REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

PHILAQUA CONSULTANTS, INC.,
Petitioner,

C.T.A. EB No. 442
(C.T.A. CASE No. 6942)

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

SEP 0 8 2009

x---x

D E C I S I O N

CASTAÑEDA, JR., J.:

This is a Petition for Review filed before the Court of Tax Appeals *en banc* assailing the Decision dated August 28, 2008 and the Resolution dated November 21, 2008 issued by the First Division of this Court in the case entitled, *"Philaqua Consultants, Inc. vs. Commissioner of Internal Revenue,"* docketed as CTA Case No. 6942.

In the Resolution, the Fist Division of this Court denied Petitioner's Motion for Partial Reconsideration of the Decision dated August 28, 2008, as follows:

> **WHEREFORE**, petitioner's "**Motion for Partial Reconsideration (Re: Decision dated 28 August 2008)**" is hereby **DENIED** for lack of merit. The Decision promulgated on August 28, 2008 is hereby **AFFIRMED**.

The dispositive portion of the assailed Decision reads:

> **WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby required to refund to petitioner the reduced amount of **NINE MILLION FOUR HUNDRED TWENTY TWO THOUSAND NINE HUNDRED TWENTY PESOS (9,422,920.00).**
>
> **SO ORDERED.**

THE FACTS

The facts of the case as found by the Court in Division are as follows:

> Philaqua Consultants, Inc. (petitioner) is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal address at ACCRA Building, 122 Gamboa St., Legaspi Village, Makati City. It is duly registered with the BIR Revenue Region No. 8, RDO No. 47-East Makati with TIN 205-711-881-000. The primary purpose of petitioner includes providing business consultancy services, operations management, project management and supervision of any work, plan or project related to water systems, drainage, deepwells, flood control, dam reservoir, structures, and other edifications and infrastructure development needed and necessary in the ordinary course of life; to act as managers or managing agents of persons, firms, associations, partnerships and other entities excluding the management of funds, assets and portfolios or similar assets of the managed company or entity; to engage in the business of providing or furnishing any

or all forms or types of services, assistance and advice for construction, commercial, industrial, infrastructure and other kinds of enterprises and generally to perform all acts connected with the business aforementioned or arising therefrom or incidental thereto and to do or perform any and all acts and things necessary, proper or convenient for and incidental to the furtherance and/or implementation of the purposes abovementioned.

Respondent is the Commissioner of Internal Revenue (respondent), authorized by law to decide on refunds of internal revenue taxes, fees, penalties imposed in relation thereto or matters arising under the National Internal Revenue Code, as amended.

On February 24, 2001, the petitioner entered into a Deed of Assignment with Montgomery Watson New Zealand Ltd. and Safege Consulting (collectively known as assignors) that will provide engineering consultancy services to its sole client, Maynilad Water Services, Inc. (Maynilad). Such consultancy services are encapsulated in the Long Term Consulting Services for Water Supply and Wastewater for the West Zone of Manila.

On October 1, 2003, a special meeting of the Board of Directors was held where it was unanimously adopted, approved and resolved that the business operations of the petitioner be closed down effective December 31, 2003. This is reflected in the Secretary's Certificate dated December 29, 2003, signed by Jose Gerardo A. Alampay, Corporate Secretary, Philaqua Consultants, Inc. Pursuant to the cessation of its operations, petitioner likewise alleged that it filed a Notice of Closure with the Securities and Exchange Commission, the Local Government of Makati and with the Bureau of Internal Revenue.

Prior to its closure and as a result of its consulatancy activities, petitioner earned service fees subject to Creditable Withholding Tax (CWT) in accordance with Sec. 2.57.2 (B) of the Revenue Regulations No. 2-98, as amended. The following amounts were withheld from petitioner's income from Maynilad for the three taxable years as reflected in its Income Tax Returns (ITRs):

Taxable Year	**Date Filed ITR**	**Amount in Php**	**Date filed Amended ITR**	**Amount in Php**
2001	11-Apr-02	P 191,006.00	30-Apr-03	P 4,332,813.00

gr

2002	15-Apr-03	23,997,874.00	24-Apr-04	17,968,890.00
2003	15-Apr-04	7,651,425.88	15-Apr-04	7,651,426.00
TOTAL		**P 31,840,305.88**		**P 29,953,129.00**

