

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FORMER EN BANC

UPSI MANAGEMENT, INC.,
Petitioner,

C.T.A. E.B. NO. 500
(C.T.A. CASE NO. 7436)

Present:

- versus -

ACOSTA, P.J.
CASTAÑEDA, JR.,
BAUTISTA,
UY,
CASANOVA, and
PALANCA-ENRIQUEZ, JJ.

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

MAR 29 2010

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DECISION

UY, J.:

This is a Petition for Review before the Court of Tax Appeals *En Banc* filed on July 20, 2009 under Republic Act No. 1125, as amended by Republic Act No. 9282, and Section 3(b), Rule 8 of the Revised Rules of the Court of Tax Appeals seeking a review of the Decision and Resolution by the Former First Division of this Court (Court in Division)¹ in CTA Case No. 7436, entitled "UPSI Management, Inc. vs. Commissioner of Internal Revenue"², to wit:

¹ Chaired by Presiding Justice Ernesto D. Acosta, with Associate Justice Lovell R. Bautista and Associate Justice Caesar A. Casanova as members.

² Ponencia of Associate Justice Lovell R. Bautista, First Division, concurred by Presiding Justice Ernesto D. Acosta and Associate Justice Caesar A. Casanova.

- 1) Decision promulgated on March 12, 2009³ denying herein petitioner's claim for refund or the issuance of tax credit certificate in its favor in the amount of TWO MILLION EIGHTY NINE THOUSAND TWO HUNDRED FIFTY TWO PESOS (P 2,089,252.00) allegedly representing its excess/unutilized creditable withholding tax for taxable year 2003; and
- 2) Resolution promulgated on June 11, 2009⁴ denying herein petitioner's Motion for Partial Reconsideration for lack of merit.

THE FACTS

The factual antecedents of the case are not in dispute.

Petitioner is a corporation duly incorporated and existing under Philippine laws, with business address at 1122 General Luna Street, Paco, Manila.

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, with powers, among others, to act upon and grant claims for refund or tax credit of overpaid internal revenue taxes. He holds office at the 5th Floor, Bureau of Internal Revenue (BIR) National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2004, petitioner filed its Annual Income Tax Return (ITR) for the taxable year 2003 which reflected the following:

Taxable income (net loss)	P (1,257,482.00)
Minimum Corporate Income Tax (MCIT)	58,719.00
Prior year Excess Credit	2,546,619.00
Creditable Tax Withheld	2,089,252.00
Total Excess Credit	P 4,577,152.00

³ Docket, pp. 40-51.

⁴ Ibid, at pp. 53-55.

Petitioner did not choose an option in the said Return as regards its excess credit. On November 12, 2004, however, petitioner amended its ITR for 2003 reflecting the aforesaid amount, but now with a marking in the option box of "To be issued a Tax Credit Certificate".

On June 1, 2005, petitioner filed with the BIR its claim for refund or issuance of tax credit certificate, but limiting the claim in the amount of ₱ 2,089,252.00, representing its unutilized creditable income taxes for taxable year 2003. For failure of respondent to act on said claim, petitioner filed its judicial claim before the Court in Division on April 11, 2006, through a Petition for Review and docketed as C.T.A. Case No. 7436, pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.

On March 12, 2009, the Court in Division rendered its assailed Decision denying petitioner's claim for refund or the issuance of tax credit certificate in its favor in the amount of TWO MILLION EIGHTY NINE THOUSAND TWO HUNDRED FIFTY TWO PESOS (₱ 2,089,252.00) allegedly representing its excess/unutilized creditable withholding tax for taxable year 2003, for lack of merit.

Finding no valid or cogent reason to either alter or modify the assailed Decision, the Court in Division denied herein petitioner's Motion for Partial Reconsideration of the aforesaid Decision in the Resolution dated June 11, 2009.

Hence, this recourse before the Court *en banc* praying that the assailed Decision dated March 12, 2009 and Resolution dated June 11, 2009


440

of the Court in Division, be annulled and set aside and a new one be issued holding that: (a) petitioner did not carry-over its excess creditable withholding taxes, arising from taxable year 2003, to the succeeding taxable year/s; (b) based on evidence presented and circumstances surrounding the case, petitioner's intention to refund its excess withholding tax credits arising from taxable year 2003, through the issuance of the tax credit certificate, is clear; (c) petitioner did not exercise the option to carry-over its 2003 excess withholding tax credits in the total amount of ₱ 2,089,252.00 to its 2004 Amended Annual Income Tax Return; and (d) petitioner, having sufficiently and fully complied with all the requirements and requisites in claiming of refund of excess creditable withholding taxes, is entitled to the refund or issuance of tax credit certificate in the amount of ₱ 2,019,398.49.

On August 20, 2009, respondent filed his Comment⁵ to the instant Petition for Review. In the Resolution dated August 28, 2009⁶, the Court *en banc* gave due course to the instant petition and directed both parties to file their respective memorandum. Both respondent and petitioner complied and filed their respective memorandum on October 5, 2009⁷ and October 7, 2009⁸, respectively. Consequently, this case was considered submitted for decision on October 12, 2009.⁹



⁵ Id., at pp. 904-906.

⁶ Id., at p. 908.

⁷ Respondent's Memorandum; Docket, pp. 909-915.

⁸ Petitioner's Memorandum; Docket, pp. 916-959.

⁹ Resolution dated October 12, 2009; Docket, p. 1001.

However, on October 21, 2009¹⁰, petitioner filed a "Motion for Leave to File Comment (to Respondent's Memorandum dated 02 October 2009)", which was granted in the Resolution dated October 28, 2009¹¹; and petitioner's Comment dated October 19, 2009 attached thereto was accordingly admitted for this Court's consideration.

Hence, this Decision.

THE ISSUE

As adduced from the parties' arguments, the sole issue for the Court's consideration is whether or not petitioner is entitled to the refund or issuance of tax credit certificate in its favor in the amount of TWO MILLION NINETEEN THOUSAND THREE HUNDRED NINETY EIGHT and 49/100 PESOS (₱ 2,019,398.49) allegedly representing its excess/unutilized creditable withholding tax for taxable year 2003.

As regards the issue on the belated filing of the instant Petition for Review, the same was already explained in its Manifestation dated July 20, 2009¹² (due to the tropical storm "Isang" and heavy monsoon rains), and has been deemed moot considering that the Court already gave due course to the same in its Resolution dated August 28, 2009.

Petitioner's Arguments:

In support of the instant Petition for Review, petitioner submits the following arguments:

¹⁰ Docket, pp. 1002-1016.

¹¹ Ibid., at p. 1017.

¹² Id., at pp. 9-11.

1. "Petitioner's acts, among others, of: (i.) amending its ITRs for taxable years 2003 and 2004; and (ii.) filing a claim for refund and/or issuance of a Tax Credit Certificate ('TCC') in the total amount of ₱ 2,089,252.00 representing unutilized creditable income taxes arising from taxable year 2003, point to the logical conclusion that petitioner opted to be refunded and/or be issued a TCC and not to carry-over its excess creditable withholding tax arising from taxable year 2003";
2. "Petitioner did not exercise the carry-over option actually or constructively, since it is clear from the start that petitioner is seeking a refund of its excess creditable withholding tax credits arising from taxable year 2003";
3. "Section 76 of the National Internal Revenue Code ('NIRC') would not be rendered useless or ineffective by the mere act of petitioner amending its ITR for taxable year 2003 since such amendment was made in accordance with Section 76 and Section 6(A) of the NIRC"; and
4. "Petitioner is entitled to the refund or issuance of a Tax Credit Certificate ('TCC') in the amount of ₱ 2,019,398.49 on the following grounds: (i.) it has sufficiently and fully complied with all the requirements and requisites in claiming of refund of excess creditable withholding taxes; and (ii.) it has been clear right from the start that petitioner's intention was to be refunded and/or issued a TCC".

Respondent's Counter-arguments:

Respondent filed his "Comment (To Petition for Review)" on August 20, 2009 praying for the dismissal of the present petition for lack of merit. He posits that the Court in Division was correct in ruling that once the carry-over option is taken, actually or constructively, it becomes irrevocable. Likewise, in the ITR for taxable year 2003, it was not indicated which option did petitioner choose as regards its excess creditable withholding tax; while for taxable year

2004, petitioner actually carried over the said excess creditable withholding tax as shown in its ITR for taxable year 2004 which was submitted as part of evidence in C.T.A. case No. 7602 involving the same taxpayer. Lastly, respondent emphasizes that the instant Petition for Review was filed out of time as it failed to file the same within the period granted by this Court.

