

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

BPI FAMILY SAVINGS BANK,
Petitioner,

- versus -

C.T.A. CASE NO. 6277

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

SEP 17 2001

MS. almanu

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RESOLUTION

The vortex of the controversy subject now to the resolution of this Court is the correct interpretation of Section 76 of the National Internal Revenue Code (NIRC) of 1997. Respondent, in its Motion to Dismiss, submits that since the Petitioner had already exercised its option to carry over its excess tax credits to the succeeding year, the option becomes irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed. Upon the other hand, Petitioner asserts that its intention to carry over and apply the excess income taxes should not be interpreted as actually making/exercising the option. In other words, Petitioner opines that since it had not actually applied its excess income taxes because it had no income tax liabilities in the following year, it is not precluded from claiming the same as a refund.

Petitioner's argument is bereft of merit. Accordingly, We dismiss the case.

Central to the dispute is Section 76 of the 1997 NIRC which provides, thus:



Section 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 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.

With marked relevance is the fact that in the aforesaid provision, the law states “such option shall be considered irrevocable x x x”. There is no cloud of doubt that the provision in question does not require any further qualification regardless of whether or not the taxpayer actually applied the unutilized taxes against its tax liabilities in the succeeding taxable year. The command is that, once the option to carry over has been made, as in the case at bar, the taxpayer may no longer apply for a refund of unutilized taxes for that taxable period.

The rule in this jurisdiction is that the intent of the legislature is to be ascertained from the very language of the statute. *Verba legis non est recedendum*, or from the words of a statute there should be no departure.

Nonetheless, the Petitioner is not without any recourse. As correctly pointed out by the Respondent, Petitioner could still further carry-over the said unutilized taxes against

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its future tax liabilities until the said excess are fully utilized. At this juncture, however,

We are not inclined to grant the relief prayed for by the Petitioner.

WHEREFORE, in view of all the foregoing, the Petition for Review is hereby
DISMISSED for failure to state cause of action.

SO ORDERED.


AMANCIO Q. SICA
Associate Judge


ERNESTO D. ACOSTA
Presiding Judge

