REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
Quezon City

THIRD DIVISION

WINEBRENNER & IÑIGO INSURANCE, BROKER, INC.,
Petitioner,

-versus-

CTA Case No. 7764

Members:

BAUTISTA, Chairperson
PALANCA-ENRIQUEZ, and
COTANGCO-MANALASTAS, JJ

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 16 2011

x- ABFernandez 4:25 p.m. - x

DECISION

COTANGCO-MANALASTAS *J.:*

STATEMENT OF THE CASE

Before the Court is the Petition for Review filed by petitioner Winebrenner & Iñigo Insurance Brokers, Inc. to seek the refund or issuance of tax credit certificate in the amount of P4,312,694.00, allegedly representing its excess and unutilized creditable income taxes withheld for taxable year 2005.

STATEMENT OF FACTS

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at Suite 803, 88 Corporate Centre, Sedeño corner Valero Streets, Salcedo Village, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) and was issued Tax Identification Number (TIN) 000-151-714-000 and BIR Certificate of Registration No. 9RC0000185715.[2]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue empowered to perform the duties of said office including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes.

On the following dates, petitioner filed with the BIR the following Annual Income Tax Returns:[3]

Annual Income Tax Return (2005)	Date of Filing
Original Annual ITR	April 17, 2006
First Amended Annual ITR	May 9, 2006
Second Amended Annual ITR	May 15, 2006

On April 9, 2008, petitioner filed with the BIR Revenue District Office No. 50 an administrative claim for refund of excess and unutilized creditable withholding taxes for taxable year 2005 in the amount of P4,312,694.00.[4] Thereafter, petitioner filed the instant Petition for Review on April 14, 2008.

[1] Exhibits "A" to "A-3"
[2] Exhibit "B"
[3] Par. 7, Stipulated Facts, Joint Stipulation of Facts and Issues, pages 3-4; Exhibits "F", "G", and "H"
[4] Exhibit "J"

In his Answer[5] filed on June 19, 2008, respondent interposed the following Special and Affirmative Defenses:

"5. Granting but without admitting that Petitioner filed a claim for refund, the same is still subject to investigation by the Bureau of Internal Revenue;

6. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

7. Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not creditable or refundable;

8. It is incumbent upon the Petitioner to show that it has complied with the provision of Sections 204(C) in relation to Section 229 of the 1997 Tax Code, as amended;

9. Petitioner is not entitled to a refund or tax credit because it opted to carry-over its excess creditable withholding tax for 2005 in its Amended Annual Income Tax Return filed on May 9, 2006 and marked as Annex 'D' of the Petition. Hence, said option is considered irrevocable and cannot be altered by filing an amended annual income tax return pursuant to Section 76 of the 1997 Tax Code and the Decision of the Honorable Court in the case of *Cebu Holdings, Inc. vs. Commissioner of Internal Revenue, C.T.A. Case No. 6062 dated September 10, 2002*;

10. In an action for tax credit or refund the burden is upon the taxpayer to prove that it is entitled thereto, and failure to discharge the said burden is fatal to the claim *(Emmanuel & Zenaida Aguilar v. Commissioner, CA-GR No. Sp. 16432, March 30, 1990 cited in Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206)*;

11. Claims for refund are construed strictly against the claimant, the same partake the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, the are looked upon with disfavor. *(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121.)*"

[5] Docket, pp. 44-47

A Notice of Pre-trial Conference[6] dated June 20, 2008 was sent to both parties, setting the case for pre-trial conference on July 4, 2008 and requiring both parties to be present at the pre-trial and to file with the Court at least three (3) days before the date of the pre-trial their pre-trial briefs.

In compliance with the said Notice, petitioner's Pre-Trial Brief[7] and respondent's Pre-Trial Brief[8] were filed on July 1, 2008 and July 2, 2008, respectively.

On July 29, 2008, the parties' Joint Stipulation of Facts and Issues was filed in Court. In a Resolution dated July 31, 2008, the Joint Stipulation of Facts and Issues was approved and the pre-trial conference was terminated.[9]

During trial, petitioner was able to present its testimonial evidence as well as its documentary evidence, specifically, Exhibits "A" to "E[12]"; which were admitted in the Resolutions dated June 19, 2009[10] and September 4, 2009[11]. For his part, respondent presented in evidence Exhibits "1" and "1-A" to support his arguments. The said exhibits were admitted in a Resolution[12] dated November 16, 2009.