THE COURT EN BANC'S RULING

At the outset, considering that one of the arguments raised herein is a jurisdictional matter, this Court would like to clarify that the acceptance of the instant Petition for Review filed on July 20, 2009, after the period allowed by law (July 17, 2009 being the last day granted by this Court for filing the appeal), was brought about by a special circumstance where technicality may be brushed aside. Worthy to note that on July 17, 2009, a Friday, all government offices were cancelled due to typhoon "Isang"; hence, this Court allowed the filing of petitioner's appeal on the next working day, July 20, 2009.

Technicality, when it deserts its proper office as an aid to justice and becomes its great hindrance and chief enemy, deserves scant consideration from courts. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice.¹³ In this case, the cancellation of government

¹³ *Agum vs. Court of Appeals*, G.R. No. 137672. May 31, 2000.

offices is beyond petitioner's control; thus, justifying the admission of petitioner's appeal although filed beyond the extension period granted.

Now, going to the main issue at bench regarding petitioner's entitlement to the refund claim or issuance of a tax credit certificate representing any excess/unutilized creditable withholding tax, it must be shown that petitioner has complied with essential basic conditions set forth under pertinent provisions of law.

Conditions for the grant of a claim for refund of creditable withholding tax

In *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*¹⁴, the Supreme Court ruled that there are three conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;¹⁵ (2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;¹⁶ and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, viz:

¹⁴ G.R. No. 155682, March 27, 2007.

¹⁵ Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector*, 107 Phil. 230 (1960).

¹⁶ *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

"SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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(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:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." (*Emphasis supplied*)

"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: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (*Emphasis supplied*)



The *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98¹⁷, which states:

"Sec. 2.58.3. Claim for Tax Credit or Refund

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(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.** (*Emphasis supplied*)

As correctly ruled by the Court in Division, petitioner has substantially complied with all three conditions as abovementioned pertaining to its claim but only in the reduced amount of ₱ 1,937,054.92 representing its unutilized excess creditable withholding taxes for taxable year 2003.

Nevertheless, notwithstanding the compliance of petitioner with the aforesaid conditions provided in the *Banco Filipino Savings case*¹⁸, the Court in Division denied petitioner's claim for its failure to comply with other requirements provided for by law; significantly, Section 76 of the NIRC of 1997, as amended, the very issue now being raised in the present case.

**Irrevocability rule under
Section 76 of the NIRC of 1997**

Section 76 of the NIRC of 1997, as amended, provides as follows:

¹⁷ SUBJECT: Implementing Republic Act No. 8424, "An Act Amending The National Internal Revenue Code, as Amended" Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

¹⁸ Supra.

“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.** (*Emphasis supplied*)

Pursuant to the foregoing provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year is allowed two options, namely: (1) to be credited or refunded (either in the form of cash or tax credit certificate) with the excess amount paid; or (2) to carry-over the excess credit to the quarters of the succeeding taxable years.

In this regard, the Supreme Court ruled in the case of ***Phil-Am Asset Management, Inc. vs. Commissioner of Internal Revenue***,¹⁹ that under Section 76 of the National Internal Revenue Code, a taxable corporation with excess quarterly income tax payments may apply for either a tax *refund* or a

¹⁹ G.R. Nos. 156637 and 162004, December 15, 2005.

tax *credit*, but not both. The choice of one precludes the other. It further held that 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 be allowed. This is known as the *irrevocability rule*.

In the more recent case of ***Commissioner of Internal Revenue vs. Bank of Philippine Islands***,²⁰ the High Court elucidated that 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. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, “no application for tax refund or issuance of a tax credit certificate shall be allowed therefor.”

It further explained that, the last sentence of Section 76 of the NIRC of 1997, as amended, reads: “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 tax refund

²⁰ G.R. No. 178490, July 7, 2009.

or issuance of a tax credit certificate shall be allowed therefor.” The phrase “for that taxable period” merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. Hence, the evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, as amended, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer’s excess tax credit.²¹

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 a refund or claim an automatic tax credit for the succeeding taxable year. These remedies are in the alternative, and the choice of one precludes the other.²²

Records show that at the outset, petitioner did not mark any option in its original 2003 ITR²³, however, upon the filing of its 2003 amended return²⁴ petitioner marked the option “To be issued a Tax Credit Certificate”. What is crucial in this case is that careful examination of the succeeding ITRs reveals that in the original 2004 ITR, **petitioner carried over its 2003 excess tax credits in the box “Prior year’s excess tax credits”**, though petitioner did not mark any box in the lower portion, whether to carry over, refund or issue a tax credit certificate in its favor. This clearly manifests that it was intended by petitioner to carry-over the aforesaid excess tax credits.

²¹ Ibid.

