662 Phil. 431

THIRD DIVISION

[G.R. No. 160949, April 04, 2011]

COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. PL MANAGEMENT INTERNATIONAL PHILIPPINES, INC., RESPONDENT.

D E C I S I O N

BERSAMIN, J.:

How may the respondent taxpayer still recover its unutilized creditable withholding tax for taxable year 1997 after its written claim for refund was not acted upon by the petitioner, whose inaction was upheld by the Court of Tax Appeals (CTA) on the ground of the claim for tax refund being already barred by prescription?

Nature of the Case

The inaction of petitioner Commissioner of Internal Revenue (Commissioner) on the respondent's written claim for tax refund or tax credit impelled the latter to commence judicial action for that purpose in the CTA. However, the CTA denied the claim on December 10, 2001 for being brought beyond two years from the accrual of the claim.

On appeal, the Court of Appeals (CA) reversed the CTA's denial through the decision promulgated in C.A.-G.R. Sp. No. 68461 on November 28, 2002, and directed the petitioner to refund the unutilized creditable withholding tax to the respondent.[1]

Hence, the petitioner appeals.

Antecedents

In 1997, the respondent, a Philippine corporation, earned an income of P24,000,000.00 from its professional services rendered to UEM-MARA Philippines Corporation (UMPC), from which income UMPC withheld P1,200,000.00 as the respondent's withholding agent.[2]

In its 1997 income tax return (ITR) filed on April 13, 1998, the respondent reported a net loss of P983,037.00, but expressly signified that it had a creditable withholding tax of P1,200,000.00 for taxable year 1997 to be claimed as tax credit in taxable year 1998.[3]

On April 13, 1999, the respondent submitted its ITR for taxable year 1998, in which it declared a net loss of P2,772,043.00. Due to its net-loss position, the respondent was unable to claim the P1,200,000.00 as tax credit.

On April 12, 2000, the respondent filed with the petitioner a written claim for the refund of the P1,200,000.00 unutilized creditable withholding tax for taxable year 1997.[4] However, the petitioner did not act on the claim.

Ruling of the CTA

Due to the petitioner's inaction, the respondent filed a petition for review in the CTA (CTA Case No. 6107) on April 14, 2000, thereby commencing its judicial action.

On December 10, 2001, the CTA denied the respondent's claim on the ground of prescription,[5] to wit:

> Records reveal that Petitioner filed its Annual Income Tax Return for taxable year 1997 on April 13, 1998 (Exhibit "A") and its claim for refund with the BIR on April 12, 2000 (Exhibit "D" and No. 2 of the Statement of Admitted Facts and Issues). Several days thereafter, or on April 14, 2000, Petitioner filed an appeal with this Court.
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> The aforementioned facts clearly show that the judicial claim for refund via this Petition for Review was already filed beyond the two-year prescriptive period mandated by Sections 204 (C) and 229 of the Tax Code xxx
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> xxx
>
> As earlier mentioned, Petitioner filed its Annual ITR on April 13, 1998 and filed its judicial claim for refund only on April 14, 2000 which is beyond the two-year period earlier discussed. The aforequoted Sections 204 (C) and 229 of the Tax Code mandates that both the administrative and judicial claims for refund must be filed within the two-year period, otherwise the taxpayer's cause of action shall be barred by prescription. Unfortunately, this lapse on the part of Petitioner proved fatal to its claim.
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> xxx
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> WHEREFORE, in view of the foregoing the Petition for Review is hereby DENIED due to prescription.

Ruling of the CA

Aggrieved, the respondent appealed to the CA, assailing the correctness of the CTA's denial of its judicial claim for refund on the ground of bar by prescription.

As earlier mentioned, the CA promulgated its decision on November 28, 2002, holding that the two-year prescriptive period, which was not jurisdictional (citing *Oral and Dental College v. Court of Tax Appeal*[6]and *Commissioner of Internal Revenue v. Philippine American Life Insurance Company*[7]), might be suspended for reasons of equity.[8] The CA thus disposed as follows:

> WHEREFORE, the petition is partly GRANTED and the assailed CTA Decision partly ANNULLED. Respondent Commissioner of Internal Revenue is hereby ordered to refund to petitioner PL Management International Phils., Inc., the amount of P1,200,000.00 representing its unutilized creditable withholding tax in taxable year 1997.[9]

The CA rejected the petitioner's motion for reconsideration.[10]

Issues

In this appeal, the petitioner insists that:

> I. THE COURT OF APPEALS ERRED IN HOLDING THAT THE TWO-YEAR PRESCRIPTIVE PERIOD UNDER SECTION 229 OF THE TAX CODE IS NOT JURISDICTIONAL, THUS THE CLAIM FOR REFUND OF RESPONDENT IS SUSPENDED FOR REASONS OF EQUITY.
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> II. THE COURT OF APPEALS ERRED IN HOLDING THAT RESPONDENT'S JUDICIAL RIGHT TO CLAIM FOR REFUND BROUGHT BEFORE THE COURT OF APPEALS ON APRIL 14, 2000 WAS ONE DAY LATE ONLY.[11]

