REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

ROXAS LAND CORPORATION,
Petitioner,

C.T.A. CASE NO. 6660

Members:

- versus -

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
MAY 2 2 2007

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DECISION

UY, *J*.:

This is a Petition for Review involving a claim for the issuance of a tax credit certificate (TCC) in the amount of P18,309,518.99 allegedly representing excess and unutilized creditable withholding taxes (CWT) for the calendar year ending December 31, 2000.

THE PARTIES

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, authorized to engage in business as a realty company, with principal place of business located at the 31st Floor, Tower One, Ayala Triangle, Ayala Avenue, Makati City, Metro Manila.[1]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with authority, among others, to decide, approve and grant tax credit and/or refund of overpaid or refundable income tax and holds office at the BIR National Office Building, East Triangle, Diliman, Quezon City.[2]

THE FACTS

As culled from the records and evidence presented by the parties, these are the facts of the case.

Petitioner filed its original annual Income Tax Return (ITR)[3] for the calendar year ending December 31, 2000 on April 16, 2001[4] with the Bureau of Internal Revenue (BIR), declaring the following information:

Sales/Revenue	P	411,008,904.00
Less: Cost of Sales		491,630,694.00
Gross Income from Operation	P	(80,621,790.00)
Add: Non-Operating & Other Income		56,757,346.00
Total Gross Income	P	(23,864,444.00)
Less: Deductions		5,649,755.00
Taxable Income	P	**(29,514,199.00)**
Tax Rate (except MCIT rate)		32%
Income Tax		**-nil-**

Petitioner reflected no excess and unutilized CWT in its original ITR, neither did it choose any option for any of its excess and unutilized CWT.[5]

On April 18, 2001, petitioner filed its first amended ITR[6] for the year 2000 with the BIR. It still reflected the net loss of P29,514,199.00[7] but it

[1] Joint Stipulation of Facts, par. 1, Rollo, p. 72.
[2] Ibid., par. 2.
[3] Exhibits A and P.
[4] Exhibit A-2.
[5] Par. 3, Petitioner's Memorandum, Rollo, p. 233.
[6] Exhibits R and HH.
[7] Exhibit HH-3.

reported the amount of P45,487,119.00 as total overpayment or excess and unutilized CWT, computed as follows:

Prior Year's Excess Credits	**P**	**26,838,842.00**
Tax Payments for the First Three Quarters		-
Creditable Tax Withheld for the First Three Quarters		-
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	P	18,648,277.00
Foreign Tax Credits, if applicable		-
Tax Paid In Return Previously Filed, if this is an Amended Return		-
Total Tax Credits/Payments	P	45,487,119.00
Tax Payable/(Overpayment)	P	(45,487,119.00)
Total	P	(45,487,119.00)
Total Amount Payable (Overpayment)	**P**	**(45,487,119.00)**

In this first amended ITR, petitioner marked an "X" in the option box "To be refunded" for its excess and unutilized CWT.[8]

On April 10, 2002,[9] petitioner filed its original annual ITR[10] for the calendar year 2001, showing, among others, the following information:

Prior Year's Excess Credits	**P**	**45,148,361.00**
Tax Payments for the First Three Quarters		-
Creditable Tax Withheld for the First Three Quarters		45,676,065.15
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	P	1,340,456.35
Foreign Tax Credits, if applicable		-
Tax Paid In Return Previously Filed, if this is an Amended Return		-
Total Tax Credits/Payments	P	92,164,882.50
Tax Payable/(Overpayment)	P	(92,164,882.50)
Total	P	(92,164,882.50)
Total Amount Payable (Overpayment)	**P**	**(92,164,882.50)**

On March 19, 2003, the petitioner filed its second amended ITR for the calendar year 2000.[11] Still, it reflected the net loss of P29,514,199.00; however, it reflected zero amount as "Prior Year's Excess Credits", thereby

[8] Exhibit HH-5.
[9] Exhibit G-2.
[10] Exhibit G.
[11] Exhibits B and S.

reducing the amount of its excess and unutilized CWT for the same year to P18,309,518.99,[12] as follows:

