654 Phil. 102

FIRST DIVISION

[G.R. No. 181298, January 10, 2011]

BELLE CORPORATION, PETITIONER, VS. COMMISSIONER OF INTERNAL REVENUE, RESPONDENT.

D E C I S I O N

DEL CASTILLO, J.:

Section 69 of the old National Internal Revenue Code (NIRC) allows unutilized tax credits to be refunded as long as the claim is filed within the prescriptive period. This, however, no longer holds true under Section 76 of the 1997 NIRC as the option to carry-over excess income tax payments to the succeeding taxable year is now irrevocable.

This Petition for Review on *Certiorari* [1] under Rule 45 of the Rules of Court seeks to set aside the January 25, 2007 Decision [2] and the January 21, 2008 Resolution [3] of the Court of Appeals (CA).

Factual Antecedents

Petitioner Belle Corporation is a domestic corporation engaged in the real estate and property business. [4]

On May 30, 1997, petitioner filed with the Bureau of Internal Revenue (BIR) its Income Tax Return (ITR) for the first quarter of 1997, showing a gross income of P741,607,495.00, a deduction of P65,381,054.00, a net taxable income of P676,226,441.00 and an income tax due of P236,679,254.00, which petitioner paid on even date through PCI Bank, Tektite Tower Branch, an Authorized Agent Bank of the BIR. [5]

On August 14, 1997, petitioner filed with the BIR its second quarter ITR, declaring an overpayment of income taxes in the amount of P66,634,290.00. The computation of which is reproduced below:

Gross Income	P 833,186,319.00
Less: Deductions	347,343,565.00
Taxable Income	P

		485,842,754.00
Tax Rate		x 35%
Tax Due		P 170,044,964.00
Less: Tax Credits/Payments		
(a) Prior Year's Excess Tax Credit	-	
(b) 1st Quarter Payment	P236,679,254.00	
(c) Creditable Withholding Tax	-	
		(P 66,634,290.00) [6]

In view of the overpayment, no taxes were paid for the second and third quarters of 1997. [7] Petitioner's ITR for the taxable year ending December 31, 1997 thereby reflected an overpayment of income taxes in the amount of P132,043,528.00, computed as follows:

Gross Income		P 1,182,473,910.00
Less: Deductions		879,485,278.00
Taxable Income		P 302,988,362.00
Tax Rate		x 35%
Tax Due		P 106,046,021.00
Less: Tax Credits/Payments		
(a) Prior Year's Excess Tax Credit	-	
(b) 1st Quarter Payment	P236,679,254.00	
(c) Creditable Withholding Tax	(1,410,295.00)	(238,089,549.00)
REFUNDABLE AMOUNT		(P 132,043,528.00) [8]

Instead of claiming the amount as a tax refund, petitioner decided to apply it as a tax credit to the succeeding taxable year by marking the tax credit option box in its 1997 ITR. [9]

For the taxable year 1998, petitioner's amended ITR showed an overpayment of P106,447,318.00, computed as follows:

Gross Income		P 1,279,810,489.00
Less: Deduction		1,346,553,546.00
Taxable Income (Loss)		(P 66,743,057.00)
Tax Rate		34%
Tax Due (Regular Income Tax)	-	NIL
Minimum Corporate Income Tax		P 25,596,210.00
Tax Due		25,596,210.00
Less: Tax Credits/Payments		
(a) Prior year's excess Tax Credits		(P 132,041,528.00)
(b) Quarterly payment	-	
(c) Creditable tax withheld	-	
Tax Payable/Overpayment		(P 106,447,318.00)

[10]

On April 12, 2000, petitioner filed with the BIR an administrative claim for refund of its unutilized excess income tax payments for the taxable year 1997 in the amount of P106,447,318.00. [11]

Notwithstanding the filing of the administrative claim for refund, petitioner carried over the amount of P106,447,318.00 to the taxable year 1999 and applied a portion thereof to its 1999 Minimum Corporate Income Tax (MCIT) liability, as evidenced by its 1999 ITR. [12] Thus:

Gross Income		P 708,888,638.00
Less: Deduction		1,328,101,776.00
Taxable Income		(P 619,213,138.00)
Tax Due		-
Minimum Corporate Income Tax		P 14,185,874.00
Less: Tax Credits/Payments		
(a) Prior year's excess Credit	P 106,447,318.00	
(b) Tax Payments for the 1st & 3rd Qtrs.	0	
(c) Creditable tax withheld	0	P 106,447,318.00
TAX PAYABLE/REFUNDABLE		(P 92,261,444.00)

[13]

Proceedings before the Court of Tax Appeals (CTA)

On April 14, 2000, due to the inaction of the respondent Commissioner of Internal Revenue (CIR) and in order to toll the running of the two-year prescriptive period, petitioner appealed its claim for refund of unutilized excess income tax payments for the taxable year 1997 in the amount of P106,447,318.00 with the CTA *via* a Petition for Review, [14] docketed as CTA Case No. 6070.

