REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

UPSI MANAGEMENT, INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 7945
For: Refund or Issuance of a Tax Credit Certificate

Members:
CASTAÑEDA, JR., *Chairperson*
CASANOVA, and
MINDARO-GRULLA, *J.J.*

Promulgated:
DEC 1 6 2011
1:05 p.m.

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D E C I S I O N

MINDARO-GRULLA, J.:

This is a Petition for Review filed by petitioner UPSI Management, Inc. 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 P1,107,228.00, representing its excess/unutilized creditable withholding tax for the fiscal year ended March 31, 2007.

Petitioner is a corporation duly incorporated and existing under Philippine laws, with business address at 1122 General Luna Street, Paco, Manila.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), with power, among others, to decide disputed assessments of internal revenue taxes and penalties imposed in relation thereto. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On July 16, 2007, petitioner filed its original Annual Income Tax Return for the fiscal period ended March 31, 2007 with the Revenue District No. 34 of BIR Revenue Region No. 6.

On November 14, 2007, petitioner filed its amended Annual Income Tax Return for the fiscal period ended March 31, 2007. Petitioner reported a Minimum Corporate Income Tax (MCIT) due of P20,562.00, prior years excess credits of P2,231,507.00, and creditable tax withheld in the amount of P1,107,228.00 for the fiscal year ended March 31, 2007.

In the same amended Annual Income Tax Return, petitioner indicated in the corresponding box its intention to be issued a tax credit certificate representing its unutilized creditable tax withheld for the taxable year 2007.

On November 7, 2008, petitioner filed a claim for refund through the issuance of a tax credit certificate in the total amount of P1,107,228.00, which represents the unutilized creditable income taxes for the taxable period ended March 31, 2007.

Due to respondent's failure to act on the said administrative claim, petitioner filed the instant Petition for Review on July 13, 2009.

Respondent filed her Answer on July 28, 2009 and interposed the following Special and Affirmative Defenses:

> "5. Petitioner's claim for refund is still pending administrative investigation;
>
> 6. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are *presumed* to have been collected in accordance with laws and regulations (*Caltex Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986*).

7. Claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund. (*Meralco Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351; Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*).

8. Petitioner must prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding fiscal years.

9. Under Section 76 of the 1997 Tax Code, petitioner's excess creditable tax withheld for fiscal year ended March 31, 2007 may either be refunded, claimed as tax credit or carried over/applied to the succeeding taxable years as could be explicitly gleaned out from the petitioner's annual income tax return (Annex 'B'). However, once an option has been made, the same becomes irrevocable for that taxable period and no application for cash refund shall be allowed therefor.

10. In the case at bar, petitioner opted to claim as tax credit said amount of P1,107,228.00 for fiscal year ended March 31, 2007, but the said amount was likewise automatically carried over as petitioner's creditable tax withheld in its income tax return for fiscal year ended March 31, 2008 (Annex 'C'). Respondent strongly points out that the amount of P1,107,228.00 being sought for by petitioner as its tax credit is included in the petitioner's reported prior years excess credit of P3,318,173.00 for fiscal year ended March 31, 2008. Undoubtedly, petitioner has explicitly violated Section 76 of the 1997 Tax Code for claiming refund, tax credit and automatic carry-over simultaneously. Said petitioner's practice of claiming the two (2) options simultaneously would not only confuse the respondent of petitioner's claim but it is likewise highly irregular, improper and erroneous.

11. Aside from the petitioner's act of carrying-over of said amount of P1,107,228.00 to the petitioner's creditable tax withheld for fiscal year ended March 31, 2009 which is improper, the fact of

carrying-over also creates serious conflict whether or not respondent would now allow petitioner's claim for refund and/or tax credit for obvious reason that said act of carrying-over might have been given due course as well. In other words, petitioner could not claim an option of carry-over and tax credit claim at the same time.