Prior Year's Excess Credits	**P**	-
Tax Payments for the First Three Quarters		-
Creditable Tax Withheld for the First Three Quarters		16,083,243.91
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	P	2,226,275.08
Foreign Tax Credits, if applicable		-
Tax Paid In Return Previously Filed, if this is an Amended Return		-
Total Tax Credits/Payments	P	18,309,518.99
Tax Payable/(Overpayment)	P	(18,309,518.99)
Total	P	(18,309,518.99)
Total Amount Payable (Overpayment)	**P**	**(18,309,518.99)**

In this second amended ITR for the calendar year 2000, petitioner alleges that it inadvertently and by oversight, failed to indicate the option chosen for its excess and unutilized CWT for the year 2000 amounting to P18,309,518.99,[13] the amount being claimed for the issuance of TCC in this Petition.

On March 26, 2003, petitioner again amended its ITR for the year 2000 and filed its third amended ITR with the BIR,[14] this time indicating therein the option chosen for the excess and unutilized CWT of P18,309,518.99 which is "To be issued a Tax Credit Certificate".[15]

On April 3, 2003, petitioner filed with the BIR an administrative claim for issuance of TCC for its excess and unutilized creditable withholding taxes of P18,309,518.99 for the calendar year 2000.[16]

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[12] Exhibit B-3.
[13] Par. 5, Petitioner's Memorandum, Rollo, p. 234.
[14] Exhibits C and T.
[15] Exhibit C-4.
[16] Exhibit M; Par. 3, Joint Stipulation of Facts, Rollo, p. 73.

To toll the running of the prescriptive period provided for by law, petitioner filed this instant Petition for Review with this Court on April 14, 2003.

Respondent, in his Answer filed on June 12, 2003,[17] averred the following Special and Affirmative Defenses:

1) Petitioner's alleged claim for tax refund/tax credit is subject to administrative investigation/examination by the respondent's Bureau;

2) Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected;

3) It has been well-settled in previous cases decided by the Tax Court and affirmed by the Supreme Court in the case of *Citibank NA vs. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 1074334, October 10, 1997*, that the following requirements must be complied with before a claim for refund of creditable withholding taxes is sustained, to wit:

   a. The claim for refund was filed within the two-year period prescribed under Section 230 of the Tax Code as amended;

   b. The income upon which the taxes were withheld was included in the return of the recipient;

   c. The fact of withholding is established by a copy of the statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

4) Taxes paid and collected are presumed to have been paid in accordance with law and regulations, hence, not refundable;

5) In an action for tax refund/credit, 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; and

[17] Rollo, pp. 41-43.

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6) Finally, there is no way to dispute the cardinal rule in taxation that tax exemption are highly disfavored in law and he who claims tax exemption must be able to justify his claim or right. The exemption cannot be established by mere implication but it must be clearly expressed. *(Wonder Mechanical Engineering Corporation vs. Court of Tax Appeals, et al., 64 SCRA 555).*

During trial, petitioner presented testimonial and documentary evidence, including the report of the independent certified public accountant (CPA),[18] in support of its claim while respondent's counsel manifested that she has no witness to present in this case. This Court then directed the parties to file their respective memoranda.[19] Thus, on July 21, 2006, petitioner submitted its memorandum while the respondent filed his memorandum on August 7, 2006. On August 16, 2006, this case was considered submitted for decision. Hence, this Decision.

THE ISSUES

The parties stipulated the following issues for this Court's resolution, to wit:[20]

"1. Whether or not the excess creditable withholding taxes of P18,309,518.99 represent taxes withheld from income payments to the petitioner arising from its sale of condominium units during the calendar year ended December 31, 2000;

2. Whether or not the income upon which the creditable withholding taxes of P18,309,518.99 were withheld was reported in the income tax return of the petitioner for year 2000;

3. Whether or not the excess creditable withholding taxes of P18,309,518.99 remain unapplied and unutilized by the petitioner at the end of calendar year December 31, 2000;

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[18] Submitted to this Court on October 4, 2004, Rollo, pp.104-128.
[19] Rollo, p. 222.
[20] Rollo, pp. 73-74.

4. Whether or not petitioner carried over to the succeeding taxable year/s as "Prior Year's Excess Credits" its excess and unutilized/unapplied creditable withholding taxes of P18,309,518.99 from calendar year 2000;

5. Whether or not the petitioner's excess and unutilized creditable withholding taxes for calendar year 2000 are properly substantiated;

6. Whether or not the administrative claim or application for issuance of tax credit certificates for year 2000 was filed within the two (2)-year prescriptive period provided under Section 204(C) in relation to Section 229 of the Tax Code of 1997."

THE COURT'S RULING

The vortex of the controversy is petitioner's entitlement to the issuance of a tax credit certificate in the amount of P18,309,518.99 representing its alleged excess or unutilized creditable withholding taxes for the taxable year 2000 on the basis of the evidence presented. All of the issues raised are intertwined and shall be discussed jointly for convenience and brevity.

Section 76 of the National Internal Revenue Code (NIRC) of 1997 provides:

"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:

(B) Pay the balance of tax still due; or
(C) Carry-over the excess credit; or
(D) 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 therefore."

In the case of ***Subic Bay Distribution, Inc. vs. The Commissioner of Internal Revenue,***[21] decided by the Second Division of this Court and affirmed *in toto* by the CTA *En Banc* on May 23, 2006,[22] it was held that:

"In order to be entitled to the refund/issuance of tax credit certificate of excess or unutilized creditable withholding taxes, petitioner must comply with the following requirements:

1. That the claim is filed with the Commissioner of Internal Revenue within the two (2)-year period from the date of payment of the tax (Section 229, NIRC);

2. It must not have opted to carry over and credit the excess income tax to the taxable quarters of the succeeding taxable years (Section 76, NIRC);

3. It must be shown in the return of the recipient that the income payment received was declared as part of the gross income; and

4. The fact of withholding is established by a copy of statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom (Section 2.58.3(B) Revenue Regulations No. 2-98; *Citibank N. A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. Court of Appeals*, 204 SCRA 957)."

Applying the above law and jurisprudence in the present case, this Court will now proceed to determine whether or not petitioner complied with the aforesaid requirements.

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[21] CTA Case No. 6640, November 3, 2004.
[22] CTA EB No. 72, Entry of Judgment dated August 16, 2006.

As to the first requirement, it is clear from the records that petitioner has complied with the same. The taxes being claimed for the issuance of TCC in this case were for the calendar year ending December 31, 2000. Petitioner filed its original annual ITR for the said year on April 16, 2001 *(Exhibits "A" and "P")*. Petitioner amended the said ITR three times, the first on April 18, 2001, the second on March 19, 2003 and on March 26, 2003 for the third time. The administrative claim for refund or for the issuance of the TCC was filed by the petitioner with the respondent on April 3, 2003 *(Exhibit "M")* and the Petition for Review was filed on April 14, 2003. Considering the above premises, both the administrative and judicial claims were filed within the two (2)-year period required by law, particularly Section 229 of the NIRC of 1997.

As for the second requirement, Section 76 of the NIRC of 1997, as cited above, allows the taxpayer to choose whether to have its excess credits or overpaid income tax in a given year refunded, or it be issued a tax credit certificate, or the taxpayer can also opt to have its overpayments or tax credits applied against its income tax liabilities for the taxable quarters of the succeeding taxable years. However, when the option to carry over is exercised, it is considered **irrevocable** and no application for cash refund or issuance of tax credit certificate shall be allowed therefor. To quote again the specific portion of Section 76:

> "xxx Once the option to carry-over xxx 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 therefore."

In the case at bench, petitioner, in its original ITR for the year 2000 *(Exhibits "A" and "P"),* failed to indicate its option under the above-cited section. Subsequently, in its first amended ITR for the calendar year 2000 *(Exhibits "R" and "HH")* filed with the respondent on April 18, 2001, petitioner reflected the amount of P45,487,119.00 as its total overpayment of taxes and marked an "X" in the option "To be refunded".

