REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

BENGUET MANAGEMENT CORPORATION,
Petitioner,

C.T.A. EB NO. 200
(C.T.A. Case No. 6890)

Present:

-versus-

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

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
APR 0 4 2007 GrApolinario

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D E C I S I O N

BAUTISTA, J.:

The Case

Petitioner elevates its case to the Court *En Banc* by filing on August 23, 2006, a Petition for Review pursuant to Section 11, Republic Act No. 1125 as amended by

Section 18 of Republic Act No. 9282, seeking the reversal of the Decision dated January 9, 2006 and the Resolution dated July 12, 2006 of the Second Division of the Court ("Court in Division") in C.T.A. Case No. 6890, entitled "*Benguet Management Corporation v. Commissioner of Internal Revenue.*"

The Court in Division denied petitioner's claim for tax refund/issuance of tax credit certificate in the reduced amount of P5,611,433.41, representing petitioner's excess and unutilized creditable expanded withholding taxes ("EWT") for calendar year 2001.

Antecedent Facts

The material antecedents as aptly summarized by the Court in Division are as follows:

> "Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office and registered address at Km. 78 Maharlika Highway, Bo. San Benito, Alaminos, Laguna, while respondent is the public officer charged with the administration and enforcement of national internal revenue laws, including the granting of refund or tax credit of taxes erroneously or illegally collected, and other refundable taxes under the provisions of the National Internal Revenue Code, with office address at the Bureau of Internal Revenue National Office Building, Diliman, Quezon City, where he may be served with summons.
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> In a letter dated November 25, 2002, and filed with RDO No. 55, San Pablo City, on November 27, 2002, petitioner requested for tax refund amounting to P5,700,272.00, representing creditable withholding tax/income tax overpayments for the year 2001.
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> It is a specialty contractor engaged primarily in the foundry business and it was also in the real estate business during the year [*sic*] calendar year 2001.
>
> Petitioner filed a tentative annual income tax return on April 15, 2002 showing a net loss of P27,958,221.00 and tax overpayment amounting to P6,249,534.00 for the calendar year 2001 (*Exhibit "A", Records, pp. 83-85*).
>
> Petitioner filed an amended ITR for CY 2001 on November 20, 2002 which showed a net loss of P218,187,525.00, but the reported overpayment was the same amount of P6,249,534.00 (*Exhibit "B", Records, pp. 88-90*).

Petitioner filed its tentative annual ITR for CY 2002 on April 24, 2003 and its amended annual ITR for CY 2002 on October 9, 2003.

Petitioner filed a request for a tax refund with the respondent, through the Revenue District Officer of RDO 55 — San Pablo City, in the amount of P5,700,272.00 representing its alleged creditable withholding tax/income tax overpayments for the calendar year 2001 on November 27, 2002, which was within the 2-year period prescribed by law for claiming tax refund and respondent has not yet acted on petitioner's claim for refund.

Petitioner filed the instant judicial recourse on March 15, 2004, which is within the 2-year period prescribed in Sec. 229 of the Tax Code for claiming a tax refund judicially.

In his Answer filed on May 17, 2004, respondent, raises the following Special and Affirmative Defenses, *to wit*:

> '4. Petitioner's claim for refund is subject to administrative investigation/examination by the respondent;
>
> 5. Petitioner, which has the burden of proving its entitlement to the tax refund, has failed to establish any clear interest in or right over the alleged unutilized creditable withholding income tax for CY 2001;
>
> 6. Petitioner must show that it has complied with the provisions of Section 204 (C) in relation to Section 229, both of the Tax Code;
>
> 7. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund or credit. This is so because exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. (Asiatic Petroleum Co. {P.I.} v. Llanes 49 Phil 466 cited in Collector of Internal Revenue v. Manila Jockey Club, Inc., 98 Phil 670);
>
> 8. Claims for refund are construed strictly against the claimant for the same partake in the nature of exemption from taxation (Records, pp. 34-37).'

During the course of the trial, petitioner presented its comptroller as its lone witness, Ms. Lina G. Fernandez. Likewise, petitioner offered as part of its evidence Exhibits "A" to "L", composed primarily of the petitioner's income tax returns, both original and amended, for the calendar years 2001 to 2003 and the Certificates of Creditable Tax Withheld at Source.

On the other hand, respondent during the June 1, 2005 trial, manifested that he will not be presenting any witness and submitted the case for decision (*Records, page 158*)."