In answer thereto, respondent interposed that:

> 4. Petitioner's alleged claim for refund/tax credit is subject to administrative routinary investigation/examination by respondent's Bureau;
>
> 5. Petitioner failed miserably to show that the total amount of P106,447,318.00 claimed as overpaid or excess income tax is refundable;
>
> 6. Taxes paid and collected are presumed to have been paid in accordance with law; hence, not refundable;
>
> 7. In an action for tax refund, the burden is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund;
>
> 8. It is incumbent upon petitioner to show that it has complied with the provisions of Section 204 (c) in relation to Section 229 of the tax Code;
>
> 9. Well-established is the rule that refunds/tax credits are construed strictly against the taxpayer as they partake the nature of tax exemptions. [15]

To prove entitlement to the refund, petitioner submitted, among others, the following documents: its ITR for the first quarter of taxable year 1997 *(Exhibit "B")*, [16] its tentative ITRs for taxable years 1997 *(Exhibit "D")* [17] and 1998 *(Exhibit "H")*, [18] its final ITRs for taxable years 1997 *(Exhibit "E"),* [19] 1998 *(Exhibit "I")* [20] and 1999 *(Exhibit "J"),* [21] its Letter Claim for Refund filed with the BIR *(Exhibit "K")* [22] and the Official Receipt issued by PCI Bank showing the income tax payment made by petitioner in the amount of P236,679,254.00 for the first quarter of 1997 *(Exhibit "C").* [23]

On April 10, 2001, the CTA rendered a Decision [24] denying petitioner's claim for refund. It found:

> [T]hat all the allegations made by the Petitioner as well as the figures

accompanying Petitioner's claim are substantiated by documentary evidence but noticed some flaws in Petitioner's application of the pertinent laws involved.

It bears stressing that **the applicable provision in the case at bar is Section 69 of the old Tax Code and not Section 76 of the 1997 Tax Code**. Settled is the rule that under Section 69 of the old Tax Code, the carrying forward of any excess/overpaid income tax for a given taxable year is limited only up to the succeeding taxable year.

A painstaking scrutiny of Petitioner's income tax returns would show that Petitioner carried over its 1997 refundable tax of P132,043,528.00 to the succeeding year of 1998 yielding an overpayment of P106,447,318.00 (Exhibit I-1) after deducting therefrom the minimum Corporate Income tax of P25,596,210.00. **However, Petitioner even went further to the taxable year 1999 and applied the Prior Year's (1998) Excess Credit of P106,447,318.00 to its income tax liability.**

True enough, upon verification of Petitioner's 1999 Corporate Annual Income Tax Return (Exh. I), **this Court found that the whole amount of P106,447,318.00 representing its prior year's excess credit (subject of this claim) was carried forward to its 1999 income tax liability,** details of the 1999 Income Tax Return are shown below as follows:

Gross Income		P 708,888,638.00
Less: Deduction		1,328,101,776.00
Taxable Income		(P 619,213,138.00)
Tax Due		-
Minimum Corporate Income Tax		P 14,185,874.00
Less: Tax Credits/Payments		
(a) Prior year's excess Credit	P 106,447,318.00	
(b) Tax Payments for the 1st & 3rd Qtrs.	0	
(c) Creditable tax withheld	0	P 106,447,318.00
TAX PAYABLE/REFUNDABLE		(P 92,261,444.00)

[13]

It is an elementary rule in taxation that an automatic carry over of an excess income tax payment should only be made for the succeeding year. (Paseo Realty and Dev't. Corp. vs. CIR, CTA Case No. 4528, April 30, 1993) True enough, implicit from the provisions of Section 69 of the NIRC, as amended, (supra) is the fact that the refundable amount

> may be credited against the income tax liabilities for the taxable quarters of the succeeding taxable year not succeeding years; and that the carry-over is only limited to the quarters of the succeeding taxable year. (citing ANSCOR Hagedorn Securities Inc. vs. CIR, CA-GR SP 38177, December 21, 1999) To allow the application of excess taxes paid for two successive years would run counter to the specific provision of the law above-mentioned. [25] (Emphasis supplied.)

