REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
Quezon City

THIRD DIVISION

STABLEWOOD PHILIPPINES, INC., [Formerly: ROLLS-ROYCE PHILIPPINES, INC.],
Petitioner,

-versus-

CTA Case No. 7705

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

DEC 10 2010

x- 11:15 a.m. - x

DECISION

COTANGCO-MANALASTAS *J.:*

Petitioner, by way of this Petition for Review, is seeking refund or issuance of tax credit certificate in the amount of P826,218.14, representing its alleged excess creditable withholding tax (CWT) for the year 2005.

The Facts

Petitioner Rolls-Royce Power Ventures (Philippines), Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with Securities and Exchange Commission (SEC) Registration No. A199813668.[1] Its business address is at Suite 208, 2nd Floor, The Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City.[2] Petitioner's primary purpose is:

> "To conduct research on and to investigate and pursue business opportunities for the development, construction, operation and maintenance of reciprocating engine, steam turbine, gas turbine, water turbine and other power generating plants and related facilities for the conversion of natural gas, heavy fuel oil, coal, distillate, steam, water and other gases into electricity, steam and other forms of energy and commodities including carbon dioxide, in the Philippines, in order to secure information and data for the capital investment, both for its own account and as agent for others, to buy and sell power projects, opportunities and developments for its own account and as agent for others; to maintain executive and operating personnel for the purpose of consulting with and advising others in all matters relating to investments in, and management plans and programs for, power generating plants, and generally, to advise and assist others, under contract or otherwise, in the management, operation and maintenance of all kinds of power generating plants."[3]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR) with authority to act as such, including, among others, the power to decide, approve, and grant refunds or tax credit of overpaid internal revenue taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

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[1] Par. 4. Facts, Joint Stipulation of Facts and Issues (JSFI), docket, p. 115
[2] Exhibit "A"
[3] Par. 5. Facts, JSFI, docket, pp. 115-116

On April 6, 2006, petitioner electronically filed its Annual Income Tax Return (BIR Form No. 1702)[4] for taxable year 2005; item no. 30 of which indicated that petitioner had chosen the option "To be issued a Tax Credit Certificate" for its excess CWT in 2005[5].

An administrative claim for refund of the excess CWT of petitioner for the year 2005 in the amount of P826,218.14 was filed by petitioner with the BIR on January 19, 2007.[6] However, due to the inaction of respondent on petitioner's application for refund, petitioner filed the present Petition for Review before this Court on November 15, 2007.

In the Answer[7] filed on January 4, 2008, respondent raised the following Special and Affirmative Defenses:

> "4) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
>
> 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
>
> 7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended upon which its claimed (*sic*) for refund is premised;
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> 8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim

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[4] Exhibits "D" and "D-1"
[5] Exhibit "D-2"
[6] Exhibit "G"
[7] Docket, pp. 92-94

> (*Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines. 1st Edition, P. 206);*
>
> 9) Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."

On January 17, 2008, a Notice of Pre-Trial Conference was issued by this Court, setting the case for Pre-Trial Conference on February 1, 2008, and requiring both parties to be present at the pre-trial and to file with this Court and serve on the adverse party their pre-trial briefs.[8]

On February 13, 2008, the parties filed their Joint Stipulation of Facts and Issues[9], which this Court approved in a Resolution dated February 18, 2008[10]. In the same Resolution, the pre-trial was considered terminated.[11]

On March 14, 2008, petitioner filed a "Motion for Substitution of Petitioner and Amendment of Caption"[12], praying for the Court to allow the substitution by "Rolls-Royce Philippines, Inc." of "Rolls-Royce Power Ventures (Philippines), Inc." as petitioner in the instant case and the amendment of the caption from "Rolls-Royce Power Ventures (Philippines), Inc. vs. Commissioner of Internal Revenue" to "Rolls-Royce Philippines, Inc. (successor-in-interest of Rolls-Royce Power Ventures (Philippines), Inc.) vs. Commissioner of Internal Revenue". The motion was granted in a

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[8] Docket, p. 96
[9] Docket, pp. 114-118
[10] Incorrectly dated as February 18, 2007
[11] Docket, p. 120
[12] Docket, pp. 134-137

Resolution[13] dated June 2, 2008, upon petitioner's submission of the certified true copy of the Certificate of Filing of the Articles and Plan of Merger and the Articles of Merger[14] entered into by and among "Orca Energy, Inc. (now Rolls-Royce Philippines, Inc.), surviving corporation and Orca Plant Operations, Inc. and Rolls-Royce Power Ventures (Philippines), Inc." and with the Compliance filed by petitioner, the caption of the case was amended to "Rolls-Royce Philippines, Inc. [successor-in-interest of Rolls-Royce Power Ventures (Philippines), Inc.] vs. Commissioner of Internal Revenue".

During trial, petitioner presented testimonial and documentary evidence to prove its case; while respondent's counsel manifested that since the claim is still pending before Revenue District Office (RDO) No. 50 and that there is no report of investigation, he is submitting the case for decision based on the pleadings.[15]

On May 26, 2009, petitioner again filed a Motion to Amend Caption[16] where it prayed that the Court allow the amendment of the caption of the case from "Rolls-Royce Philippines, Inc. [successor-in-interest of Rolls-Royce Power Ventures (Philippines), Inc.] vs. Commissioner of Internal Revenue" to "Stablewood Philippines, Inc., (formerly: Rolls-Royce Philippines, Inc. and successor-in-interest of Rolls-Royce Power Ventures (Philippines), Inc.) vs. Commissioner of Internal Revenue" on the ground that on May 8, 2009, the SEC approved petitioner's change of name.

[13] Docket, p. 217
[14] Docket, pp. 180-215
[15] Docket, p. 664
[16] Docket, pp. 665-668

On July 13, 2009, this Court issued a Resolution[17] granting petitioner's Motion to Amend Caption upon presentation by petitioner of its evidence supporting the said motion. Accordingly, the caption of the case was amended to read as: "Stablewood Philippines, Inc., (formerly: Rolls-Royce Philippines, Inc.) vs. Commissioner of Internal Revenue."

The case was submitted for decision on January 18, 2010, taking into consideration the report of the Records Division dated January 12, 2010, that petitioner and respondent failed to file their respective memorandum.[18]

Issues

The parties submitted the following issues[19] for this Court's resolution:

"A.
WHETHER OR NOT INCOME PAYMENTS FROM WHICH THE TAXES WERE WITHHELD WERE INCLUDED IN PETITIONER'S GROSS INCOME FOR THE YEAR 2005.

B.
WHETHER OR NOT PETITIONER HAS EXCESS CREDITABLE WITHHOLDING TAX IN THE YEAR 2005.

C.
WHETHER OR NOT PETITIONER CARRIED OVER TO THE SUCCEEDING TAXABLE YEARS THE ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX IN THE YEAR 2005.

D.
WHETHER OR NOT PETITIONER'S RIGHT TO CLAIM FOR REFUND OF THE ALLEGED EXCESS/CREDITABLE WITHHOLDING TAX IN THE YEAR 2005 WAS DULY SUBSTANTIATED.

E.

[17] Docket, pp. 698-699
[18] Resolution dated January 18, 2010, docket, p. 781
[19] Docket, p. 117

WHETHER OR NOT PETITIONER IS ENTITLED TO THE REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE SUM OF PHP826,218.14 AS ALLEGED EXCESS/UNUTILIZED CREDITABLE WITHHOLDING TAX ON INCOME PAYMENT IN THE YEAR 2005.

F.

WHETHER OR NOT THE CLAIM FOR REFUND WAS FILED WITHIN THE TWO (2)-YEAR PRESCRIPTIVE PERIOD PRESCRIBED UNDER SECTION 204(C), IN RELATION TO SECTION 229 OF THE TAX CODE"

The above-enumerated issues can be summarized into a single issue, to wit:

> "Whether or not petitioner is entitled to the refund or issuance of tax credit certificate in the amount of P826,218.14, representing petitioner's alleged excess/unutilized creditable withholding tax for taxable year 2005."

Discussion/Ruling

Petitioner claims that it is entitled to a refund in the amount of P826,218.14, allegedly representing its excess/unutilized creditable withholding tax for taxable year 2005.

Pertinent to the resolution of the issue are Sections 76, 204(C), and 229 of the National Internal Revenue Code (NIRC) of 1997, which are all quoted hereunder 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 cash refund or issuance of a tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless **the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.** xxx" (*Emphasis supplied)*

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be

> maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax** or penalty regardless of any supervening cause that may arise after payment; *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied)*

Furthermore, in accord with the Supreme Court ruling in *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[20], petitioner has two years from the filing of the Final Adjustment Return within which to file a claim for refund of excess creditable income taxes withheld both in the administrative and judicial levels.

Records show that petitioner filed its 2005 Annual Income Tax Return on April 6, 2006; thus, it had until April 7, 2008[21], within which to file its administrative and judicial claims. Petitioner filed its administrative claim for refund on January 19, 2007.[22] Then on November 15, 2007, petitioner filed its Petition for Review before this Court. Clearly, both the administrative and judicial claims were filed within the two-year prescriptive period, pursuant to Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended.

However, despite the fact that petitioner timely filed its claim for refund, this Court still has to deny the claim on the basis of Section 76 of the National Internal Revenue Code.

[20] G.R. No. 96322, December 20, 1991
[21] April 6, 2008 fell on a Sunday
[22] Exhibit "G"

Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. These options are (1) filing a tax refund (either in the form of cash or tax credit certificate) or (2) availment of a tax credit.

