REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

UPSI MANAGEMENT, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 7602

Members:
ACOSTA, *Chairperson*
BAUTISTA, and
CASANOVA, *JJ.*

Promulgated:
JUL 06 2009 ; 1:30 pm

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DECISION

CASANOVA, *J.*:

The instant Petition for Review prays that judgment be rendered ordering the respondent Commissioner of Internal Revenue to refund or issue a tax credit to petitioner UPSI Management, Inc. in the amount of P2,151,269.00 representing excess/unutilized creditable withholding tax for the year 2004 allegedly unutilized and unapplied for up to the time of the filing of this case.

Petitioner is a corporation duly organized and existing under Philippine Laws, with business address at 1122 General Luna Street, Paco, Manila[1].

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue with powers to act upon and grant claims for refund of tax credit

[1] Joint Stipulation of Facts, Rollo, pp. 90-97, par. 1.

of overpaid internal revenue taxes, with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City[2].

On April 15, 2005, petitioner filed its annual income tax return for the taxable year ended December 31, 2004 with Revenue District No. 34, Revenue Region No. 6 of the Bureau of Internal Revenue[3].

On June 7, 2005 petitioner filed an Amended Annual Income Tax Return (ITR) for taxable year ended December 31, 2004[4].

On December 19, 2006, pursuant to Sections 204(c) and 229 of the National Internal Revenue Code of 1997 (1997 NIRC), petitioner filed a claim for refund and/or issuance of a Tax Credit Certificate in the total amount of P2,151,269.00 representing the unutilized creditable withholding taxes for taxable year 2004 [5].

In his income tax returns for the calendar year 2004, petitioner reported a net loss of P1,030,044.00, a Minimum Corporate Income Tax (MCIT) due of P68,464.00, Prior Year's Excess Creditable Withholding Taxes amounting to P2,487,900.00 and Creditable Taxes Withheld for the taxable year 2004, in the amount of P2,151,269.00[6]. In sum, petitioner reported excess creditable withholding taxes amounting to P4,639,169.00[7]. As petitioner was in a net loss position, it only paid the MCIT due[8].

Petitioner indicated its intention "to be issued a tax credit certificate" to the extent of the unutilized creditable tax withheld for taxable year 2004 by marking the

[2] Ibid., par. 2.
[3] Ibid., par. 3.
[4] Ibid., par. 4.
[5] Ibid., par. 5.
[6] Ibid., pars. 6-8.
[7] Ibid., par. 12.
[8] Ibid., par. 9.

appropriate box with "x" in its 2004 Amended Income Tax Return[9]. Despite its manifestation that it wishes to be issued a tax credit certificate, its Creditable Taxes Withheld for the year 2004, in the amount of P2,151,269.00, was carried over to Petitioner's Creditable Tax Withheld in its 2005 Annual Income Tax Return. The P2,151,269.00 was part of the Petitioner's Prior Excess Credits of P4,570,705.00 for taxable year 2005[10].

On December 19, 2006, petitioner filed with the office of the respondent a claim for refund and/or issuance of a tax credit certificate in the total amount of P2,151,269.00 representing the unutilized creditable withholding taxes for taxable year 2004[11].

Not having received any reply from respondent, petitioner filed the instant case before this Court on April 12, 2007.

Respondent filed his Answer[12] on May 29, 2007 which stated 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)*.
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> 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)*.

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[9] Ibid., par. 13.
[10] Ibid., par. 14-15.
[11] Ibid., par. 16.
[12] Rollo. pp. 62-65.

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 taxable years.

9. Under Section 76 of the 1997 Tax Code, petitioner's excess creditable tax withheld for taxable year 2004 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 'E'). However, once an option has been made, the same becomes irrevocable for the tax period and no application for cash refund shall be allowed therefore.

10. In the case at bar, petitioner opted to claim as tax credit said amount of P2,151,269.00, but the said amount was likewise automatically carried over and/or applied as petitioner's creditable tax withheld in its 2005 income tax return (Annex 'C'). 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 three (3) option[s] simultaneously would not only confuse the respondent of petitioner's claim but it is likewise highly irregular, improper and erroneous.