On March 12, 2010, a Resolution[13] was issued by this Court submitting this case for decision, considering petitioner's Memorandum[14] filed on February 17, 2010 and respondent's failure to submit his Memorandum. h

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[6] Docket, p. 48
[7] Docket, pp. 49-57
[8] Docket, pp. 58-59
[9] Docket, p. 77
[10] Docket, pp. 343-344
[11] Docket, pp. 367-368
[12] Docket, p. 388
[13] Docket, p. 452
[14] Docket, pp. 397-449

STATEMENT OF ISSUES

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

"1. Whether or not the claim for refund was filed within the two year period.

2. Whether or not the income from the subject creditable taxes where reported as part of Petitioner's gross income in its ITR for the CY 2005.

3. Whether or not Petitioner's unutilized excess withholding taxes amounting to Four Million Three Hundred Twelve Thousand Six Hundred Ninety Four Pesos (P4,312,694.00), representing petitioner's excess and unutilized creditable withholding taxes for the CY 2005, are duly substantiated by documentary evidence.

4. Whether or not Petitioner opted to carry-over its unutilized withholding taxes for the CY 2005 against its income tax liability in the succeeding year.

5. Whether Petitioner has excess and unutilized creditable withholding tax for the year 2005.

6. Whether Petitioner is entitled to a refund or issuance of tax credit certificate in the aggregate amount of P4,312,694.00 representing alleged unutilized creditable withholding tax for the year 2005."[15]

DISCUSSION/RULING

The foregoing issues can be summarized as follows:

> "Whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of P4,312,694.00, representing alleged unutilized creditable withholding tax for taxable year 2005."

Before this Court determines petitioner's compliance with the requirements provided by law and jurisprudence for refund claims of excess

[15] Stipulated Issues for Trial, Joint Stipulation of Facts and Issues, pages 4-5

creditable withholding tax, the Court deems it proper to first ascertain whether petitioner opted to refund or to carry over its unutilized income taxes withheld for taxable year 2005 against its income tax liability in the succeeding year, in accordance with Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended.

Section 76 of the NIRC of 1997, as amended, is hereunder quoted for easy reference, to wit:

> "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 credits; 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)*

Based on the afore-quoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options, namely: (1) to carry over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the corporation opts for a carry-over of the excess credit, the same shall be irrevocable for that taxable period.

Records show that on April 17, 2006, petitioner filed its Annual Income Tax Return for taxable year 2005.[16] Subsequently, it amended the said return on May 9, 2006[17] and on May 15, 2006[18]. Below are the amounts shown in the returns:

	Original 2005 ITR filed on 4/17/06	First Amended ITR filed on 5/9/06	Second Amended ITR filed on 5/15/06
Sales/Revenues/Receipts/Fees	P 40,264,754.00	P 40,264,754.00	P 40,264,754.00
Less: Cost of Sales/Services	31,155,447.00	30,915,447.00	30,915,447.00
Gross Income from Operation	P 9,109,307.00	P 9,349,307.00	P 9,349,307.00
Add: Non-Operating & Other Income	10,200,303.00	9,200,303.00	9,200,303.00
Total Gross Income	P 19,309,610.00	P 18,549,610.00	P 18,549,610.00
Less: Deductions	14,515,405.00	15,266,237.00	15,266,237.00
Taxable Income	**P 4,794,205.00**	**P 3,283,373.00**	**P 3,283,373.00**
Tax Rate (except MCIT Rate)	35% / 32%	35% / 32%	35% / 32%
Income Tax	P 1,558,117.00	P 1,067,096.00	P 1,067,096.00
Minimum Corporate Income Tax (MCIT)	P 386,192.00	P 370,992.00	P 370,992.00
Aggregate Income Tax Due	**P 1,558,117.00**	**P 1,067,096.00**	**P 1,067,096.00**
Less: Tax Credits/Payments			
Prior Year's Excess Credits	P 5,488,269.00	P 5,488,269.00	P 5,488,269.00
Creditable Tax Withheld for the First Three Quarters	4,312,225.00	4,312,694.00	4,312,694.00
Creditable Tax Withheld for the Fourth Quarter	-	-	-
Total Tax Credits/Payments	**P 9,800,494.00**	**P 9,800,963.00**	**P 9,800,963.00**
Tax Payable/(Overpayment)	**P (8,242,377.00)**	**P (8,733,867.00)**	**P (8,733,867.00)**

A closer examination of the foregoing Annual Income Tax Returns reveals that petitioner opted to carry over and apply its excess creditable

