Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

RELIANCE COMMERCIAL ENTERPRISES, INC., *Petitioner,*	**C.T.A. CASE NO. 6586**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* **UY,** and **PALANCA-ENRIQUEZ,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 19 2005

x - x

DECISION

CASTAÑEDA, JR., *J.*:

Petitioner comes to this Court to judicially contest the inaction of the respondent on its claim for refund and/or issuance of a tax credit certificate in the total amount of P1,143,190.00 asserted to represent excess and unutilized creditable withholding taxes for the fiscal year ending September 30, 2000.

The following are the facts as unfolded in the course of the proceedings:

Petitioner is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal office at 5th Floor Comfoods Building, Sen. Gil Puyat Ave., corner Pasong Tamo St., Makati City.

On January 15, 2001, petitioner filed its Corporate Annual Income Tax Return (AITR for brevity) for the fiscal year ended September 30, 2000 with the Bureau of Internal Revenue (BIR) declaring a net loss of P4,496,681.00 *(Exhibit A-5)* and a minimum corporate income tax (MCIT) due of P10,648.00 *(Exhibit A-8).* For the said taxable year, petitioner indicated an overpayment amounting to P7,198,040.00 *(Exhibit A-11)* consisting of its prior year's excess credits and creditable income taxes withheld during the year, computed as follows:

Gross Income		P 532,390.00
Less: Deductions		5,029,071.00
Net Loss		P(4,496,681.00)
Minimum Corporate Income Tax (MCIT)		P 10,648.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	P6,065,498.00	
Form No. 2307 for the Fourth Quarter	1,143,190.00	
Total Tax Credits/Payments		P 7,208,688.00
Tax Amount Payable/(Overpayment)		**P(7,198,040.00)**

Petitioner did not mark any of the boxes providing for options in case of overpayment of: a) To be refunded; b) To be issued a Tax Credit Certificate; or c) To be carried over as tax credit next year/quarter.

According to the petitioner, its creditable withholding taxes for fiscal year ended September 30, 2000 were unutilized since it had no taxable income for said fiscal year being in a net loss position and the prior years' overpayments were sufficient to cover the MCIT due for the period of P10,648.00.

For the fiscal year ended September 30, 2001, petitioner filed with the BIR its Amended Annual Income Tax Return on May 16, 2002 (*Exhibit B)* reporting a net loss of P8,086,461.00 and a total overpayment in the amount of P1,186,944.00 (*Exhibit B-7*). The choice "to be refunded" was marked accordingly by the petitioner.

Thus, on January 9, 2003, petitioner requested for a cash refund or the issuance of a tax credit certificate for its overpaid withholding tax for fiscal year ended September 30, 2000, with the BIR Region 8, Revenue District Office No. 49 in the total amount of P1,143,190.00. (*Exhibit KK*). On January 14, 2003, or just a few days thereafter, petitioner filed the instant Petition for Review with this Court.

Respondent posted his Answer on February 27, 2003, and by way of Special and Affirmative Defenses, averred the following:

> 4. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and regulations, hence, not refundable.

6. 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.

7. It is incumbent upon the petitioner to show that it has complied with the provisions of Sections 204 in relation to Section 229 of the Tax Code, as amended.

8. 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**).

The parties jointly submitted the following issues to be resolved by the Court:

1. Whether or not petitioner is entitled to the refund of P1,143,190 representing excess and unutilized CWT for fiscal year ending September 30, 2000.

2. Whether or not petitioner has an unutilized/excess creditable withholding tax in the amount of P1,143,190 for fiscal year ending September 30, 2000.

3. Whether or not the income from which the taxes withheld were included as part of the gross income in the petitioner's 2000 income tax return.

4. Whether or not the petitioner's claim for refund/tax credit allegedly representing unutilized/excess creditable withholding tax for the fiscal year ending September 30, 2000 in the amount of P1,143,190.00 is substantiated by documentary evidence.

The issues stipulated by the parties are intertwined, hence, they shall be discussed collectively.

