REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

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RAYTHEON-EBASCO OVERSEAS LTD.– PHILIPPINE BRANCH, Petitioner,	**C.T.A CASE NO. 6458**
	Members:
- versus -	**ACOSTA,** *Chairperson* **BAUTISTA,** and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** AUG 06 2009 ; 10:02 am

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DECISION

ACOSTA, *PJ.*:

Before the Court is an Amended Petition for Review seeking the issuance of tax credit certificate in the amount of TWENTY NINE MILLION FOUR HUNDRED EIGHTY NINE THOUSAND NINE HUNDRED TWENTY SIX PESOS and 30/100 (P29,489,926.30), allegedly representing unutilized excess creditable taxes withheld for taxable year 1999.

Raytheon Ebasco Overseas Ltd. - Philippine Branch (petitioner) is a foreign corporation duly organized under the laws of the United States of America and is licensed to do business in the Philippines under Securities and Exchange Commission (SEC) Certificate of Registration No. A1997-16458 dated December 18, 1997. Its principal office is located at 1615-1616 Tower One, Ayala Triangle, Ayala Avenue, Makati City. Petitioner is engaged in the business of procurement services, project management, construction, wholesale marketing, and sales and contract administration, in connection with industrial projects.[1]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau Internal Revenue (BIR) empowered to perform the duties of his office, including among others, the duty to act upon and approve claims for refund or tax credit as provided by law. He holds office at the 4th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner acted as a general contractor for San Roque Power Corporation and Kepco Ilijan Corporation in two major projects in the Philippines. The first project entered with San Roque Power Corporation involved the construction, procurement, erection, testing, and commissioning of a combined flood control and power generation project in Pangasinan.[2] The other project transacted with Kepco Ilijan Corporation pertained to the construction of a 1200 MW gas-fired combined cycle generating plant situated in Ilijan, Batangas.[3] Petitioner received income payments for services rendered to San Roque Power Corporation and Kepco Ilijan Corporation, which were allegedly subjected to one percent (1%) creditable withholding tax, pursuant to Revenue Regulations No. 2-98.

On April 17, 2000, petitioner filed with the BIR its Annual Income Tax Return[4] for taxable year 1999, reflecting no income tax liability either at the minimum corporate income tax (MCIT) rate of two percent (2%) or regular rate of thirty-three percent (33%) as it incurred a gross loss in the amount of P124,154.00 and net loss in the amount of P83,536,340.00. Consequently, petitioner was unable to utilize the reported creditable taxes withheld in taxable year 1999 in the amount of P29,489,926.00, as shown below:

Sales/Revenues/Receipts/Fees		P	4,418,398,263.00
Less:	Cost of Sales/Services		4,418,522,417.00
Gross Income from Operation		P	(124,154.00)
Add:	Non-Operating & Other Income		679,408.00

[1] Par. 1.0, Stipulation of Facts, Joint Stipulation of Facts and Issues, docket, p. 42.
[2] Exhibit "V".
[3] Exhibit "W".
[4] Exhibit "B".

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Total Gross Income	P	555,254.00
Less: Deductions		84,091,594.00
Taxable Income	P	(83,536,340.00)
Income Tax Due	P	-
Less: Tax Credits		
Creditable Tax Withheld for the First Three Quarters	P	24,858,518.00
Creditable Tax Withheld for the Fourth Quarter		4,631,408.00
Total Tax Credits	P	29,489,926.00
Overpayment	**P**	**29,489,926.00**

In its Annual Income Tax Return[5] for taxable year 2000 filed with the BIR on April 18, 2001, petitioner carried over the excess tax credits of P29,489,926.00 for taxable year 1999. Likewise, the Return showed creditable taxes withheld during taxable year 2000 in the amount of P53,062,744.00. Thus, petitioner's total tax credits amounted to P82,552,670.00, which were partially applied against the income tax due of P1,299,730.00; leaving an income tax overpayment of P81,252,940.00, as shown below:

Sales/Revenues/Receipts/Fees	P	5,673,993,150.00
Less: Cost of Sales/Services		5,720,139,771.00
Gross Income from Operation	P	(46,146,621.00)
Add: Non-Operating & Other Income		144,640,124.00
Total Gross Income	P	98,493,503.00
Less: Deductions		94,431,848.00
Taxable Income	P	4,061,655.00
Income Tax Due	P	1,299,730.00
Less: Tax Credits		
Prior Year's Excess Credits	P	29,489,926.00
Creditable Tax Withheld for the First Three Quarters		30,772,702.00
Creditable Tax Withheld for the Fourth Quarter		22,290,042.00
Total Tax Credits	P	82,552,670.00
Overpayment	**P**	**81,252,940.00**

On April 16, 2002, petitioner filed with the BIR a letter claiming refund of the amount of P81,252,940.00, representing excess/unutilized creditable withholding taxes for taxable years 1999 and 2000.[6]

Respondent's inaction on its claim for refund prompted petitioner to file before this Court a Petition for Review, docketed as C.T.A. Case No. 6458 on April 17, 2002.

[5] Exhibit "D".
[6] Annex "D", Petition for Review, docket, p. 18.

On May 28, 2002, respondent filed his Answer interposing the following Special and Affirmative Defenses:

> "6. The petition states no cause of action as it does not allege the dates when the taxes sought to be refunded were actually paid;
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> 7. Claims for refund are constructed 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 Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);
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> 8. 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 Phil. 466; Union Garment Co. vs. Court of Tax Appeals, 4 SCRA 304);
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> 9. In an action for tax 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 tax refund;
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> 10. It is incumbent upon petitioner to show compliance with the provisions of Section 229 of the National Internal Revenue Code;
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> 11. Taxes paid and collected are presumed to have been made in accordance with the law and regulations, hence not refundable."[7]

In their Joint Stipulation of Facts and Issues[8] filed on October 8, 2002, the parties presented the following issues for this Court's resolution:

> "a) Whether or not Petitioner had selected the option to carryover its excess income taxes from CY 1999 to CY 2000.
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> b) Assuming that Petitioner had selected the option to carryover its excess income taxes from CY 1999 to CY 2000, whether or not Petitioner's selection of the option to carry (sic) over excess income taxes from CY 1999 to CY 2000 is irrevocable only (sic) for CY 1999.
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> c) Whether or not Petitioner's selection of the option to carry (sic) over excess income taxes from CY 2000 to CY 2001 is irrevocable only (sic) for CY 2000.
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> d) Whether or not Petitioner is legally (sic) and factually (sic) entitled to its claim for refund in the amount of P81,252,940 for excess creditable (sic) taxes for CY 1999 and CY 2000."[9]

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[7] Docket, p. 25.
[8] Docket, pp. 42-44.
[9] Docket, pp. 43-44.

On November 12, 2002, respondent moved to dismiss the Petition on the ground of lack of cause of action to claim refund because petitioner opted to carry-over its excess creditable withholding taxes for taxable years 1999 and 2000 to the succeeding years in violation of Section 76 of the National Internal Revenue Code (NIRC) of 1997.[10] Petitioner counters that the Motion to Dismiss was filed out of time.[11]

In the Resolution[12] dated May 23, 2003, this Court agreed with respondent in dismissing the Petition for Review due to lack of cause of action. The Court concluded that petitioner's option to carry-over the excess tax credits for taxable years 1999 and 2000 is irrevocable for the said taxable years. Accordingly, petitioner is no longer allowed to pursue the instant claim for the issuance of tax credit certificate in the amount of P81,252,940, representing its excess tax credits for taxable years 1999 and 2000.

