REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

EN BANC

UPSI MANAGEMENT, INC., Petitioner,	**CTA EB No. 828 (CTA Case No. 7908)**
	Present:
- versus -	**CASTAÑEDA, JR.,** *Acting P.J.* **BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA,** *and* **COTANGCO-MANALASTAS,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondents.	**Promulgated:** FEB 08 2013 *11:00 a.m.*

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DECISION

UY, *J.*:

This is a Petition for Review filed by petitioner UPSI Management, Inc. against respondent Commissioner of Internal Revenue, praying for the annulment and setting aside of the Decision dated July 5, 2011[1] and Resolution dated September 8, 2011[2], both rendered by the Second Division of this Court (hereinafter referred to as the "Court in Division") in CTA Case No. 7908, entitled *"UPSI Management, Inc., petitioner, vs. Commissioner of Internal Revenue, respondent"*, the dispositive portion of which read:

Decision dated July 5, 2011:

"**WHEREFORE**, the instant Petition for Review is hereby

[1] Penned by Associate Justice Caesar A. Casanova and concurred by Associate Justice Juanito C. Castañeda, Docket (Vol. 1), pp. 59 to 68.
[2] Penned by Associate Justice Caesar A. Casanova and concurred by Associate Justices Juanito C. Castañeda and Cielito N. Mindaro-Grulla, Docket (Vol. 1), pp. 85 to 90.

DENIED for lack of merit.

SO ORDERED."

Resolution dated September 8, 2011:

"**WHEREFORE**, premises considered, petitioner's Motion for Reconsideration is hereby **DENIED** for lack of merit.

SO ORDERED."

THE FACTS

Culled from the records, the parties' respective pleadings filed herein, as well as supporting documents attached thereto, and as found by the Court in Division, these are the antecedent facts of the instant case.

Petitioner is a corporation incorporated and existing under and by virtue of 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.

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), reflecting an income tax overpayment of ₱ 5,159,341.00, computed as follows:

Sales/Revenues/Receipts/Fees	₱ 28,808,960.00
Less: Cost of Sales/Services	23,834,605.00
Gross Income from Operation	₱ 4,974,355.00
Add: Non-Operating & Other Income	5,375.00
Total Gross Income	₱ 4,979,730.00
Less: Deductions	4,979,730.00
Taxable Income	₱ -
Tax Rate (except MCIT Rate)	35%
Income Tax	-
Minimum Corporate Income Tax (MCIT)	₱ 99,595.00

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Aggregate Income Tax Due	**₱**	**99,595.00**
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱	2,331,102.00
Creditable Tax Withheld for the First Three Quarters		-
Creditable Tax Withheld for the Fourth Quarter		2,972,834.00
Total Tax Credits/Payments	**₱**	**5,258,936.00**
Tax Payable/(Overpayment)	**₱**	**(5,159,341.00)**

Subsequently, on November 14, 2007, petitioner filed an Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the income tax overpayment of ₱ 5,159,341 from the previous period as *"Prior Year's Excess Credits"*,[3] as follows:

Sales/Revenues/Receipts/Fees	₱	7,489,259
Less: Cost of Sales/Services		6,461,650
Gross Income from Operation	₱	1,027,609
Add: Non-Operating & Other Income		479
Total Gross Income	₱	1,028,088
Less: Deductions		1,206,543
Taxable Income	₱	(178,455)
Tax Rate (except MCIT Rate)		35%
Income Tax		-
Minimum Corporate Income Tax (MCIT)	₱	20,562
Aggregate Income Tax Due	₱	20,562
Less: Tax Credits/Payments		
Prior Year's Excess Credits	**₱**	**5,159,341**
Creditable Tax Withheld for the First Three Quarters		1,107,228
Creditable Tax Withheld for the Fourth Quarter		6,266,569
Total Tax Credits/Payments	**₱**	**6,266,569**
Tax Payable/(Overpayment)	**₱**	**(6,246,007)**

On the same date, petitioner filed an amended Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the removal of the amount of the instant claim in the *"Prior Year's Excess*

[3] Exhibit "KK", CTA Case No. 7908 Docket (Vol. II), p. 717.