Petitioner sought reconsideration [26] of the CTA's denial of its claim for refund, but the same was denied in a Resolution [27] dated June 5, 2001, prompting petitioner to elevate the matter to the CA *via* a Petition for Review [28] under Rule 43 of the Rules of Court.

Ruling of the Court of Appeals

On January 25, 2007, the CA, applying *Philippine Bank of Communications v. Commissioner of Internal Revenue,* [29] denied the petition. The CA explained that the overpayment for taxable year 1997 can no longer be carried over to taxable year 1999 because excess income payments can only be credited against the income tax liabilities of the succeeding taxable year, in this case up to 1998 only and not beyond. [30] Neither can the overpayment be refunded as the remedies of automatic tax crediting and tax refund are alternative remedies. [31] Thus, the CA ruled:

> [W]hile BELLE may not have fully enjoyed the complete utilization of its option and the sum of Php106,447,318 still remained after it opted for a tax carry over of its excess payment for the taxable year 1998, but be that as it may, BELLE has only itself to blame for making such useless and damaging option, and **BELLE may no longer opt to claim for a refund considering that the remedy of refund is barred after the corporation has previously opted for the tax carry over remedy**. As a matter of fact, the CTA even made the factual findings that **BELLE committed an aberration to exhaust its unutilized overpaid income tax by carrying it over further to the taxable year 1999, which is a blatant transgression of the "succeeding taxable year limit" provided for under Section 69 of the old NIRC**. [32] (Emphasis supplied)

Hence, the *fallo* of the Decision reads:

> **WHEREFORE,** premises considered, the instant Petition for Review is **DENIED,** and accordingly, the herein impugned April 10, 2001 Decision and

June 5, 2001 Resolution of the CTA are hereby affirmed.

SO ORDERED. [33]

Petitioner moved for reconsideration. [34] The CA, however, denied the same in a Resolution [35] dated January 21, 2008.

Issues

Aggrieved, petitioner availed of the present recourse, raising the following assignment of errors:

> A. THE CA COMMITTED SERIOUS ERROR OF LAW IN APPLYING THE PBCOM CASE.
>
> A.1. THE [DECISION IN THE] PBCOM CASE HAS ALREADY BEEN REPEALED.
>
> A.2. ASSUMING ARGUENDO THAT THE [DECISION IN THE] PBCOM CASE HAS NOT BEEN REPEALED, IT HAS NO APPLICATION TO BELLE.
>
> B. THE CA COMMITTED SERIOUS ERROR OF LAW IN FINDING THAT BELLE'S REFUND CLAIM IS NOT ON ALL FOURS WITH THE CASES OF BPI FAMILY AND AB LEASING.
>
> B.1. BELLE'S `CARRYING-OVER' OF ITS EXCESS INCOME TAX PAID FOR 1997 TO 1999 (BEYOND THE SUBSEQUENT YEAR) IS IMMATERIAL.
>
> B.2. BELLE'S PARTIAL USE OF ITS EXCESS INCOME TAX PAID IN 1998 (THE SUBSEQUENT YEAR) DOES NOT PRECLUDE BELLE FROM ASKING FOR A REFUND. [36]

In a nutshell, the issue boils down to whether petitioner is entitled to a refund of its excess income tax payments for the taxable year 1997 in the amount of P106,447,318.00.

