REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

AXIA POWER HOLDINGS PHILIPPINES CORPORATION,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8092

Members:

DEL ROSARIO, *Chairperson,*
UY, *and*
MINDARO-GRULLA, *JJ.*

Promulgated:

FEB 25 2014 11:13 a.m.

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DECISION

DEL ROSARIO, PJ.:

This involves an Amended Petition for Review filed by petitioner Axia Power Holdings Philippines Corporation to seek the refund or issuance of a tax credit certificate in the amount of **SIXTEEN MILLION THREE HUNDRED SEVENTY THOUSAND THREE HUNDRED TWENTY SIX PESOS (₱16,370,326.00)**, representing Marubeni Energy Services Corporation's (MESC) excess Creditable Withholding Tax (CWT) for the calendar year ended December 31, 2007.

THE FACTS

Petitioner is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with a new principal office located at Unit 700-C, 20th Drive Corporate Center, 20th Drive McKinley Business Park, Fort Bonifacio, Taguig City, 1634.[1]

[1] Par. 1, Joint Stipulation of Facts and Issues, *CTA Docket*, p. 326.

Respondent is the duly appointed Commissioner of Internal Revenue (CIR), vested by law with the power and authority to act and decide upon applications for refund or tax credit of excess internal revenue tax payments, and in general to enforce the provisions of the National Internal Revenue Code of 1997 (1997 NIRC), as amended and other laws, with office address at BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

On April 15, 2008, MESC timely filed with the BIR its Annual Income Tax Return (ITR) for the Calendar Year (CY) ended December 31, 2007.[3]

MESC indicated on the face of its Annual ITR its intention to have its unutilized CWT carried over as a tax credit for the [succeeding] year. Hence, the said amount of ₱16,370,326.00 was carried over as a tax credit to the succeeding taxable [year] 2008 including the other unutilized withholding tax credits for the years 2004 to 2006 as evidenced by MESC's duly filed Annual ITR for 2008.[4]

Meanwhile, on December 22, 2009, the Board of Directors of MESC approved its merger with petitioner Axia Power Holdings Philippines Corporation (Axia), Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MPEHC II), with petitioner Axia as the surviving entity. The merger was approved by the Securities and Exchange Commission (SEC) on March 20, 2010, which effectively dissolved MESC as a corporate entity.[5]

The Certificate of Filing of Articles and Plan of Merger dated March 29, 2010 specifically mentioned that the entire assets and liabilities of MPEHC and MESC will be transferred to and absorbed by petitioner Axia.[6]

On April 15, 2010, MESC filed with respondent CIR a written claim for refund or issuance of tax credit certificate of its unutilized CWT for the CY ended December 31, 2007 in accordance with Section 204(c) of the 1997 NIRC, as amended.[7]

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[2] Pars. 4 and 10, *Id.*, p. 327.
[3] Par. 5, *Id.*, p. 327.
[4] Pars. 7 and 11, *Id.*
[5] Par. 2, *Id.*, p. 326.
[6] Par. 3, *Id.*
[7] Par. 8, *Id.*

On April 15, 2010, MESC filed a Petition for Review before this Court, which was docketed as CTA Case No. 8092.[8]

In her Answer[9] posted on June 1, 2010, respondent raised the following special and affirmative defenses, to wit:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
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> 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
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> 6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
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> 7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204 (C) in relation to Section 229 of the Tax Code, as amended upon which its claim for refund is premised;
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> 8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge 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*);
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> 9) 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, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121*)."[10]

On June 29, 2010, petitioner filed its Pre-Trial Brief[11] while respondent filed her Pre-Trial Brief[12] on July 2, 2010.

On July 19, 2010, the parties filed their Joint Stipulation of Facts and Issues[13]. *m*

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[8] Petition for Review, *CTA Docket*, pp. 1-7.
[9] *CTA Docket*, pp. 95-97.
[10] *Id., pp.* 95-96.
[11] *CTA Docket,* pp. 104-109.
[12] *CTA Docket*, pp. 110-112.
[13] *CTA Docket*, pp. 118-120.

On July 21, 2010, the Court issued a Resolution[14] approving the parties' Joint Stipulation of Facts and Issues. In the same Resolution, the Court terminated the pre-trial and ordered petitioner to proceed with its presentation of evidence.

On October 15, 2010, petitioner filed a Motion for Leave to Amend Petition for Review and to Admit Attached Amended Petition for Review.[15] The Court, in a Resolution[16] dated October 20, 2010, ordered respondent to file her Comment on petitioner's Motion for Leave to Amend Petition for Review and to Admit Attached Amended Petition for Review within ten (10) days from receipt of the resolution.

