REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

NEC LOGISTICS PHILIPPINES, INC., *Petitioner,*	CTA Case No. 8533
	Members:
-versus-	**DEL ROSARIO, *Chairperson,*** **UY, *and,*** **MINDARO-GRULLA, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: APR 0 7 2015 ; 4:19 p.m.

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RESOLUTION

This resolves petitioner NEC Logistics Philippines, Inc.'s ("petitioner") **Motion for Reconsideration** filed on January 21, 2015, with respondent's **Opposition (Re: Motion for Reconsideration of the Decision promulgated 18 December 2014)** filed on February 13, 2015.

In the motion for reconsideration, petitioner argues that the presentation of the Securities and Exchange Commission ("SEC")-approved articles of incorporation and SEC-Certificate of Dissolution are not required by the National Internal Revenue Code of 1997 ("NIRC"), as amended, in order for the company to be considered dissolved and consequently excluded from the irrevocability rule under Section 76 of the NIRC, as amended. Petitioner claims that Sections 52 (c) and 235 of the NIRC, as amended, merely require the submission of tax clearance certificates as a prior requirement before the SEC could approve the dissolution of a corporation.

Petitioner further avers that its claim for refund covering the period of fiscal years 2007 to 2009 has not yet prescribed. Petitioner posits that the reckoning date in computing for the two (2) year prescriptive period of its claim for refund should commence from August 20, 2010, the date of filing of the short-period return.

Lastly, petitioner contends that it has substantially proven the inclusion of the income from which the subject taxes were withheld in its income tax returns.

In her Opposition, respondent contends that a dissolving corporation must abide with the requirements to secure both a Certificate of Tax Clearance from the Bureau of Internal Revenue ("BIR") and a Certificate of Dissolution from the SEC before it will be considered as dissolved for tax purposes. Respondent further avers that the reckoning of the two-year prescriptive period for filing a claim for refund of excess income tax paid/withheld commences from the date of filing the final adjustment return. Lastly, respondent states that petitioner failed to prove that the income upon which the subject taxes were withheld were included and reported in its income tax return.

After a careful evaluation of the records of the case and the parties' respective arguments, the Court finds no sufficient and cogent reason to disturb its ruling in the assailed Decision.

Pursuant to Section 76 of the NIRC, as amended, 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 is irrevocable. As an exception, however, to the irrevocability rule, taxpayers who chose the option to "carry over" may still claim a tax refund provided that they have permanently ceased operations.

In the case of *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[1] the Honorable Supreme Court provided the afore-said exception to the irrevocability rule, to wit:

> "Where, however, the corporation permanently ceases its operation before full utilization of the tax credits it opted to carry over, it may then be allowed to claim the refund of the remaining tax credits. In such a case, the remaining tax credits can no longer be carried over and the irrevocability rule ceases to apply."

Indubitably, a taxpayer may opt to claim for a refund of its remaining tax credits though it previously chose the irrevocable carry-over option upon cessation of business since there is no more opportunity for it to utilize such unutlized/excess credits. For the exception to the irrevocability rule to apply, petitioner must, however, prove that it has satisfied the requirements for cessation or dissolution. A corporation is considered dissolved only if it complies with Sections 52(C) and 235(e) of the NIRC, as amended, which state:

[1] G.R. No. 176290, September 21, 2007.

"SEC. 52. Corporation Returns. -

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(C) Return of Corporation Contemplating Dissolution or Reorganization. - Every corporation shall, within thirty (30) days after the adoption by the corporation of a resolution or plan for its dissolution, or for the liquidation of the whole or any part of its capital stock, including a corporation which has been notified of possible involuntary dissolution by the Securities and Exchange Commission; or for its reorganization, render a correct return to the Commissioner, verified under oath, setting forth the terms of such resolution or plan and such other information as the Secretary of Finance, upon recommendation of the Commissioner, shall, by rules and regulations, prescribe.

The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission."

"SEC. 235. Preservation of Books of Accounts and Other Accounting Records. –

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(e) xxx All corporations, partnerships or persons that retire from business shall, within ten (10) days from the date of retirement or within such period of time as may be allowed by the Commissioner in special cases, submit their books of accounts, including the subsidiary books and other accounting records to the Commissioner or any of his deputies for examination, after which they shall be returned. Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability."

Based on the foregoing, a dissolving corporation must comply with the requirements provided in the above-quoted provisions before it could be considered legally dissolved for tax purposes, *viz.*, (1) to secure a Certificate of Tax Clearance from the BIR, and (2) to secure a Certificate of Dissolution from the SEC.

In the case at bar, while petitioner duly informed the BIR of its intention to cease business operations and permanently close the corporation and was issued a Certificate of No Outstanding Liability by the BIR, there is no indication that petitioner has already been dissolved or has permanently ceased its business operations as petitioner failed to present its SEC-approved amended articles of incorporation and the certificate of dissolution issued by the SEC. In the absence of the afore-mentioned documents, this Court cannot exclude petitioner from the application of the irrevocability rule under Section 76 of the NIRC, as amended.

Considering that petitioner cannot be considered to have ceased its operations as a dissolved corporation, petitioner cannot find solace in invoking the exception to the irrevocability rule. Thus, petitioner cannot opt to refund its excess and unutilized creditable withholding tax for taxable years 2007 to 2009 since it chose to carry-over the same for the succeeding taxable years.

As for taxable year 2010, petitioner indeed opted for the issuance of a tax credit certificate. As the Court pointed out, however, in the Decision dated December 18, 2014, petitioner failed to adequately support and prove its claim, *viz*:

> "This brings us to the third requirement of whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its income tax returns.
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> To further support its claim, petitioner submitted its FYs 2006 to 2010 Annual Income Tax Returns; FYs 2006 to 2010 Quarterly Income Tax Returns and the related Quarterly Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding Tax at Source (SAWT); FYs 2007 to 2010 Audited Financial Statements; FYs 2007 to 2010 General Ledger of Revenue-related accounts; FYs 2007 to 2010 Sales Books; FYs 2007 to 2010 Cash Receipts Journal. Although petitioner's revenues in its sales books in the amount of P263,774,520.04 was higher by P2,935,085.20 when compared with the income payments of P260,839,434.84 reflected in the certificates, it cannot be established that petitioner reported the income related to the claimed creditable withholding taxes of P3,750,742.30. Petitioner failed to fully account for the discrepancies. Moreover, it cannot be determined and verified from the sales books whether the income payments subjected to CWT were recorded therein. **Petitioner should have provided the detailed composition of its revenues as reflected in the certificates on a per customer basis and should have shown in what particular part of the sales books the said revenues were recorded.** Thus, petitioner's failure to satisfy the third requisite is fatal to its claimed CWT for FY 2010 of P3,750,742.30." (*Emphases added and citations omitted*)

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Based on the foregoing, the Court finds no cogent reason to disturb the assailed Decision.

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration** filed on January 21, 2015 is hereby **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice