REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

SYSTRA PHILIPPINES INC.,
Petitioner,

C.T.A. EB NO. 135
(C.T.A. Case No. 6655)

Present:

-versus-

Acosta, P.J.
Castañeda, Jr.
Bautista,
Uy,
Casanova, and
Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JAN 18 2007 [signature]

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D E C I S I O N

BAUTISTA, J.:

The Case

Before Us is a Petition for Review filed by Systra Philippines Inc. ("petitioner") praying for the reversal of the Decision of this Court's First Division ("Court in Division") in C.T.A. Case No. 6655 promulgated on August 3, 2005 and its Resolution resolving the Motion for Reconsideration dated October 12, 2005.

In the assailed Decision and Resolution, the Court in Division partially granted petitioner's claim for refund or issuance of a tax credit certificate for its unutilized creditable withholding taxes ("CWT") for calendar year ("CY") 2001 in the amount of P1,111,587.00 but denied petitioner's claim for refund amounting to P4,230,659.00, representing excess and unutilized CWT for CY 2000.

Antecedent Facts

The material antecedents are narrated by the Court in Division in this wise:

> "Systra Philippines, Incorporated ("petitioner") is a corporation duly organized and existing under and by virtue the laws of the Republic of the Philippines with office address at Unit 2205-B, 22/F West Tower, Philippine Stock Exchange Centre, Exchange Road, Ortigas Center, Pasig City. It is primarily engaged in consultancy and management services for firms and entities engaged in the field of railways, urban and mass transit systems and other areas in transportation and communications and provides planning, development services, systems/project studies, construction, supervision and project engagement, modernization and rehabilitation of networks, training of technical staff and other related services. It is registered with the Bureau of Internal Revenue ("BIR") under Taxpayer Identification No. 004-665-254-000.
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> On April 16, 2001, petitioner filed with the BIR its Annual Income Tax Return ("ITR") for the taxable year ended December 31, 2000 declaring revenues in the amount of Eighteen Million Two Hundred Fifty Two Thousand Seven Hundred Nineteen Pesos (P18,252,719.00) the bulk of which consists of income from management consultancy services rendered to Philippine Branch of Group Systra SA, France. Subjecting said income from consultancy services of petitioner to 5% creditable withholding tax, a total amount of Four Million Seven Hundred Three Thousand Nineteen Pesos (P4,703,019.00) was declared by petitioner as creditable taxes withheld for the taxable year 2000.
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> For the same period, petitioner reflected a total gross income of Three Million Seven Hundred Fifty Two Thousand One Hundred Twenty Nine Pesos (P3,752,129.00) and a net loss of Seventeen Thousand Nine Hundred Thirty Pesos (P17,930.00) and a minimum corporate income tax ("MCIT") of Seventy Five Thousand Forty Three Pesos (P75,043.00). Said MCIT of P75,043.00 was offset against its total tax credits for the year 2000 amounting to Four Million Seven Hundred Three Thousand Nineteen Pesos (P4,703,019.00) thereby leaving a total unutilized tax credits of Four

Million Six Hundred Twenty Seven Thousand Nine Hundred Seventy Six Pesos (P4,627,976.00), computed as follows:

Gross Income		P3,752,129.00
Less: Deductions		3,770,059.00
Net loss		P 17,930.00
Minimum Corporate Income Tax Due		P 75,043.00
Less: Tax Credits		
Prior year's excess credits	P -	
Creditable taxes withheld during the year	4,703,019.00	4,703,019.00
Tax Overpayment		P4,627,976.00

Petitioner opted to carry over the said excess tax credit to the succeeding taxable year 2001.

For the taxable year ended December 31, 2001, petitioner filed with the BIR its Annual ITR on April 12, 2002, reflecting a total gross income of Four Million Seven Hundred Seventy One Thousand Four Hundred Nineteen Pesos (P4,771,419.00) and a total creditable taxes withheld of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00) for consultancy services. It likewise declared a taxable income of One Million Nine Hundred Thirty Six Thousand Eight Hundred Fifty One Pesos (P1,936,851.00) with corresponding normal income tax due in the amount of Six Hundred Nineteen Thousand Seven Hundred Ninety Two Pesos (P619,792.00). After deducting the unexpired excess of the previous years' MCIT [1999 and 2000] in the amount of Two Hundred Twenty Two Thousand Four Hundred Seventy Five Pesos (P222,475.00) from the normal income tax due for the period, petitioner's net tax due of Three Hundred Ninety Seven Thousand Three Hundred Seventeen Pesos (P397,317.00) was applied against the accumulated tax credits of Five Million Seven Hundred Thirty Nine Thousand Five Hundred Sixty Three Pesos (P5,739,563.00). Said reported tax credits comprised of prior year's excess tax credits in the amount of Four Million Six Hundred Twenty Seven Thousand Nine Hundred Seventy Six Pesos (P4,627,976.00) and creditable taxes withheld during taxable year 2001 in the sum of One Million One Hundred Eleven Thousand Five Hundred Eighty Seven Pesos (P1,111,587.00). These excess tax credits were utilized to pay off the income tax still due of Three Hundred Ninety Seven Thousand Three Hundred Seventeen Pesos (P397,317.00) resulting to an overpayment of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00), computed as follows:

