REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILAM FINANCIAL ADVISORY SERVICES, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB Case No. 463
(CTA CASE NO. 7606)

Members:
ACOSTA, *Chairperson*
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, *and*
PALANCA-ENRIQUEZ, *JJ.*

Promulgated:
OCT 2 2 2009
3:50 pm

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DECISION

CASANOVA, *J.*:

This is an appeal, by way of a *Petition for Review*, filed by Philam Financial Advisory Services, Inc. (petitioner), on the *Decision* of the Court of Tax Appeals (CTA) Second Division promulgated on September 8, 2008 in CTA Case No. 7606, entitled *Philam Financial Advisory Services, Inc. vs. Commissioner of Internal Revenue,* wherein the Court denied petitioner's claim for refund of alleged excess creditable withholding taxes in the amount of P1,361,402.16 for the year ending December 31, 2004; and from the *Resolution* dated February 6, 2009 denying petitioner's *Motion for Reconsideration* dated September 26, 2008.

The facts of the case, as found by the CTA Second Division, are as follows:

"Philam Financial Advisory Services (Petitioner) is a corporation duly organized and existing under Philippine laws, with principal office address at the 18th Floor, Robinson's Summit Center, Ayala Avenue, Makati City.[1]

Commissioner of Internal Revenue (Respondent) is the duly appointed officer of the Bureau of Internal Revenue (BIR) empowered to perform the duties of her office, including among others, the duty to act and approve claims for refund or tax credit as provided by law. She holds office at the BIR National Office Building, Diliman, Quezon City, where she may be served summons and other court processes.[2]

On April 15, 2005, petitioner filed with the BIR its Annual Income Tax Return (ITR) for year ending December 31, 2004 and declared the following:

Sales/Revenues/Receipts/Fees	P	10,682,837.00
Less: Cost of sales/services		30,733,829.00
Gross income from operation	P	(20,050,992.00)
Add: Non-operating and Other income		135,999.00
Total Gross Income	P	(19,914,993.00)
Less: Deductions		4,738,949.00
Taxable Income	P	(24,653,942.00)

In the same ITR, petitioner did not opt to be refunded, to be issued a Tax Credit Certificate or to be carried over as tax credit next year/quarter.[3] In the same taxable year, petitioner incurred creditable tax withheld from its commission income/service fees amounting to P1,361,402.16, broken down as follows:

	2004				
	1st Quarter	**2nd Quarter**	**3rd Quarter**	**4th Quarter**	**TOTAL**
Philamlife[4]	18,515.38	40,847.32	234,469.02	543,058.68	836,890.40
Philam Asset Management Inc.[5]	16,073.14	42,883.96	64,661.49	33,378.92	156,997.51
Philam Plans. Inc.[6]		69,617.91	147,101.31	139,133.23	355,852.45
Philam Care[7]		295.93	1,785.89		2,081.82
Philam Insurance[8]	925.97		8,654.01		9,579.98
Total	35,514.49	153,645.12	456,671.72	715,570.83	**1,361,402.16**

[1] Paragraph 1, Joint Stipulation of Facts and Issues (JSFI), *Rollo*, page 79.
[2] Paragraph 2, JSFI, *ibid.*
[3] Exhibit "C-6", *Rollo*, page 131.
[4] Exhibits "I", "I-2", "J", "J-2", "K", "K-2", "L", and "L-2", *Rollo*, pages 230 to 233.
[5] Exhibits "M", "M-2", "N", "N-2", "O", "O-2", "P", and "P-2", *Rollo*, pages 234 to 237.
[6] Exhibits "Q", "Q-2", "R", "R-2", "S", and "S-2", *Rollo*, pages 238 to 240.
[7] Exhibits "T", "T-2", "U", and "U-2", *Rollo*, pages 241 to 242.
[8] Exhibit "H", *Rollo*, page 229.

On April 12, 2007, petitioner filed its administrative claim for refund of the amount of P1,361,402.16, representing excess/unutilized creditable withholding taxes for taxable year 2004.[9] And in order to comply with the prescriptive periods provided by law and to preserve its rights, petitioner filed before this Court the instant Petition for Review on April 13, 2007.