Acting on petitioner's Motion for Reconsideration of the assailed Resolution dated May 23, 2003, the Court issued another Resolution dated October 16, 2003 denying the Motion for lack of merit.[13]

On November 19, 2003, petitioner appealed to the Court of Appeals by way of a Petition for Review, docketed as "Raytheon Ebasco Overseas Ltd. Philippine Branch vs. Commissioner of Internal Revenue, CA–G.R. No. 80296," and raised the following assignments of error: (1) Whether or not the Court of Tax Appeals erred in dismissing the Petition on the basis of a Motion to Dismiss filed out of time and upon a ground not specifically raised by the movant; and (2) whether or not petitioner is precluded from claiming refund of the excess tax credits under Section 76 of the NIRC of 1997.[14]

The Court of Appeals issued a Decision dated April 11, 2005, granting the said Petition for Review and ordering the remand of the case to the Court of Tax Appeals for further study and reception of evidence. The Court of Appeals concluded that lack of cause

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[10] Docket, pp. 48-52.
[11] Docket, pp. 60-65.
[12] Docket, pp. 70-74.
[13] Docket, p. 96.
[14] Docket, pp. 110-141.

of action or failure to state a cause of action in the pleading does not justify the *motu proprio* dismissal of a Petition such as in the instant case. The Court of Appeals likewise interpreted the meaning of the "irrevocability of option to carry-over" as limited only for the year when such option was exercised, so much so that the taxpayer can still refund the unutilized excess tax credits carried over to the succeeding year. The significant portions of the Court of Appeals' Decision dated April 11, 2005 is hereunder quoted for ready reference, to wit:

> "True that the petitioner indeed opted to carry-over its excess tax credits for 1999 and 2000. However, in 1999, the petitioner company suffered from more than eighty three million net loss. Naturally, no income tax is due when there is no income to start with. Hence, even if it chose to have its excess tax credits carried over to the following year, it could not possibly utilize the same. As may be gleaned from the records, the unutilized tax credit of the petitioner around this time amounted to more than eighty one million pesos.
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> In 2000, the petitioner was only able to earn roughly four million in net income. The tax due on the said income was paid by applying it against the eighty two million plus unutilized tax credit of the petitioner company. Resultantly, there was a remaining eighty one million plus still unutilized by the petitioner company which it likewise carried over to the following year.
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> However, in 2001, petitioner company again suffered another net loss amounting to more than five billion pesos such that, again, it incurred no tax liability to which the tax credit may be applied.
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> There is therefore no reason for the BIR to withhold the tax refund which belongs to the petitioner. The government cannot illicitly withhold from taxpayers what is justly due them. xxx
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> xxx xxx xxx
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> Then again, a closer reading of the law would show that even if we construe the provision literally, the 'irrevocability' of the taxpayer's choice of mode of recovery is not absolute inasmuch as it was qualified and followed by the phrase 'for that taxable period'.
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> Seemingly, the proscription lies thus: that once a taxpayer elects to carry-over and apply its excess tax to the following year's tax liability, it could not have this excess refunded *until the entire duration of that taxable year has lapsed or expired.* In any case, the law was not couched in such a way as to authorize the State to forfeit and absolutely bar innocent taxpayers from recovering the unutilized excess tax credits carried over to the succeeding taxable year."

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In accordance with the Court of Appeals' ruling, petitioner filed an Omnibus Motion before this Court on July 19, 2005; primarily praying that the issue on the irrevocability of its choice to carry-over its excess creditable withholding taxes should be considered no longer open to further litigation following the "law of the case" doctrine.[15] However, on October 12, 2005, this Court denied petitioner's Omnibus Motion and reasoned that with the enactment of Republic Act No. 9282 elevating this Court to the same level as that of the Court of Appeals and in order to avoid a collision course with the opinion of the Court of Appeals, it is imperative to proceed with the trial of the case and for the parties to present their respective position on the issues to be determined during the pre-trial conference.[16]

On November 17, 2005, petitioner filed a Motion for Reconsideration of the Resolution dated October 12, 2005.[17] However, during the hearing held on November 18, 2005, this Court denied the said Motion and ordered the case to proceed with the trial proper.[18]

On March 3, 2006, petitioner filed a Petition for Certiorari before the Supreme Court, docketed as "Raytheon-Ebasco Overseas Ltd. - Philippine Branch vs. Court of Tax Appeals (First Division), Commissioner of Internal Revenue, G.R. No. 170929;"[19] while respondent filed his Comment on September 7, 2006.[20] Petitioner subsequently filed a Reply on December 27, 2006.[21]

On August 16, 2006, petitioner filed a Manifestation and Urgent Motion before this Court for the suspension of the proceedings in the instant case, considering that the Petition for Certiorari filed with the Supreme Court allegedly involves the interrelated issue of whether this Court may still require the submission of evidence as well as rule on the legal right of petitioner to claim a tax credit certificate, representing its excess creditable

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[15] Docket, pp. 270-275.
[16] Docket, pp. 281-284.
[17] Docket, pp. 287-296.
[18] Docket, p. 353.
[19] Docket, pp. 398-412.
[20] Docket, pp. 631-635.
[21] Docket, pp. 644-658.

withholding taxes for taxable years 1999 and 2000; notwithstanding the fact that such credits were carried over to succeeding taxable years.[22] This Court however denied the said Motion in open court on August 17, 2006, since no restraining order was issued by the Supreme Court.[23]

On June 4, 2007, petitioner manifested before this Court that it is withdrawing its claim for refund in the amount of P51,763,014.00 for taxable year 2000, because respondent administratively granted its claim for refund for the said year.[24]

On June 14, 2007, this Court ordered petitioner's counsel to amend the Petition for Review in view of the partial administrative grant of refund by respondent.[25]

In the Resolution dated July 9, 2007, this Court admitted petitioner's Amended Petition for Review filed on June 29, 2007 that requests the issuance of tax credit certificate in the reduced amount of P29,489,926.30, representing its accumulated excess creditable withholding taxes for taxable year 1999.[26] On the other hand, respondent manifested that that he will be adopting his original Answer to petitioner's Amended Petition for Review.[27]

Petitioner filed a Motion before the High Tribunal requesting an early resolution of its Special Civil Action for Certiorari under Rule 65 of the Rules of Court,[28] which the Supreme Court merely noted in the Resolution dated October 8, 2007.[29]

During trial, petitioner proffered testimonial and documentary evidence;[30] while respondent merely submitted the case for decision based on the records.[31]

The case was submitted for decision on August 8, 2008, considering petitioner's Memorandum[32] filed on July 31, 2008, sans respondent's Memorandum.

[22] Docket, pp. 611-614.
[23] TSN, August 17, 2006, page 8.
[24] Docket, pp. 674-675.
[25] Docket, p. 680.
[26] Docket, 714.
[27] Docket, p. 715.
[28] Docket, pp. 726-730.
[29] Docket, p. 748-A.
[30] Docket, pp. 733-744.
[31] Docket, p. 765.
[32] Docket, pp. 778-784.

The resolution of the issue of petitioner's entitlement to the issuance of tax credit certificate for its unutilized excess tax credits in taxable year 1999 hinges on the proper interpretation of Section 76 of the NIRC of 1997, which states:

> "**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.
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> 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*)

A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry-over the excess credit or (2) to apply for the issuance of tax credit certificate or to claim cash refund. If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period.[33]

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.[34]

In the present case, while petitioner did not mark any option in its Income Tax Return[35] for 1999, petitioner however reflected the claimed 1999 excess tax credits of

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[33] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007.
[34] Id.
[35] Exhibit "B", Part II, line 31.