The details of petitioner's application of the Excess Creditable Withholding Tax (ECWT) applied for the taxable years of 2001, 2002 and 2003 are summarized as follows:

Taxable Year			**Quarter**		
	1st	**2nd**	**3rd**	**4th**	**Total**
2001	P 733,536.00	P 1,137,012.00	0	P 2,054,063.00	P 3,924,611.00
2002	0	0	1,184,308.57	286,526.00	1,470,834.57
2003	0	0	0	0	0
Grand Total	**P 733,536.00**	**1,137,012.00**	**P1,184,308.57**	**P 2,339,589.00**	**P 5,395,445.57**

* As for taxable year 2003, the ITRs filed by the petitioner do not indicate any amount under the item captioned "Prior Year's Excess Credit"

Petitioner alleged that no portion of its creditable tax withheld in taxable year 2003 was applied against its tax liabilities because there was no income tax due for any of the quarters in view of the losses incurred by the corporation amounting to P30,260,695. Accordingly, the amount withheld by the withholding agent was not utilized and may be subject for a claim for refund.

Petitioner filed administrative and judicial claims for refund on the following dates:

Taxable Year	Administrative Claim	Judicial Claim
2001	13-Apr-04	14-Apr-04
2002	13-Apr-04	14-Apr-04
2003	8-Oct-04	14-Oct-04

Allegedly, there was no action taken by the respondent. To suspend the running of the two-year period provided by law in claiming for refund, petitioner filed a Petition for Review with this Court on April 14, 2004, docketed as CTA Case No. 6942, and a Supplemental Petition for Review filed on October 14, 2004 with the same Court.

In her Answer, respondent specifically denied the allegation that the petitioner is a joint venture corporation duly registered with the BIR-Revenue Region No. 8 and was issued

Tax Identification Number 205-711-811-000. She raised the following special and affirmative defenses, to wit:

6. The Petitioner's claim is already barred by prescription;

7. Granting arguendo that the claim has not prescribed, still the unapplied portion of the excess withholding tax for the year 2000 in the stated amount of P2,245,069.00 which was carried-over to the year 2001 is no longer refundable for being barred by prescription considering that in its 2001 return said amount formed part of the excess withholding tax applied for tax credit certificate and was no longer carried over and applied as tax payment for the year 2002;

8. Amendment of the return can be done only within three years from its filing and provided that no notice for audit and investigation has been actually served upon the taxpayer (Sec. 6 (A), NIRC);

9. Petitioner has not shown that the income from which the withholding tax was withheld was declared in their corresponding returns for the years 2001 and 2002;

10. Claims for refund are construed strictly against the claimant, the same being in the nature of exemption from taxes (Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95; Manila Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 35);

11. In an action for tax refund/credit, the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the action for refund; [and]

12. It is presumed that taxes paid and collected are made in accordance with law and regulations, hence, not refundable[.]"

> As regards petitioner's Supplemental Petition for Review, respondent manifested on November 10, 2004 that she is still adopting her original Answer since the new allegations raised in petitioner's Supplemental Petition for Review are still covered by the special and affirmative defenses she raised in her Answer.
>
> Petitioner presented documentary and testimonial evidence through its Formal Offer of Evidence and Supplemental Formal of Evidence with Manifestation filed on August 30, 2006 and on November 28, 2006, respectively. On July 31, 2007, respondent for his part manifested in open court that he is no longer presenting further evidence. On September 18, 2007, petitioner submitted its Memorandum. The case was submitted for decision on November 7, 2007 *sans* respondent's Memorandum.

Acting on the Petition, the First Division of this Court issued a Decision on August 28, 2008 which is now the subject of appeal. The said Decision partially granted the petition.

The petitioner filed a Motion for Partial Reconsideration of the Decision dated August 28, 2008. In a Resolution dated November 21, 2008, the First Division denied the Motion for lack of merit.

