REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

-versus-

ISUZU PHILIPPINES CORPORATION,
Respondent.

C.T.A. E.B. No. 168
(C.T.A. Case No. 6079)

Present:

ACOSTA, P.J.,
CASTANEDA, JR.,
BAUTISTA
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

Promulgated:

JUL 27 2006 ~~Apolinario~~

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DECISION

PALANCA-ENRIQUEZ, J.:

THE CASE

This is a Petition for Review filed by the Commissioner of Internal Revenue (hereafter "petitioner CIR") under *Section 11 of Republic Act No. 9282 (an Act Expanding the Jurisdiction of the Court of Tax Appeals),* in relation to *Rule 43 of the Rules of Court,* which seeks the reversal of the Decision dated June 17, 2005, granting the Petition for Review and the Resolution dated February 3, 2006, denying Isuzu Philippines Corporation's (hereafter "respondent Isuzu") Motion for Reconsideration of the decision. The respective dispositive portions of the Decision and Resolution read as follows:

> "**WHEREFORE**, in view of all the foregoing, the instant petition is hereby **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of **P45,928,578.71** representing its overpaid quarterly income tax and excess or unutilized creditable withholding taxes for the taxable year 1997.
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> **SO ORDERED.**"
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> "**WHEREFORE**, respondent's 'Motion for Reconsideration' is hereby **DENIED** for lack of merit.
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> **SO ORDERED.**"

THE FACTS

The facts are not in dispute:

Petitioner CIR is the government official vested by law to decide, approve and grant claims for refund or tax credit of erroneously or

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excessively paid taxes, with office address at BIR National Office Building, Diliman, Quezon City.

Respondent Isuzu Philippines Corporation is a domestic corporation duly organized and existing under and by virtue of Philippine laws, with principal office at 114 Technology Avenue, Laguna Technopark, Biñan, Laguna. It is engaged in the business of assembling, manufacturing, designing and sale of motor vehicles, parts, accessories, tools, and equipment.

On April 15, 1997, respondent filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return for the calendar year 1996, declaring excess/unutilized creditable withholding taxes in the amount of P4,623,685.00, with an indication that said amount is "to be applied as credit to next year."

On May 30, 1997, respondent filed its Quarterly Income Tax Return for the first quarter of calendar year 1997, showing a payment of income tax in the amount of P29,155,375.03. On April 29, 1998, respondent filed its Annual Income Tax Return for the calendar year 1997, reporting a net loss in the amount of P177,006,063.00, computed as follows:

Gross Income	P 521,534,740.00
Less: DEDUCTIONS	698,540,793.00
TAXABLE LOSS	P(177,006,053.00)

For the same calendar year, respondent likewise declared excess/unutilized creditable withholding taxes in the total amount of P16,773,204.00, broken down as follows:

First Quarter	P 3,966,570.00
Second Quarter	5,068,325.00
Third Quarter	5,909,978.00
Fourth Quarter	1,828,331.00
TOTAL	P16,773,204.00

Respondent's 1997 Income Tax Return also reflected an overpaid quarterly income tax in the sum of P29,155,375.00 for its first quarter operations.

Respondent indicated in the said Annual Corporate Income Tax Return for calendar year 1997 that it would carry forward as tax credit for taxable year 1998, the amount of P50,552,264.00 representing its overpaid quarterly income tax and excess/unutilized creditable withholding taxes for calendar years 1996 and 1997, computed as follows:

Year 1996 excess credit	P 4,623,685.00
First Quarter of 1997	29,155,375.00

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Overpayment/Excess unutilized creditable withholding taxes	16,773,204.00
TOTAL	P50,552,264.00

On April 30, 1999, respondent filed its Annual Income Tax Return for the calendar year 1998. The said return showed that respondent was again in a net loss position amounting to P726,246,634.00.

Consequently, on April 7, 2000, respondent filed an administrative claim for refund/issuance of a tax credit certificate with the BIR in the amount of P45,928,579.00 representing overpaid quarterly income tax and excess/unutilized creditable withholding taxes for taxable year 1997, broken down as follows:

Payment for the first quarter	P29,155,375.00
Tax withheld for the first quarter	3,966,570.00
Tax withheld for the second quarter	5,068,325.00
Tax withheld for the third quarter	5,909,978.00
Tax withheld for the fourth quarter	1,828,331.00
TOTAL	P45,928,579.00

As the two (2)-year prescriptive period was about to lapse, respondent filed the instant judicial claim on April 14, 2000.

