.

The above stipulated issues boil down to the principal issue of whether or not petitioner is entitled to a refund or tax credit in the amount of P39,002,873.00, representing excess creditable withholding taxes from petitioner's income from sale of acquired real properties, rental income and commission, among others, for the taxable year 2001.

The proper resolution of the case lies on the correct interpretation and application of the Section 76 of the 1997 National Internal Revenue Code (NIRC). The same is hereunder quoted for ready reference, to wit:

> "**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** gr

cash refund or issuance of a tax credit certificate shall be allowed therefor."

A cursory reading of Section 76 of the NIRC of 1997, as amended, reveals the effect of the choice made by petitioner in the matter of its tax refund pertaining to its 2001 excess creditable withholding tax. Section 76 provides that a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year is allowed two (2) options, namely: (a) to be credited or refunded (either in the form of cash or tax credit certificate) with the excess amount paid; or (b) to carry-over the excess credit to the quarters of the succeeding taxable years. Once the taxpayer has exercised the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years, such option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.

The corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, whether to request a refund or claim for an automatic tax credit for the succeeding taxable year. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[11]

In the present case, petitioner filed through the Electronic Filing and Payment System of the BIR its Annual Income Tax Return[12] for Calendar Year 2001 on April 17, 2002 reflecting a net loss of P17,554,984,402.00 and total tax overpayment of P43,149,354.00, computed as follows:

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[11] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241.*
[12] Exhibit "A".

Sales/ Revenues/Receipts/Fees (Sch.1)		P 5,798,408,717.00
Less:	Cost of Sales/Services (Sch.2/3)	12,652,861,142.00
Gross Income from Operation		P (6,854,452,425.00)
Add:	Non-Operating & Other Income (Sch.4)	4,280,416,277.00
Total Gross Income		P (2,574,036,148.00)
Less:	Deductions (Section E)	14,980,948,254.00
Taxable Income		**P (17,554,984,402.00)**
Tax Rate		32.00
Income Tax		P (5,617,595,008.64)
Tax Due		-
Less:	Tax Credits/Payments	
	Prior Years Excess Credits	P 5,106,339.00
	Creditable Tax Withheld for the First Three Quarters	21,104,284.00
	Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter	16,938,731.00
	Total Tax Credit/Payments	P 43,149,354.00
Tax Payable/Overpayment		**P (43,149,354.00)**

Petitioner indicated therein that the total overpayment of P43,149,354.00 will be carried-over as tax credit next year/quarter. This fact is evidenced by a tick mark in a box corresponding to the choice "To be carried-over as tax credit next year/quarter" in its 2001 Tentative Annual Income Tax Return.[13]

However, on May 31, 2002, petitioner filed its 2001 Amended Income Tax Return[14] declaring a lower net loss of P14,036,868,491.00 and a higher tax overpayment of P43,861,099.00, detailed as follows:

Sales/ Revenues/Receipts/Fees (Sch.1)		P 5,712,334,910.00
Less:	Cost of Sales/Services (Sch.2/3)	12,671,033,218.00
Gross Income from Operation		P (6,958,698,308.00)
Add:	Non-Operating & Other Income (Sch.4)	4,266,311,053.00

[13] Exhibit "A".
[14] Exhibit "B".

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Total Gross Income		P (2,692,387,255.00)
Less: Deductions (Section E)		11,344,481,236.00
Taxable Income		**P(14,036,868,491.00)**
Tax Rate		32.00
Income Tax		P (4,491,797,917.12)
Tax Due		-
Less: Tax Credits/Payments		
Prior Years Excess Credits	P	5,106,339.00
Creditable Tax Withheld for the First Three Quarters		21,104,284.00
Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter		17,650,476.00
Total Tax Credit/Payments	P	43,861,099.00
Tax Payable/Overpayment	**P**	**(43,861,099.00)**

This time, petitioner indicated therein that the total overpayment of P43,861,099.00 will be refunded. This fact is evidenced by a tick mark in a box corresponding to the choice "To be refunded" in its 2001 Amended Annual Income Tax Return.[15]

The Second Amended Annual Income Tax Return for the taxable year 2001 was filed by petitioner on July 29, 2003, reflecting the same net loss of P14,036,868,491.00 but higher tax overpayment of P44,109,212.00, as shown below:

Sales/ Revenues/Receipts/Fees (Sch.1)	P 5,712,334,910.00
Less: Cost of Sales/Services (Sch.2/3)	12,671,033,218.00
Gross Income from Operation	P (6,958,698,308.00)
Add: Non-Operating & Other Income (Sch.4)	4,266,311,053.00
Total Gross Income	P 2,692,387,255.00)
Less: Deductions (Section E)	11,344,481,236.00
Taxable Income	**P (14,036,868,491.00)**
Tax Rate	32.00

[15] Exhibit "B".

Income Tax		P	(4,491,797,917.12)
Tax Due			-
Less:	Tax Credits/Payments		
	Prior Years Excess Credits	P	5,106,339.00
	Creditable Tax Withheld for the First Three Quarters		21,104,284.00
	Creditable Tax Withheld Per BIR Form No.2307 for the Fourth Quarter		17,898,589.00
	Total Tax Credit/Payments	P	44,109,212.00
Tax Payable/Overpayment		**P**	**(44,109,212.00)**

For the overpayment of P44,109,212.00, petitioner indicated in the return[16] its option "To be issued a Tax Credit Certificate."

Petitioner avers that the final amendment corrected its chosen option of carry-over in accordance with the right granted to taxpayers under Section 6 of the NIRC of 1997, as amended, which provides:

> **"SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—***
>
> **(A) *Examination of Returns and Determination of Tax Due. -*** xxx
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> Any return statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* That within three (3) years from the date of such filing, the same may be modified, changed, or amended: *Provided, further,* That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer. xxx"

The Court disagrees with petitioner.

The amendment of returns allowed by Section 6 of the NIRC of 1997, as amended does not extend to changing a taxpayer's chosen option under Section 76 of the same Code. To do so would render Section 76 ineffectual.[17] *gr*

[16] Exhibit "C".

This Court has already ruled in a number of cases[18] 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. It is not necessary that said excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as the taxpayer had elected to carry-over said amount to the succeeding taxable year, that choice is irrevocable for that taxable period.[19]

The "taxable period" referred to under Section 76 is 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.[20]

In this case, when petitioner indicated in its Annual Income Tax Return (*Exhibit "A"*) filed on April 17, 2002 that its total tax overpayment will be carried-over as tax credit next year/quarter, the same became binding. The choice became irrevocable for that taxable period. This is notwithstanding the subsequent modifications of or changes in its choice; first, to have the same refunded, and second, to be issued tax credit certificate.

In the case of **Paseo Realty & Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue**,[21] the Supreme Court made a corroborative finding in this wise:

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[17] *Subic Bay Distribution, Inc. vs. The Commissioner of Internal Revenue, CTA Case No. 6640, November 3, 2004.*

[18] *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.*

[19] *Honda Cars Philippines, Inc. vs. Commissioner of Internal Revenue, CA-G.R. SP No.75365, September 29, 2005.*

[20] *SC&C Cosmetech Co., Inc. vs. Commissioner of Internal Revenue, CTA Case No.6650, June 6, 2005.*

"As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed."

In the recent case of **Philam Asset Management, Inc., vs. Commissioner of Internal Revenue**, [22] the Honorable High Tribunal reiterated said ruling, thus:

"These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention – whether to request a *tax refund* or claim a *tax credit* – by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.

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The carry-over option under Section 76 is permissive. A corporation that is entitled to a *tax refund* or a *tax credit* for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a *tax refund* or issuance of a *tax credit certificate* shall then be allowed.

[21] *G.R. No. 119286, October 13, 2004.*
[22] *G.R. No.156637/162004, December 14, 2005.*

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> Whether the FIFO principle is applied or not, Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes *irrevocable*. Petitioner has chosen that option for its 1998 creditable withholding taxes. Thus, it is no longer entitled to a *tax refund* of P459,756.07, which corresponds to its 1998 excess tax credit. xxx"

In sum, when petitioner had opted to carry-over its 2001 unutilized tax credits, such option became irrevocable. Accordingly, petitioner's alleged 2001 unutilized tax credits can no longer be refunded or be applied for the issuance of a tax credit certificate. Petitioner's only recourse is to carry-over/apply the 2001 unutilized tax credit to the succeeding taxable years until the same is fully utilized.

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

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
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

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