Hence, this Petition for Review *en banc.*

THE ISSUES

The issues in this case are as follows:

I. Whether or not the First Division's finding that out of petitioner's 2001 ECWT in the aggregate amount of P4,332,813.00, petitioner utilized the amount of P2,561,319.00 when it reported such amount as "prior year's excess credits" in its original annual ITR for the year 2002 is erroneous. gc

II. Whether or not petitioner complied with all requirements for the grant of its claim for refund of its 2002 ECWT.

III. Whether or not petitioner was unduly deprived of its right to its property.

IV. Whether or not the Honorable Court exceeded its jurisdiction by requiring a tax clearance as a condition for the grant of petitioner's refund of its 2002 ECWT.

PHILAQUA'S ARGUMENTS

Philaqua Consultants, Inc. ("Philaqua" for brevity) contends that the amount of P2,561,319.00 reported as "prior years excess credits" in its original 2002 Annual Income Tax Return (ITR) does not pertain to the 2001 excess creditable withholding tax (ECWT) and is just a result of erroneous reporting of amounts in the ITRs. Furthermore, Philaqua alleges that the 2001 ECWT was not yet claimed or reported at the time the amount of P2,561,319.00 was reported as "prior years excess credits" in the original 2002 Annual ITR.

For the second, third and fourth issues, Philaqua alleges that it has complied with all requirements for the grant of claim for refund of its 2002 ECWT. The First Division erred when it required a tax clearance to be issued by the Bureau of Internal Revenue (BIR) as proof of settlement of all its liabilities since the said requirement lacks sufficient legal basis and tantamount to set-off which is not allowed. Moreover, it is sufficient that the 2003 Annual ITR does not show utilization or carry over of the 2002 ECWT.

Philaqua argues that the denial of its 2002 ECWT claim for refund despite failure of respondent to present findings of any deficiency taxes during trial and despite the fact that respondent's right to assess any deficiency taxes has lapsed is undue deprivation of property. In addition, Philaqua maintains that the submission of a tax clearance showing that it is cleared of liabilities to the government is not among the issues stipulated by the parties, hence, it is not bound to present evidence to prove such matter during the trial of the case.

Meanwhile, respondent failed to submit its Comment and Memorandum, thus, in a Resolution dated May 14, 2009 the Court *en banc* submitted this case for decision.

THIS COURT'S RULING

The petition is without merit.

For the first issue, We have re-examined the original and the amended 2001 Annual ITR[1] of Philaqua as well as its original and amended 2002 Annual ITR.[2] In its original 2002 Annual ITR, Philaqua claimed the P2,561,319.00 as "prior year's excess credits." Subsequently, Philaqua amended its 2002 Annual ITR removing the amount of P2,561,319.00 as

[1] Exhibit "H-3", Exhibit "H" respectively.
[2] Exhibit "P", Exhibit "O" respectively.

prior year's excess credit and reflecting a year end ECWT of P17,968,690.00.

Philaqua argues that the P2,561,319.00 could not have come from 2001 prior year's ECWT totaling P4,332,813.00 because the ECWT of P4,332,813.00 came out only after it filed its original 2002 Annual ITR. Moreover, the amount of P2,561,319.00 as "prior year's excess credits" as reflected in the original 2002 Annual ITR is just a result of erroneous reporting of amounts in the ITRs.

We are not convinced by petitioner's contentions.

The Annual ITR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason.[3]

Prudence dictates that when petitioner filled up the items in its original 2002 Annual ITR it should have at least ascertained the basis of each item declared therein. If indeed the amount of P2,561,319.00 did not pertain to excess credits in the prior year of 2001, petitioner could have showed its source or basis than just merely denying that the said amount was not a portion of the 2001 ECWT totaling P4,332,813.00. In this case, We cannot sustain petitioner's excuse that the said amount was *Je*

---

[3] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761.

just a result of erroneous reporting when it has not presented sufficient explanation and accounting of how the error came about.