12. Moreover, the existence of an excess creditable withholding taxes alone does not per se entitle petitioner to tax credit entitlement. The petitioner must prove that (1) its claim for refund is filed with the respondent within the two (2) year period from the date of payment of the tax required under Section 204 of the 1997 Tax Code; (2) it must be shown on petitioner's return that the income payment received was declared as part of its gross income; and (3) the fact of withholding is established by copies of statement duly issued by petitioner's payor showing the amount paid and the amount of taxes withheld (*Citytrust Finance Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; Paseo Realty & Development Corporation vs. Commissioner of Internal Revenue, CTA Case No. 4254, August 10, 1993).*"

On July 30, 2009, a Notice of Pre-Trial Conference was issued by this Court requiring both parties to be present at the pre-trial on August 27, 2009 and to file with the Court and serve on the adverse party their pre-trial briefs.

Subsequently, petitioner's Pre-Trial Brief was filed on August 20, 2009; while respondent's Pre-trial Brief was filed on August 24, 2009.

On September 16, 2009, the parties filed their Joint Stipulation of Facts, which the Court approved in a Resolution dated September 23, 2009. In the same Resolution, the pre-trial was deemed terminated.

Trial proceeded, during which petitioner presented witnesses, namely: Catherine D. Belen, Julieta M. Masilungan and Emmanuel Y. Mendoza. Thereafter, petitioner formally offered Exhibits "A" to "TTTT", which were later admitted in a Resolution dated December 7, 2010.

The documentary evidence formally offered are as follows:

Exhibits:	Particulars:
A	Petitioner UPSIMI'S Short Period Income Tax Return for the taxable period 2007
B	Petitioner UPSIMI's Amended Short Period Income Tax Return for the taxable period 2007
C	Petitioner UPSIMI's Annual Income Tax Return for the taxable year 2008
D	Petitioner UPSIMI's Amended Annual Income Tax Return for the taxable year 2008
E	Petitioner UPSIMI's Claim for Refund through the Issuance of a Tax Credit Certificate filed on 07 November 2008
F	Certificate of Creditable Tax Withheld at Source for the first quarter, with payor Emilio Aguinaldo Educational Corporation (EAEC), Cavite
F-1	Indicating the amount of P3,890.43

G	Certificate of Creditable Tax Withheld at Source for the month of January 2007, with payor Emilio Aguinaldo Educational Corporation (EAEC), Manila
G-3	Indicating the amount of P4,936.72
G-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, with payor Emilio Aguinaldo Educational Corporation (EAEC), Manila
G-1-A	Indicating the amount P4,936.72
G-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, with payor Emilio Aguinaldo Educational Corporation (EAEC), Manila
G-2-A	Indicating the amount of P4,936.72
H	Certificate of Creditable Tax Withheld at Source for the month of January 2007, with payor Hospital Management Services, Inc.
H-3	Indicating the amount of P25,377.00
H-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, with payor Hospital Management Services, Inc.
H-1-A	Indicating the amount of P25,277.71
H-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, with payor Hospital Management Services, Inc.
H-2-A	Indicating the amount of P25,277.71
I	Certificate of Creditable Tax Withheld at Source for the month of January 2007, with payor Immaculate Conception Academy, Inc. - Cavite
I-3	Indicating the amount of P528.79
I-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, with payor Immaculate Conception Academy, Inc. - Cavite
I-1-A	Indicating the amount of P434.36
I-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, with payor Immaculate Conception Academy, Inc. – Cavite
I-2-A	Indicating the amount of P793.20
J	Certificate of Creditable Tax Withheld at Source for the First Quarter January 2007, with payor Rural Bank of Dasmariñas, Inc.

