

FIRST DIVISION

**SYSTRA PHILIPPINES, INC.,
Petitioner,**

G.R. No. 176290

Present:

PUNO, *C.J.*, *Chairperson*,
SANDOVAL-GUTIERREZ,
CORONA,
AZCUNA and
GARCIA, *JJ.*

- v e r s u s -

**COMMISSIONER OF
INTERNAL REVENUE,
Respondent.**

Promulgated:

September 21, 2007

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R E S O L U T I O N

CORONA, J.:

This resolves petitioner Systra Philippines, Inc.'s (1) motion for leave to file a second motion for reconsideration and (2) second motion for reconsideration of the Court's March 28, 2007 resolution.

On March 9, 2007, petitioner filed a petition for review on certiorari assailing the January 18, 2007 decision ^[1] of the Court of Tax Appeals (CTA) in CTA EB Case No. 135. The Court denied the petition in its March 28, 2007 resolution on the following grounds:

- (a) failure of petitioner's counsel to submit his IBP ^[2] O.R. ^[3] number showing proof of payment of IBP dues for the current year (the IBP O.R. No. was for 2006, *i.e.*, it was dated November 20, 2006);
- (b) submitting a verification of the petition, certification of non-forum shopping and affidavit of service that failed to comply with the 2004 Rules on Notarial Practice

with respect to competent evidence of affiants' identities and

- (c) failure to give an explanation why service was not done personally as required by Section 11, Rule 13 in relation to Section 3, Rule 45 and Section 5(d), Rule 56 of the Rules of Court.

On July 5, 2007, petitioner's motion for reconsideration was denied with finality as there was no compelling reason to warrant a modification of the March 28, 2007 resolution. Thus, the present motions.

Petitioner claims that this Court has granted second and even third motions for reconsideration for "extraordinarily persuasive reasons." It avers that this Court should look into the importance of the issues involved in deciding whether leave to file a second motion for reconsideration should be granted or not. It prays that its petition should not be denied on the basis of procedural lapses alone and points out that the substantial amount involved in the petition justifies relaxation of technical rules. It asserts that there is an important legal issue involved in this case: whether the exercise of the option to carry over excess income tax credits under Section 76 of the National Internal Revenue Code of 1997, as amended (Tax Code) bars a taxpayer from claiming the excess tax credits for refund even if the amount remains unutilized in the succeeding taxable year. Finally, it contends that the assailed CTA decision was contradictory to the decisions of the Court of Appeals (CA)^[4] in *Bank of the Philippine Islands v. Commissioner of Internal Revenue*^[5] and *Raytheon Ebasco Overseas Ltd. Philippine Branch v. Commissioner of Internal Revenue*^[6] which involved the same issue as that in this case. According to petitioner, in view of those CA decisions, it is unjust to deprive it of the right to claim a refund.

We deny petitioner's motions.

A SECOND MOTION FOR RECONSIDERATION IS PROHIBITED

The denial of a motion for reconsideration is final. It means that the Court will no longer entertain and consider further arguments or submissions from the parties respecting the correctness of its decision or resolution.^[7] It signifies that, in the Court's considered view, nothing more is left to be discussed, clarified or done in the case since all issues raised have been passed upon and definitely resolved. Any other issue which could and should have been raised is deemed waived and is no longer available as ground for a second motion. A denial with finality underscores that the case is considered closed.^[8] Thus, as a rule, a second motion for reconsideration is a prohibited pleading.^[9] The Court stressed in *Ortigas and Company Limited Partnership v. Velasco*:^[10]

A second motion for reconsideration is forbidden except for extraordinarily persuasive reasons, and only upon express leave first obtained.^[11] (emphasis supplied)

It is true that procedural rules may be relaxed in the interest of substantial justice. They are not, however, to be disdained as mere technicalities that may be ignored at will to suit the convenience of a party.^[12] They are intended to ensure the orderly administration of justice and the protection of substantive rights in judicial proceedings.^[13] Thus, procedural rules are not to be belittled or dismissed simply because their non-observance may have resulted in prejudicing a party's substantive rights.^[14] Like all rules, they are required to be followed except only when, for the most persuasive of reasons, they may be relaxed to relieve a litigant of negative consequences commensurate with the degree of thoughtlessness in not complying with the prescribed procedure.^[15]

In this case, contrary to petitioner's claim, there was no compelling reason to excuse non-compliance with the rules. Nor were the grounds raised by it extraordinarily persuasive.