11. While the petitioner's act of carrying–over of said amount of P2,151,269.00 to petitioner's creditable tax withheld for taxable year 2005 is improper, the fact of carrying-over alone 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 refund and/or tax credit at the same time.

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) years 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)."

The parties submitted their Joint Stipulation of Facts[13] on July 27, 2007 which this Court approved *via* a Resolution[14] on July 31, 2007.

During trial, petitioner presented documentary and testimonial evidence to establish inclusion of its income in its returns, fact of withholding and non-utilization of excess creditable taxes withheld. Petitioner submitted its Formal Offer of Evidence[15] on May 23, 2008 which this Court resolved[16] on July 15, 2008 by admitting all of its documentary exhibits except Exhibits "E-3, E-4, E-5, GG, GG-1, GG-2, GG-3, R, R-1, R-2 and R-3".

On August 5, 2008, due to the denial of some of its exhibits, petitioner filed a Motion for Reconsideration[17] of the Resolution dated July 15, 2008. However, in the hearing held on August 7, 2008, because of the lack of date and time of hearing of said Motion, the same was not admitted by the Court; instead, petitioner was given a period of thirty days to file a Motion to Admit the Attached Motion for Reconsideration[18]. Also in the same hearing, respondent's counsel manifested that it has no witnesses to present and that it is submitting the case for decision based on the pleadings[19].

In compliance with Court order, petitioner filed its Motion to Admit Attached Motion for Reconsideration[20] on August 7, 2008. On September 30, 2008 the Court

[13] Supra, note 1.
[14] Rollo, p. 99.
[15] Rollo, pp. 790-843.
[16] Rollo, pp. 846-848.
[17] Rollo, pp. 850-857.
[18] Rollo, p. 876.
[19] Ibid.
[20] Rollo, pp. 877-879.

denied the Motion to Admit Attached Motion for Reconsideration[21]. Petitioner again filed a Motion for Reconsideration[22] of the Resolution dated September 30, 2008 on October 20, 2008, which this Court granted on December 5, 2008[23].

Upon submission by the parties of their respective Memorandum, January 8, 2009 for petitioner[24] and January 21, 2009 for respondent[25], the case was submitted for decision[26] on March 19, 2009.

The issues jointly submitted by the parties for decision are as follows;

1. Whether or not petitioner filed its claim for refund and/or issuance of a tax credit certificate within the two-year period;

2. Whether or not the unutilized Creditable Taxes Withheld for the taxable year 2004 has been used at any time and whether the same has been inadvertently carried over to taxable year 2005;

3. Whether or not petitioner could simultaneously claim refund and/or tax credit certificate of said alleged unutilized creditable income tax withheld of P2,151,269.00 for taxable year 2004 and carried over the same amount of P2,151,269.00 as its prior excess credits in its Income Tax return for taxable year 2005;

4. Whether or not the excess creditable taxes for taxable year 2004 sought to be refunded were actually withheld and remitted to the BIR by the petitioner's payors/withholding agents, as proven by statements duly issued by the payors/withholding agents to petitioner showing the amount paid and the amount of tax withheld therefrom;

5. Whether or not the alleged excess creditable taxes for taxable year 2004 sought to be refunded were actually withheld and remitted by petitioner's withholding agents to the BIR in accordance with the provisions of the Tax Code;

6. Whether or not the Annual Income Tax Return and the Amended Annual Income Tax Return both for taxable year 2004, show that the income payments were received, that were

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[21] Rollo, pp. 999-100.
[22] Rollo, pp. 1001-1010.
[23] Rollo, pp. 1014-1015.
[24] Memorandum , Rollo, pp. 1017-1076.
[25] Memorandum, Rollo, pp. 1079-1086.
[26] Rollo, p. 1104.

subjected to withholding taxes, were declared as part of petitioner's gross income;

7. Whether or not petitioner is entitled to be issued a tax credit certificate in the amount of P2,151,269.00 representing the unutilized creditable taxes withheld for taxable year 2004; and

8. Whether or not petitioner's claim for refund of P2,151,269.00 is proper and in accordance with law.

The main issue to be resolved is whether or not petitioner is entitled to claim as refund the amount of P2,151,269.00.