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The Ruling of the Court in Division

On January 9, 2006, the Court in Division rendered its Decision dismissing petitioner's Petition for Review. According to the Court in Division, petitioner actually carried over its prior year's excess tax credits of P6,249,534.00 for the calendar year 2001 to the taxable quarters of the succeeding taxable year 2002 as well as to its original annual corporate income tax return for calendar year 2002.

Under Section 76 of the 1997 Tax Code, once the option to carry over has been exercised, it becomes irrevocable. Thus, petitioner is already barred from claiming a cash refund corresponding to its unutilized tax credits for the year 2001 for having exercised its option to carry over the said tax credits to the succeeding taxable quarters.

The dispositive portion of the said Decision reads as follows:

> "**IN VIEW OF THE FOREGOING**, the Petition for Review is hereby ***DISMISSED*** for lack of merit.
>
> **SO ORDERED**."

Aggrieved, petitioner filed a Motion for Reconsideration which was denied by the Court in Division in its Resolution dated July 12, 2006.

The Issues

Hence, the present recourse with petitioner ascribing to the Court in Division the following errors:

> "1. THE 2^{ND} DIVISION COMMITTED AN ERROR IN RELYING ON AND APPLYING SECTION 76, A GENERAL PROVISION, IN DENYING PETITIONER'S CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CREDITABLE EXPANDED WITHHOLDING TAX (EWT). WHAT IS APPLICABLE IS SECTION 58(D), AS IMPLEMENTED BY SECTION 2.58.3 OF REVENUE REGULATIONS (RR) NO. 2-98, WHICH APPLIES SPECIFICALLY TO REFUNDS OF EXCESS AND UNUTILIZED CREDITABLE EWT

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2. ASSUMING THAT THE UNUTILIZED CREDITABLE EWT REFERRED TO IN SECTION 58(D) IS THE SAME AS, OR PART OF, THE 'EXCESS QUARTERLY INCOME TAX' THAT IS SPECIFICALLY COVERED BY SECTION 76, THE 2ND DIVISION COMMITTED AN ERROR IN APPLYING THE 'IRREVOCABILITY RULE' IN SAID SECTION 76, SINCE ONE OF THE TWO CONDITIONS FOR THE 'RULE' TO APPLY DID NOT MATERIALIZE IN THE CASE OF PETITIONER."

Petitioner contends that since what it claimed to be refunded consisted entirely of creditable withholding taxes, Section 58(D) of the Tax Code, as implemented by Section 2.58.3 of Revenue Regulations (RR) No. 2-98, should have been applied in resolving petitioner's entitlement to the refund, as it is this provision in the Tax Code which specifically applies to the refund of excess EWT.

Section 76 of the Tax Code has for its subject the "tax credit or refund of the excess estimated quarterly income taxes paid" by the taxpayer itself. According to petitioner, it is this "excess estimated quarterly income taxes paid" that is subject to the "irrevocability rule" because Section 76 states in the second sentence that: "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 irrevocable for the taxable period…."

Petitioner also posits that, as between Section 58 (D) and Section 76, Section 58 (D) is the specific or particular enactment as it covers only excess creditable withholding tax, while Section 76 is the general enactment because it covers quarterly income tax in general. Thus, pursuant to the rules of statutory construction, the specific enactment should be operative.

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Lastly, petitioner avers that assuming that its excess creditable withholding tax can be considered as part of or the same as, the excess quarterly income tax that is referred to in Section 76, it is submitted that the "irrevocability rule" is not applicable because while petitioner may have opted to carry over the excess tax to the succeeding quarters, it has not applied the carried over excess tax against income tax due in the succeeding taxable quarters because there was no income tax due in the succeeding taxable quarters.

Respondent did not file his Comment.

The Court *En Banc* required the parties to submit their Memoranda. Petitioner however, filed a Manifestation on December 8, 2006, waiving the submission of its Memorandum. Respondent, on the other hand, failed to file his Memorandum. Thus, the case was deemed submitted for decision as of January 15, 2007.

The Ruling of the Court En Banc

The Petition for Review has no merit.

The Court *En Banc* cannot give credence to petitioner's contention that Section 76, particularly the "irrevocability rule", does not apply to excess creditable taxes withheld under Section 57 (B) since said Section 76 mentions only "excess quarterly income tax."

It is a well-settled rule that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.