In his Answer filed on June 1, 2000, respondent raises the following Special and Affirmative Defenses:

"3. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by respondent's Bureau;

4. The amount of P45,928,579.00 being claimed by petitioner representing alleged unutilized creditable withholding taxes for calendar year 1997 was not properly documented;

5. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund/credit, and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;

6. Petitioner must show that it has complied with the provisions of Sections 204(C) and 229 of the Tax Code, as amended;

7. Petitioner miserably failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

8. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95) and as such, they are looked upon with disfavor (Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121)."

After trial on the merits, the Second Division of this Court rendered judgment in the terms earlier set forth.

Not satisfied, petitioner CIR filed a Motion for Reconsideration, which the Second Division of this Court denied in its Resolution dated February 3, 2006.

ISSUE

Hence, the instant Petition for Review raising the following sole issue, to wit:

WHETHER OR NOT SECTION 76 OF THE 1997 TAX CODE IS APPLICABLE TO THE CASE AT BAR.

In support of his theory, petitioner CIR argues that:

THIS HONORABLE COURT'S ORIGINAL DIVISION ERRED IN HOLDING THAT SECTION 76 OF THE 1997 TAX CODE, PROVIDING THAT IF A CORPORATION EXERCISES THE OPTION TO CARRY-OVER THE EXCESS TAX CREDIT TO THE SUCCEEDING TAXABLE YEARS SUCH OPTION SHALL BE CONSIDERED IRREVOCABLE FOR THE TAXABLE PERIOD AND NO APPLICATION FOR CASH REFUND OR TAX CREDIT CERTIFICATE SHALL BE ALLOWED, IS NOT APPLICABLE TO THE CASE AT BAR.

On March 28, 2006, We required respondent Isuzu to file its comment on the petition, within ten (10) days from notice. On April 11, 2006, it filed its "Comment/Opposition to Petition For Review". Hence, the Petition is now deemed submitted for resolution.

THE COURT *EN BANC'S* RULING

The petition is without merit.

The sole issue posed for resolution by the Court *En Banc* is whether or not the Second Division of this Court erred in ruling that

Section 69 of the 1977 Tax Code, as amended, is the law applicable to the case at bar.

Petitioner CIR contends that when respondent Isuzu filed its 1997 income tax return on April 29, 1998 and signified its intention to carry over the excess tax credits to the following year 1998, *Section 76 of the 1997 Tax Code* was already in effect. Hence, *Section 76 of the 1997 Tax Code* is the law applicable at the time respondent exercised its option to carry over the excess tax credits.

On the other hand, respondent Isuzu invoking the basic rule that laws shall have prospective application unless provided otherwise (*Santos vs. Sandiganbayan, 347 SCRA 386*) maintains that the *Tax Code of 1997* can not be made to apply to cases filed prior to January 1, 1998. Thus, it is the *1977 Tax Code, as amended*, that is applicable to the case at bar.

We rule for respondent Isuzu.

A perusal of the records shows that the subject claim for refund covers the calendar year ended December 31, 1997. Petitioner's contention that the *1997 Tax Code* is the law applicable since it was already effective when respondent Isuzu filed its 1997 income tax return on April 29, 1998 is devoid of merit.

Section 8 of R.A. 8424 (An Act Amending the National Internal Revenue Code, as amended, and For Other Purposes) explicitly provides:

> "SEC. 8. Effectivity. – this Act shall take effect on January 1, 1998."

Pursuant to the above provision, the *1997 Tax Code* took effect only on January 1, 1998, and no retroactive application can be had if the law is silent on the matter. It is well-settled that laws shall have prospective application, unless provided otherwise.

Section 69 of the 1977 Tax Code, as amended, expressly provides:

> "SEC. 69. *Final Adjustment Return.* – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total taxable income for the preceding calendar year or fiscal year. If the sum of the quarterly tax payments made during said taxable year is not equal to the total tax due on the entire taxable 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 tax credit or refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return

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> may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

The law is very clear. Pursuant to the aforecited provision, if the corporate taxpayer is not able to utilize its overpaid income tax in the succeeding taxable year, the corporate taxpayer is entitled to the cash refund of the excess amount or in the alternative be issued a tax credit certificate for said amount. However, *Section 69* also expressly provides that the taxpayer may carry over any of its unutilized income tax only to the next succeeding taxable year.

In this regard, petitioner CIR contends that since respondent Isuzu carried over to 1999 the total 1998 excess creditable withholding taxes including the said amount of P45,928,579.00 (the 1997 excess creditable withholding taxes, which is the subject of the present claim for refund), respondent is not eligible to apply for a tax refund or issuance of a tax credit.

We find no merit to this contention.

