Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

ASIANBANK CORPORATION (presently known as GLOBAL BUSINESSBANK), Petitioner,	CTA CASE NO. 6095 For: Refund or Issuance of a Tax Credit Certificate
-versus-	Present: CASTAÑEDA, JR., Chairperson CASANOVA, and MINDARO-GRULLA, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 21 2011 4:10 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed by petitioner AsianBank Corporation (or AsianBank for brevity, now known as Global Business Bank) against respondent Commissioner of Internal Revenue (CIR) for the Court in Division, pursuant to Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a), of the Revised Rules of the Court of Tax Appeals (RRCTA).

Petitioner seeks for the refund or issuance of a tax credit certificate in the amount of P2,803,609.00, allegedly representing petitioner's overpaid income tax for the taxable year 1997.

Petitioner AsianBank Corporation is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office located at AsianBank Center, Sen. Gil J. Puyat Avenue, Makati City.

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with the authority to act as such, including the power to decide, approve, and grant claims for issuance of tax credit certificate or refund of overpaid internal revenue taxes as provided by law. Respondent holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 15, 1998, petitioner filed with the BIR its Corporate Annual Income Tax Return[1] for the taxable year 1997, reporting a net loss in the amount of P16,163,420.00 and a refundable amount of P2,803,609.00.

On May 4, 1999, petitioner filed its Amended Annual Income Tax Return[2] for the taxable year 1998, reflecting therein a net loss of

[1] Exhibit "A", Docket, pp. 97-99; Par. 1.01, Statement of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 79.
[2] Exhibit "E", Docket, pp. 111-112.

P21,716,831.00[3] and P6,666,387.00[4] minimum corporate income tax. Petitioner allegedly paid in full the amount of P6,666,387.00 minimum corporate income tax instead of deducting prior year's (1997) excess credits of P2,803,609.00[5] and creditable taxes withheld in 1998 of P349,436.00. Since it purportedly paid an amount of P6,666,387.00, instead of availing the benefit of prior year's excess credits, petitioner now claims that it failed to utilize the prior year's (1997) excess tax credits of P2,803,609.00.

On April 17, 2000, petitioner filed an administrative claim with the Bureau of Internal Revenue for the refund of its overpaid income taxes for the taxable year 1997.[6]

On even date, petitioner filed with this Court the instant Petition for Review.

On May 19, 2000, respondent filed an Answer[7] interposing the following Special and Affirmative Defenses:

> "4. The alleged claim for refund is subject to administrative investigation/examination by the respondent.

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3 Exhibit "E-1", Docket, p. 112.
4 Exhibit "E-3", Docket, p. 112.
5 Exhibit "E-4", Docket, p. 111.
6 Par. 1.02, Statement of Facts, JSFI, docket, p. 79 and Annex "G", Petition for Review, Docket, pp. 46-48.
7 Docket, pp. 55-57.

5. Petitioner failed to show that the taxes subject of the case at bar were erroneously or illegally collected.

6. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

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

8. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204(c) and 229 of the National Internal Revenue Code, as amended.

9. 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, G.R. No. L-13509, January 30, 1970, 31 SCRA 95***) and as such, they are looked upon with disfavor (***Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121***)."

During trial, petitioner presented its sole witness, Mr. Edwin Cruz.[8]

On September 28, 2000, petitioner filed its Formal Offer of Evidence[9] to which respondent submitted a comment, and with their admission by this Court in its Resolution[10] dated October 25, 2000, petitioner is deemed to have formally rested its case.

The documentary evidence formally offered are as follows:

Exhibits	Description
A	BIR Form No. 1702 or the Corporation Annual Income Tax Return of ASIANBANK CORPORATION for calendar year ending December 31, 1997.

[8] Minutes of Hearing, Docket, p. 85.
[9] Docket, pp. 90-96.
[10] Docket, p. 150.

A-2	Portion of page one of Exhibit "A" wherein the word "NIL" appears opposite the caption Tax Due of the Petitioner for the calendar year ending December 31, 1997.
A-3	Portion of Exhibit "A" showing the schedule of gross income of the Petitioner for calendar year 1997.
A-3-a	Section C of Exhibit "A" showing a more detailed schedule of gross income of the Petitioner for calendar year 1997.
A-4	Section E of Exhibit "A" showing the amount of P2,803,609.00 representing Tax Credits/Payments for calendar year 1997.
A-4-a	Portion of Exhibit "A-4" showing the amount of quarterly corporate tax payments made during the calendar year 1997 amounting to P2,794,268.00.
A-4-b	Portion of Exhibit "A-4" showing the amount of creditable tax withheld for calendar year 1997 amounting to P9,341.00.
B	BIR Form No. 1702Q or the Corporation Quarterly Income Tax Return of AsianBank for the first quarter of 1997 showing the payment of the corporate quarterly tax amounting to P2,794,267.69.
B-1	BIR Form No. 1702Q or the Corporation Quarterly Income Tax Return of AsianBank for the second quarter of 1997 showing that no corporate quarterly tax is due on the said quarter.
B-1-a	Portion of Exhibit "B-1" wherein the rubber stamp "NO PAYMENT RECEIVED" appears.
B-1-b	Signatures of Asterio L. Favis, Jr. and Ma. Lucila C. Cruz.
B-1-c	Portion of Exhibit "B-1" wherein the rubber stamp "Received August 15, 1997" by the BIR appears.
B-2	BIR Form No. 1702Q or the Corporation Quarterly Income Tax Return of AsianBank for the third quarter of 1997 showing that no corporate quarterly tax is due on the said quarter.

B-2-a	Portion of Exhibit "B-2" wherein the rubber stamp "NO PAYMENT RECEIVED" appears.
B-2-b	Signature of Asterio L. Favis, Jr.
B-2-c	Portion of Exhibti "B-2" wherein the rubber stamp "Received November 21, 1997" by the BIR appears.
B-3	Portion of Exhibit "B" which shows the machine validation of AsianBank Corporation evidencing the payment by the Petitioner of its quarterly tax for the first quarter of 1997 amounting to P2,794,267.69.
B-4	Signature of Asterio L. Favis, Jr. and Dante T. Fuentes
B-5	Portion of Exhibit "B" wherein the rubber stamp "Received May 23, 1997" by the BIR appears.
C	BIR Form No. 1743-750 (Certificate of Creditable Tax Withheld at Source) filed by MAPFRE ASIAN INSURANCE CORPORATION for the account of AsianBank for taxable year 1997 covering the remittance of creditable withholding tax in the amount of Three Thousand Seven Hundred One Pesos and Thirty Nine Centavos (P3,701.39).
D	BIR Form No. 1743-750 (Certificate of Creditable Tax Withheld at Source) filed by MAPFRE ASIAN INSURANCE CORPORATION for the account of AsianBank for taxable year 1997 covering the remittance of creditable withholding tax in the amount of Five Thousand Six Hundred Forty Pesos (P5,640.00).
E	BIR Form 1702 or the Amended Corporation Annual Income Tax Return for Calendar Year 1998 of Petitioner.
E-1	Item 25C of Exhibit "E" showing the amount of P21,716,831.00 representing the Loss of AsianBank for calendar year ending December 31, 1998.
E-2	Item 27 of Exhibit "E" showing the amount of income due (normal rate) for calendar year ending December 31, 1998.
E-3	Item 28 of Exhibit "E" showing the amount of P6,666,387.00 representing the Minimum Corporate

	Income Tax (MCIT) Due of AsianBank for calendar year ending December 31, 1998.
E-4	Item 13A of Exhibit "E" showing the amount of P2,803,609.00 representing prior year's excess credits for calendar year ending December 31, 1998.
E-5	Item 14 of Exhibit "E" showing the amount of P3,153,045.00 representing the total tax credits of AsianBank for calendar year ending December 31, 1998.
E-6	Item 17 of Exhibit "E" showing the amount of P3,513,342.00 representing the amount of tax payable for calendar year ending December 31, 1998.
E-7	Signature of Roberto F. Yap.
E-8	Rubber stamp received on March 4, 1999 by the BIR-Large Taxpayers' Division.
F	BSPFTI Transaction Register showing the payment of P6,656,387.00 for calendar year ending December 31, 1998.
F-1	BSPFTI Transaction Register showing the payment of P10,000.00 for calendar year ending December 31, 1998.
H	BIR Form No. 1702 or the Corporation Annual Income Tax Return of AsianBank for calendar year ending December 31, 1999.
H-1	Item 26A of Exhibit "H" wherein no amount appears opposite the caption "Prior Year's Excess Credits".
H-2	Signature of Mr. Edward S. Go and Ms. Edita M. Cruz.
H-3	Rubber stamp received on April 14, 2000 by the BIR-Large Taxpayer's Assistance Division.

On November 22, 2000 hearing, respondent's counsel manifested that respondent will submit the case for decision based on the pleadings. Upon motion, both parties were given by the Court thirty (30) days within which to file their respective Memorandum.

On February 27, 2001,[11] the case was submitted for decision taking into consideration petitioner's Memorandum[12] filed on February 2, 2001 and respondent's Memorandum[13] filed on February 22, 2001. On March 16, 2001, petitioner filed its Reply to Memorandum of Respondent.[14]

On October 9, 2001, the Court of Tax Appeals (original composition) rendered a Decision[15], denying the petition on the ground of prescription.

On November 6, 2001, petitioner filed a Motion for Reconsideration[16] of the said Decision, which was denied in the Resolution[17] dated January 23, 2002.

Aggrieved by the Decision and Resolution of the Court of Tax Appeals, petitioner filed on Mach 1, 2002 a Petition for Review[18] with the Court of Appeals, docketed as CA-G.R. SP No. 69129.

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[11] Docket, p. 191.
[12] Docket, pp. 165-182.
[13] Docket, pp. 183-189.
[14] Docket, pp. 193-200.
[15] Decision, Docket, pp. 201-208.
[16] Motion for Reconsideration, Docket, pp. 211-215.
[17] Resolution, Docket, pp. 217-218.
[18] Docket, pp. 224-235.

On December 16, 2010, the Court of Appeals, Special Fourteenth Division, rendered a Decision[19] granting herein petitioner's Petition for Review, reversing and setting aside the Decision and Resolution of the Court of Tax Appeals (original composition) dated October 9, 2001 and January 23, 2002, respectively, and referring back to the Court of Tax Appeals the instant case for further proceedings.

On January 25, 2011, this Court issued a Resolution stating that the instant case is submitted anew for decision.[20]

Hence, this Court is now tasked to determine whether or not petitioner is entitled to the refund or issuance of a tax credit certificate in the amount of P2,803,609.00, representing alleged overpaid income tax for the taxable year 1997.

The following are the parties' jointly stipulated issues[21] submitted for this Court's consideration:

> "2.01. Whether or not Petitioner has overpaid income tax for the calendar year ended December 31, 1997 in the amount of P2,803,609.00;
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> 2.02. Whether or not Petitioner is entitled to the refund of the said amount; and

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[19] CA Decision, Docket, pp. 468-477.
[20] Resolution dated January 25, 2011, Docket, pp. 479-480.
[21] Docket, p. 80

2.03. Whether or not the said overpaid income taxes are substantiated by evidence."

The foregoing issues can be summarized as follows:

"Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P2,803,609.00, allegedly representing petitioner's overpaid income taxes for the taxable year 1997."

The petition lacks merit.

Section 76 of the NIRC of 1997, as amended, provides as follows:

"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)*

In *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*[22], the Supreme Court held:

> "Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:
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> > 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 excess tax still due; or
> > (b) Be refunded the excess amount paid,
> > as the case may be.
> >
> > 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 supplied)
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> Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. **In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the 'succeeding taxable years.'**
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> **Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.**" (*Emphasis supplied*)

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[22] G.R. No. 171766, July 29, 2010.

The last sentence of Section 76 of the NIRC of 1997 reads: "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." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[23]

Section 76 provides that a taxpayer has the option to file a claim for refund or to carry-over its excess income tax payments. The option to carry-over, however, is irrevocable. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek a refund of the unutilized excess income tax payments. The taxpayer, however, may apply the unutilized excess income tax payments as a tax credit to the succeeding taxable years until such has been fully applied pursuant to Section 76 of the

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

NIRC.[24] These two options under Section 76 are alternative in nature. The choice of one precludes the other.[25]

In the instant case, petitioner filed its Annual Income Tax Return[26] for the taxable year 1997 with the Bureau of Internal Revenue on April 15, 1998, when the applicable provision is Section 76 of the NIRC of 1997, which took effect on **January 1, 1998**.

In *Commissioner of Internal Revenue vs. McGeorge Food Industries, Inc.*[27], the Supreme Court explained that:

> "Thus treated, Section 76 and its companion provisions in Title II, Chapter XII should be applied following the general rule on the prospective application of laws such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on 1 January 1998. There is no quarrel that at the time respondent filed its final adjustment return for 1997 on 15 April 1998, the deadline under Section 77 (B) of the 1997 NIRC (formerly Section 70(b) of the 1977 NIRC), the 1997 NIRC was already in force, having gone into effect a few months earlier on 1 January 1998. Accordingly, Section 76 is controlling.
>
> The lower courts grounded their contrary conclusion on the fact that respondent's overpayment in 1997 was based on transactions occurring before 1 January 1998. This analysis suffers from the twin defects of missing the gist of the present controversy and misconceiving the nature and purpose of Section 76. None of respondent's corporate transactions in 1997 is disputed here. Nor can it be argued that Section 76 determines the taxability of corporate *transactions*. To sustain the rulings below is to subscribe to the untenable proposition that, had Congress in the 1997 NIRC moved the deadline for the filing of final adjustment returns from 15 April to 15 March of each year, taxpayers filing returns after 15

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[24] *Belle Corporation vs. Commissioner of Internal Revenue,* G.R. No. 181298, January 10, 2011.
[25] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005.
[26] Exhibit "A", Docket, pp. 97-105.
[27] G.R. No. 174157, October 20, 2010.

> March 1998 can excuse their tardiness by invoking the 1977 NIRC because the transactions subject of the returns took place before 1 January 1998. A keener appreciation of the nature and purpose of the varied provisions of the 1997 NIRC cautions against sanctioning this reasoning." (*Emphasis supplied*)

Accordingly, Section 76 of the NIRC of 1997 is controlling because at the time petitioner filed its final adjustment return for 1997 on **April 15, 1998**, the deadline under Section 77(B) of the NIRC of 1997 [formerly Section 70(b) of the 1977 NIRC], the NIRC of 1997 was already in force, having gone into effect a few months earlier on January 1, 1998.

In the instant case, the records show that in its Annual Income Tax Return[28] (ITR) for the taxable year 1997 filed with the Bureau of Internal Revenue on April 15, 1998, petitioner reflected a net loss of P16,163,420.00[29] and an overpaid income tax of P2,803,609.00[30]. The said overpaid income tax for 1997 allegedly composed of the first quarter income tax payment amounting to P2,794,268.00[31] and creditable taxes withheld at source amounting to P9,341.00[32]

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[28] Exhibit "A", Docket, pp. 97-105.
[29] No. 1, Section B, Exhibit "A", Docket, p. 97.
[30] No. 6, Section B, Exhibit "A", Docket, p. 97; Exhibit "A-4", Docket, p. 99.
[31] Exhibit "A-4-a", Docket, p. 99.
[32] Exhibit "A-4-b", Docket, p. 99.

However, petitioner marked the box "TO BE APPLIED AS CREDIT TO NEXT YEAR"[33] instead of the option "TO BE REFUNDED" for its 1997 overpaid income tax of P2,803,609.00, showing its decision to carry-over its excess creditable taxes withheld for the taxable year 1997. Thus, in its 1998 ITR, petitioner carried over and reflected its 1997 excess income tax payment of P2,803,609.00 as "Prior Year's Excess Credits".[34] Having exercised the option of carry-over with respect to its claimed excess income tax payment of P2,803,609.00, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997. Consequently, petitioner cannot seek the refund of the amount of P2,803,609.00 even if the same was not utilized in the succeeding year 1998. Petitioner's only recourse is to apply the excess amount of P2,803,609.00 to the succeeding quarters/years until it is fully utilized.

In the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,*[35] the Supreme Court held that:

> "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

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[33] Line 6, Section B, Exhibit "A", Docket, p. 97.
[34] Line 13A, Exhibit "E-4", Docket, p. 111.
[35] G.R. No. 178490, July 7, 2009.

> the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.'"

Consequently, petitioner's claim for refund must be denied, pursuant to Section 76 of the NIRC of 1997, as amended, being the law in effect at the time petitioner made known to the BIR its preference to carry-over and apply its overpayment in 1997 to its tax liability in 1998. In lieu of refund, petitioner's overpayment can be applied to its tax liability for the taxable years following 1998 until it is fully credited.

WHEREFORE, premises considered, the petition for review is hereby **DISMISSED** for lack of merit.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
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's Division.

Ernesto D. Acosta
ERNESTO D. ACOSTA
Presiding Justice