Later on, when petitioner filed its original annual ITR for the calendar year ending December 31, 2001 *(Exhibit "G")* on April 10, 2002, it declared the reduced amount of P45,148,361.00 [P45,487,119.00[23] less P338,758[24]] as its "Prior Year's Excess Credits".

It is evident from the faces of the abovementioned income tax returns *(Exhibits "R", "HH" and "G")* that petitioner had already carried over the excess and unutilized CWT for the year 2000 to its 2001 ITR amounting to P45,148,361.00, computed as follows:

Prior Year's Excess Credits *(Exhibits MM, MM-2, R and HH)*	P 26,838,842.00[25]
Amount being claimed for the issuance of TCC	P 18,309,518.99
Total	**P45,148,361.00**[26]

Clearly therefrom, petitioner exercised the option to carry-over the amount being requested for issuance of a TCC amounting to P18,309,518.99, which formed part of the P45,148,361.00 carried-over as "Prior Year's Excess Credits" from the taxable year 2000 to the next taxable year 2001. Petitioner's subsequent amendments of its 2001 ITR *(Exhibits "H" and "I"),* showing zero amount of "Prior Year's Excess Credits", do not alter the fact that it has already carried-over the excess and unutilized CWT for the year

[23] Exhibit HH, Total Amount Payable (Overpayment), Line 31.
[24] The petitioner did not present any evidence or explanation regarding the amount of P338,758.00.
[25] Marked "XX" by petitioner "To be carried over as tax credit next year/quarter" from the year 1999.
[26] Exhibit G, Line 26A.

2000; hence, governed by the **irrevocability rule** under Section 76 of the NIRC of 1997.

As held by the Supreme Court in the consolidated cases of ***Philam Asset Management Inc. vs. Commissioner of Internal Revenue***,[27] the carry-over option under Section 76 is permissive. A corporation that is entitled to a *tax refund* or a *tax credit* for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable[28] for that taxable period, and no application for a *tax refund* or issuance of a *tax credit certificate* shall then be allowed.

Moreover, it bears stressing that petitioner's original annual ITR for the year 2001 *(Exhibit "G")*, showing "Prior Year's Excess Credits" amounting to P45,148,361.00, was already filed by the petitioner on April 10, 2002 when it filed its second and third amended ITR for the year 2000 on March 19, 2003 and March 26, 2003, respectively.

Petitioner invokes Section 6(A) of the NIRC of 1997 relative to its right to amend tax returns, *viz*:

> "SEC. 6. Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.—
>
> x x x
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided*, That **within three (3) years from the date of such filing**, the same **may be modified, changed, or amended**: *Provided, further,* That no notice for audit or investigation of

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[27] G.R. Nos 156637 and 162004, December 14, 2005

[28] Paseo Realty and Development Corporation v. CA, 440 SCRA 235, 250-251, October 13, 2004

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such return, statement or declaration has, in the meantime, been actually served upon the taxpayer." *(Emphasis supplied)*

However, contrary to petitioner's assertion, We do not agree that the amendments of returns allowed by Section 6 of the NIRC of 1997 extends to **changing** a taxpayer's chosen option and **actual exercise of such option** under Section 76 of the same Code. Otherwise, Section 76 will be rendered nugatory by merely amending the income tax returns.

Considering, therefore, that petitioner already exercised the option to carry-over its prior year's tax credit of P45,148,361.00, from its 2000 ITR to its 2001 ITR, which includes the subject claim for refund of P18,309,518.99, it is already barred from claiming a tax credit certificate corresponding thereto. Petitioner may, however, carry over and apply the same to its future tax liabilities until fully utilized.

Well-settled is the rule that tax refunds are in the nature of tax exemptions and as such they are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[29]

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

SO ORDERED.

ERLINDA P. UY
Associate Justice

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[29] Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., 309 SCRA 87; Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332; and Commissioner of Customs vs. Court of Tax Appeals, 328 SCRA 822.

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Associate Justice

OLGA PALANCA-ENRIQUEZ
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.
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.

ERNESTO D. ACOSTA
Presiding Justice