A careful perusal of respondent's income tax returns shows that respondent carried over its 1996 refundable tax of P4,623,685.00 and 1997 refundable tax of P45,928,579.00 to the succeeding year of 1998.

Respondent also chose to carry over, as tax credit, to the next year/quarter in its 1998 Income Tax Return its overpayments by marking the box corresponding to such choice.

Upon examination, however, of respondent's 1999 Corporate Annual Income Tax Return, this Court finds that only the amount of P16,022,971.00, representing the 1998 excess credit was carried forward to its 1999 income tax liability (*Exhibit "C-4")*. Details of the 1999 Income Tax Return are herein below shown as follows:

Gross Income	P 440,566,620.00
Less: Deduction	1,152,138,381.00
Taxable Income	P (711,571,761.00)
Income Tax Due	P NIL
Less: Tax Credits/Payments	
(a) Prior year's excess credit	16,022,971.00
(b) Tax payments for the 1st & 3rd Qtrs.	12,255,528.00
(c) Creditable tax withheld	6,448,636.00
TAX PAYABLE/REFUNDABLE	P (34,727,135.00)
	(*Exhibit "C"*)

From the records, it is clear therefore that respondent carried over to taxable year 1999 only the amount of P16,022,971.00, which corresponds to the current 1998 excess creditable withholding taxes.

As aptly ruled by the Second Division of this Court:

"It is thus crucial to determine the applicable law at the time that petitioner filed its 1997 income tax return. Is it

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Section 69 of the 1977 National Internal Revenue Code (NIRC), as amended, or is it Section 76 of the 1997 National Internal Revenue Code (NIRC)?

The instant petition involves petitioner's claim for tax refund of its alleged overpaid quarterly income tax and excess/unutilized creditable withholding taxes for the taxable year ended 1997. The Tax Code of 1997 took effect only on January 1, 1998. Following the basic rule that laws shall have prospective application unless provided otherwise (*Santos vs. Sandiganbayan, 347 SCRA 386*), the Tax Code of 1997 can not be made to apply to cases prior to January 1, 1998 as in the present case. Thus, it is the 1977 Tax Code, as amended, that is applicable in this case.

Section 69 of the 1977 National Internal Revenue Code, as amended, reads:

> **SEC. 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:
>
> (a) Pay the tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In the 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 <u>may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.</u>

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Clearly, the above law provides that any excess of the total quarterly payments over the actual income tax computed in the adjustment or final corporate income tax return, shall either be refunded to the corporation or may be credited against the estimated quarterly income tax liabilities for the quarters of the succeeding taxable year.

Unlike the provisions of Section 76 of the Tax Code of 1997, Section 69 above-cited does not contain any irrevocability clause relative to the option to carry over and it allows the carry over of excess income taxes to the taxable quarters of the succeeding taxable year only.

On the other hand, Section 76 allows the carry over of excess tax credits to the taxable quarters of the succeeding taxable years, and requires that the corporation signify its intention in its annual income tax return, whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year.

In the case at bar, petitioner signified its intention to carry over the excess credit of P50,552,264.00 for the year 1997 by marking the appropriate option box (*Exhibit A*). For the year 1998, petitioner actually carried over the same amount of P50,552,264.00 as prior year's excess credits and also opted to carry over as next year's tax credit the amount of P66,575,235.00 (*Exhibit B*).

Pursuant to Section 69 of the NIRC, as amended, petitioner opted to carry over its 1997 excess income taxes to the year 1998. Despite the choice to carry over however, petitioner failed to actually apply the same excess credits against any tax liabilities for the year 1998 since it was in a net loss position. Thus, We hold that petitioner may still claim the overpaid income tax and unutilized creditable withheld taxes for the year 1997 because Section 69 allows the crediting of excess credits against the succeeding taxable

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> quarters of the succeeding taxable year only, in this case, up to 1998 only.
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> It is noteworthy that for the year 1999, petitioner no longer carried over the said amount of P66,575,235.00 as prior year's excess credits, which it originally intended to carry over (*Exhibit 'C', Records, pp. 122-124*). Moreover, it was again in a net loss position." (Underlining supplied.)

Finding no reversible error, the Court *En Banc* has no alternative but to sustain the findings and conclusion of the Second Division of this Court granting the Petition.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED DUE COURSE,** and accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

OLGA PALANCA-ENRIQUEZ
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

JUANITO C. CASTAÑEDA, JR.
Associate Justice

LOVELL R. BAUTISTA
Associate Justice

ERLINDA P. UY
Associate Justice

CAESAR A. CASANOVA
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, it is hereby certified that the above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice