REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

IRONCON BUILDERS AND DEVELOPMENT CORPORATION,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. CASE NO. 6502

Members:

CASTAÑEDA, JR., *Chairperson*
UY, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:

JUL 3 1 2006

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AMENDED DECISION

CASTAÑEDA, JR., J.:

On January 5, 2006, this Court promulgated a decision the dispositive portion of which reads as follows:

> **IN VIEW OF THE FOREGOING**, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.
>
> **SO ORDERED.**

Petitioner then filed a motion on January 25, 2006 seeking reconsideration of the said decision on the grounds that:

(1) its subsequent acts clearly manifested its intention to avail of a tax credit certificate and not a carry-over of its excess creditable expanded withholding tax to the succeeding year;

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(2) it presented all the evidence required by Section 76 of the Tax Code for the claiming of a tax refund or credit; and

(3) Section 76 of the Tax Code does not require the presentation of the VAT returns for the succeeding taxable year for the claiming of a tax credit or refund of the excess creditable VAT.

In the questioned decision, this Court held that pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997, petitioner is barred from claiming a refund or a tax credit certificate of the alleged excess creditable withholding taxes as of December 31, 2000 in the amount of P4,799,367.04 since it had already chosen and in fact, exercised the option of carry-over.

In the instant motion, petitioner however insists that it is entitled to the amount of P4,799,367.04 because although it inadvertently indicated in the return that it would carry-over the excess taxes to the succeeding taxable year, in reality, it did not. The amended income tax return for the year 2000 shows that the excess tax payment was never applied/utilized or forwarded to its 2001 business operations. On the contrary, petitioner manifested its intention to request for a tax credit certificate by filing letter claims for the same with the Bureau of Internal Revenue on April 24, 2001 and October 11, 2001.

We find petitioner's arguments devoid of merit.

It is explicitly stated in Section 76 of the NIRC of 1997 that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed ***(PHILAM ASSET MANAGEMENT, INC. vs.***

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COMMISSIONER OF INTERNAL REVENUE, G.R. Nos. 156637/162004, December 14, 2005). 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 (***HONDA CARS PHILIPPINES, INC. vs. COMMISSIONER OF INTERNAL REVENUE, CA-G.R. SP No. 75365, September 29, 2005***). The excess amount shall be carried-over to the succeeding taxable *years* until the same is fully utilized.

In the case at bar, petitioner not only had chosen the option of carry-over but in fact actually applied the excess amount of P4,799,367.04 as of December 31, 2000 against the income tax liability of P690,639.72 as shown in its 2001 income tax return (*Exhibit N*). Further, as already stated in Our decision, the amendment of returns allowed by Section 6 of the NIRC of 1997 does not extend to the changing of a taxpayer's chosen option and actual exercise of such option under Section 76 of the same Code. To allow such amendment would render Section 76 ineffectual.

As to the denial of the remaining portion of its claim in the amount of P18,053,715.64, this Court ruled that out the said amount, only the amount of P9,332,598.00 representing unutilized creditable VAT withheld as of December 31, 2000 appears to be a proper subject of a claim for refund under Sections 204(C) and 229 of the NIRC of 1997 in relation to Section 114(C) of the same Code, petitioner nevertheless failed to prove that the same was not utilized or carried-over in the subsequent quarters of 2001. Thus, this Court held that without convincing proof/s that the claimed amount of P9,332,598.00

was not applied against any output VAT liability in the succeeding quarters of 2001, the same cannot be granted.

Petitioner, in its motion, however contends that Section 76 of the NIRC of 1997 does not mandate the presentation of the final adjustment return of the subsequent taxable year. Petitioner further argues that Section 5 of Revenue Regulations (RR) No. 12-94, amending Section 10(a) of RR No. 6-85, merely provides that claims for refund of income taxes deducted and withheld from income payments shall be given due course only (a) when it is shown on the Income Tax Return that the income payment received is being declared as part of the taxpayer's gross income; and (b) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.