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P29,489,926.30[36] as "Prior Year's Excess Credits" in its Income Tax Return for 2000. Unable to utilize the 1999 excess tax credits in the year 2000, petitioner likewise carried the same in the year 2001.[37] These subsequent acts of petitioner reveal that it has effectively chosen the option of carry-over as regards the excess tax credits of P29,489,926.00 for 1999.[38]

Section 76 of the NIRC of 1997 is clear and unequivocal. Once the carry-over option is chosen, actually or constructively, it becomes irrevocable for that taxable period and no application for tax refund or issuance of tax credit certificate shall then be allowed.[39]

Petitioner maintains that the Court of Appeals[40] had already ruled that the irrevocability of the "option to carry-over" the excess tax credit is qualified by the phrase "for that taxable period," which means that the option to carry-over applies only to the immediately succeeding taxable year. There is therefore no prohibition in seeking a refund or an issuance of tax credit certificate following the lapse of the taxable year to which it was carried over. In other words, after taxable year 2000, petitioner has the option to file a claim for refund or issuance of tax credit certificate for the income tax overpayment shown in its Annual Income Tax Return for taxable year 1999.

This Court disagrees.

The phrase "taxable period" refers to the taxable year when petitioner derived the excess income tax payment and elected the option to carry-over, which in the instant case refers to taxable year 1999. In a Resolution dated March 11, 2003 in the case of **United International Pictures AB vs. Commissioner of Internal Revenue**[41], this Court elucidated as follows:

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[36] P29,489,926.00 in the 1999 Income Tax Return.
[37] Exhibit "RR", Part II, line 26A.
[38] Exhibit "D", Part II, line 26A.
[39] Philam Asset Management, Inc . vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[40] Raytheon Ebasco Overseas Ltd., Philippine Branch vs. Commissioner of Internal Revenue, CA-G.R. No. 80296, April 11, 2005; Commissioner of Internal Revenue vs. Citicorp Capital Philippines, Inc., CA-GR SP No. 68554, April 12, 2002.
[41] CTA Case No. 6240.

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"xxx, the phrase 'taxable period' should refer to the year 1998 when petitioner incurred the excess income tax payment and at the same time elected the option '[T]o be carried as tax credit next year.' To apply the phrase 'taxable period' to the year 1999 when the option was exercised would contradict the provisions of Section 76 of the 1997 Tax Code, *supra*, because the application of excess credit is clearly 'against income tax due for the taxable quarters of the ***succeeding*** ***taxable years***'. Thus, the use of the phrase 'succeeding taxable years' implies that once the option to carry-over is made, the law already allows a perpetual carry-over since a change from carry-over to refund is no longer permitted. The rational interpretation, therefore, is to apply the phrase 'taxable period' to the year when the 'option to carry-over' was made.

To have a better interpretation of the aforementioned law, let us examine the provisions of Section 69 of the then Tax Code which was amended by Sec. 76 of the 1997 Tax Code:

> **Section 69.** ***Final Adjustment Return.*** – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
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> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
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> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year. (Emphasis ours).

From the above, it is clear to us that while the former law merely allows the credit of excess quarterly income taxes paid only up to the succeeding taxable year, the amendment now allows a perpetual carry-over precisely because the option, once made, is already irrevocable. Under the said Section 69, after the carry-over is made in the succeeding year, the excess credit may already be refunded. If we are to adopt the interpretation advanced by petitioner, then the amendment would be put to naught and there will be no difference between Section 69 of the old Tax Code and Section 76 of the new code.

Jurisprudence tells us that if a taxpayer's final adjustment return shows a refundable amount, such amount may be credited only against the income tax liability of the succeeding taxable year. xxx However, the said excess payment is no longer allowed to be carried over to more than the following year. xxx The only remedy allowed by law to recover the said excess payment is by filing of an administrative and/or judicial claim for refund within the two-year prescriptive period allowed under Section 230 of the then Tax Code xxx.