Petitioner Axia filed the Amended Petition for Review pursuant to Section 80 of the Corporation Code of the Philippines, being the surviving entity after its merger with MESC, MPEHC and MPEHC II.[17] The Amended Petition for Review was filed solely for the purpose of properly designating the correct petitioner in the present case, that is, from MESC (the absorbed corporation) to petitioner Axia (the surviving corporation).[18]

On November 18, 2010, the Court in a Resolution granted petitioner's Motion for Leave to Amend Petition for Review and to Admit Attached Amended Petition for Review and admitted petitioner's Amended Petition for Review, *sans* comment/opposition from respondent despite due notice. The Court in the same Resolution ordered respondent to file her Amended Answer to petitioner's Amended Petition for Review within fifteen (15) days from receipt of the resolution.[19]

In her Amended Answer[20] filed on January 25, 2011, respondent raised the following special and affirmative defenses, to wit:

"SPECIAL AND AFFIRMATIVE DEFENSES

> 4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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[14] *CTA Docket*, p. 122.
[15] *CTA Docket*, pp. 147-157.
[16] *CTA Docket*, p. 249.
[17] Par. 1, Amended Petition for Review, *CTA Docket*, p. 151
[18] Par. 7, Motion for Leave to Amend Petition for Review and to Admit Attached Amended Petition for Review, *CTA Docket*, pp. 148-149.
[19] *CTA Docket*, pp. 252-253.
[20] *CTA Docket*, pp. 255-258.

5. Petition for [R]eview should be dismissed on the following grounds:

(a) Lack of cause of action on the part of the petitioner for non-exhaustion of administrative remedies. Inasmuch as the original petition for review was filed simultaneously when the application for tax refund/credit was filed on April 15, 2010, the petitioner has not given the Commissioner the opportunity to decide on the claim. The taxpayer is given a period of two (2) years before appealing to the Court of Tax Appeals; and to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure ***(Bermejo vs. Collector, L-3028, July 29, 1950)***. The petition is pro-forma and was done merely to comply with the letter of the law and yet it disregarded the spirit or the very substance of the law. The petitioner should have filed its claim for refund at the earliest possible instance and should not have waited for the last day of the expiration of the two-year period because by then it would be too late for the Commissioner to act on its claim thereby destroying the essence of the doctrine of exhaustion of administrative remedies.

Petitioner's utter disregard of the doctrine of exhaustion of administrative remedies will undoubtedly lead to undesirable results and unimaginable chaos. A taxpayer desirous to resort directly to the Court can effectively bypass the respondent Commissioner by filing an administrative claim for refund on the last day of the expiration of the 2-year prescriptive period then simultaneously, on the pretext of the "inaction" of respondent and the prescriptive period will lapse, file a corresponding petition for review with the Honorable Court. Such course of action will render nugatory the authority granted by law upon respondent to act accordingly on the claims for refund. Consequently, the application for refund/credit is not impressed with merit.

(b) Lack of jurisdiction for there was no decision or inaction (tantamount to denial) by the Commissioner that the Court of Tax Appeals could review simply because [she] was not given an opportunity to reach that decision.

6. The claim for refund subject of the amended petition for review is already barred by prescription. The amended pleading superseded the original pleading which is deemed withdrawn and is no longer considered part of record. This finds support in the case of **Ruymann vs. Director of Lands, 34 Phils 429**, in which the High Court ruled that the filing of an amended pleading does not retroact to the date of the filing of the original.

7. It is explicitly stated under Section 76 of the NIRC of 1997, as amended, that 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 **(Philam Asset Management, Inc., vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005)**. Marubeni Energy Services Corporation (MESC) in its 2007 income tax return filed on April 15, 2008 shows that it marked the option "To be carried over as tax credit next year/quarter". Petitioner being the successor-in-interest of MESC is, therefore, precluded from claiming a cash refund or tax credit corresponding to MESC's excess tax credit for taxable year 2007.

8. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

9. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to adduce sufficient proof is fatal to the action for tax refund/credit.

10. It is incumbent upon the petitioner to show that it has complied with the provisions of Section 76 in relation to Sections 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

11. Claims for refund are construed strictly against the claimant for the same partakes the nature of exemption from taxation **(Commissioner of Internal Revenue vs. Ledesma, G.R. No. L-13509, January 30, 1970 31 SCRA 95)** and as such, they are looked upon with disfavor **(Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).**

On March 1, 2011, petitioner filed its [Amended] Pre-Trial Brief[21] while respondent filed her Amended Pre-Trial Brief[22] on March 2, 2011.