J-1	Indicating the amount of P2,632.64
K	Certificate of Creditable Tax Withheld at Source for the month of January 2007, with payor Lope De Vega Tower Condominium Association, Inc.
K-3	Indicating the amount of P3,562.18
K-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, with payor Lope De Vega Tower Condominium Association, Inc.
K-1-A	Indicating the amount of P3,562.18
K-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, with payor Lope De Vega Tower Condominium Association, Inc.
K-2-A	Indicating the amount of P3,562.18
L	Certificate of Creditable Tax Withheld at Source for the month of January 2007, with payor UPSI Property Holdings, Inc. – Manila (Leasing Business)
L-3	Indicating the amount of P120,000.00
L-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, with payor UPSI Property Holdings, Inc. - Manila
L-1-A	Indicating the amount of P120,000.00
L-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, with payor UPSI Property Holdings, Inc. - Manila
L-2-A	Indicating the amount of P120,000.00
M	Certificate of Creditable Tax Withheld at Source for the month of January 2007, for payor UPSI Property Holdings, Inc. – Manila (Hotel Business)
M-3	Indicating the amount of P158,070.72
M-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, for payor UPSI Property Holdings, Inc. - Manila
M-1-A	Indicating the amount of P189,212.17
M-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, for payor UPSI Property Holdings, Inc. - Manila
M-2-A	Indicating the amount of P204,212.17

N	Certificate of Creditable Tax Withheld at Source for the month of January 2007, for payor UPSI Property Holdings, Inc. - Cavite
N-3	Indicating the amount of P16,631.74
N-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007, for payor UPSI Property Holdings, Inc. - Cavite
N-1-A	Indicating the amount of P26,699.19
N-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, for payor UPSI Property Holdings, Inc. - Cavite
N-2-A	Indicating the amount of P16,260.79
O	Certificate of Creditable Tax Withheld at Source for the month of January 2007, for payor Yaman Lahi Foundation, Inc. - EAC
O-3	Indicating the amount of P8,744.34
O-1	Certificate of Creditable Tax Withheld at Source for the month of February 2007
O-1-A	Indicating the amount of P8,744.34
O-2	Certificate of Creditable Tax Withheld at Source for the month of March 2007, for payor Yaman Lahi Foundation, Inc. - EAC
O-2-A	Indicating the amount of P8,744.34
P	Summary of Alphalist of Withholding Taxes for the month of March 2007
Q	Summary of Alphalist of Withholding Taxes for the month of March 2007
R	Independent Auditor's Report dated 11 July 2008, comprised of the balance sheets as of 31 March 2008 and 2007 (consisting of 18 pages)
S	List of Withholding Tax Payable Expanded
T	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Hospital Management Services, Inc. for the month of January 2007
T-1	Indicating the amount of P299,544.00

U	Alphalist of Payees Subject to Expanded Withholding Tax of Hospital Management Services, Inc. as of January 2007 (consisting of 4 pages)
V	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Hospital Management Services, Inc. for the month of February 2007
V-1	Indicating the amount of P442,322.28
W	Alphalist of Payees Subject to Expanded Withholding Tax of Hospital Management Services, Inc. as of February 2007 (consisting of 5 pages)
X	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Hospital Management Services, Inc. for the month of March 2007
X-1	Indicating the amount of P369,192.29
Y	Alphalist of Payees Subject to Expanded Withholding Tax of Hospital Management Services, Inc. as of March 2007 (consisting of 5 pages)
Z	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Immaculate Conception Academy, Inc. for the month of January 2007
Z-1	Indicating the amount of P207,397.87
AA	Alphalist of Payees Subject to Expanded Withholding Tax of Immaculate Conception Academy, Inc. as of January 2007
BB	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Immaculate Conception Academy, Inc. for the month of February 2007
BB-1	Indicating the amount of P197,382.29
CC	Alphalist of Payees Subject to Expanded Withholding Tax of Immaculate Conception Academy, Inc. as of February 2007