Credits".[4] Thus, the amount thereof was changed from ₱ 5,159,341 to ₱ 2,231,507.

On October 10, 2008, petitioner filed with the respondent's office, a claim for refund and/or issuance of a Tax Credit Certificate (TCC) in the amount of ₱ 2,927,834.00, representing the alleged excess and unutilized creditable withholding taxes for 2006.

In view of the fact that respondent has not acted upon the foregoing claim for refund/tax credit, petitioner filed with a Petition for Review on April 14, 2009 before the Court in Division.

In response to the summons issued on April 22, 2009, respondent filed her Answer on May 14, 2009 interposing special and affirmative defenses and praying for the dismissal of the instant petition.

Subsequently, pre-trial conference was held on June 18, 2009[5], and pursuant thereto, the parties submitted their Joint Stipulation of Facts on June 30, 2009[6], and the same was approved in the Resolution dated July 8, 2009[7].

During trial, petitioner presented oral and documentary evidence, while respondent did not present any evidence. Consequently, the 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.

On July 5, 2011, the Court in Division promulgated the assailed Decision, denying the Petition for Review for lack of merit. In the said Decision, the Court in Division ruled that while the administrative and judicial claims were timely filed, petitioner effectively exercised the carry-over option under Section 76 of the National Internal Revenue Code (NIRC) of 1997, pertaining to its claimed excess and unutilized creditable withholding tax for 2006.

Petitioner then filed its Motion for Reconsideration (Decision dated 05 July 2011) on July 19, 2011. In the said Motion, petitioner's

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[4] Exhibit "B-1", CTA Case No. 7908 Docket (Vol. II), p. 526.
[5] Minutes of June 18, 2009 Pre-trial Conference, CTA Case No. 7908 Docket, Volume I, p. 239.
[6] CTA Case No. 7908 Docket, Volume I, pp. 250 to 255.
[7] Ibid, at p. 257.

main theses are that: (1) the irrevocability rule under Section 76 of the NIRC of 1997 is not applicable for the reason that petitioner did not carry-over to the succeeding taxable period the 2006 excess tax credits; and (2) what is controlling as to petitioner's choice as regards its 2006 excess tax credits should be petitioner's positive and unmistakable election of the option "To be issued a Tax Credit Certificate" in its 2006 ITR, and not the inadvertent inclusion of the subject excess tax credits in the original 2007 ITR, which error was actually rectified in the amended 2007 ITR.

Subsequently, the Court in Division issued the assailed Resolution, denying petitioner's Motion for Reconsideration. It ruled as follows:

> "The argument of petitioner as regards the inadvertent inclusion of its claimed 2006 excess tax credits in its 2007 Original ITR is a mere reiteration of the argument in its Memorandum filed on August 18, 2010, which had already been duly considered in the assailed Decision.
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> But, for emphasis, the alleged inadvertent inclusion of the 2006 excess tax credit in the 2007 Original ITR belies petitioner's own allegation that it did not carry-over the said amount to the succeeding taxable period.
>
> Moreover, the fact that petitioner marked the option 'To be issued a Tax Credit Certificate' in its 2006 ITR is not controlling because said option was negated by its subsequent act of carrying over its 2006 excess tax credit in its Original ITR for the succeeding short fiscal period ending March 31, 2007.
>
> Section 76 of the NIRC clearly enunciates the irrevocability rule that *'xxx 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.'*
>
> With respect to petitioner's contention that the pronouncement of the Court that the amendment cannot be allowed has no basis in law for it was only exercising its right to amend the 2007 ITR pursuant to Section 6(A)

of the NIRC, petitioner utterly failed to properly comprehend the same.