On April 8, 2011, the parties filed their [Amended] Joint Stipulation of Facts and Issues.[23]

On May 23, 2011, the Court, in a Resolution,[24] terminated the pre-trial and ordered petitioner to present its evidence. The Court issued the Pre-Trial Order[25] on October 6, 2011.

During trial, petitioner submitted documentary and testimonial evidence. On November 8, 2012, petitioner filed its Formal Offer of

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[21] *CTA Docket*, pp. 298-304.
[22] *CTA Docket*, pp. 305-311.
[23] *CTA Docket*, pp. 326-333.
[24] *CTA Docket*, pp. 356-357.
[25] *CTA Docket*, pp. 410-422.

Documentary Evidence [26] without respondent's Comment/Opposition thereon despite due notice.[27]

In a Resolution[28] dated January 31, 2013, the Court resolved to admit Exhibits "A" to "BB-2" as evidence for petitioner but denied Exhibits "A-2", "A-3", "C-31", "C-32", "D", "D-1", "D-2", "E", "E-1", "F", "F-1", and "G". The Court deemed petitioner to have rested its case.

On February 21, 2013, petitioner moved for the reconsideration of the Court's Resolution dated January 31, 2013[29] with no comment/opposition from respondent despite due notice.[30]

In a Resolution[31] dated April 30, 2013, the Court partially granted petitioner's Motion for Reconsideration and admitted Exhibits "C-31", "C-32", "D", "D-1", "D-2", "E", "E-1", "F", "F-1", and "G".

On July 18, 2013, respondent's counsel manifested that he will no longer present evidence. The Court, in a Resolution[32] dated July 18, 2013 ordered the parties to file their respective memoranda and gave them a period of thirty (30) days within which to do so.

Petitioner filed its Memorandum [33] on October 7, 2013, while respondent failed to file a memorandum[34] within the given period. Thus, case was submitted for decision on November 12, 2013.[35]

THE ISSUES

The parties jointly submitted the following stipulated issues for the Court's consideration:

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[26] *CTA Docket*, pp. 518-541.
[27] Records Verification dated January 9, 2013, *CTA Docket*, p. 796.
[28] *CTA Docket*, pp. 800-801.
[29] *CTA Docket*, pp. 802-806.
[30] Records Verification dated April 1, 2013, *CTA Docket*, p. 809.
[31] *CTA Docket*, pp. 812-814.
[32] *CTA Docket*, p. 818.
[33] *CTA Docket*, pp. 871-897.
[34] Records Verification dated November 4, 2013, *CTA Docket*, p. 898.
[35] *CTA Docket*, p. 900.

1. Whether or not petitioner's administrative and judicial claims for refund or tax credit of its excess creditable withholding tax for the CY ended December 31, 2007 were timely filed within the two-year prescriptive period prescribed under Section 204 (C), in relation to Section 229 of the 1997 NIRC, as amended.

2. Whether or not the amended petition for review supersedes the original petition for review, thus, the claim for refund subject of the amended petition for review is already barred by prescription.

3. Whether or not the Petition for Review should be dismissed for lack of [cause] action on the part of petitioner for non-exhaustion of administrative remedies by filing the instant petition on the very same date of the filing of the administrative claim for refund.

4. Whether or not MESC's gross income of ₱26,010,459.00, the bulk of which amounting to ₱26,010,380.00, consists of management fees derived from its O & M services provided to its customers.

5. Whether or not the amount of ₱15,073,693.00 was withheld from management fees paid to MESC by its clients.

6. Whether or not MESC's total tax credit/payments for the CY ended December 31, 2007 is in the amount of ₱20,946,030.00.

7. Whether or not the income tax liability of MESC for taxable year 2007 is in the amount of ₱4,575,704.00.

8. Whether or not the income from which the taxes were withheld was included as part of the gross income of petitioner and was reflected in its 2007 Annual ITR.

9. Whether or not petitioner's claim for refund/tax credit allegedly representing unutilized/excess creditable withholding tax for CY ended December 31, 2007 in the amount of ₱16,370,326.00 was substantiated by documentary evidence.

10. Whether or not petitioner as successor-in-interest of MESC is precluded from claiming a cash refund or for issuance of tax credit certificate in the amount of ₱16,370,326.00, the alleged unutilized creditable withholding taxes for CY ended December 31, 2007 inasmuch as MESC opted to carry-over [as shown] in its 2007 Annual ITR the said alleged unutilized creditable withholding taxes as tax credit to the succeeding taxable quarters/year(s).

11. And in sum, whether or not petitioner is entitled to the claim for refund or issuance of TCC in the amount of ₱16,370,326.00 representing its unutilized creditable withholding taxes for CY ended December 31, 2007.[36]

[36] *CTA Docket*, pp. 328-329.