DD	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Immaculate Conception Academy, Inc. for the month of March 2007
DD-1	Indicating the amount of P259,796.44
EE	Alphalist of Payees Subject to Expanded Withholding Tax of Immaculate Conception Academy, Inc. as of March 2007
FF	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Rural Bank of Dasmariñas, Inc. for the month of January 2007
FF-1	Indicating the amount of P5,063.22
GG	Alphalist of Payees Subject to Expanded Withholding Tax of Rural Bank of Dasmariñas, Inc. as of January 2007
HH	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Rural Bank of Dasmariñas, Inc. for the month of February 2007
HH-1	Indicating the amount of P11,425.57
II	Alphalist of Payees Subject to Expanded Withholding Tax of Rural Bank of Dasmariñas, Inc. as of February 2007
JJ	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Rural Bank of Dasmariñas, Inc. for the month of March 2007
JJ-1	Indicating the amount of P5,051.84
KK	Alphalist of Payees Subject to Expanded Withholding Tax of Rural Bank of Dasmariñas, Inc. as of March 2007
LL	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of UPSI Property Holdings, Inc. – Cavite for the month of January 2007
LL-1	Indicating the amount of P12,222.35
MM	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. as of January 2007

NN	Amended Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of UPSI Property Holdings, Inc. – Cavite for the month of January 2007
NN-1	Indicating the amount of P7,011.72
OO	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. as of January 2007 (attached to the Amended BIR Form 1601-E)
PP	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of UPSI Property Holdings, Inc. – Cavite for the month of February 2007
PP-1	Indicating the amount of P19,088.87
QQ	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. – Cavite as of February 2007
RR	Amended Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of UPSI Property Holdings, Inc. – Cavite for the month of February 2007
RR-1	Indicating the amount of P10,514.18
SS	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. - Cavite as of February 2007 (attached to Amended BIR Form 1601-E)
TT	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of UPSI Property Holdings, Inc. – Cavite for the month of March 2007
TT-1	Indicating the amount of P12,527.54
UU	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. – Cavite as of March 2007
VV	Amended Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of

	UPSI Property Holdings, Inc. – Cavite for the month of March 2007
VV-1	Indicating the amount of P6,708.36
WW	Alphalist of Payees Subject to Expanded Withholding Tax of UPSI Property Holdings, Inc. - Cavite as of March 2007 (attached to Amended BIR Form 1601-E)
XX	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Yaman Lahi Foundation, Inc. for the month of January 2007
XX-1	Indicating the amount of P624,243.24
YY	Alphalist of Payees Subject to Expanded Withholding Tax as of January 2007 (consisting of 6 pages)
ZZ	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Yaman Lahi Foundation, Inc. for the month of February 2007
ZZ-1	Indicating the amount of P568,989.45
AAA	Alphalist of Payees Subject to Expanded Withholding Tax of Yaman Lahi Foundation, Inc. as of February 2007 (consisting of 2 pages)
BBB	Amended Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Yaman Lahi Foundation, Inc. for the month of February 2007
BBB-1	Indicating an overpayment of P10,273.26
CCC	Amended Alphalist of Payees Subject to Expanded Withholding Tax of Yaman Lahi Foundation, Inc. as of February 2007 (consisting of 2 pages)
DDD	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Yaman Lahi Foundation, Inc. for the month of March 2007
DDD-1	Indicating the amount of P499,316.49

EEE	Alphalist of Payees Subject to Expanded Withholding Tax of Yaman Lahi Foundation, Inc. as of March 2007 (consisting of 2 pages)
FFF	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Cavite for the month of January 2007
FFF-1	Indicating the amount of P6,420.72
GGG	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation - Cavite as of January 2007
HHH	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Cavite for the month of February 2007
HHH-1	Indicating the amount of P5,230.98
III	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation – Cavite as of February 2007
JJJ	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Cavite for the month of March 2007
JJJ-1	Indicating the amount of P4,577.56
KKK	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation – Cavite as of March 2007
LLL	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Manila for the month of January 2007
LLL-1	Indicating the amount of P12,741.42

MMM	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation – Manila as of January 2007
NNN	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Manila for the month of February 2007
NNN-1	Indicating the amount of P9,638.72
OOO	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation – Manila as of February 2007
PPP	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Emilio Aguinaldo Educational Corporation – Manila for the month of March 2007
PPP-1	Indicating the amount of P7,401.47
QQQ	Alphalist of Payees Subject to Expanded Withholding Tax of Emilio Aguinaldo Educational Corporation – Manila as of March 2007
RRR	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Lope de Vega Tower Condominium Association, Inc. for the month of January 2007
RRR-1	Indicating the amount of P5,818.13
SSS	Alphalist of Payees Subject to Expanded Withholding Tax of Lope de Vega Tower Condominium Association, Inc. as of January 2007
TTT	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Lope de Vega Tower Condominium Association, Inc. for the month of February 2007
TTT-1	Indicating the amount of P5,968.52