Undisputedly, Section 6(A) of the NIRC provides that a return maybe amended within three (3) years from the date of filing, provided, that no notice for audit or investigation of such return has been actually served upon the taxpayer. Nevertheless, the amendment cannot undo petitioner's actual exercise of the 'carry-over option' in the Original ITR. To reiterate, allowing the amendment as the controlling basis in determining petitioner's option will clearly be against the irrevocability rule. Thus, the act of carrying over its claimed excess tax credit for 2006 to its 2007 Original ITR bars petitioner from claiming a refund.

Be that as it may, the claimed excess creditable withholding tax of P2,927,834.00 will not be forfeited in favor of the Government. Petitioner has the recourse of applying the said amount against the income tax due for the succeeding taxable years until it its fully utilized."[8]

On September 20, 2011, petitioner filed before the Court *En Banc* a Motion for Extension of Time (To File Petition for Review),[9] praying that it be granted an extension of fifteen (15) days from September 24, 2011, or until October 9, 2011, within which to file the Petition for Review.

The Court *En Banc* granted the said Motion and gave a final and non-extendible period of fifteen (15) days from September 24, 2011 or until October 9, 2011, within which to file petitioner's Petition for Review.[10]

On October 7, 2011, petitioner filed the instant Petition for Review.[11] Thereafter, the Court *En Banc* required respondent to file a comment thereto.[12]

Upon the filing of respondent's Comment (To Petitioner's Petition for Review *En Banc*) on November 21, 2011,[13] this case was deemed submitted for decision in the Court *En Banc*'s Resolution

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[8] Docket (Vol. 1), pp. 88 to 89.
[9] Docket (Vol. 1), pp. 1 to 4.
[10] Docket (Vol. 1), p. 6.
[11] Docket (Vol. 1), pp. 7 to 54.
[12] Resolution dated October 25, 2011, Docket (Vol. 4), pp. 1704 to 1705.
[13] Docket (Vol. 4), pp. 1706 to 1709.

dated January 4, 2012[14].

On January 27, 2012, however, petitioner filed a Motion for Leave to Admit Attached Reply (to Respondent's Comment dated 18 November 2011).[15] The Court *En Banc* granted said motion in the Resolution dated February 15, 2012,[16] admitted the attached Reply. In the same Resolution, the Court *En Banc* set aside its earlier Resolution dated January 4, 2012 and submitted anew the instant case for decision as of February 15, 2012.

Hence, this Decision.

ISSUE

In the instant petition, petitioner raises the following ground:

> "THE SECOND DIVISION OF THE COURT OF TAX APPEALS DID NOT DECIDE IN ACCORDANCE WITH LAW, APPLICABLE JURISPRUDENCE, AND FACTUAL CIRCUMSTANCES SURROUNDING THE CASE, WHEN IT RULED THAT PETITIONER IS NOT ENTITLED TO THE REFUND OR ISSUANCE OF A TCC IN THE AMOUNT OF ₱ 2,927,834.00 REPRESENTING EXCESS CREDITABLE WITHHOLDING TAXES ARISING FROM TAXABLE YEAR 2006 BECAUSE PETITIONER ALLEGEDLY CARRIED OVER THE SAME TO THE SUCCEEDING SHORT TAXABLE PERIOD OF 2007."[17]

<u>Petitioner's arguments</u>

Petitioner presents the following arguments in support of the instant Petition for Review, to wit:

> "The issue of whether or not Petitioner carried over its 2006 excess tax credits to the succeeding short taxable period of 2007 was never raised in the Joint Stipulation of Facts."[18]
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> "...it was already clear to the parties, by way of the Parties' judicial admissions in their Joint Stipulation of

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[14] Docket (Vol. 4), pp. 1711 to 1712.
[15] Docket (Vol. 4), pp.1713 to 1724.
[16] Docket (Vol. 4), pp. 1727 to 1728.
[17] Docket (Vol. 1), p. 19.
[18] Docket (Vol. 1), p. 22.