In this case, petitioner sought the refund of its excess creditable withholding taxes for calendar year 2001 in the amount of P5,700,272.00. Hence, the applicable rules are found in RR No. 2-98, specifically Section 2.58.3 thereof which provides:

> **"SECTION 2.58.3. Claim for Tax Credit or Refund. —**
>
> (A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.
>
> (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.
>
> Proof of remittance is the responsibility of the withholding agent.
>
> (C) Excess Credits — An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits,** and on which return he has not opted for a cash refund or tax credit certificate." (Emphasis supplied)

The term "return" in the afore-cited Section refers to the final adjustment return or the Annual Income Tax Return (BIR Form No. 1702) of domestic corporations like petitioner, which is mentioned in Section 76 of the 1997 Tax Code, *viz*:

> "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:

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> (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 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)

Thus, there is a need to file a return first before a claim for refund can prosper inasmuch as the respondent Commissioner by his own rules and regulations mandates that the corporate taxpayer opting to ask for a refund must show in its final adjustment return the income it received from all sources and the amount of withholding taxes remitted by its withholding agents to the Bureau of Internal Revenue.[1]

It is worth mentioning that the prescriptive period of two years for claims for refund should commence to run only from the time that the refund is ascertained, which can only be determined after a final adjustment return is accomplished.[2] This is so because at that point, it can already be determined whether there has been an overpayment by the taxpayer.[3]

The Supreme Court has ruled that "like the corporate quarterly income tax, creditable withholding taxes are subject to adjustment upon determination of the

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[1] ACCRA Investments Corporation v. The Honorable Court of Appeals, Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No. 96322, December 20, 1991.
[2] Commissioner of Internal Revenue v. Philippine American Life Insurance Co., 244 SCRA 446, 453 (1995).
[3] Commissioner of Internal Revenue v. Court of Appeals, Court of Tax Appeals, and Bank of the Philippine Islands as liquidator of Paramount Acceptance Corporation, G.R. No. 117254, January 21, 1999.

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correct income tax liability after the filing of the corporate income tax return, as at the end of the taxable year."[4] It is only when the adjustment return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[5] This final determination of the corporate income tax liability is provided in Section 76 of the Tax Code.

As pointed out by the High Tribunal, quarterly income tax payments and creditable taxes withheld are both subject to adjustments at the end of the calendar or fiscal year, *to wit*:

> "In *Commissioner of Internal Revenue vs. TMX Sales, Inc.*, this Court ruled that the payments of quarterly income taxes (per Section 68, NIRC) should be considered mere installments on the annual tax due. These quarterly tax payments, which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year. The same holds true in the case of the withholding of creditable tax at source. Withholding taxes are "deposits" which are subject to adjustments at the proper time when the complete tax liability is determined."[6]

Under the creditable withholding tax system, taxes withheld on certain income payments are intended to equal or at least approximate the tax due from the payee on said income. The income recipient must file an income tax return, as prescribed in Sec. 51 and Sec. 52 of the 1997 Tax Code, as amended, to report the income and/or pay the difference between the tax withheld and the tax due on the income.[7] Thus, creditable withholding taxes are considered as partial tax

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[4] Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue, G.R. No. 107434, October 10, 1997.
[5] Commissioner of Internal Revenue v. TMX Sales Inc., 205 SCRA 184.
[6] Citibank, N.A. v. Court of Appeals and Commissioner of Internal Revenue, *supra*, note 4.
[7] Section 2.57 (A), Revenue Regulations No. 2-98.

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payments which are indeed subject to adjustment through the filing of a final adjustment return.

Moreover, in a recent case, the Supreme Court applied the irrevocability rule in Section 76 to creditable withholding taxes, *viz*:

> "Whether the FIFO principle is applied or not, **Section 76 remains clear and unequivocal. 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."[8] (Emphasis supplied)

Based on the foregoing discussion, it is clear that Section 76 and the "irrevocability rule" provided therein, applies to both quarterly income taxes paid by the corporate taxpayer and to creditable taxes duly withheld by the taxpayer's withholding agents.