Petitioner principally anchored its claim on Section 76, in relation to Sections 204 (C) and 229 of the 1997 National Internal Revenue Code, 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 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.
>
> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: . . .
>
> SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained,

> whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: . . .

From the provision of Section 76 of the NIRC, a corporation has three options as regards its excess quarterly income tax payments/creditable withholding taxes, namely: a) to be refunded, b) to be issued a tax credit certificate and c) to carry –over excess credit to the succeeding taxable years. However, once the option of carry-over has been made, the same becomes irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

It must be stressed that the corporation was given this option to carry-over the excess tax credit to prevent it from claiming twice the excess quarterly taxes paid: one, as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate (TCC) has been issued; another, as a tax credit for which a TCC will be issued or convert such tax credit into a claim for a cash tax refund. Thus, once the option was exercised for that taxable period when the excess income tax payment was incurred, such option is irrevocable, and the taxpayer is precluded from availing of the other options – *i.e,* to claim for refund or to be issued a tax credit certificate.

This is precisely why the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention whether to request for a refund or claim for an automatic tax credit for the succeeding taxable year. (*Flour Daniel Inc. – Phils. v. CIR, CA-G.R. SP No. 79596, promulgated on July 14, 2005*)

In the case at bar, petitioner did not indicate its intention whether the claimed income tax overpayment for the fiscal year ended September 30, 2000 was: a) "To be refunded"; b) "To be issued a Tax Credit Certificate"; or c) "To be carried over as tax credit to next year/quarter". Petitioner offered in evidence only its amended income tax return for fiscal year 2001 reflecting no amount of prior year's excess credit (*Exhibit B-3*). The same cannot be the basis of its original intention. Petitioner's 2001 original annual income tax return is crucial in the determination if indeed the original option of the petitioner was to refund the excess income tax payment and not to carry-over excess credit to succeeding year/quarter. And an examination of petitioner's original income tax return for the fiscal year ended September 30, 2001 in fact shows that petitioner actually exercised the option of carry over and the total overpayment for said period was opted "to be carried over as tax credit next year/quarter".[1] To quote in part the declarations of petitioner in its income tax return for fiscal year 2001:

Gross Income	P (295,412.00)
Less: Deductions	7,791,049.00
Taxable Income	P(8,086,461.00)
Minimum Corporate Income Tax (MCIT)	P -
Less: Tax Credits/Payments	
Prior Year's Excess Credits	**P 7,198,040.00**
Tax Withheld for the First Three Quarters	924,869.00
Tax Withheld for the Fourth Quarter	262,075.00
Tax Amount Payable/(Overpayment)	**P(8,384,984.00)**[2]

It is without a doubt now that petitioner really carried over the total amount of P7,198,040.00 as prior year's excess credits to its 2001 income tax return. The subject claim for refund in the amount of P1,143,190.00 formed part of the total amount of P7,198,040.00, computed as follows:

Gross Income		P 532,390.00
Less: Deductions		5,029,071.00
Net Loss		P(4,496,681.00)
Minimum Corporate Income Tax (MCIT)		P 10,648.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	P6,065,498.00	
Tax Withheld for the Fourth Quarter	**1,143,190.00**	
Total Tax Credits/Payments		P 7,208,688.00
Tax Amount Payable/(Overpayment)		**P(7,198,040.00)**

Therefore, petitioner is precluded from claiming a cash refund or a tax credit corresponding to its reported excess tax credits for the fiscal year ended September 30, 2000 in the amount of P1,143,190.00

---

1 Exhibit C, Reliance Commercial Enterprise, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6848
2 Exhibit A

considering that the same was carried over to the succeeding fiscal year. The presentation of an amended income tax return for fiscal year ended September 30, 2001 is immaterial since the law is quite clear. Once the option of carry over has been exercised, the same becomes irrevocable. A claim for refund is in the nature of a claim for exemption and should be construed in *strictissimi juris* against the taxpayer ***(Commissioner of Internal Revenue vs. Tokyo Shipping Co., Ltd., 244 SCRA 332)***.

WHEREFORE, premises considered, petitioner's claim for refund is hereby **DENIED**.

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Chairman