Facts and the Summary of Admitted Facts in Respondent's Pre-Trial Brief, that Petitioner sought a refund through the issuance of a TCC of its 2006 excess credits and that Petitioner did not carry over the same to the succeeding taxable year."[19]

"Petitioner clearly indicated on its 2006 Annual ITR that it opted to refund, through the issuance of a TCC, its 2006 excess creditable withholding taxes in the amount of ₱ 2,927,834.00".[20]

"Petitioner did not amend its 2006 Annual ITR, hence its true, clear, continuous, and consistent intention to refund, through issuance of a TCC, its 2006 excess creditable withholding taxes, is binding upon Petitioner".[21]

"Petitioner did not carry over the 2006 excess creditable withholding taxes to the succeeding short taxable period of 2007".[22]

"The inclusion of the amount of ₱ 5,159,341.00, as prior year's credits in Petitioner's 2007 Original Short Period Income Tax Return, is a mere inadvertence and is a consequence of clerical errors".[23]

"Petitioner did not carry over its 2006 excess creditable withholding taxes in the amount of ₱ 2,927,834.00, to the succeeding taxable quarters of taxable period 2008".[24]

"Even with the inadvertent inclusion of ₱ 2,927,834.00 in the 'prior year's excess credits' in the 2007 Original Short Period Income Tax Return, Petitioner has not, in any way, benefited from the inadvertent inclusion since Petitioner was in a net loss position in the short taxable period of 2007."[25]

"Excluding Petitioner's excess unutilized creditable withholding taxes for taxable years 2003, 2004, 2005, and 2006, which are being claimed for refund, Petitioner has remaining prior year's excess tax credits in the amount of

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[19] Id.
[20] Docket (Vol. 1), p. 34.
[21] Docket (Vol. 1), p. 35.
[22] Id.
[23] Docket (Vol. 1), p. 36.
[24] Docket (Vol. 1), p. 39.
[25] Docket (Vol. 1), p. 43.

₱ 2,331,103.00 which is available for carry over to Petitioner's succeeding taxable years."[26]

"Petitioner's Amendment of the 2007 Short Period Income Tax Return does not render nugatory the 'Irrevocability Rule'".[27]

"Petitioner is entitled to a refund of its excess unutilized creditable withholding taxes for 2006 because it has clearly made an overpayment to the Government and has complied with all requirements for claiming a refund through the issuance of a TCC".[28]

Respondent's counter-arguments

Respondent contends that although petitioner elected the option "To be issued a Tax Credit Certificate", the excess tax credit of ₱ 5,159,341 (including the amount of ₱ 2,927,834.00 which is the subject of the claim) in its income tax return for 2006, was carried over by petitioner to the succeeding short period original ITR for fiscal year ending March 31, 2007. As a consequence, the carrying over bars the petitioner from subsequently applying for tax refund or issuance of tax credit for the same amount following the irrevocability rule under Section 76 of the NIRC of 1997.

Furthermore, according to respondent, the amendment of the ITR for the fiscal year ending March 31, 2007 excluding thereto the subject excess tax credits which were previously carried over in the original ITR for fiscal year ended March 31, 2007 has no bearing and effect to the carry-over option made by petitioner. Therefore, the contention of petitioner that it had already accumulated sufficient prior years' excess tax credits that it may apply for the payment of its income tax liabilities is beside the point and cannot be considered as an exception or qualification to the irrevocability rule.

Moreover, respondent points out that the asseveration of petitioner that the inclusion of its 2006 excess tax credits in its 2007 original short period ITR was due to inadvertence and a consequence of clerical errors brought about by respondent's confusing format of the ITR is a flimsy excuse and merely an afterthought on the part of petitioner. As between petitioner's overt act of carrying over vis-à-vis its bare and self-serving asseveration, the former shall prevail.

[26] Id.
[27] Docket (Vol. 1), p. 46.
[28] Docket (Vol. 1), p. 50.

In addition, respondent stresses that the pertinent stipulations and admissions pointed out by petitioner are inconsequential. The fact remains that petitioner subsequently carried over its 2006 excess tax credits in its original ITR for the succeeding short fiscal period ending March 31, 2007.