Moreover, petitioner did not indicate in the original 2001 Annual ITR its option whether to have its 2001 ECWT refunded or carried over and applied to the succeeding year. Instead of marking the appropriate option box of its original 2001 Annual ITR, petitioner opted to reflect in its original 2002 Annual ITR the amount of P2,561,319.00 as "prior year's excess credits." This subsequent act of the petitioner clearly showed its intention to carry over as tax credit a portion of its 2001 ECWT to the taxable year of 2002 which option shall be considered irrevocable regardless of whether it was able to actually apply the said amount to a tax liability. [4]

Thus, the First Division was correct when it computed the amount of ECWT to be refunded for the taxable year 2001, as follows:

> Hence, the amount of petitioner's unutilized creditable tax for the year 2001 is computed as follows:
>
> | | |
> |---|---|
> | Total Creditable Tax | P 4,332,813.00 |
> | Less: Carry Over from Orig. ITR | 2,561,319.00 |
> | Creditable Tax for 2001 | P 1,771,494.00 |

As for the second issue, We now determine whether or not petitioner has complied with the basic legal requirements for the grant of a tax refund of its 2002 ECWT, namely:

[4] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

1. That the claim for refund was filed within the two-year prescriptive period provided under Section 229 of the National Internal Revenue Code (NIRC) of 1997;

2. That it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and [5]

3. That 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 income tax withheld from that amount.[6]

As correctly found by the First Division, all the above requirements have been complied with.

In addition to this, it was held that to request for either a tax refund or a tax credit of income tax paid, a taxpayer must signify its intention by marking the corresponding option box on its Annual ITR and must not have opted to carry over the excess income tax to the taxable quarters of the succeeding taxable years. The options of either filing a refund or carrying over as tax credit the excess income taxes are provided under Section 76 of the National Internal Revenue Code (NIRC) of 1997, which states:

> 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:

[5] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997, 280 SCRA 459.
[6] *Ibid.*

(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 ours)

The options in the abovementioned provision are alternative in nature. The choice of one precludes the other. [7]

As held by the Supreme Court in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*,[8] (herein *BPI*) Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable. It mentioned no exception or qualification to the *irrevocability rule*. The Court further explained:

Hence, 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

[7] *Supra*, note 3.
[8] *Supra*, note 4.

> 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."
>
> The last sentence of Section 76 of the NIRC of 1997 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 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. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

Upon examination of petitioner's original 2002 Annual ITR, it reported an ECWT of P23,997,874.00 and signified its intention to carry over the said amount as tax credit of the succeeding year by marking the appropriate option box. Subsequently, when petitioner amended its 2002 Annual ITR it now reported an ECWT of P17,968,690.00 and indicated its option to be refunded instead of carrying it over the succeeding year.

We ruled in several cases[9] that a taxpayer can amend its return to aver any mistake but this does not include the changing of the taxpayer's chosen or deemed chosen option under Section 76 of the NIRC of 1997. To let every taxpayer make the irrevocable option of carrying-over the excess credits for the succeeding taxable year and allow him later to

[9] *Benguet Management Corp. vs. Commissioner of Internal Revenue*, CTA EB No. 200, April 4, 2007, *Subic Bay Distribution Inc. Commissioner of Internal Revenue*, CTA EB No. 72, May 23, 2006, and *SC & C Cosmetech Co., Inc. vs. Commissioner of Internal Revenue*, CTA EB No. 126, July 31, 2006.

amend his return when he changes his mind would render nugatory the irrevocability mandated by Section 76. [10]

Hence, when petitioner elected to carry over its 2002 ECWT to the succeeding year, that option becomes irrevocable. One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.[11] However, petitioner alleges that it has closed its business operations effective December 31, 2003 and so it can no longer utilize its 2002 ECWT.

In line with this, petitioner submitted before the Court its (1) Application for Registration Information Update,[12] applying for the cessation of its registration and change in registered address, (2) Secretary's Certificate,[13] certifying that the Board of Directors unanimously resolved to close the business operation of the corporation effective December 31, 2003 and (3) Letter-Notice of Cancellation of Registration[14] addressed to the Bureau of Internal Revenue (BIR). This Court now evaluates whether there has been dissolution.