Gross Income	P4,771,419.00
Less: Deductions	2,834,568.00
Taxable Income	P1,936,851.00

Income Tax Due at the Normal Rate of 32%		P 619,792.00
Less: Unexpired Excess of Prior Year's MCIT over Normal Income Tax Rate		222,475.00
Income Tax Still Due		P 397,317.00
Less: Tax Credits		
Prior year's excess credits	P4,627,976.00	
Creditable taxes withheld during the year	1,111,587.00	5,739,563.00
Tax Overpayment		P5,342,246.00

Petitioner indicated in the 2001 ITR the option "To be issued a Tax Credit Certificate" relative to its tax overpayments.

On August 9, 2002, petitioner instituted a claim for refund or issuance of a tax credit certificate with the BIR for its unutilized creditable withholding taxes in the amount of Five Million Three Hundred Forty Two Thousand Two Hundred Forty Six Pesos (P5,342,246.00) as of December 31, 2001."

Due to the inaction of the BIR on petitioner's claim for refund and to preserve its right to claim for the refund of its unutilized CWT for CYs 2000 and 2001 by judicial action, petitioner filed a petition for review with the Court in Division on April 14, 2003.

The Ruling of the Court in Division

On August 3, 2005, the Court in Division promulgated its Decision, partially granting petitioner's claim for refund or issuance of a tax credit certificate for its unutilized CWT for CY 2001 in the amount of P1,111,587.00. The amount of P4,230,659.00 representing excess and unutilized CWT for CY 2000 was denied on the ground that petitioner exercised the option to carry-over the same as prior year's excess tax credits in CY 2001, which option, once exercised, is forever irrevocable.

Not satisfied, petitioner moved for a partial reconsideration of the said Decision which was unfortunately, denied by the Court in Division in a Resolution dated October 12, 2005.

The Issue

Aggrieved, petitioner filed the instant petition, on the sole ground that the Court in Division erred in disallowing petitioner's claim for refund of unutilized CWT for CY 2000 in the amount of P4,230,659.00.

The Ruling of the Court En Banc

The petition is bereft of merit.

Petitioner argues that the option to carry-over excess tax credits under Section 76 of the 1997 Tax Code is irrevocable only for the succeeding taxable period, and not thereafter. Thus, petitioner's option to carry-over its unutilized CWT for CY 2000 is irrevocable only in CY 2001. Since a substantial portion of petitioner's excess tax credits for CY 2000 remained unutilized as of December 31, 2001, petitioner may avail of the option to refund its tax overpayment as of year end of CY 2001. To hold otherwise will not only be contrary to the provisions of Section 76, but will likewise be grossly unfair to the taxpayer.

Petitioner's argument cannot be given credence.

As We are asked to interpret Section 76 of the 1997 Tax Code, We reproduce below its exact language:

> 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 legal provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, is allowed two (2) options: (a) be credited or refunded (either in the form of cash or credit certificate) with the excess amount paid; or (b) carry-over the excess credit. If the option to carry-over the amount is exercised, the same shall be irrevocable. The law 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.[1] The rule seeks to prevent a taxpayer 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 has been

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[1] Subic Bay Distribution, Inc., v. Commissioner of Internal Revenue, C.T.A. EB NO. 72 (C.T.A. Case No. 6640), May 23, 2006, *citing Philippine Banking Corporation, now known as Global Business Bank, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6820, August 16, 2001; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, May 2, 2002.*

issued; another as a tax credit for which a tax credit certificate will be issued or convert such tax credit into a claim for cash refund.[2]

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. To ease the administration of tax collection, these remedies are in the alternative, and the choice of one precludes the other.[3]

In the instant case, the crux of the controversy is the meaning of the phrase "for that taxable period" in the aforecited Section 76. In its assailed Decision, the Court in Division correctly made the following interpretation of the said phrase:

> "This Court in a resolution dated March 11, 2003, defined the meaning of "taxable period" in the case of *United International Pictures AB vs. Commissioner of Internal Revenue:*
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> > '. . . the phrase 'taxable period' should refer to the year 1998 when petitioner incurred the excess income tax payment and at the same time elected the option "[T]o be carried as tax credit next year." To apply the phrase 'taxable period' to the year 1999 when the option was exercised would contradict the provisions of Section 76 of the 1997 Tax Code, *supra*, because the application of excess credit is clearly 'against income tax due for the taxable quarters of the succeeding taxable years.' Thus, the use of the phrase "succeeding taxable years" implies that once the option to carry over is made, the law already allows a perpetual carry-over since a change from carry-over to refund is no longer permitted. **The rational interpretation, therefore, is to apply the phrase 'taxable period' to the year when the 'option to carry-over' was made.'**
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> Thus, petitioner is precluded from claiming for a refund or an issuance of a tax credit certificate on its unutilized tax credits for the taxable year 2000 in the sum of Four Million Two Hundred Thirty Thousand Six Hundred Fifty Nine Pesos (P4,230,659.00). It must be pointed out however that the irrevocability of the option to carry-over will not prejudice the taxpayer since Section 76 of the 1997 NIRC permits the application of the excess tax credit against the estimated income tax liabilities of the

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[2] Hector S. De Leon, The National Internal Revenue Code Annotated, Seventh Edition, 2000, p.430.
[3] Philippine Bank of Communications vs. Commissioner of Internal Revenue, 302 SCRA 241.

succeeding taxable years until the said excess income tax payment is fully utilized." (Emphasis supplied)

Furthermore, according to the Court in Division, the phrase "for that taxable period" should be read together with the proviso "taxable quarters of the succeeding taxable years" otherwise, Section 76 would not be an amended version of Section 69 of the 1977 Tax Code. Section 69 states:

> "SECTION. 69. Final Adjustment Return. — Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
>
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year."

Under the above-quoted provision, corporations, aside from opting to carry-over the excess tax to the next succeeding quarter, may likewise avail of the remedy of refund, because the old Tax Code does not preclude the exercise of one to the exclusion of the other.[4] In this case, petitioner's interpretation of the said phrase will defeat the intention of the framers of the law to incorporate the rule on irrevocability of the option to carry-over unutilized or excess income taxes.

In fine, We agree with the pronouncement of the Court in Division in its assailed Decision and Resolution that "taxable period" refers to the year when the

[4] Commissioner of Internal Revenue, v. MC George Food Industries, Inc., CA-G.R. SP No. 67767, January 31, 2006.

taxpayer incurred tax credits and elected the option to carry-over the same as it is in accord with a recent ruling of the Supreme Court, to wit:

> "Once the carry-over option is taken, actually or constructively, it becomes irrevocable. **Petitioner has chosen that option for its 1998 creditable withholding taxes. Thus, it is no longer entitled to a tax refund of P459,756.07, which corresponds to its 1998 excess tax credit. Nonetheless, the amount will not be forfeited in the government's favor, because it may be claimed by petitioner as tax credits in the succeeding taxable years.**"[5] (Emphasis and underscoring supplied)

In the said case, the Supreme Court ruled that since the petitioner effectively chose the carry-over option for its 1998 CWT when it filled out the portion "Prior Year's Excess Credits" in its 1999 Final Adjustment Return, it is barred from claiming a tax refund of its 1998 excess tax credit.

In the same vein, the Court in Division in the case at bar correctly ruled that since petitioner opted to carry-over its excess tax credit for CY 2000 to the succeeding taxable year 2001 in its Annual Income Tax Return ("ITR") for the taxable year ended December 31, 2000, petitioner is bound by the irrevocability rule. Although said 2000 excess CWT was not fully utilized in 2001, petitioner cannot still seek its refund. By express mandate of Section 76, the option to carry over is irrevocable regardless of whether or not the excess tax credit is actually or fully utilized.[6]

It bears stressing that contrary to petitioner's averment that the denial of its claim for refund is grossly unfair, the amount of P4,230,659.00 will not be forfeited in favor of the government and will remain in the account of petitioner. Petitioner is

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[5] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[6] Havi Food Services Inc. v. Commissioner of Internal Revenue, C.T.A. Case No. 6619, January 5, 2006.

not left without recourse since the said amount may be carried over to succeeding taxable years and credited against future income tax liabilities until it is fully utilized.

WHEREFORE, finding no reversible error in the assailed Decision promulgated on August 3, 2005 and the Resolution dated October 12, 2005, the instant Petition for Review is hereby **DENIED** and, accordingly, **DISMISSED** for lack of merit.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
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 above Decision has been reached in consultation with the members of the Court *En Banc* before the case was assigned to the writer of the opinion of this Court.

ERNESTO D. ACOSTA
Presiding Justice