Lastly, respondent asserts that the issues and arguments raised in the instant Petition for Review are mere repetitions and reiterations of those previously raised in the Court below.

THE COURT EN BANC'S RULING

Section 76 of the National Internal Revenue Code (NIRC) of 1997 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. Thus, once a taxpayer opted to carry-over its excess income tax payments, it can no longer seek refund of the unutilized excess income tax payments.[29]

Having carried-over its excess tax credits for taxable year 2006 to its succeeding quarters of 2007, even if allegedly done inadvertently, with the pertinent returns having been amended, petitioner is barred from claiming a refund of such excess tax credits.

Hence, the instant petition will perforce fail.

The irrevocability rule under Section 76 of the NIRC of 1997.

Section 76 of the NIRC of 1997 provides as follows:

> "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
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> (B) Carry-over the excess credit; or

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

(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.**" *(Emphases supplied)*

Based on the foregoing provision, in case there is an excess credit, the taxpayer has two (2) options, either: (i) to be credited or refunded with the excess amount paid, as the case may be; or (ii) to carry over the said excess credit. It must be emphasized, however, that the Supreme Court, in the cases of *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*[30] and *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*[31], declared that: "'**Section 76 remains clear and unequivocal. Once the carry-over option is taken, <u>actually or constructively</u>, it becomes irrevocable.**' It mentioned no exception or qualification to the *irrevocability rule*."

Correspondingly, even if initially, the taxpayer chose the first option to be credited or refunded, and later on, there is an indication that he opted to carry over his or its excess credit, the latter option shall prevail.

Moreover, the law is silent as to the particular form or as to how the option to carry over excess tax credits may be made or manifested. Parenthetically, it must be remembered that courts cannot limit the application or coverage of a law, nor can it impose conditions not provided therein. To do so constitutes judicial legislation.[32] Thus, even when the option to be refunded has been initially chosen, the determination of the option to carry the excess tax credits cannot be merely confined to the subject Final Adjustment

[30] G.R. No. 156637 and No. 162004, December 14, 2005.
[31] G.R. No. 178490, July 7, 2009.
[32] *Fort Bonifacio Development Corporation vs. Commissioner of Internal Revenue, et al.*, G.R. No. 173425, September 4, 2012.

Return or Annual ITR, but may include documents *aliunde*, such as the taxpayer's subsequent Quarterly ITR, and/or the subsequent acts of the concerned taxpayer. After all, while a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.[33]

Furthermore, the term *"irrevocable"* is defined as *"(t)hat which cannot be revoked or recalled."*[34] The word *"revoke"* in turn means *"(t)o annul or make void by recalling or taking back. To cancel, rescind, repeal, or reverse, as to revoke a license or will."*[35] In other words, when one is made irrevocable, it can no longer be taken back; neither can it be cancelled, nor rescinded.

Correspondingly, if there is an indication that the option to carry over has been made, **at least once**, the same can no longer be taken back; neither can it be cancelled, nor rescinded. It then becomes immaterial whether the said option to carry over has been inadvertently made, or as a consequence of clerical errors, or whether the taxpayer had not, in any way, benefited from such inadvertence. To rule otherwise is to disregard the very essence of the word "irrevocable".

Section 76 is explicit as to its meaning of the term "irrevocable" that it decrees that if the option to carry-over is once made *"no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."*

Thus, while petitioner claims that its true, clear, continuous and consistent intention was to claim for refund, through the issuance of a TCC, the fact remains that petitioner, at some point, chose to carry over and apply its excess tax credits for taxable year 2006 in the amount of ₱ 5,159,341.00 (which included the subject claim of ₱ 2,927,834.00) against the income tax due for the succeeding taxable period.[36] Having done so, said chosen option made by petitioner becomes irrevocable. Accordingly, petitioner can no longer seek the refund or the issuance of a TCC of the unutilized excess income tax credits for taxable year 2006.