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> Probably aware of the inequity it may cause to a taxpayer who fails to file a written claim for refund, our lawmakers, in enacting Section 76 of the 1997 Tax Code, allowed the perpetual application of the excess payment to more than the succeeding taxable year xxx. This in effect made the excess income tax payment of a particular period available as an automatic tax credit against the income tax due for the succeeding taxable years until the same is fully utilized. However, the option is not without any restriction. Our framers regulated the same by indicating that **such option shall be considered irrevocable for that taxable period**. This directive is viewed in the light of the indecisiveness of the taxpayers in choosing their option regarding the amount reflected as refundable in their respective income tax return. It is often observed that the taxpayers are in the habit of amending their income tax returns for the purpose of changing their option from 'to be carried-over' to 'to be refunded' or vice-versa. Thus, Section 76 of the 1997 Tax Code addressed this problem when it mandated that **'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**."

The above interpretation finds support in the case of **Systra Philippines, Inc. vs. Commissioner of Internal Revenue**[42], wherein the High Court ruled:

> "(T)he phrase 'such option shall be considered irrevocable for that taxable period' means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked.
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> The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.
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> In this case, it was in the year 2000 that petitioner derived excess tax credits and exercised the irrevocable option to carry them over as tax credits for the next taxable year. Under Section 76 of the Tax Code, a claim for refund of such excess credits can no longer be made. The excess credits will only be applied 'against income tax due for the taxable quarters of the succeeding taxable years.'
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> The legislative intent to make the option irrevocable becomes clearer when Section 76 is viewed in comparison to Section 69 of the (old) 1977 Tax Code:
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> xxx xxx xxx
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> Under Section 69 of the 1977 Tax Code, there was no irrevocability rule. Instead of claiming a refund, the excess tax credits could be 'credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year,' that is, *the immediately following year only.*

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[42] G.R. No. 176290, September 21, 2007.

> In contrast, Section 76 of the present Tax Code formulates an irrevocability rule which stresses and fortifies the nature of the remedies or options as alternative, not cumulative. It also provides that the excess tax credits 'may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable **years**' until fully utilized."

It is not necessary that the excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as petitioner had elected to carry-over the 1999 excess tax credits of P29,489,926.30 to the succeeding taxable year, that choice is irrevocable for that taxable period and petitioner is precluded from filing an application for refund or issuance of tax credit certificate corresponding to the amount of P29,489,926.30.

Contrary to petitioner's assertion that it would be unjust to bar the claim for refund, the amount of P29,489,926.30 will not be forfeited in favor of the government but will remain in the account of petitioner. Petitioner is not left without recourse since the excess amount of P29,489,926.30 may be carried over to succeeding taxable years and credited against its future income tax liabilities until the same is fully utilized.

Lastly, considering that the issue on the "irrevocability of the option to carry-over" has been finally put to rest by the Supreme Court in the cases[43] earlier cited, petitioner's reliance on the Court of Appeals' Decisions in the cases of **Raytheon Ebasco Overseas Ltd., Philippine Branch vs. Commissioner of Internal Revenue**[44] and **Commissioner of Internal Revenue vs. Citicorp Capital Philippines, Inc.**[45], is misplaced. Rulings of the Court of Appeals are only persuasive in nature and can have no mandatory effect.[46] In the case of **Systra Philippines, Inc. vs. Commissioner of Internal Revenue**[47], the Supreme Court emphasized that:

> "Moreover, petitioner can neither properly nor successfully rely on the decisions of the CA in the *Bank of the Philippine Islands* and *Raytheon Ebasco Overseas Ltd. Philippine Branch* cases. First, the CA and the CTA are now of

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[43] Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[44] *Supra.*
[45] CA-G.R. SP No. 68554, April 12, 2002
[46] Paras, Civil Code of the Philippines, Annotated, Vol. I, 2008 Edition, pp. 65-66.
[47] *Supra.*

the same level pursuant to RA 9282.[48] Decisions of the CA are thus no longer superior to nor reversive of those of the CTA. xxx Finally and most importantly, while a ruling of the CA on any question of law is not conclusive on this Court, all rulings of this Court on questions of law are conclusive and binding on all courts including the CA. All courts must take their bearings from the decisions of this Court."

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

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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
Chairman, First Division

[48] An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court With Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.