Petitioner's Arguments

Petitioner insists that it is entitled to a refund as the ruling in *Philippine Bank of Communications v. Commissioner of Internal Revenue* [37] relied upon by the CA in denying its claim has been overturned by *BPI-Family Savings Bank, Inc. v. Court of*

Appeals, [38] *AB Leasing and Finance Corporation v. Commissioner of Internal Revenue,* [39] *Calamba Steel Center, Inc. v. Commissioner of Internal Revenue,* [40] and *State Land Investment Corporation v. Commissioner of Internal Revenue.* [41] In these cases, the taxpayers were allowed to claim refund of unutilized tax credits. [42] Similarly, in this case, petitioner asserts that it may still recover unutilized tax credits *via* a claim for refund. [43]

And while petitioner admits that it has committed a "blatant transgression" of the "succeeding taxable year limit" when it carried over its 1997 excess income tax payments beyond the taxable year 1998, petitioner believes that this should not result in the denial of its claim for refund but should only invalidate the application of its 1997 unutilized excess income tax payments to its 1999 income tax liabilities. [44] Hence, petitioner postulates that a claim for refund of its unutilized tax credits for the taxable year 1997 may still be made because the carry-over thereof to the taxable year 1999 produced no legal effect, and is, therefore, immaterial to the resolution of its claim for refund. [45]

Respondent's Arguments

Respondent, on the other hand, maintains that the cases of *BPI-Family Savings Bank* [46] and *AB Leasing* [47] are inapplicable as the facts obtaining therein are different from those of the present case. [48] What is controlling, therefore, is the ruling in *Philippine Bank of Communications,* [49] that tax refund and tax credit are alternative remedies; thus, "the choice of one precludes the other." [50] Respondent, therefore, submits that since petitioner has already applied its 1997 excess income tax payments to its liabilities for taxable year 1998, it is precluded from carrying over the same to taxable year 1999, or from filing a claim for refund. [51]

Our Ruling

The petition has no merit.

Both the CTA and the CA erred in applying Section 69 [52] of the old NIRC. The law applicable is Section 76 of the NIRC.

Unutilized excess income tax payments may be refunded within two years from the date of payment under Section 69 of the old NIRC

Under Section 69 of the old NIRC, in case of overpayment of income taxes, a corporation may either file a claim for refund or carry-over the excess payments to the succeeding taxable year. Availment of one remedy, however, precludes the other. [53]

Although these remedies are mutually exclusive, we have in several cases allowed corporations, which have previously availed of the tax credit option, to file a claim for refund of their unutilized excess income tax payments.

In *BPI-Family Savings Bank,* [54] the bank availed of the tax credit option but since it suffered a net loss the succeeding year, the tax credit could not be applied; thus, the bank filed a claim for refund to recover its excess creditable taxes. Brushing aside technicalities, we granted the claim for refund.

Likewise, in *Calamba Steel Center, Inc.,* [55] we allowed the refund of excess income taxes paid in 1995 since these could not be credited to taxable year 1996 due to business losses. In that case, we declared that "a tax refund may be claimed even beyond the taxable year following that in which the tax credit arises x x x provided that the claim for such a refund is made within two years after payment of said tax." [56]

In *State Land Investment Corporation,* [57] we reiterated that "if the excess income taxes paid in a given taxable year have not been entirely used by a x x x corporation against its quarterly income tax liabilities for the next taxable year, the unused amount of the excess may still be refunded, provided that the claim for such a refund is made within two years after payment of the tax." [58]

Thus, under Section 69 of the old NIRC, unutilized tax credits may be refunded as long as the claim is filed within the two-year prescriptive period.

The option to carry over excess income tax payments is irrevocable under Section 76 of the 1997 NIRC

This rule, however, no longer applies as Section 76 of the 1997 NIRC now reads:

> Section 76. *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 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 tax refund or issuance of a tax credit certificate shall be allowed therefor.** (Emphasis supplied)

Under the new law, in case of overpayment of income taxes, the remedies are still the same; and the availment of one remedy still precludes the other. But unlike Section 69 of the old NIRC, the carry-over of excess income tax payments is no longer limited to the succeeding taxable year. Unutilized excess income tax payments may now be carried over to the succeeding taxable years until fully utilized. In addition, the option to carry-over excess income tax payments is now irrevocable. Hence, unutilized excess income tax payments may no longer be refunded.