Petitioner hinges its claim on Sections 204 (c) and 229 of the 1997 NIRC which read as follows:

"**SECTION 204.** ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.*** — The Commissioner may —

xxx xxx xxx

(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.

xxx xxx xxx"

"**SECTION 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, 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 therefore, 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."

Petitioner argues that it incurred excess creditable taxes in the amount of its claim which is P2,151,269.00 for the taxable year 2004 and submitted its original and amended Annual Income Tax Returns to prove overpayment. As it incurred excess payments, it now seeks to claim such overpayment under Sections 204(c) and 229 of the 1997 NIRC. The details of its returns are as follows:

		2004 Original Annual ITR[27]		**2004 Amended Annual ITR**[28]
Sales/Revenues	P	21,723,861.00	P	21,723,861.00
Less: Cost of Sales		18,303,462.00		18,303,462.00
Gross Income from Operation	P	3,420,399.00	P	3,420,399.00
Add: Non-operating and Other Income		2,797.00		2,797.00
Total Gross Income	P	3,423,196.00	P	3,423,196.00
Less: Deductions		4,453,240.00		4,453,241.00
Taxable Income	P	(1,030,044.00)	P	(1,030,045.00)
Tax Rate		32%		32%
Income Tax		NIL		NIL
Minimum Corporate Income Tax (MCIT)	P	68,464.00	P	68,464.00
Aggregate Income Tax Due		68,464.00		68,464.00
Less: Tax Credits/Payments				
Prior Year's Excess Credits		(4,577,152.00)		(2,487,900.00)
Tax Payments for the First Three Quarters		-		-
Creditable Tax Withheld for the First Three Quarters		-		-
Creditable Tax Withheld Per BIR Form 2301		(2,151,269.00)		(2,151,269.00)
Total Tax Credits/Payments	P	(6,728,421.00)	P	(4,639,169.00)
Payable/Overpayment	P	**(6,659,957.00)**	P	**(4,570,705.00)**

[27] Exhibit "A", Rollo, pp. 153-155.
[28] Exhibit "B", Rollo, pp. 156-158.

Based from the above returns, petitioner explained that since its operations incurred a loss, it was only required to pay a Minimum Corporate Income Tax (MCIT) of P68,464.00. Its MCIT liability, however did not fully utilize its Excess Creditable Taxes Withheld leaving a balance of P4,570,705.00. Although it did not exercise any option in its 2004 Original Annual ITR to either claim the excess as a refund, as a tax credit certificate or as a carry-over, it specifically crossed out the option "to be issued a tax credit certificate" in its 2004 Amended Annual ITR. Petitioner furthered that since the chosen option of requesting for a tax credit certificate only affects the taxable year of 2004, it thus claims as refund only the amount of P2,151,269.00.

Respondent, on the other hand, countered that although petitioner opted for the issuance of a tax credit certificate, petitioner actually carried-over the entire P4,570,705.00 in its 2005 Original Annual ITR, as such, petitioner is precluded from claiming P2,151,269.00 as a tax credit certificate.

We find for respondent.

Petitioner alleged that the carry-over to 2005 of its excess creditable withholding taxes was done inadvertently and to remedy this, the whole amount of P4,570,705.00 was deducted from its excess creditable withholding taxes in 2006. This was shown in petitioner's returns detailed as follows:

		2005 Original Annual ITR[29]		2006 Original Annual ITR [30]
Sales/Revenues	P	18,741,488.00	P	28,808,960.00
Less: Cost of Sales		14,325,299.00		23,834,605.00
Gross Income from Operation	P	4,416,189.00	P	4,974,355.00
Add: Non-operating and Other Income		466.00		5,375.00
Total Gross Income	P	4,416,655.00	P	4,979,730.00

[29] Exhibit "C", Rollo, pp. 159-161.
[30] Exhibit "D", Rollo, pp. 162-164.