The petitioner argues that the decision of the CA suspending the running of the two-year period set by Section 229 of the National Internal Revenue Code of 1997 (NIRC of 1997) on ground of equity was erroneous and had no legal basis; that equity could not supplant or replace a clear mandate of a law that was still in force and effect; that a claim for a tax refund or tax credit, being in the nature of a tax exemption to be treated as in derogation of sovereign authority, must be construed *in strictissimi juris* against the taxpayer; that the respondent's two-year prescriptive period under Section 229 of the NIRC of 1997 commenced to run on April 13, 1998, the date it filed its ITR for taxable year 1997; that by reckoning the period from April 13, 1998, the respondent had only until April 12, 2000 within which to commence its judicial action for refund with the CTA, the year 2000 being a leap year; that its filing of the judicial

action on April 14, 2000 was already tardy; and that the factual findings of the CTA, being supported by substantial evidence, should be accorded the highest respect.

In its comment, the respondent counters that it filed its judicial action for refund within the statutory two-year period because the correct reckoning started from April 15, 1998, the last day for the filing of the ITR for taxable year 1997; that the two-year prescriptive period was also not jurisdictional and might be relaxed on equitable reasons; and that a disallowance of its claim for refund would result in the unjust enrichment of the Government at its expense.

Ruling of the Court

We reverse and set aside the decision of the CA to the extent that it orders the petitioner *to refund* to the respondent the P1,200,000.00 representing the unutilized creditable withholding tax in taxable year 1997, but permit the respondent to apply that amount as *tax credit* in succeeding taxable years until fully exhausted.

Section 76 of the NIRC of 1997 provides:

> Section 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
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> (B) Carry over the excess credit; or
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> (C) Be credited or refunded with 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.**

The predecessor provision of Section 76 of the NIRC of 1997 is Section 79 of the NIRC

of 1985, which provides:

> Section 79. *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.

As can be seen, Congress added a sentence to Section 76 of the NIRC of 1997 in order to lay down the irrevocability rule, to wit:

> xxx 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.

In *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,*[12] the Court expounds on the two alternative options of a corporate taxpayer whose total quarterly income tax payments exceed its tax liability, and on how the choice of one option precludes the other, *viz*:

> The first option is relatively simple.Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
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> The second option works by applying the refundable amount, as shown on the FAR of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
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> **These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of***

***Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention - whether to request a tax refund or claim a tax credit - by marking the corresponding option box provided in the FAR.While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection**.

One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. xxx

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands,*[13] the Court, citing the aforequoted pronouncement in *Philam Asset Management, Inc.,* points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains:

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 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.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the irrevocability rule. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as

> regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.
>
> The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in *Philam*, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. **The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years, as provided in Section 76 of the NIRC of 1997. 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 FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, *i.e.*, to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.**

Inasmuch as the respondent already opted to carry over its unutilized creditable withholding tax of P1,200,000.00 to taxable year 1998, the carry-over could no longer be converted into a claim for tax refund because of the irrevocability rule provided in Section 76 of the NIRC of 1997. Thereby, the respondent became barred from claiming the refund.

However, in view of it irrevocable choice, the respondent remained entitled to utilize that amount of P1,200,000.00 as tax credit in succeeding taxable years until fully exhausted. In this regard, prescription did not bar it from applying the amount as tax credit considering that there was no prescriptive period for the carrying over of the amount as tax credit in subsequent taxable years.[14]

The foregoing result has rendered unnecessary any discussion of the assigned errors committed by the CA.

WHEREFORE, we reverse and set aside the decision dated November 28, 2002 promulgated in C.A.-G.R. Sp. No. 68461 by the Court of Appeals, and declare that PL Management International Phils., Inc. is not entitled to the refund of the unutilized

creditable withholding tax of P1,200,000.00 on account of the irrevocability rule provided in Section 76 of the National Internal Revenue Code of 1997.

We rule that PL Management International Phils., Inc. may still use the creditable withholding tax of P1,200,000.00 as tax credit in succeeding taxable years until fully exhausted.

No pronouncement on costs of suit.

SO ORDERED.

Carpio Morales, (Chairperson), Brion, Villarama, Jr., and *Sereno, JJ.*, concur.

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[1] *Rollo*, pp. 31-39; penned by Associate Justice Ruben T. Reyes (later Presiding Justice of the Court of Appeals and a Member of the Court, but already retired), with Associate Justice Remedios Salazar-Fernando and Associate Justice Edgardo P. Sundiam (now deceased) concurring.

[2] *Id.,* p.32

[3] *Id.,* p. 85 (copy of BIR Form 1702, which is Annex 1 of the Comment).

[4] *Id.*, pp. 32-33.

[5] *Id.*, pp. 42-49.

[6] 102 Phil 912 (1958).

[7] G.R. No. 105208, May 29, 1995, 244 SCRA 446.

[8] Citing *Panay Electric Co. v. Collector*, 103 Phil 819 (1958).

[9] *Rollo*, p. 39.

[10] *Id*., pp. 40-41.

[11] *Id*., p. 20.

[12] G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761, 772. See also *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*, G.R. No. 171766, July 29, 2010, 626 SCRA 172; and *Commissioner of Internal Revenue v.*

McGeorge Food Industries, Inc., G.R. No. 174157, October 20, 2010.

[13] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231.

[14] *Id*.
