REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

RELIANCE COMMERCIAL ENTERPRISES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6377

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 10 2002

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RESOLUTION

This "Motion to Dismiss" filed by the respondent seeks the dismissal of the instant Petition for Review on the ground of lack of cause of action.

In his motion, respondent argues that petitioner can no longer refund its alleged 1999 unutilized creditable withholding tax for the simple reason that petitioner had already exercised the option to carry over its excess tax credit to the next succeeding year, as evidenced by its 2000 Corporate Annual Income Tax Return. While petitioner failed to put a check (/) mark in the box corresponding to the phrase "to be carried as tax credit next year" in its 1999 Corporate Annual Income Tax Return, it nonetheless, indicated the amount of Php 6,065,498, as "Prior years excess credits" in its 2000 Corporate Annual Income Tax Return.

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Respondent cites as legal basis Section 76 of the 1997 Tax Code, which provides that if a corporation exercises the option to carry over its excess tax credits to the succeeding years, the option becomes irrevocable for the taxable period and no application for cash refund or issuance of a tax credit certificate will be allowed as the options are in the alternative and the choice of one precludes the other.

Petitioner, on the other hand, contends that no option to carry-over has been made as can be gleaned from the face of its 1999 Annual Income Tax Return. It further argues that the absence of any indicative mark in the option box "To be carried as tax credit next year/quarter" should be enough evidence to prove its lack of desire to take such option. Petitioner likewise submits that respondent should not be allowed to unilaterally interpret a taxpayer-company's intention without clear and unsupported proof of the same and by simply relying on the act of the petitioner in "reflecting the said amount of Php 6,065,498.00 as 'Prior year's excess credit" as indication that it exercised said option. Furthermore, petitioner, in its Opposition to the Motion to Dismiss, mentioned cases which allow the refund of the excess tax credit once the "carrying over" was not availed of.

Petitioner's arguments are bereft of merit. Accordingly, We dismiss the case.

It should be pointed out that the controversy is not one of first impression. And central to the dispute is Section 76 of the Tax Code of 1997 which provides, thus:

> **"Section 76. Final Adjustment Return**. x x x
>
> 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 certificates shall be allowed therefore.**" (Emphasis supplied)

The aforequoted provision is clear and unambiguous leaving no room for any other interpretation than what it literally conveys, that is, when an option has been exercised, the same shall be irrevocable for that taxable period. (Philippine Banking Corporation, now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6820, 16 August 2001).

Anent the contention of the petitioner that the absence of any indicative mark in the option box "To be carried as tax credit next year/quarter" should be considered enough evidence to prove its lack of desire to take such option, the same holds no water, in the face of contrary evidence. The petitioner's declaration of the amount of Php6,065,498.00 as representing its "Prior year's excess credit" in its Annual Income Tax Return for year 2000 is more than a sufficient manifestation of its decision to exercise the said option. The said decision coupled with the sequence of events, from the time of its initial business losses until it finally chose to apply for a refund instead, reveals that the same was a mere afterthought, a final attempt to get its hand on the said amount.

Considering that petitioner had already selected the option to carry-over to the succeeding year its unutilized creditable taxes for the taxable year 1999, it is thus, barred to pursue the instant claim for refund.

To reiterate, there is no cloud of doubt that the provision in question does not require any further qualification regardless of whether or not the taxpayer actually applied the unutilized taxes against its tax liabilities in the succeeding taxable year. The

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command is that, once the option to carry over has been made, as in the case at bar, the taxpayer may no longer apply for a refund of unutilized taxes for that taxable period.

It is a well-settled principle in statutory construction that "when the language of the law is clear and unequivocal, the law must be taken to mean exactly what it say" (Handbook on Statutory Construction by Ruperto G. Martin, 1972 edition, page 2).

Finally, the cases relied upon by the petitioner are inapplicable because the said cases involved claims for refund when the amendment introduced by the Tax Reform Act of 1997 was not yet in effect.

Nonetheless, the petitioner is not without any recourse. As correctly pointed out by the respondent, petitioner could still further carry-over the said unutilized creditable taxes against its future tax liabilities until the said excess are fully utilized.

WHEREFORE, in view of all the foregoing, the respondent's Motion to Dismiss is hereby **GRANTED**. The Petition for Review is accordingly **DISMISSED** for lack of cause of action.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Judge

ERNESTO D. ACOSTA
Presiding Judge

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