Less: Deductions	4,524,900.00	4,453,241.00
Taxable Income	P (108,245.00)	P -
Tax Rate	32%/35%	35%
Income Tax	NIL	NIL
Minimum Corporate Income Tax (MCIT)	P 88,333.00	P 99,595.00
Aggregate Income Tax Due	88,333.00	99,595.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	(4,570,705.00)	(2,331,102.00)
Tax Payments for the First Three Quarters	-	-
Creditable Tax Withheld for the First Three Quarters	(1,664,028.00)	-
Creditable Tax Withheld Per BIR Form 2301	(248,167.00)	(2,927,834.00)
Total Tax Credits/Payments	P (6,482,900.00)	P (5,258,936.00)
Payable/Overpayment	**P (6,394,567.00)**	**P (5,159,341.00)**

However, Section 76 of the 1997 NIRC provides that once the alternative of carrying-over excess creditable taxes withheld has been chosen, such action is irrevocable. Section 76 is reproduced hereunder:

> "**SECTION 76.** ***Final Adjustment Return***. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit 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.**" (Emphasis supplied)

In other words, Section 76, gives a corporation three options as regards its excess quarterly income tax payments/creditable withholding taxes, namely:

a) to be refunded;
b) to be issued a tax credit certificate; and
c) to carry-over as excess credit to the succeeding taxable quarters/years.

The words of Section 76 are clear: once the option of carry-over has been made, the same becomes irrevocable for that taxable period and consequently, an application for cash refund or issuance of tax credit certificate shall be not be allowed[31]. The taxpayer is given the option, however, to continuously carry-over such amount to the next taxable quarters/years until fully utilized.

Also in *Commissioner of Internal Revenue vs. Honda Philippines, Inc.*[32], the Court of Appeals held that "since the rule of irrevocability of the option to carry-over the tax credit applies to respondent, it cannot file a claim for cash refund for its unutilized tax credit."

Considering that petitioner has actually exercised the option to carry-over despite the fact that it marked the option "to be issued a tax credit certificate", it is still precluded from seeking the issuance of a tax credit certificate for its excess creditable withholding taxes.

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[31] *Bakun Power Line Corporation vs. Commissioner of Internal Revenue*, CTA Case No. 6701, March 19, 2007 citing *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, CTA Case No. 6276, dated March 12, 2003; *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*. CTA Case No. 6210, dated May 2, 2002; *Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6074, dated April 19, 2002; *Pilipinas Transport Industries vs. Commissioner of Internal Revenue*, CTA Case No. 6073, dated March 1, 2002; and *The Philippine Banking Corporation (now known as Global Business Bank, Inc.)* vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6280, August 16, 2001.
[32] CA-G.R. SP No. 68141, October 25, 2002.

In *Subic Bay Distribution Inc., vs. Commissioner of Internal Revenue*[33], this Court made a similar observation when it said that:

> "A perusal of petitioner's 2000 Annual Income Tax Return shows that, indeed, petitioner marked the box 'To be issued a Tax Credit Certificate'. However, upon further verification of its 2001 Annual Income Tax Return, the amount of P28,422,664.00 was found to have been carried-over as the same was included as prior year's excess credits in its 2001 return, which amount included the subject claim amounting to P15,794,318.00. Thereby leading to the conclusion that petitioner has actually exercised the option to carry-over the excess creditable taxes withheld for the year 2000 due to its inclusion in the 2001 Annual Income Tax Return."

From the above citation, We can likewise conclude that when petitioner exercised the carry-over of P4,570,705.00 despite marking the option to be issued a tax credit certificate, its intention was really to utilize its excess Creditable Withholding Taxes in the succeeding taxable years to come. Having opted this, petitioner's claim cannot be granted.

WHEREFORE, 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

LOVELL R. BAUTISTA
Associate Justice

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[33] CTA EB NO. 72. May 23, 2006 (C.T.A. Case No. 6640).

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's Division.

ERNESTO D. ACOSTA
Presiding Justice
Chairperson, First Division