[16] Exhibit "F"
[17] Exhibit "G"
[18] Exhibit "H"

income taxes withheld for taxable year 2005 to the succeeding year. While petitioner marked the box pertaining to the phrase "To be issued a Tax Credit Certificate" for its unutilized excess creditable withholding tax in its original[19] and second amended[20] Annual Income Tax Returns for 2005, its first amended Annual Income Tax Return for 2005[21] explicitly shows that petitioner chose the option of carry-over of its excess creditable withholding tax by marking the box corresponding to the phrase "To be carried over as tax credit next year/quarter". Applying the above-quoted provision to this case, the carry-over option is considered irrevocable and cannot be altered by filing an amended Annual Income Tax Return, pursuant to Section 76 of the NIRC of 1997, as amended.

In the case of *Paseo Realty and Development Corporation vs. Court of Appeals, Court of Tax Appeals and Commissioner of Internal Revenue*[22], the Supreme Court explained Section 76 of the NIRC of 1997, as amended; which provides for the irrevocability of the option chosen by the taxpayer to carry over its excess or unutilized creditable withholding tax. The pertinent portion of the said case 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

[19] Exhibit "F", line 31
[20] Exhibit "H", line 31
[21] Exhibit "G", line 31
[22] G.R. No. 119286, October 13, 2004

> 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.**"

In the same vein, the High Tribunal reiterated the above ruling in the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*[23] in this wise:

> "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)*

From the foregoing discussion, it is apparent that the option chosen by petitioner is the carry-over of its excess creditable income taxes withheld in 2005 and apply the same to the succeeding year. Consequently, the said option is now considered irrevocable.

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

In its Memorandum, petitioner argues that it did not carry over its excess and unutilized creditable withholding tax as of December 31, 2005 in the amount of P4,312,694.00 to the succeeding taxable year as shown in its Annual Income Tax Return for 2006, particularly, in Line 27A thereof, which indicates the amount of P4,421,173.00 as "prior year's excess credits".

This Court is not persuaded.

Upon close verification of petitioner's second amended Annual Income Tax Return for taxable year 2005[24], it may be gleaned that petitioner had total tax credits of P9,800,963.00; which consisted of the prior year's excess credits in the amount of P5,488,269.00 and creditable taxes withheld during the year 2005 in the amount of P4,312,694.00. Petitioner's income tax due was paid using a portion of its prior year's excess credits of P5,488,269.00, leaving the prior year's excess credits in the amount of P4,421,173.00 (P5,488,269.00 less P1,067,096.00) and creditable taxes withheld during the year 2005 in the amount of P4,312,694.00, or a total of P8,733,867.00, unutilized as of December 31, 2005, as shown below:

Income Tax Due	P 1,067,096.00
Less: Prior Year's Excess Credits	5,488,269.00
Balance of Prior Year's Excess Credits	P 4,421,173.00
Add: Creditable Taxes Withheld – 2005	**4,312,694.00**
Excess Creditable Taxes Withheld as of December 31, 2005	P 8,733,867.00

[24] Exhibit "H"

Indeed, this Court finds that petitioner did not in fact carry over and apply the 2005 unutilized excess tax credits of P4,312,694.00[25] as may be verified in its 2006 Annual Income Tax Return.

Nevertheless, in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[26], the Supreme Court declared that even if the excess income tax credit was not actually applied to a tax liability, the choice to carry over is still irrevocable. The pertinent part of the said case reads:

> "The choice by BPI of **the option to carry over its 1998 excess income tax credit to succeeding taxable years**, which it explicitly indicated in its 1998 ITR, is **irrevocable, regardless of whether it was able to actually apply the said amount to a tax liability**. xxx" *(Emphasis supplied)*

Indubitably, the carry-over option had already been made and petitioner is bound by the irrevocability rule under Section 76 of the NIRC of 1997, as amended. Accordingly, petitioner cannot seek a refund of its 2005 excess tax credits in the amount of P4,312,694.00 even if the same were not utilized in the succeeding year 2006. Instead, it should just apply the 2005 excess tax credits to the succeeding quarters/years until the same are fully utilized.

In view of this Court's findings that petitioner is not entitled to a refund of its excess creditable income taxes withheld for taxable year 2005, pursuant to the provision of Section 76 of the NIRC of 1997, as amended, the

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[25] Exhibit "I", line 28A (P8,733,867.00 less P4,312,694.00)
[26] G.R. No. 178490, July 7, 2009

discussion of the remaining issues raised by the parties is now rendered moot.

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

SO ORDERED.

AMELIA COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

LOVELL R. BAUTISTA
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