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. 7908

Members:

CASTAÑEDA, JR., *Chairperson*
CASANOVA, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:
JUL 0 5 2011
11:10 a.m.

x- x

DECISION

CASANOVA, *J.*:

This is a claim for refund or issuance of tax credit certificate in the amount of P2,927,834.00 representing the alleged excess/unutilized creditable withholding tax for the taxable year 2006.

The significant factual antecedents of this case are as follows:

Petitioner is a corporation duly incorporated and existing under and by virtue of the laws of the Republic of the Philippines, with business address at 1122 General Luna Street, Paco, Manila. Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act upon claims for refund or tax credit of overpaid internal revenue taxes, with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[1]

On April 16, 2007, petitioner filed its annual income tax return (ITR) for the year ended December 31, 2006 with the Revenue District No. 34 of the Revenue Region No. 6 of the Bureau of Internal Revenue ("BIR"),[2] reflecting an income tax overpayment of P5,159,341.00,[3] computed as follows:

Sales/Revenues/Receipts/Fees	P	28,808,960.00
Less: Cost of Sales/Services		23,834,605.00
Gross Income from Operation	P	4,974,355.00
Add: Non-Operating & Other Income		5,375.00
Total Gross Income	P	4,979,730.00
Less: Deductions		4,979,730.00
Taxable Income	**P**	**-**
Tax Rate (except MCIT Rate)		35%
Income Tax		-
Minimum Corporate Income Tax (MCIT)	P	99,595.00
Aggregate Income Tax Due	**P**	**99,595.00**
Less: Tax Credits/Payments		
Prior Year's Excess Credits	P	2,331,102.00
Creditable Tax Withheld for the First Three Quarters		-
Creditable Tax Withheld for the Fourth Quarter		2,927,834.00
Total Tax Credits/Payments	**P**	**5,258,936.00**
Tax Payable/(Overpayment)	**P**	**(5,159,341.00)**

On October 10, 2008, petitioner filed with the respondent's office, a claim for refund and/or issuance of a Tax Credit Certificate in the amount of P2,927,834.00, representing the alleged excess and unutilized creditable withholding taxes for 2006.[4]

[1] Paragraphs 1 and 2, Joint Stipulation of Facts; Division Docket, p. 250.
[2] Paragraph 3, Joint Stipulation of Facts; *Ibid*, p. 251.
[3] Exhibit "A".
[4] Paragraphs 7 and 8, Joint Stipulation of Facts; *Ibid*, p. 251.

In view of the fact that respondent has not acted upon the foregoing claim for refund/tax credit,[5] petitioner filed the instant Petition for Review on April 14, 2009.

In response to the summons[6] issued on April 22, 2009, respondent filed her Answer[7] on May 14, 2009 praying for the dismissal of the instant petition. In support thereof, she interposed the following special and affirmative defenses, *viz*:

> "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 not automatically applied against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.
>
> 9. Under Section 76 of the 1997 Tax Code, petitioner's excess creditable tax withheld for taxable year 2006 may either be refunded, claimed as tax credit or carried over/applied to the succeeding taxable years. However, once an option has been made, the same becomes irrevocable for that taxable period and no application for tax refund and/or tax credit shall be allowed.

---

[5] Paragraph 12, Joint Stipulation of Facts; *Ibid*, p. 252.
[6] *Ibid*, p. 219.
[7] *Ibid*, pp. 221-224.

10. In the case at bar, it is clear that petitioner opted to claim tax refund. However, it is also clear that the petitioner's claim of tax refund was done partially when it claimed only the unutilized creditable taxes withheld for taxable year 2006 amounting to P2,927,834.00 but excluded in its claim the prior years excess tax credits less MCIT in the amount of P5,258,936.00. Petitioner has explicitly violated Section 76 of the 1997 Tax Code for claiming partial tax refund instead of the whole amount of P5,159,341.00 as indicated in Item 31 of the petitioner's Income Tax Return (ITR). Thus, said petitioner's claim of *partial tax refund* is highly irregular, improper and erroneous.

11. The irrevocability of option is already well-settled. Once an option was made, it is deemed irrevocable. Splitting of option, such as where petitioner opted for tax refund of its excess and unutilized creditable withholding taxes of petitioner for taxable year 2006 amounting to P2,927,834.00 while automatically carrying over the remaining amount of P2,231,507.00 (See: Item 28A of the petitioner's ITR for taxable year 2007), consisting of petitioner's prior years excess tax credit less MCIT due, is violative of Section 76 of the 1997 Tax Code.

