

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. 8655)

Present:

-VERSUS-

Acosta, P.J.

Castañeda, Jr.

Bautista,

Uy,

Casanova, and

Palanca-Enriquez, JJ.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

Promulgated.

JAN 18 2007

At Apolinario

DECISION

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. 8655 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 ₱1,111,587.00 but denied petitioner's claim for refund amounting to ₱4,230,658.00, 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, 22nd 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.

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 Systre 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 (P4,703,618.00) was declared by petitioner as creditable taxes withheld for the taxable year 2000.

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 (P4,703,619.00) thereby leaving a total unutilized tax credits of Four

Income Tax Due at the Normal Rate of 32%	P 618,792.00
Less: Unexpired Excess of Prior Year's YCIT over Normal Income Tax Rate	222,476.00
Income Tax Still Due	P 396,316.00
Less: Tax Credits	
Prior year's excess credits	74,627,876.00
Creditable taxes withheld during the year	1,111,587.00
Tax Overpayment	P5,342,248.00

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

On August 3, 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 (P5,342,248.00) 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 P4,230,658.00 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.

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

¹ *Subic Bay Distribution, Inc., v. Commissioner of Internal Revenue*, CTA EB NO. 72 (C.T.A. Case No. 9643), May 23, 2006, citing *Pangasinan Banking Corporation, now known as Global Business Bank, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 8920, August 10, 2001; *Eastern Steel Management, Inc., vs. Commissioner of Internal Revenue*, CTA Case No. 6216, May 3, 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 aforesaid Section 78. 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 AP vs. Commissioner of Internal Revenue*:

... 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 'To 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 78 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."

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 invocability of the option to carry-over will not prejudice the taxpayer since Section 78 of the 1997 NIRC permits the application of the excess tax credit against the estimated income tax liabilities of the

² Hector S. De Leon, *The National Internal Revenue Code Annotated, Seventeenth Edition, 2000*, p. 430.

³ *Philippine Bank of Communications vs. Commissioner of Internal Revenue*, 302 SCRA 241.

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.
Associate Justice



ERLINDA B. LY
Associate Justice



CAESAR A. CASANOVA
Associate Justice



OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VII 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