UUU	Alphalist of Payees Subject to Expanded Withholding Tax of Lope de Vega Tower Condominium Association, Inc. as of February 2007
VVV	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of Lope de Vega Tower Condominium Association, Inc. for the month of March 2007
VVV-1	Indicating the amount of P5,012.36
WWW	Alphalist of Payees Subject to Expanded Withholding Tax of Lope de Vega Tower Condominium Association, Inc. as of March 2007
XXX	Summary of Creditable Withholding Tax for the 3-month period ended 2007
YYY	Schedule of Creditable Withholding Tax that are Declared as part of Petitioner UPSIMI's Income for the 3-month period ended 2007
ZZZ	Reconciliation Schedule of Income per Books against 2307
AAAA	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of University Property Holdings, Inc. for the month of January 2007
AAAA-1	Indicating the amount of P291,828.39
BBBB	Alphalist of Payees Subject to Expanded Withholding Tax of University Property Holdings, Inc. as of January 2007 (consisting of 4 pages)
CCCC	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of University Property Holdings, Inc. for the month of February 2007
CCCC-1	Indicating the amount of P424,291.10
DDDD	Alphalist of Payees Subject to Expanded Withholding Tax of University Property Holdings, Inc. as of February 2007 (consisting of 5 pages)

EEEE	Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of University Property Holdings, Inc. for the month of March 2007
EEEE-1	Indicating the amount of P408,707.18
FFFF	Alphalist of Payees Subject to Expanded Withholding Tax of University Property Holdings, Inc. as of March 2007 (consisting of 4 pages)
GGGG	Amended Monthly Remittance Return of Creditable Income Taxes Withheld – Expanded (BIR Form No. 1601-E) of University Property Holdings, Inc. for the month of March 2007
GGGG-1	Indicating the amount of P418,004.53
HHHH	Alphalist of Payees Subject to Expanded Withholding Tax of University Property Holdings, Inc. as of March 2007 (consisting of 4 pages)
IIII	Judicial Affidavit of Ms. Catherine D. Belen
IIII-1	Printed name and Signature of Ms. Catherine D. Belen
JJJJ	Judicial Affidavit of Ms. Julieta M. Masilungan
JJJJ-1	Printed name and Signature of Ms. Julieta M. Masilungan
KKKK	Results of the Procedures Performed Relative to Company's Claim for Refund of Its Unutilized Creditable Withholding Tax Covering the Taxable Fiscal Year 2007 CTA Case No. 7945
KKKK-1	Printed name and signature of Mr. Emmanuel Y. Mendoza dated 10 August 2010
LLLL-1	Quarterly Income Tax Return of UPSI Management, Inc. for the First Quarter of Taxable Year 2008
LLLL-2	Quarterly Income Tax Return of UPSI Management, Inc. for the Second Quarter of Taxable Year 2008
LLLL-3	Quarterly Income Tax Return of UPSI Management, Inc. for the Third Quarter of Taxable Year 2008