After a close review of the records, We agree with the following findings of the Court in Division that petitioner is already barred from claiming a refund or a tax credit certificate corresponding to its unutilized tax credits for the year 2001:

> "However, petitioner carried over the declared overpayment for 2001 in the amount of P6,249,534.00 to the succeeding quarters of taxable year 2002 as prior year's excess credits (*Annexes C to E, Petition for Review, Records, pp. 10-12*). As petitioner's own evidence would show (original/tentative annual ITR for CY 12/2001, Exhibit "A"), the total declared overpayment of P6,249,534.00 for the calendar year 2001, was carried over by the petitioner to the first quarter of 2002 filed on June 11, 2002 (*Quarterly Income Tax Return for the 1st Quarter of 2002, Annex C, Petition for Review*). When petitioner filed its second quarterly return for the year 2002, it likewise carried over the amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for 2nd Quarter of 2002, Annex D, Petition for Review*). For the third quarter of 2002, petitioner still carried over the same amount of P6,249,534.00 as prior year's excess credits (*Quarterly Income Tax Return for 3rd Quarter of 2002, Annex E, Petition for Review*). The total amount of P5,700,272.00

[8] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.

subject of this claim, formed part of the P6,249,534.00 overpayment for calendar year 2001 (Exhibit A-1).

xxx xxx xxx

We have already ruled in a number of cases that once the option to carry-over has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate of any overpaid income tax payment for the said year (***Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6274, April 4, 2003; Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue, CTA Case No. 6374, April 3, 2003 and Philippine Airlines, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6134, May 16, 2003***).

Although petitioner did not indicate any chosen option in its 2001 income tax return filed on April 15, 2002, it nevertheless actually carried over the claimed excess credits to the succeeding quarters of 2002, as discussed above. Besides, if the taxpayer fails to signify his option by marking with an "x" the appropriate box in the return, "the excess payments shall be automatically carried-over to the next taxable period" (*BIR Form No. 1702, p. 4*). And under the law, once the option of carry over has been exercised, it becomes irrevocable pursuant to Section 76 of the 1997 NIRC above quoted.

In this case, petitioner actually exercised the right to carry over its excess credits to the succeeding taxable quarters. Thus, it can no longer claim for a cash refund or issuance of a tax credit certificate for the subject period.

It is noteworthy that when petitioner filed its amended return for the subject period on November 20, 2002, it still reflected the amount P6,249,534.00, as total overpayment to which the claimed amount of P5,700,272.00 formed a part of (*Exhibit B-1*).

When petitioner filed its corporate annual income tax return for the calendar year 2002 on April 14, 2003, it still carried over the amount of P6,249,534.00 as prior year's excess credits (*Exhibit F, Records, pp. 91-93*). The fact that petitioner amended its 2002 tax return on October 9, 2003 (*Exhibit G, Records, pp. 94-96*) does not alter the fact that petitioner in fact carried over the amount of P6,249,534.00 which the claimed amount of P5,700,272.00 formed a part of, to the succeeding first, second and third quarters of 2002. And in its 2002 original corporate income tax return, petitioner again carried over the same amount of prior year's excess credits.

Otherwise stated, petitioner may have amended its 2001 income tax return on October 9, 2003 (*Exhibit G*) but this amendment did not undo the act/s already made or exercised. Otherwise, Section 76 is rendered nugatory by a mere act of a taxpayer amending its return.

> Any taxpayer can easily aver mistake or error in its declaration and amend its return not only once but several times, as the case may be. It is Our considered view that the amendment of returns allowed by Section 6 of the 1997 Tax Code does not extend to changing of taxpayer's chosen option, much more, an actual exercise of such option under Section 76 of the same Code.
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> Thus, taking into account that petitioner actually carried over its prior year's excess tax credits of P6,249,534 for the calendar year 2001 to the taxable quarters of the succeeding taxable year 2002 (*Annexes C to E, Petition for Review*), as well as to its original annual corporate income tax return for calendar year 2002 (*Exhibit F*), it is already barred from claiming a refund or a tax credit certificate corresponding to the unutilized tax credits for the year 2001."

WHEREFORE, the Court *En Banc* finds no reversible error to warrant the reversal of the assailed Decision promulgated on January 9, 2006 and the Resolution dated July 12, 2006, respectively.

Accordingly, the instant Petition for Review is hereby **DENIED** and the assailed Decision and Resolution are **AFFIRMED *in toto***.

SO ORDERED.

LOVELL R. BAUTISTA
Associate Justice

WE CONCUR:

(ON LEAVE)
ERNESTO D. ACOSTA
Presiding Justice

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

ERLINDA P. UY
Associate Justice

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CAESAR A. CASANOVA
Associate Justice

OLGA PALANCA-ENRIQUEZ
Associate Justice

C E R T I F I C A T I O N

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.

JUANITO C. CASTAÑEDA, JR.
Acting Presiding Justice[9]

[9] *Per* Court of Tax Appeals Administrative Order No. 9-2007 issued on March 21, 2007 by Presiding Justice Ernesto D. Acosta.

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