The amendment of the original ITR for fiscal year ended March

[33] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005.
[34] BLACK'S LAW DICTIONARY, Sixth Edition, © 1990, p. 830, citing *Commissioner of Internal Revenue v. Strong Mfg. Co., C.C.A.Ohio*, 124 f.2d 360, 363.
[35] Id., p. 1322.
[36] Exhibit "KK", CTA Case No. 7908 Docket (Vol. II), pp. 717.

31, 2007 does not take back, cancel or rescind the option to carry-over once made by petitioner.

Section 6(A) of the NIRC of 1997, which provides:

> "SEC. 6. *Power of the Commissioner to Make Assessments and Prescribe Additional Requirements for Tax Administration and Enforcement.*—
>
> (A) *Examination of Returns and Determination of Tax Due.* — xxx
>
> xxx xxx xxx
>
> Any return, statement or declaration filed in any office authorized to receive the same shall not be withdrawn: *Provided,* **That within three (3) years from the date of such filing, the same may be modified, changed, or amended**: *Provided, further*, That no notice for audit or investigation of such return, statement or declaration has, in the meantime, been actually served upon the taxpayer."

It is clear from the foregoing that taxpayers are given the right to modify, change, or amend any of its return, statement or declaration filed in any office authorized to receive the same. The only qualification is that the modification, change, or amendment must be done before any notice for audit or investigation of the subject return, statement or declaration has been actually served upon the taxpayer.

However, while We recognize the said right may have been available to petitioner, the latter's amendment of its Annual ITR for the short period fiscal year ended March 31, 2007 will not have the effect of taking back, cancelling or rescinding its chosen option to carry over its excess tax credits for taxable year 2006. To rule otherwise would be to disregard the last sentence of Section 76 of the NIRC of 1997. To repeat, the option to carry over said excess tax credits, having once made, is already irrevocable.

It must be noted that Section 76 is a special provision as it specifically deals with the treatment of excess income tax credits; while the above-quoted Section 6(A) is general provision dealing with the amendment or modification of returns, regardless of the type of tax being paid.

Correspondingly, a special and specific provision prevails over a general provision irrespective of their relative position in the statute. *Generalia specialibus non derogant.* Where there is in the same statute a particular enactment and also a general one which in its most comprehensive sense would include what is embraced in the former, the particular enactment must be operative, and the general enactment must be taken to affect only such cases within its general language as are not within the provisions of the particular enactment.[37]

There is no showing that the parties judicially admitted that petitioner never carried over its excess tax credits for taxable year 2006.

Petitioner points out that the parties have judicially admitted the following:

> "4. Petitioner indicated in the corresponding box its intention to be issued a tax credit certificate (TCC) representing its unutilized creditable tax withheld for the taxable year 2006 by marking the appropriate box."[38]

Furthermore, petitioner contends that respondent made the following admission, to wit:

> "4. Petitioner has chosen a tax refund option in its ITR for taxable year 2006."[39]

On the basis of the foregoing supposed admissions, petitioner submits that it cannot be considered to have carried over its excess tax credits for taxable year 2006.

We disagree.

A careful reading of the above-quoted statements would reveal that what is being admitted is only the fact that petitioner chose the option to be refunded or to be issued a TCC of its excess tax credits for taxable year 2006 **in its ITR for taxable year 2006**.

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[37] *Commissioner of Customs vs. Court of Tax Appeals, et al.*, G.R. No. L-41861, March 23, 1987
[38] Docket (Vol. I), p. 20.
[39] Id.

However, to the mind of the Court, said statements or supposed admission do not foreclose or bar the consideration of evidence to the effect that petitioner subsequently made the option to carry over said credits after the filing of the said ITR.

The Court may not be confined only to the issues raised by the parties. It may decide on related issues.

Petitioner likewise emphasizes that the issue of whether or not petitioner carried over its 2006 excess tax credits to the succeeding short taxable period of 2007 was never raised in the Joint Stipulation of Facts.