MMMM-1	Official Receipt No. 2012 E dated 09 March 2007 issued to Emilio Aguinaldo Educational Corp. (HOKI) for the sum of P30,456.68
MMMM-2	Official Receipt No. 2013 E dated 09 March 2007 issued to Emilio Aguinaldo Educational Corporation for the sum of P1,467.50
MMMM-3	Official Receipt No. 2018 E dated 21 March 2007 issued to Emilio Aguinaldo Educational Corp. - Cavite for the sum of P9,159.50
MMMM-4	Official Receipt No. 2019 E dated 21 March 2007 issued to Emilio Aguinaldo Educational Corp. – Cavite for the sum of P9,159.50
MMMM-5	Official Receipt No. 2000 E dated 19 February 2007 issued to Emilio Aguinaldo Educational Corporation for the sum of P1,391.86
MMMM-6	Official Receipt No. 2001 E dated 19 February 2007 issued to Emilio Aguinaldo Educational Corp. (HOKI) for the sum of P28,886.75
MMMM-7	Official Receipt No. 1989 E dated 29 January 2007 issued to Emilio Aguinaldo Educational Corp. – Cavite for the sum of P9,518.33
MMMM-8	Official Receipt No. 1980 E dated 17 January 2007 issued to Emilio Aguinaldo Educational Corporation for the sum of P1,543.14
MMMM-9	Official Receipt No. 1981 E dated 17 January 2007 issued to Emilio Aguinaldo Educational Corp. (HOKI) for the sum of P32,026.61
MMMM-10	Official Receipt No. 2014 E dated 12 March 2007 issued to Hospital Management Services, Inc. for the sum of P163,462.54

MMMM-11	Official Receipt No. 1996 E dated 12 February 2007 issued to Hospital Management Services, Inc. for the sum of P155,003.54
MMMM-12	Official Receipt No. 1978 E dated 11 January 2007 issued to Hospital Management Services, Inc. for the sum of P172, 563.59
MMMM-13	Official Receipt No. 2045 E dated 07 June 2007 issued to ICA Cavite for the sum of P4,579.76
MMMM-14	Official Receipt No. 2017 E dated 21 March 2007 issued to ICA Cavite for the sum of P3,909.33
MMMM-15	Official Receipt No. 1995 E dated 10 February 2007 issued to ICA Cavite for the sum of P4,759.18
MMMM-16	Official Receipt No. 2015 E dated 12 March 2007 issued to Lope de Vega Tower Condominium, Asso. Inc. for the sum of P23,035.41
MMMM-17	Official Receipt No. 1992 E dated 10 February 2007 issued to Lope de Vega Tower Condominium, Asso. Inc. for the sum of P21,848.02
MMMM-18	Official Receipt No. 1974 E dated 02 January 2007 issued to Lope de Vega Tower Condominium, Asso. Inc. for the sum of P24,222.80
MMMM-19	Official Receipt No. 2008 E dated 08 March 2007 issued to Rural Bank for the sum of P4,578.76
MMMM-20	Official Receipt No. 2006 E dated 27 February 2007 issued to Rural Bank for the sum of P4,343.69
MMMM-21	Official Receipt No. 1977 E dated 11 January 2007 issued to Rural Bank for the sum of P4,815.83
MMMM-22	Official Receipt No. 2007 E dated 08 March 2007 issued to UPSIPHI for the sum of P776,000.00

MMMM-23	Official Receipt No. 1990 E dated 07 February 2007 issued to UPSIPHI for the sum of P736,000.00
MMMM-24	Official Receipt No. 1973 E dated 02 January 2007 issued to UPSIPHI for the sum of P816,000.00
MMMM-25	Official Receipt No. 2011 E dated 09 March 2007 issued to Yaman Lahi Foundation, Inc. for the sum of P56,546.72
MMMM-26	Official Receipt No. 1998 E dated 16 February 2007 issued to Yaman Lahi Foundation, Inc. for the sum of P53,631.94
MMMM-27	Official Receipt No. 1976 E dated 11 January 2007 issued to Yaman Lahi Foundation, Inc. for the sum of P59,461.50
MMMM-28	Official Receipt No. 2010 E dated 09 March 2007 issued to The Pearl Manila for the sum of P156,572.04
MMMM-29	Official Receipt No. 2021 E dated 21 March 2007 issued to The Pearl Manila for the sum of P1,164.00
MMMM-30	Official Receipt No. 2005 E dated 27 February 2007 issued to The Pearl Manila for the sum of P1,067,000.00
MMMM-31	Official Receipt No. 1993 E dated 10 February 2007 issued to The Pearl Manila for the sum of P148,501.32
MMMM-32	Official Receipt No. 1988 E dated 27 January 2007 issued to The Pearl Manila for the sum of P970,000.00
MMMM-33	Official Receipt No. 1986 E dated 20 January 2007 issued to The Pearl Manila for the sum of P164,642.76
NNNN	SEC Certificate of Filing of the Articles and Plan of Merger dated 20 December 2005
OOOO	Articles of Merger executed on 01 September 2005
PPPP	Plan of Merger signed on 01 September 2005
QQQQ	Certificate of Registration of Business Name dated 15 January 2006