In the Letter-Notice of Cancellation of Registration addressed to the BIR, petitioner's request was limited only to the cessation of its registration *without cancellation of its Tax Identification Number*. This brings

---

[10] *Honda Cars Phils. Inc. vs. Commissioner of Internal Revenue*, CA-G.R. SP No. 75365, September 29, 2005.
[11] *Supra*, note 3.
[12] Exhibit "GG"
[13] Exhibit "GG-2"
[14] Exhibit "GG-1"

uncertainty as to whether petitioner is merely closing its business for a time being or completely dissolving the corporation.

The term dissolution signifies the extinguishment of its franchise to be a corporation and the termination of its corporate existence. The mere fact, however, that the corporation has quit doing business does not necessarily constitute even a de facto dissolution, if it is still solvent and has not gone into liquidation. [15] The methods of effecting dissolution as prescribed by statute are exclusive, and a corporation cannot be dissolved except in the manner prescribed by law. It is said that a failure to follow the prescribed statutory method renders ineffectual any attempt to dissolve a corporation.[16] If no dissolution papers are filed with the Securities and Exchange Commission by a corporation claiming dissolution voluntarily, such corporation is still deemed legally existing, notwithstanding the fact that it has ceased to operate.[17]

After considering the foregoing, it can be gathered that mere cessation of operation does not preclude a corporation from resuming its business operation in the future especially in this case when there is an apparent uncertainty as to petitioner's status in the absence of any clear evidence showing petitioner's dissolution. The danger that this Court is

---

[15] De Leon, Hector S., *The Corporation Code of the Philippines Annotated*, 2002 Edition, citing (16 Fletcher, p.656.), p. 728.
[16] Ibid., p. 730.
[17] Ibid., p. 731, citing (SEC Opinion, March 1, 1971).

trying to avoid is the granting of refund which petitioner may subsequently claim as a carry over tax credit to its succeeding taxable years should it continue its business operations. One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.[18]

This brings Us to the third issue as to whether or not the denial of petitioner's claim for refund of its 2002 ECWT would result to the undue deprivation of its property.

We rule in the negative.

As explained by the Supreme Court in the *BPI* case, when a taxpayer elected to carry over its excess tax credit to the succeeding taxable year, the amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the Final Adjustment Return, there is no prescriptive period for the carrying over of the same.

As regards the fourth issue, petitioner contends that the First Division of this Court exceeded its jurisdiction by requiring tax clearance as a condition for the grant of refund of petitioner's 2002 ECWT. Petitioner submits that the Court erred when it denied the claim for refund based on matter not put in issue by the parties considering also that it was not even

---

[18] *Supra*, note 3.

raised as a defense by the respondent despite numerous opportunities to do so. Petitioner also maintains that it is not duty bound to present a tax clearance.

First, it is well-settled that appellate courts have ample authority to rule on matters not assigned as errors in an appeal, if these are indispensable or necessary to the just resolution of the pleaded issues. Once a court acquires jurisdiction over a case, it has wide discretion to look upon matters which, although not raised as an issue, would give life and meaning to the law. [19]

Second, tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption. The burden in proving the claim for refund necessarily falls on the taxpayer, and petitioner in this case failed to discharge the necessary burden of proof when it failed to submit the tax clearance. [20]

Third, the submission of tax clearance is a documentary requirement for all dissolving corporations mandated by the law itself and cannot be considered an unreasonable requirement imposed by the Court. The tax clearance from the BIR will establish not only the fact that petitioner has been cleared of any tax liability but will also sufficiently substantiate its intention to dissolve.

[19] *Logronio vs. Taleseo*, G.R. No. 134602, August 6, 1999, 312 SCRA 52.
[20] *FEBTC vs. Commissioner of Internal Revenue, et. al.*, G.R. No. 138919, May 2, 2006, 488 SCRA 473.

In view of all the foregoing, the Court en banc finds no reversible error committed by the First Division of this Court and sees no cogent reason to REVERSE, MODIFY or AMEND the assailed Decision and Resolution.

WHEREFORE, the Petition for Review *en banc* is **DISMISSED** for lack of merit. Accordingly, the Decision dated August 28, 2008 and Resolution dated November 21, 2008 are **AFFIRMED**.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

ERNESTO D. ACOSTA
Presiding Justice

LOVELL R. BAUTISTA
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 the Court.

ERNESTO D. ACOSTA
Presiding Justice