We disagree. First, Section 76 of the NIRC of 1997 and RR No. 12-94 (amending RR No. 6-85) apply to claims for refund/tax credit certificate of *excess creditable income taxes withheld* and not to *excess creditable VAT withheld.* Second, it must be emphasized that the claimed amount of P9,332,598.00 representing unutilized creditable VAT withheld as of December 31, 2000 formed part of the total excess creditable VAT of P18,053,715.64 reflected in petitioner's VAT return as of the end of the fourth quarter of 2000 which was to be carried-over to the succeeding first quarter of 2001. Therefore, without any convincing evidence that the subject creditable VAT withheld of P9,332,598.00 was not utilized or carried-over as credit to the subsequent quarters, this Court cannot grant petitioner's prayer. To grant petitioner's claim for refund, without proof of deduction of the corresponding amount, would be dangerous and tantamount to granting twice the refund herein sought to be refunded, to the prejudice of the Government.

Despite the above arguments of the petitioner, it nonetheless attached to its motion, the VAT returns for the four quarters of 2001 (original and amended) which, were presented for marking in open court on February 16, 2006 and the same were noted to be faithful reproduction of the originals (*Exhibits A to D-1*). Citing the case of ***BPI-Family Savings Bank vs. Court of Appeals, G.R. No. 122480, April 12, 2000,*** petitioner points out that the evidence it submitted before this Court should not be ignored on grounds of strict technicality because the rationale of the rules of procedure is to secure a just determination of every action.

We agree with petitioner on this point.

In the aforecited BPI Family case, petitioner therein proved that indeed it had excess creditable withholding taxes for 1989 and that the only issue left for determination was whether or not the same were applied against its succeeding year's tax liability as may be shown in petitioner's succeeding income tax return for 1990. Finding that petitioner actually incurred a net loss in 1990 and could not have possibly utilized the 1989 excess tax credits, the Supreme Court allowed the attachment of the 1990 income tax return in the petitioner's motion for reconsideration despite the fact that it was not seasonably presented in evidence. As a result thereof, the claim for refund was granted and the decision of the Court of Appeals and this Court, which denied petitioner's claim, was subsequently reversed by the Supreme Court, thus:

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> Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed strictissimi juris against the claimant. **Under the facts of this case, we hold that the petitioner has established its claim. Petitioner may have failed to strictly comply with the rules of procedure; it may have even been negligent**. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.
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> Substantial justice, equity and fair play are on the side of the petitioner. **Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens**. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness. (Emphasis supplied)

Applying the rule above-enunciated that once a taxpayer claiming a refund has clearly established its claim, technicalities in the presentation of evidence should be set aside, this Court considers the VAT returns submitted by petitioner as part of its evidence.

As stated in Our decision, petitioner proved that it had excess creditable VAT withheld as of December 31, 2000 in the amount of P9,332,598.00. A scrutiny of petitioner's amended VAT returns for the succeeding four quarters of 2001 simultaneously filed with the BIR on May 9, 2002 (***Exhibits A-1, B-1, C-1 & D-1***) shows that the excess amount of P9,332,598.00 was no longer carried-over nor applied against any output VAT liability in the said quarters. Consequently, the excess creditable VAT as of the end of the fourth quarter of 2001 in the amount of P9,986,723.71 which was to be carried-over to the succeeding first quarter of 2002 did not include the claimed amount of P9,332,598.00. In other words, with the presentation

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of these returns, petitioner has now sufficiently established that the excess creditable VAT withheld in the amount of P9,332,598.00 was not carried over to the succeeding quarters of 2001 or the succeeding quarters thenceforth. Therefore, this Court reconsiders its decision and grants the amount of P9,332,598.00 to petitioner.

WHEREFORE, in the light of the foregoing, petitioner's Motion for Reconsideration is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** to the petitioner the amount of P9,332,598.00 representing unutilized excess creditable VAT withheld as of December 31, 2000.

SO ORDERED.

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

WE CONCUR:

ERLINDA P. UY.
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

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ATTESTATION

I attest that the conclusions in the above Amended 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
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 Amended 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

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