RRRR	General Ledger of Revenue for Taxable Fiscal Year 2007
SSSS-1	Quarterly Income Tax Return of UPSI Management, Inc. for the First Quarter of Taxable Year 2009
SSSS-2	Quarterly Income Tax Return of UPSI Management, Inc. for the Second Quarter of Taxable Year 2009
SSSS-3	Quarterly Income Tax Return of UPSI Management, Inc. for the Third Quarter of Taxable Year 2009
SSSS-4	Amended Annual Income Tax Return of UPSI Management, Inc. for Taxable Year 2009
TTTT	Judicial Affidavit of Mr. Emmanuel Y. Mendoza dated 10 August 2010
TTTT-1	Printed name and signature of Mr. Emmanuel Y. Mendoza

When the case was called for the initial presentation of respondent's evidence, respondent's counsel manifested that respondent will not present any witness.

Petitioner then filed its Memorandum on February 17, 2011; while respondent filed her Memorandum on February 18, 2011.

After the filing of the parties' memoranda, the case was deemed submitted for decision on February 25, 2011.

The parties submitted the following issues for this Court's disposition:

"1. Whether or not the fact of withholding is established by a copy of a statement duly issued by the payors (withholding agents) to Petitioner, showing the amount paid and the amount of tax withheld therefrom;

2. Whether or not Petitioner's income tax returns for taxable period ended 31 March 2007 include income payments that were subjected to creditable withholding tax, as part of Petitioner's gross income for taxable period ended 31 March 2007; and

3. Whether or not the petitioner has violated Section 76 of the 1997 Tax Code."

This Court finds it appropriate to first address the issue of whether petitioner violated Section 76 of the National Internal Revenue Code (NIRC) of 1997.

Section 76 of the NIRC of 1997, as amended, states 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)*

The above-quoted provision provides two options to a taxable corporation whose quarterly income tax payments in a given taxable year exceed its total income tax due. These options are (1) filing a tax refund (either in the form of cash or tax credit certificate) or (2) availing of a tax credit.

The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for a refund. On the other hand, the second option works by applying the refundable amount, as shown on the Final Adjustment Return of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. However, once the carry-over option is taken, actually or constructively, it becomes irrevocable for that taxable period. The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.

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.

On July 16, 2007, petitioner filed its Annual Income Tax Return (AITR) for the fiscal year ended March 31, 2007. Subsequently, it amended the said return on November 14, 2007. Below are the computations shown in the returns:

Fiscal Year ended March 31, 2007 AITR	Original AITR filed on 07/16/07		Amended AITR filed on 11/14/07	
	Exhibit "A"		*Exhibit "B"*	
Sales/Revenues/Receipts/Fees	P	7,489,259.00	P	7,489,259.00
Less: Cost of Sales/Services		6,461,650.00		6,461,650.00
Gross Income from Operation	P	1,027,609.00	P	1,027,609.00
Add: Non-Operating & Other Income		479.00		479.00
Total Gross Income	P	1,028,088.00	P	1,028,088.00
Less: Deductions		1,206,543.00		1,206,543.00
Taxable Income	**P**	**(178,455.00)**	**P**	**(178,455.00)**
Tax Rate (except MCIT Rate)	35%		35%	
Income Tax	NIL		NIL	
Minimum Corporate Income Tax (MCIT)	P	20,562.00	P	20,562.00
Aggregate Income Tax Due	**P**	**20,562.00**	**P**	**20,562.00**
Less: Tax Credits/Payments				
Prior Year's Excess Credits	P	5,159,341.00	P	2,231,507.00
Creditable Tax Withheld for the First Three Quarters		1,107,228.00		1,107,228.00