There is no doubt that it is only the Court *a quo* which raised the said issue. Nevertheless, Section 1 (second paragraph), Rule 14 of the Revised Rules of the Court of Tax Appeals, empowers the said Court to rule upon related issues, even if the same are not raised by the parties. Said provision reads:

> "In deciding the case, the Court may not limit itself to the issues stipulated by the parties **but may also rule upon related issues necessary to achieve an orderly disposition of the case**." *(Emphasis supplied)*

The resolution of the issue of whether or not petitioner has carried over its 2006 excess tax credit is very much necessary for an orderly disposition of the case, since it is determinative of whether, under the law, petitioner is indeed entitled to the tax refund being sought. In this connection, it must be emphasized that the taxpayer is charged with the heavy burden of proving that he has complied with and satisfied **all the statutory and administrative requirements** to be entitled to the tax refund.[40] As a corollary, it must be remembered that as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[41]

WHEREFORE, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated July 5,

[40] *Commissioner of Internal Revenue vs. Eastern Telecommunications Phils., Inc.*, G.R. No. 163835, July 7, 2010.

[41] *Dizon vs. Court of Tax Appeals, et al.*, G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

2011 and Resolution dated September 8, 2011 both rendered by the Court in Division in CTA Case No. 7908 are hereby **AFFIRMED**.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

LOVELL R. BAUTISTA
Associate Justice

CAESAR A. CASANOVA
Associate Justice

(With Dissenting Opinion)
ESPERANZA R. FABON-VICTORINO
Associate Justice

(Joins Associate Justice Esperanza R. Fabon-Victorino in her Dissenting Opinion)
CIELITO N. MINDARO-GRULLA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

CERTIFICATION

Pursuant to Section 13, 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 *En Banc*.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

UPSI MANAGEMENT, INC., Petitioner,	C.T.A. EB No. 828 (C.T.A. CASE NO. 7908)
	Members:
- versus -	CASTAÑEDA, JR., *Acting PJ* BAUTISTA, UY, CASANOVA, FABON-VICTORINO, MINDARO-GRULLA, and COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: FEB 08 2013 11:00 a.m.

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DISSENTING OPINION

***Fabon-Victorino, J.*:**

I join the majority in saying that Section 76 of the 1997 NIRC offers two options to a taxpayer with excess income tax payments – either file a claim for refund or to carry-over its excess credit. However, with regrets, I cannot join in the majority's position that only the option to carry-over is irrevocable.

I respectfully submit that **the options of a corporate taxpayer, whose total quarterly income tax payments exceed its tax liability, are alternative in nature and the choice of one precludes the other.** [1]

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[1] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, 514 Phil. 147, 157 (2005).

Under Section 76 of the NIRC, as amended, there are **only two alternative options** available to a corporate taxpayer whose quarterly income tax payments exceed its tax liability, viz., (1) to apply for a refund within the prescribed period, **or** (2) carry over and apply the same to its tax liabilities for the succeeding quarters of the succeeding taxable years. This was the import of the Supreme Court's ruling in *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*,[2] where it was declared that:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> ***These two options under Section 76 are alternative in nature. The choice of one precludes the other***. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue, the Court ruled that a corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid... (*Emphases supplied*)

Thus, a corporate taxpayer is **not** legally allowed to change its position once it has chosen an option from the two alternative remedies for the choice of one precludes the other.

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[2] 514 Phil. 147, 157 (2005).

In the case at bar, petitioner unequivocally indicated in its Annual ITR for 2006 that it wanted a refund of its excess creditable tax withheld for the said year. It marked "x" the box "To be issued a Tax Credit Certificate." Hence, even if it wanted to, petitioner could no longer legally carry over the subject amount to the succeeding quarters or years having opted to exercise one of the available options under the law. This much was also observed by the Court in Division saying that "petitioner elected the option "To be issued a Tax Credit Certificate" as shown in its 2006 ITR."[3]

It may be true that petitioner's ITR for the succeeding short period for fiscal year ending March 31, 2007 reflect the excess/unutilized creditable withholding tax of P5,159,341.00 (including the subject claim of P2,927,834.00), the inadvertence was rectified when petitioner removed it in its Amended Annual ITR for the said fiscal year.