In the Answer filed on June 8, 2007, respondent alleged the following Special and Affirmative Defenses:

> '3. He reiterates and re-pleads the preceding paragraphs of this answer as part of his Special and Affirmative Defenses;
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> 4. Petitioner's alleged claim for issuance of tax credit certificate is still subject to administrative routine investigation/examination by the respondent's Bureau;
>
> 6. Granting that petitioner is at a loss position for the year 2004, it is still required to pay the minimum corporate income tax (MCIT) of two percent (2%) of its gross income as of the end of taxable year 2004 pursuant to Section 27 (E)(1) of the Tax Code which may diminish tremendously its claim;
>
> 7. In an action for refund/credit, the burden of proof is on the petitioner to establish its right to refund and failure to adduce sufficient proof is fatal to the claim for tax refund/credit;
>
> 8. It is incumbent upon the latter to show that it has complied with the provisions under Sections 204 (C) in relation to Section 229 of the Tax Code, otherwise, its failure to prove the same is fatal to its claim for refund;
>
> 10. 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 1211).***'[10]

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[9] Exhibit "G", *Rollo*, pages 225 to 228.
[10] *Rollo*, pages 56 to 57.

On August 29, 2007, the parties filed their 'Joint Stipulation of Facts and Issues', which was approved by this Court in a Resolution dated September 4, 2007.[11]

On June 26, 2008, the case was submitted for decision after petitioner's submission of its Memorandum on June 25, 2008, *sans* respondent's Memorandum."

After trial on the merits, the *CTA Second Division* promulgated the assailed *Decision* on September 8, 2008, the dispositive portion of which reads as follows:

"**IN VIEW OF THE FOREGOING,** the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED."

Not satisfied with the above decision, petitioner filed its *Motion for Reconsideration* on September 26, 2008[12] which was subsequently denied by the Second Division in a Resolution[13] promulgated on February 6, 2009.

On February 24, 2009, herein petitioner filed the instant *Petition for Review*[14] alleging that the same be given due course based on the following grounds:

1. The Honorable Court committed a reversible error when it denied the refund for failure of Petitioner to present a tax clearance certificate;

2. The First *(sic)* Division of the Honorable Court committed a reversible error in denying the refund when it failed to consider that:

    a. petitioner inadvertently reflected its CY 2004 tax credits as prior year's credits in its CY 2005 annual corporate income tax return; and

    b. due to business losses and its closure, petitioner will no longer be able to utilize its excess tax credits for CY 2004 to the succeeding taxable years.

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[11] *Rollo*, pp. 79 to 80 and 82.
[12] *Rollo*, CTA Second Division, pp. 355-362.
[13] *Rollo*, CTA Second Division, pp. 370-373.
[14] *Rollo*, CTA En Banc, pp. 1-14.

3. The Honorable Court erred in denying petitioner's claim for refund even if the latter has sufficiently proven the three requisites laid down by the law and jurisprudence.

Based on above grounds, petitioner presented the following issues in its *Petition for Review*:

1. Whether or not petitioner should be required to prove that it has been cleared of any tax liability before the refund may be granted considering that during the pendency of the case, petitioner's corporate existence has not yet expired;

2. Whether or not petitioner should be refunded of its excess/unutilized tax credits considering that it sufficiently proved that it made a mistake in recording its said tax credits as "prior year's tax credits" in its CY 2005 corporate annual income tax return and subsequently, petitioner corrected the said mistake;

3. Whether or not petitioner is entitled to a refund of its excess/unutilized tax credits considering that its consistent business losses and closure will render it impossible for petitioner to utilize the said excess tax credits;

4. Whether or not petitioner is entitled to the excess/unutilized creditable taxes amounting to P1,361,402.00 since it has sufficiently proven the three requisites laid down by law and jurisprudence.

The issues being interrelated shall be discussed concurrently.

Petitioner argues that it is unfair for the Court to require a tax clearance certificate when the same has not yet been issued and is in fact still pending with the respondent's office; and that petitioner finished with the presentation of its evidence when it formally offered its exhibits on January 11, 2008 or two months prior to the cessation of petitioner's corporate existence and more than five months prior to the application for tax clearance with the BIR.

Petitioner further argues that the government should not refuse a valid claim for refund which the taxpayer has on the ground that the latter owes the government taxes as the Supreme Court had ruled that a taxpayer may not set-off taxes against any claims he may have against the government.

Finally, petitioner argues that the carry-over was done inadvertently and petitioner sought to correct this by amending its calendar year 2005 corporate annual income tax return taking out the amount of P1,361,402.16 from the "Prior year's excess credits" portion. With such correction, and considering that petitioner has already shortened its corporate existence, it can no longer utilize its excess creditable withholding taxes.

We do not agree.

Petitioner is of the opinion that its claim was denied based on the fact that it did not present any certificate of tax clearance. However, petitioner's claim was denied because there was no excess and unutilized creditable tax withheld declared in its Annual ITR for 2004. Also, even if petitioner recognized its creditable withholding taxes for the year 2004, petitioner's claim was denied as it exercised the option to carry over in its original Annual ITR for 2004. The pertinent portion of the assailed decision is as follows:

> "A careful scrutiny of the Annual ITR for the year 2004 shows that petitioner did [not] reflect any excess and unutilized creditable tax withheld.[15] Neither did petitioner choose any option (*i.e.,* to be refunded, to be issued a Tax Credit Certificate, or to carry over to the succeeding taxable years) in case there is any excess and unutilized creditable tax withheld. Without reflecting any amount of excess creditable tax withheld in its Annual ITR, petitioner is precluded from claiming a refund for there is in fact no excess creditable tax withheld to speak of.
>
> Even assuming *arguendo* that petitioner recognized its excess creditable withholding taxes for the year 2004 amounting to P1,123,148.00 (the same is reported as 'Other Assets' in its Audited

[15] Exhibit "C", *supra.*

Financial Statement[16] and indicated the same in its Annual ITR), the claim for tax refund must still fail.

In its original Annual ITR filed on April 17, 2006[17] for taxable year 2005, petitioner clearly manifested its intention to carry-over the excess credits from taxable year 2004, since petitioner declared the amount of P1,257,088.00 as its 'Prior Year's Excess Credits other than MCIT' in its Annual ITR for taxable year 2005.

Clearly therefrom, petitioner exercised the option to carry-over the amount being requested for refund amounting to P1,361,402.16 from taxable year 2004 to the immediately succeeding taxable year. Petitioner's subsequent amendment of its Annual ITR for taxable year 2005[18], showing zero amount of 'Prior Year's Excess Credits other than MCIT', did not alter the fact that it had already carried-over the excess and unutilized creditable tax withheld for the year 2004. Hence, the **irrevocability rule** under Section 76 of the NIRC of 1997 governs.

In Section 76 of the NIRC of 1997, once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed.[19] It is not necessary that said excess tax payment/credit is actually applied against the tax due for the succeeding taxable year. As long as the taxpayer had elected to carry-over said amount to the succeeding taxable year, that choice is irrevocable for that taxable period.[20] The taxable period referred to under Section 76 is that taxable period which the taxpayer made the choice to carry-over and not to the next taxable year when the said excess or unutilized tax credits be carried over.[21]"

Petitioner's 2005 Annual Income Tax Return (ITR) shows utilization of its 2004 excess creditable withholding taxes. Despite amendment of its 2005 Annual ITR taking out the amount of claim from "Prior Year's Excess Credits other than MCIT", petitioner is bound by the irrevocability rule; thus, precluding its refund claim.

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[16] Exhibit "C-7", *Rollo*, page 149.
[17] Exhibit "D", *Rollo*, pages 153 to 155.
[18] Exhibit "E", *Rollo*, pages 178 to 180.
[19] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 and 162004, December 14, 2005.
[20] *Honda Cars Philippines, Inc. vs. Commissioner of Internal Revenue,* CA-G.R. SP No.75365, September 29, 2005.
[21] *SC & C Cosmotech Co., Inc. vs. Commissioner of Internal Revenue,* CTA Case No.6650, June 6, 2005.

As regards the requirement of a tax clearance, the same was for this Court's determination of whether or not petitioner shall be deemed dissolved or its operations deemed continued for purposes of determining carry-over of excess creditable withholding taxes pursuant to Section 235 of the 1997 National Internal Revenue Code which reads as follows:

> "**SEC. 235.** ***Preservation of Books of Accounts and Other Accounting Records.*** —
>
> xxx xxx xxx
>
> xxx. All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of its deputies for examination, after which they shall be returned. **Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability**." (Emphasis supplied)

In the absence of a certificate of tax clearance, the petitioner is deemed not dissolved but a continuing corporation with its operations assumed to be carried-on. Taken together with the irrevocability rule, the creditable withholding taxes shall be considered carried-over and utilized from the year 2005 onwards, again precluding petitioner's claim.

WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

CAESAR A. CASANOVA
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

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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