12. Moreover, the existence of an excess creditable withholding taxes alone does not per se entitle petitioner to a refund. 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 payors 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).*"

Afterwards, pre-trial ensued which culminated in the approval of the parties' "Joint Stipulation of Facts" on July 8, 2009.[8]

During the trial of the case, petitioner presented and offered its evidence while respondent did not present any evidence. Thereafter, this

---

[8] *Ibid*, p. 257.

case was submitted for decision on May 19, 2011 taking into consideration petitioner's "Memorandum" and "Supplemental Memorandum" filed on August 18, 2010 and May 12, 2011, respectively, and respondent's "Memorandum" filed on August 2, 2010.[9]

The parties jointly stipulated on the following issues to be tried or resolved[10] by this Court, *viz.*:

> "1. Whether or not the Petitioner filed its claim for refund and/or issuance of a tax credit certificate within the two-year prescriptive period from the date of payment of tax;
>
> 2. 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;
>
> 3. Whether or not Petitioner's income tax returns for taxable year 2006 include income payments that were subjected to creditable withholding tax, as part of petitioner's gross income for taxable year 2006; and
>
> 4. Whether or not the petitioner has violated Section 76 of the 1997 Tax Code when it claimed only the unutilized creditable taxes withheld for the whole of taxable year 2006 alone, amounting to P2,927,834.00, but excluded in its claim the Petitioner's prior years' (i.e., years prior to taxable year 2006) excess tax credits less MCIT, amounting to P2,231,507.00."

---

[9] *Ibid*, Vol. III, p. 1269.
[10] *Ibid*, pp. 252-253.

The crux of the foregoing jointly stipulated issues is the determination of whether or not petitioner is entitled to refund or issuance of tax credit certificate allegedly representing excess or unutilized creditable withholding tax in the amount of P2,927,834.00 for taxable year 2006.

To avail of the refund of excess creditable withholding taxes, the following are the basic requirements[11] *viz.*:

1. The claim for refund must be filed within the two-year prescriptive period provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2. The fact of withholding is established by a copy of a statement issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld were included in the return of the recipient.

Equally important, aside from the above-enumerated requirements, is that petitioner must prove that it did not carry-over its excess creditable withholding taxes to the succeeding taxable year.[12] This additional requirement is an offshoot of the "irrevocability rule" introduced in Section 76 of the 1997 National Internal Revenue Code (NIRC), which 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:
>
> "(A) Pay the balance of tax still due; or
> "(B) Carry-over the excess credit; or

---

[11] Golden Arches Realty Corporation vs. Commissioner of Internal Revenue, CTA Case No. 7201, May 17, 2007 *citing Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459 and Section 2.58.3(B) of Revenue Regulations No. 2-98.*
[12] Golden Arches Realty Corporation vs. Commissioner of Internal Revenue, *supra*.

> "(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)*

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[13] for that taxable period once taken actually or constructively.[14] 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.[15]

At this point, we are now going to determine petitioner's compliance with the aforesaid requirements.

As regards the first requirement, Section 204(C)[16] of the 1997 NIRC in relation to Section 229[17] of the same Code provides that the claim for refund

---

[13] Belle Corporation vs. Commissioner of Internal Revenue, G.R. No. 181298, March 2, 2011 Resolution.

[14] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005; and Systra Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007 Resolution.

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

[16] Sec. 204. *Authority of the Commissioner to compromise, abate and refund/credit taxes.* – The Commissioner may – (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

[17] Sec. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected,

both in the administrative and judicial levels must be filed within two (2) years from the date of payment of the tax. In a claim for refund of excess and unutilized creditable withholding tax, the two (2)-year prescriptive period shall be reckoned from the date of filing of the annual income tax return.[18]

Applying these settled rules in the present case reveal that petitioner's claim with the BIR on October 10, 2008 and its Petition for Review on April 14, 2009, were both filed within the two (2) year prescriptive period reckoned from the filing of its 2006 Annual ITR on April 16, 2007.

Notwithstanding the timely filing of petitioner's administrative and judicial claims, the same should be denied since petitioner effectively exercised the carry-over option pertaining to its claimed excess and unutilized creditable withholding tax for 2006.

Records disclose that petitioner elected the option "To be issued a Tax Credit Certificate" as shown in its 2006 ITR.[19] However, this option is negated by petitioner's act of carrying over the 2006 excess tax credit of P5,159,341.00 *(including the subject claim of P2,927,834.00)* to the succeeding short period original ITR for fiscal year ended March 31, 2007.[20] While petitioner filed an amended ITR for the said fiscal year, where it is shown that the claimed excess tax credits was no longer carried over

---

until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* that the Commissioner, may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

[18] Golden Arches Realty Corporation vs. Commissioner of Internal Revenue, *supra*, *citing ACCRA Investments Corporation vs. Court of Appeals et. al., 204 SCRA 957; and Commissioner of Internal Revenue vs. TMX Sales, Inc., 205 SCRA 184.*

[19] Exhibits "A" and "A-9".

[20] Line 28A, Exhibit "KK".

therein,[21] such amendment cannot be allowed. To do so would render the irrevocability of the carry over option under Section 76 of the NIRC nugatory.

Having exercised the option of carry-over as regards the claimed excess tax credits of P2,927,834.00, petitioner is bound by the irrevocability rule under Section 76 of the NIRC. Consequently, petitioner is not entitled to the refund of the amount being sought. Its only recourse is to apply the claimed excess creditable withholding tax of P2,927,834.00 to the succeeding years until it is fully utilized.

In view of the foregoing, it is no longer necessary to discuss the other requirements as well as the issues raised by the parties.

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

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Wellness Leave)
CIELITO N. MINDARO-GRULLA
Associate Justice

[21] Exhibit "B-5".

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.

ERNESTO D. ACOSTA
Presiding Justice