²² *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, G.R. No. 112024, January 28, 1999, 302 SCRA 241.

²³ Exhibit “A”, CTA Case No. 7436.

²⁴ Exhibit “B”, CTA Case No. 7436.

We adopt the factual and legal findings of the Court in Division, quoted hereunder as follows:

"In the present case, the claim for refund or issuance of tax credit certificate in the amount of ₱ 2,089,252.00 covers unutilized creditable withholding taxes for taxable year 2003. A scrutiny of petitioner's 2003 Income Tax Return shows that petitioner reflected the same amount as an unutilized creditable tax withheld. **Petitioner's failure to make the appropriate marking in its 2003 Income Tax Return and the fact that the claimed amount was actually carried over to the succeeding taxable year 2004 manifest petitioner's intention to carry-over the excess credits; thus, rendering its written claim for refund or issuance of tax credit certificate nugatory.**

Since petitioner already exercised the option to carry-over its prior year's tax credit in the total amount of ₱ 4,577,152.00 (which included the present claim of ₱ 2,089,252.00) to its 2004 Annual Income Tax Return, it is already barred from claiming a refund/tax credit certificate corresponding thereto. Its subsequent amendments of its 2003 ITR with the intention to request a tax credit certificate by checking the 'To be issued a Tax Credit Certificate' option, and of its 2004 ITR showing the amended amount of ₱ 2,487,900.00, which is actually the prior year's excess credit net of the claimed unutilized taxes withheld in the amount of ₱ 2,089,252.00 for the year 2003, do not alter the fact that it had already carried over the excess and unutilized creditable withholding tax for the year 2004; therefore, governed by the 'irrevocability rule' under Section 76 of the NIRC of 1997. Petitioner's only recourse is to carry-over the amount of ₱ 1,937,054.92 to the succeeding taxable years until the same is fully utilized."²⁵

Moreover, in the assailed Resolution dated June 11, 2009²⁶, the Court in Division explained that by taking into consideration petitioner's 2004 ITR²⁷, petitioner clearly indicated its intention by **actually carrying-over the subject**

²⁵ Assailed Decision dated March 12, 2009, pp. 10-11; Docket, pp. 49-50.

²⁶ Docket, pp. 53-55.

²⁷ The Court in Division took judicial notice of said 2004 Income Tax Return, marked and submitted as Exhibit "A" in CTA Case No. 7602, involving the same parties.

excess creditable withholding tax. The *irrevocability rule* provided for under Section 76 of the NIRC of 1997, as amended, applies in the present case, as petitioner opted to carry-over the excess creditable withholding tax. This notwithstanding the fact that petitioner subsequently amended its 2004 ITR and deducted its 2003 excess tax credits and chose the option "To be issued a Tax Credit Certificate" for its 2004 excess tax credits. As correctly explained by the Court in Division, "the provision of Section 76 would be rendered useless or ineffective by the mere act of a taxpayer amending its Return. In effect, any taxpayer can easily aver mistake or error in its declaration and amend its Return not only once but several times".²⁸

All the foregoing considered, this Court finds no reversible error committed by the Court in Division when it rendered the Decision dated March 12, 2009 and Resolution dated June 11, 2009. We therefore adopt the ruling that although petitioner has sufficiently substantiated its reported creditable withholding taxes for taxable year 2003, pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended, and Revenue Regulations No. 2-98, particularly Section 2.58.3 thereof, in the amount of ₱ 1,937,054.92 representing unutilized excess tax credits for taxable year 2003; it however opted to carry-over the subject excess and unutilized creditable withholding tax. Consequently, petitioner's recourse is to carry-over the amount of ₱ 1,937,054.92 to the succeeding taxable years until the same is fully utilized.



²⁸ Assailed Resolution dated June 11, 2009, p. 3; Docket, p. 55.

WHEREFORE, premises considered, the instant petition is hereby **DISMISSED** for lack of merit. Accordingly, the Decision dated March 12, 2009 of the Court in Division in C.T.A. Case No. 7436 is **AFFIRMED IN TOTO**.

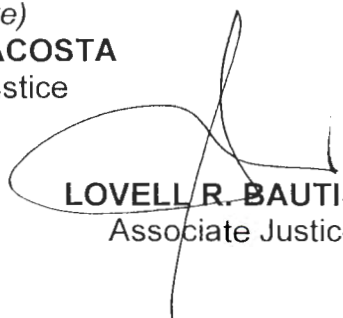
SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:

(On Leave)
ERNESTO D. ACOSTA
Presiding Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
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