It is well to recall the teaching of the Supreme Court, speaking through Justice Antonio T. Carpio, to wit:

> **Under Section 76, the Exercise of an Option is Irrevocable** and a Decision to Carry-over and Apply Tax Overpayment Continues Until the Overpayment has been Fully Applied to Tax Liabilities[4]

The Final Arbiter added that a decision to carry-over and apply tax overpayment continues until the overpayment has been fully applied to tax liabilities, thus:

> Section 76 of the NIRC of 1997 was formerly Section 69 of the 1977 NIRC and it wrought about two (2) changes therefrom: first, it mandates that **the taxpayer's exercise of its option to either seek refund or crediting is irrevocable**, and second, the **taxpayer's decision to carry-over and apply its current overpayment to**

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[3] *En Banc* docket p. 66, page 8, Decision dated July 5, 2011

[4] Commissioner of Internal Revenue v. McGeorge Food Industries, Inc., G.R. No. 174157, October 20, 2010.

> **future tax liability continues until the overpayment had been fully applied, no matter how many tax cycles it takes**. (*Emphases supplied*)

A contextual appreciation of the ruling would tell us that any of the two alternatives once chosen is irrevocable - be it for refund or carry over. **The controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one**.[5]

The foregoing fueled the explanation that "Section 76 is, like its predecessor Section 69 of the 1977 NIRC, a tax administration measure crafted to ease tax collection. By requiring corporate taxpayers to indicate in their final adjustment return whether, in case of overpayment, they wish to have the excess amount refunded or carried-over and applied to their future tax liability, the provision aims to properly manage claims for refund or tax credit. Administratively speaking, Section 76 xxx xxx xxx is a toll designed to promote rational and efficient functioning of the tax system."[6] To be sure, flip-flopping on the part of the corporate taxpayer will not only run counter to the spirit of the law but will also create chaos and delay in the collection of taxes to the prejudice of the government.

Guided by the foregoing, I respectfully submit that under Section 76, the exercise of any of the two options is irrevocable and this doctrine has not been changed.

It is also submitted that in all the subsequent cases brought before the Final Arbiter, viz., Belle Corporation v. Commissioner of Internal Revenue, G.R. No. 181298, January 10, 2011, Commissioner of Internal Revenue v. PL Management International Philippines, Inc., G.R. No. 160949, April 4, 2011, and the consolidated cases of Commissioner of Internal Revenue v. Mirant (Philippines) Operations Corporation, G.R. No. 171742, June 15, 2011 and Mirant

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[5] *Commissioner of Internal Revenue v. PL Management International Philippines, Inc.*, G.R. No. 160949, April 4, 2011, citing *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[6] CIR v. McGeorge, *supra*.

(Philippines) Operators Corporation v. Commissioner of Internal Revenue, G.R. No. 176165, June 15, 2011, the original option exercised by the respective corporate taxpayers therein was to carry over the excess to the succeeding quarter and not refund. Thus the ruling that the option of the respective corporate taxpayers to carry over excess income tax payment was irrevocable under Section 76 of the 1997 NIRC emphasizing that unutilized excess income tax payments may be carried over to the succeeding taxable years until fully utilized.

Finally, the Supreme Court is consistent to date in holding that the two (2) options are alternative in nature and that the choice of one bars the other.[7] In fact, even the *Annual Income Tax Return (BIR Form 1702)* under line 31, states and I quote:

> **If overpayment, mark one box only: (<u>once the choice is made, the same is irrevocable</u>)**

Respectfully submitted.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

CIELITO N. MINDARO-GRULLA
Associate Justice

[7] *United Coconut Planter Bank vs. Commissioner of Internal Revenue*, C.T.A. Case No. 7614, January 26, 2011.