Creditable Tax Withheld for the Fourth Quarter		-		-
Total Tax Credits/Payments	P	6,266,569.00	P	3,338,735.00
Tax Payable/(Overpayment)	P	(6,246,007.00)	P	(3,318,173.00)

Petitioner did not check any box in its original Annual Income Tax Return and elected the option "To be issued a Tax Credit Certificate" in its amended Annual Income Tax Return insofar as the excess tax credits as of the fiscal year ended March 31, 2007 in the amount of P3,318,173.00 (including the subject claim of P1,107,228.00) is concerned. Nonetheless, petitioner carried over the said amount in its original Annual Income Tax Return for the fiscal year ended March 31, 2008 and Quarterly Income Tax Returns for the first, second, and third quarters of the succeeding fiscal year ended March 31, 2008. Thus, petitioner's option to refund (in the form of tax credit certificate) the amount of P1,107,228.00 is actually negated by its very act of carrying over said excess amount to the succeeding fiscal quarters/year of 2008. Clearly, petitioner manifested its intention to carry over, instead of refunding the excess creditable withholding tax it paid during the fiscal year ended March 31, 2007.

When petitioner exercised the carry-over option as regards the claimed excess creditable withholding tax for the fiscal year 2007, the said option became irrevocable for that taxable period and thus, no application for cash refund or issuance of tax credit certificate can be allowed.

In the case of *Paseo Realty and Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*, the Supreme Court had the occasion to expound on the options contained in Section 76 of the NIRC of 1997, as amended, and the irrevocability of the option made by the taxpayer. The pertinent portion of the decision reads:

> "As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year: (a) pay the balance of the tax still due; (b) carry-over the excess credit; or (c) be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed.**" *(Emphasis supplied)*

In the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, the Supreme Court reiterated the above ruling as follows:

> "These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention — whether to request a *tax refund* or claim a *tax credit* — by marking the corresponding option box provided in the FAR. **While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.**
>
> xxx xxx xxx
>
> 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 for that taxable period, and no application for a *tax refund* or issuance of a *tax credit certificate* shall then be allowed.**
>
> xxx xxx xxx
>
> Whether the FIFO principle is applied or not, Section 76 remains clear and unequivocal. **Once the carry-over option is taken, actually or constructively, it becomes irrevocable.** Petitioner has chosen that option for its 1998 creditable withholding taxes. Thus, it is no longer entitled to a *tax refund* of P459,756.07, which corresponds to its 1998 excess tax credit xxx" *(Emphasis supplied)*

A similar pronouncement was made by this Court in the case of *Shell Services International Sendirian Berhad vs. Commissioner of Internal Revenue* as regards the determination of the option chosen by the taxpayer in accordance with Section 76 of the NIRC of 1997, as amended. The pertinent portion thereof reads:

> "(W)hile petitioner marked with an 'x' the box corresponding to the phrase 'to be refunded' in its 2000 ITR, petitioner had ***actually exercised*** the option to carry-over its 2000 excess creditable withholding tax to the year 2001, and in fact, *it had already carried over* to the succeeding year its unutilized creditable taxes withheld for the taxable year 2000. By express mandate of *Section 76*, once the option to carry-over has been made, such option is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefore." *(Emphasis supplied)*

Furthermore, in the case of *Commissioner of Internal Revenue vs. PL Management International Philippines, Inc.*, the High 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 the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor'.**" *(Emphasis supplied)*

Having exercised the option of carry-over as regards the claimed excess tax credits of P1,107,228.00, petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended. Consequently, petitioner cannot seek the refund of the amount of P1,107,228.00 even if the same was not utilized in the succeeding fiscal year 2008. Petitioner's only recourse is to apply the excess amount of P1,107,228.00 to the succeeding quarters/years until it is fully utilized.

Suffice it to say that tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund. Considering petitioner's failure to discharge such burden of proof, the instant claim for tax refund must necessarily fail.

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** 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
Presiding Justice