THE COURT'S RULING

Invoking *Ruymann vs. The Director of Lands,*[37] respondent argues that the instant petition has already prescribed as the filing of the amended petition for review superseded the original petition. Respondent avers that the prescription period should be reckoned from the date of filing of the amended petition.

It is indeed generally true that an amended complaint supersedes the original pleading which it amends.[38] Nonetheless, in *Verzosa vs. Verzosa,*[39] the Supreme Court elucidated that the original complaint is deemed superseded and abandoned by the amendatory complaint, for purposes of determining the commencement of a suit, <u>only if the latter introduces a new or different cause of action</u>. In a later case,[40] the Supreme Court clarified the effect of filing an amended complaint that does not introduce a new or different cause of action *vis-à-vis* the date when the suit is deemed instituted, *viz.*:

> "**It follows that when the amended complaint does not introduce new issues, causes of action, or demands, the suit is deemed to have commenced on the date the original complaint was filed, not on the date of the filing of the amended complaint**. In other words, for demands already included in the original complaint, the suit is deemed to have commenced upon the filing of such original complaint. In short, for purposes of determining the commencement of a suit, the original, complaint is deemed abandoned and superseded by the amended complaint **only if the amended complaint introduces a new or different cause of action or demand.**

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[37] G.R. No. L-9845, March 28, 1916.

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1997 RULES OF CIVIL PROCEDURE, AS AMENDED

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RULE 10
Amended and Supplemental Pleadings

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Section 8. *Effect of amended pleadings.* — An amended pleading supersedes the pleading that it amends. However, admissions in superseded pleadings may be received in evidence against the pleader, and claims or defenses alleged therein not incorporated in the amended pleading shall be deemed waived.

[39] G.R. No. L-25609, November 27, 1968.

[40] Verzosa vs. Court of Appeals, G.R. No. 119511, November 24, 1998.

> Hence, it has been held that "an amendment which merely supplements and amplifies the facts originally alleged relates back to the date of the commencement of the action and is not barred by the statute of limitations, the period of which expires after service of the original complaint but before service of amendment." It is the actual filing in court that controls and not the date of the formal admission of the amended pleading." (*Emphases supplied and Citation omitted*)

To be sure, *Ruymann* involves an amendment by including additional parcels of land in the petition for registration which, according to the Supreme Court, changes the cause of action of the original petition. In contrast, the only amendment petitioner introduced in the present case is a change of name of the petitioner, from MESC to Axia, as a result of their merger. This is merely a formal amendment[41] that did not involve the introduction of a new or different cause of action.[42] In other words, the amended petition for review did not supersede the original petition for review.

Since MESC filed its 2007 Annual ITR on April 15, 2008, and the original petition for review was filed on April 15, 2010, petitioner's judicial claim for refund of excess CWT for the CY ended December 31, 2007 was filed within the two-year prescriptive period provided under Section 229 of the 1997 NIRC, as amended.

The Court shall now tackle the issue of whether or not petitioner Axia, as the surviving corporation, is entitled to a tax refund or issuance of a tax credit certificate in the amount of ₱16,370,326.00, representing MESC's (which is the absorbed corporation) excess and unutilized CWT for CY ended December 31, 2007.

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Amended and Supplemental Pleadings

Section 1. *Amendments in general.* — Pleadings may be amended by adding or striking out an allegation or the name of any party, or by correcting a mistake in the name of a party or a mistaken or inadequate allegation or description in any other respect, so that the actual merits of the controversy may speedily be determined, without regard to technicalities, and in the most expeditious and inexpensive manner.

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Section 4. *Formal amendments.* — A defect in the designation of the parties and other clearly clerical or typographical errors may be summarily corrected by the court at any stage of the action, at its initiative or on motion, provided no prejudice is caused thereby to the adverse party.

42 Chua Kiong vs. Whitaker, G.R. No. L-22388, December 2, 1924.

Section 76 of the 1997 NIRC, as amended, states:

> "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:
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> (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*)

Under the irrevocability rule, once the option to carry-over excess CWT is chosen by the taxpayer, such option shall be irrevocable for the taxable period, and a refund of excess CWT shall not be allowed. The irrevocability rule applies only to the option of carry-over and not to the option of a refund as explicitly stated in Section 76 of the 1997 NIRC, as amended.[43]

Citing *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*[44] and *Sankyu Construction Philippines,*[45] petitioner Axia argues that it can claim for a refund or apply for the issuance of tax credit certificate of MESC's excess unutilized CWT as an exception to the irrevocability rule under Section 76 of the 1997 NIRC, as amended, due to the cessation of the MESC's business on account of its merger with petitioner Axia.