In the instant case, both the CTA and the CA applied Section 69 of the old NIRC in denying the claim for refund. We find, however, that the applicable provision should be Section 76 of the 1997 NIRC because at the time petitioner filed its 1997 final ITR, the old NIRC was no longer in force. In *Commissioner of Internal Revenue v. McGeorge Food Industries, Inc.,* [59] we explained that:

Section 76 and its companion provisions in Title II, Chapter XII **should be applied following the general rule on the prospective application of laws such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on 1 January 1998**. There is no quarrel **that at the time respondent filed its final adjustment return for 1997 on 15 April 1998, the deadline under Section 77 (B) of the 1997 NIRC (formerly Section 70(b) of the 1977 NIRC), the 1997 NIRC was already in force, having gone into effect a few months earlier on 1 January 1998. Accordingly, Section 76 is controlling.**

The lower courts grounded their contrary conclusion on the fact that respondent's overpayment in 1997 was based on transactions occurring before 1 January 1998. This analysis suffers from the twin defects of missing the gist of the present controversy and misconceiving the nature and purpose of Section 76. None of respondent's corporate transactions in 1997 is disputed here. Nor can it be argued that Section 76 determines the taxability of corporate *transactions*. To sustain the rulings below is to subscribe to the untenable proposition that, had Congress in the 1997 NIRC moved the deadline for the filing of final adjustment returns from 15 April to 15 March of each year, taxpayers filing returns after 15 March 1998 can excuse their tardiness by invoking the 1977 NIRC because the transactions

> subject of the returns took place before 1 January 1998. A keener appreciation of the nature and purpose of the varied provisions of the 1997 NIRC cautions against sanctioning this reasoning. [60]

Accordingly, since petitioner already carried over its 1997 excess income tax payments to the succeeding taxable year 1998, it may no longer file a claim for refund of unutilized tax credits for taxable year 1997.

To repeat, under the new law, once the option to carry-over excess income tax payments to the succeeding years has been made, it becomes irrevocable. Thus, applications for refund of the unutilized excess income tax payments may no longer be allowed.

WHEREFORE, the petition is hereby **DENIED**. The Decision dated January 25, 2007 and the Resolution dated January 21, 2008 of the Court of Appeals are hereby **AFFIRMED** only insofar as the denial of petitioner's claim for refund is concerned.

SO ORDERED.

Corona, C.J., (Chairperson), Velasco, Jr., Leonardo-De Castro, and *Perez, JJ.,* concur.

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[1] *Rollo,* pp. 9-140, with Annexes "A" to "Q," inclusive.

[2] Id. at 42-51; penned by Associate Justice Rosmari D. Carandang and concurred in by Associate Justices Martin S. Villarama, Jr. (Now Supreme Court Justice), and Mariflor P. Punzalan Castillo.

[3] Id. at 65-68.

[4] Id. at 101.

[5] Id. at 101-102.

[6] CTA Division *rollo,* p. 2.

[7] Id. at 2.

[8] *Rollo,* pp. 102-103.

[9] Id. at 103.

[10] Id.

[11] Id.

[12] CTA Division *rollo,* p. 281.

[13] *Rollo,* p. 107.

[14] Id. at 103.

[15] CTA Division *rollo,* pp. 127-128.

[16] Id. at 178.

[17] Id. at 180-190.

[18] Id. at 223-249.

[19] Id. at 191-218.

[20] Id. at 250-280.

[21] Id. at 281-320.

[22] Id. at 321-327.

[23] Id. at 179.

[24] *Rollo,* pp. 101-109; penned by Associate Judge Amancio Q. Saga and concurred in by Presiding Judge Ernesto D. Acosta.

[25] Id. at 106-108.

[26] Id. at 110-120.

[27] Id. at 121-124.

[28] Id. at 125-140.

[29] 361 Phil. 916 (1999).

[30] *Rollo,* pp. 46-48.

[31] Id. at 48-50.

[32] Id. at 49-50.

[33] Id.

[34] Id. at 54-63.

[35] Id. at 65-68.

[36] Id. at 17-18.

[37] Supra note 29.

[38] 386 Phil. 719 (2000).

[39] 453 Phil. 297 (2003).

[40] 497 Phil. 23 (2005).

[41] G.R. No. 171956, January 18, 2008, 542 SCRA 114.

[42] *Rollo,* pp. 206-209.

[43] Id. at 209.

[44] Id. at 30-32, 223-227.

[45] Id. at 225-227.

[46] Supra note 38.

[47] Supra note 39.

[48] *Rollo,* p. 161.

[49] Supra note 29 at 932.

[50] *Rollo,* p. 158-159.

[51] Id. at 157.

[52] 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. (Emphasis supplied.)

[53] Supra note 29.

[54] Supra note 38.

[55] Supra note 40 at 31.

[56] Id.

[57] Supra note 41 at 122.

[58] Id.

[59] G.R. No. 174157, October 20, 2010.

[60] Id.