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for a refund.

The second option works by applying the refundable amount, as shown on the Final Adjustment Return of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. However, once the carry-over option is taken, actually or constructively, it becomes irrevocable for that taxable period.[23] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[24]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[25]

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[23] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007

[24] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009

[25] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.* G.R. No. 112024, January 28, 1999

Based on records, petitioner electronically filed its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2005[26] on April 6, 2006, reflecting an income tax overpayment of P10,591,139.21, computed as follows:[27]

Sales/Revenues/Receipts/Fees	P 16,115,324.00
Less: Cost of Sales/Services	13,352,010.00
Gross Income from Operation	2,763,314.00
Add: Non-Operating and Other Income	393,773.00
Total Gross Income	3,157,087.00
Less: Deductions	5,362,689.00
Taxable Income	(2,205,602.00)
Income Tax Due (32%)	-
Minimum Corporate Income Tax (MCIT)	63,141.74
Less: Tax Credits/Payments	
Prior Year's Excess Credits	3,912,763.42
Creditable Tax Withheld for the First Three Quarters	6,100,429.79
Creditable Tax Withheld for the Fourth Quarter	641,087.74
Total Tax Credits/Payments	10,654,280.95
Tax Payable/(Overpayment)	**P(10,591,139.21)**

According to petitioner, the tax overpayment of P10,591,139.21 consisted of: (a) the amount of P3,849,621.68, representing the balance after deducting the MCIT of P63,141.74 from the prior year's excess credits of P3,912,763.42; and (b) the amount of P6,741,517.53 creditable taxes withheld during the year 2005, as shown below:[28]

MCIT due for 2005		P 63,141.74
Less: Prior Year's Excess Credits		3,912,763.42
Balance of Prior Year's Excess Credits		3,849,621.68
Add: Creditable Taxes Withheld -2005		
Creditable Tax Withheld for the First Three Quarters	P6,100,429.79	
Creditable Tax Withheld for the Fourth Quarter	641,087.74	6,741,517.53
Excess Creditable Taxes Withheld as of December 31, 2005		**P10,591,139.21**

[26] Par. 7, Facts, JSFI, docket, p. 116
[27] Exhibits "B" to "B-4", docket, pp. 314-332
[28] Exhibit "FF", docket, pp. 487-488

Petitioner further alleged that the reported creditable taxes withheld for the four quarters of 2005 amounting to P6,741,517.53 comprised of: (a) the amount of P5,915,299.39, corresponding to the foreign taxes withheld by Pacific Marine and Industrial Corporation; and (b) the amount of P826,218.14, corresponding to the creditable taxes withheld by petitioner's local clients, Orca Energy, Inc. and Rhombus Energy, Inc. in the year 2005.[29] The latter amount is the subject of the present claim for refund/tax credit certificate.

In the parties' Joint Stipulation of Facts and Issues, it was stated that "Item No. 30 of the Annual Income Tax Return for 2005 indicated that the excess CWT in 2005 is 'To be refunded'."[30] However, a scrutiny of the reprint of petitioner's Annual Income Tax Return for taxable year 2005[31] showed that petitioner marked the choice "To be issued a Tax Credit Certificate"[32].

Even though petitioner elected the option "To be issued a Tax Credit Certificate" insofar as the excess tax credits as of December 31, 2005 in the amount of P10,591,139.21 (including the subject claim of P826,218.14) is concerned, petitioner nevertheless carried over the said amount in its Quarterly Income Tax Returns for the first[33], second[34], and third[35] quarters of the succeeding taxable year 2006. Thus, petitioner's original option to refund (in the form of tax credit certificate) the amount of P826,218.14 is actually

[29] Exhibit "FF", docket, p. 488
[30] Docket, p. 116
[31] Exhibit "D", docket, pp. 358-359
[32] Exhibit "D-2", docket p. 359
[33] Exhibit "TT", Item No. 29A, docket, p. 718
[34] Exhibit "UU", Item No. 29A, docket, p. 721
[35] Exhibit "VV", Item No. 29A, docket, p. 724

negated by its very act of carrying over said excess amount to the succeeding taxable quarters of 2006. Having exercised the option of carry-over with respect to its claimed excess tax credits of P826,218.14, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended. Consequently, petitioner cannot seek the refund of the amount of P826,218.14 even if the same was not utilized in the succeeding year 2006. Petitioner's only recourse is to apply the excess amount of P826,218.14 to the succeeding quarters/years until it is fully utilized.

As held by the High Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[36], to wit:

> "Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, 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'."

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED**.

SO ORDERED.

AMELIA COTANGCO-MANALASTAS
Associate Justice

[36] G.R. No. 178490, July 7, 2009

WE CONCUR:

LOVELL R. BAUTISTA
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.

LOVELL R. BAUTISTA
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's Division.

ERNESTO D. ACOSTA
Presiding Justice