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[43] Belle Corporation v. Commissioner of Internal Revenue, G.R. No. 181298, January 10, 2011, 639 SCRA 108; Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation, G.R. Nos. 171742 & 176165, June 15, 2011, 652 SCRA 80; Commissioner of Internal Revenue v. PL Management International Philippines, Inc., G.R. No. 60949, April 4, 2011, 647 SCRA 72.
[44] G.R. No. 176290, September 21, 2007.
[45] CTA Case No. 8079, May 31, 2013.

The Court finds petitioner's argument bereft of merit.

A perusal of *Sankyu* reveals that it is not on all fours with the subject case as it involves dissolution with permanent cessation of business and not a dissolution by operation of law of the absorbed corporation on account of its merger with another corporation. In *Systra,* by way of *obiter*, the Supreme Court states that "[w]here, however, the corporation **permanently ceases its operations** before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply. *Cessante ratione legis, cessat ipse lex.*"

Clearly, the purpose of allowing the refund of excess CWT for dissolved corporations with permanent cessation of operations, as an exception to the irrevocability rule, is due to the **impossibility of carrying it over to succeeding years**. As compared to dissolution with permanent cessation of business, however, the rights, privileges, immunities and franchises, and all assets of the absorbed corporation in a merger is transferred to the surviving corporation by operation of law.

A merger is defined as a union whereby one or more existing corporations are absorbed by another corporation that survives and **continues the combined business**.[46] Section 80 of the Corporation Code of the Philippines states the effects of merger or consolidation, *viz.*:

> SEC. 80. Effects of merger or consolidation. — The merger or consolidation shall have the following effects:
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> 1. The constituent corporations shall become a single corporation which, in case of merger, shall be the surviving corporation designated in the plan of merger; and, in case of consolidation, shall be the consolidated corporation designated in the plan of consolidation;
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> 2. The separate existence of the constituent corporations shall cease, except that of the surviving or the consolidated corporation;
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

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[46] Poliand Industrial Limited v. National Development Company, et al. and National Development Company and Poliand Industrial Limited, G.R. Nos. 143866 and 143877, August 22, 2005, 467 SCRA 500.

> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, **and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed**; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; **and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation**. The right of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation." *(Emphases supplied)*

The Supreme Court, in a litany of cases, discussed the effects of corporate merger with regard to the rights and privileges of the absorbed corporation, thus:

> Ordinarily, in the merger of two or more existing corporations, **one of the combining corporations survives and continues the combined business**, while the rest are dissolved and all their rights, properties and liabilities are acquired by the surviving corporation. Although there is dissolution of the absorbed corporations, **there is no winding up of their affairs or liquidation of their assets**, because the surviving corporation automatically acquires all their rights, privileges and powers, as well as their liabilities.[47] (Emphasis supplied)

Upon the effectivity of the merger among MESC, MPEHC and MPEHC II as the absorbed corporation and petitioner Axia as the surviving corporation, the rights, assets and obligations of the absorbed corporations were transferred to petitioner Axia which shall continue the combined business. The excess CWT of MESC, being a prepaid tax asset, was transferred to petitioner Axia by operation of law, as a necessary

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[47] Mindanao Savings and Loan Association, Inc., represented by its liquidator, The Philippine Deposit Insurance Corporation, vs. Edward Willkom, G.R. No. 178618, October 11, 2010; Associated Bank vs. Court of Appeals, G.R. No. 123793, June 29, 1998 *citing* Jose C. Campos Jr. and Maria Clara Lopez-Campos, *The Corporation Code: Comments, Notes and Selected Cases*, Vol. 2, 1990 ed., p. 441; § 80, Corporation Code.

consequence of the merger.[48] Since MESC has chosen to carry over its excess CWT for the CY ended December 31, 2007, as shown in its 2007 Annual ITR, petitioner Axia, having succeeded to the rights, properties and liabilities of MESC, cannot now claim for a refund of MESC's excess CWT for CY ended December 31, 2007. Petitioner Axia may nonetheless carry over MESC's excess CWT to the succeeding taxable years and use the same as tax credits against its future tax liabilities, until fully utilized, provided that said excess CWT of MESC is duly substantiated.

WHEREFORE, premises considered, the Amended Petition for Review filed by petitioner Axia Power Holdings Philippines Corporation is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

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[48] Stablewood Philippines, Inc. vs. Commissioner of Internal Revenue, CTA EB CASE No. 712, November 15, 2011.

CERTIFICATION

Pursuant to Section 13 of Article VIII 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.

ROMAN G. DEL ROSARIO
Presiding Justice