[16]

Moreover, petitioner can neither properly nor successfully rely on the decisions of the CA in the *Bank of the Philippine Islands* and *Raytheon Ebasco Overseas Ltd. Philippine Branch* cases. First, the CA and the CTA are now of the same level pursuant to RA 9282. [17]

Decisions of the CA are thus no longer superior to nor reversive of those of the CTA. Second, a decision of the CA in an action *in personam* binds only the parties in that case. A third party in an action *in personam* cannot claim any right arising from a decision therein. Finally and most importantly, while a ruling of the CA on any question of law is not conclusive on this Court, all rulings of this Court on questions of law are conclusive and binding on all courts including the CA. All courts must take their bearings from the decisions of this Court. [18]

ON THE SUBSTANTIVE ASPECT, THE PETITION HAS NO MERIT

The antecedents of this case are as follows:

On April 16, 2001, petitioner filed with the [Bureau of Internal Revenue (BIR)] its Annual Income Tax Return ("ITR") for the taxable year ended December 31, 2000 declaring revenues in the amount of [P18,252,719] the bulk of which consists of income from management consultancy services rendered to the Philippine Branch of Group Systra SA, France. Subjecting said income from consultancy services of petitioner to 5% creditable withholding tax, a total amount of [P4,703,019] was declared by petitioner as creditable taxes withheld for the taxable year 2000.

For the same period, petitioner reflected a total gross income of [P3,752,129], a net loss of [P17,930] and a minimum corporate income tax (MCIT) of [P75,043]. Said MCIT of P75,043 was offset against its total tax credits for the year 2000 amounting to [P4,703,019] thereby leaving a total unutilized tax credits of [P4,627,976], computed as follows:

Gross Income	P3,752,129.00
Less: Deductions	<u>P3,770,059.00</u>
Net loss	<u>P 17,930.00</u>

Minimum Corporate Income Tax Due P75,043.00

Less: Tax Credits

Prior year's excess credits	P	-	
Creditable taxes withheld during the year		<u>P4,703,019.00</u>	<u>P4,703,019.00</u>
Tax Overpayment			<u>P4,627,976.00</u>

Petitioner opted to carry over the said excess tax credit to the succeeding taxable year 2001.

For the taxable year ended December 31, 2001, petitioner filed with the BIR its Annual ITR on April 12, 2002, reflecting a total gross income of [P4,771,419] and a total creditable taxes withheld of [P1,111,587] for consultancy services. It likewise declared a taxable income of [P1,936,851] with corresponding normal income tax due in the amount of [P619,792]. After deducting the unexpired excess of the previous year MCIT [1999 and 2000] in the amount of [P222,475] from the normal income tax due for the period, petitioner's net tax due of [P397,317] was applied against the accumulated tax credits of [P5,739,563]. Said reported tax credits comprised of prior year's excess tax credits in the amount of [P4,627,976] and creditable taxes withheld during the year 2001 in the sum of [P1,111,587]. These excess tax credits were utilized to pay off the income tax still due of [P397,317] resulting to an overpayment of [P5,342,246], computed as follows:

Gross Income		P4,771,419.00
Less: Deductions		<u>P2,834,568.00</u>
Taxable Income		<u>P1,936,851.00</u>
Income Tax Due at the Normal Rate of 32%		P 619,792.00
Less: Unexpired Excess of Prior Year's MCIT		
Over Normal Income Tax Rate		P <u>222,475.00</u>
		P 397,317.00
Income Tax Still Due		
Less: Tax Credits		
Prior year's excess credits	P4,627,976.00	
Creditable taxes withheld during the year	<u>1,111,587.00</u>	<u>P5,739,563.00</u>
Tax Overpayment		<u>P5,342,246.00</u>

Petitioner indicated in the 2001 ITR the option "To be issued a Tax Credit Certificate" relative to its tax overpayments.

On August 9, 2002, petitioner instituted a claim for refund or issuance of a tax credit certificate with the BIR of its unutilized creditable withholding taxes in the amount of P5,342,246.00 as of December 31, 2001."

Due to the inaction of the BIR on petitioner's claim for refund and to preserve its right to claim for the refund to its unutilized CWT for CYs 2000 and 2001 by judicial action, petitioner filed a petition for review with the Court in Division on April 14, 2003. [\[19\]](#)

In its August 3, 2005 decision, the First Division of the CTA partially granted the petition and ordered the issuance of a tax credit certificate to petitioner in the amount of ₱1,111,587 representing the excess or unutilized creditable withholding taxes for taxable year 2001. The CTA, however, denied petitioner's claim for refund of the excess tax credits for the year 2000 in the amount of ₱4,627,976. It ruled that petitioner was precluded from claiming a refund thereof or requesting a tax credit certificate therefor. Once it was made for a particular taxable period, the option to carry over became irrevocable.

Petitioner moved for reconsideration but it was denied. Petitioner elevated the case to the CTA *en banc* which rendered the assailed decision. Thus, this petition.

As already stated, petitioner formulated the issue in this petition as follows: whether the exercise of the option to carry-over excess income tax credits under Section 76 of the Tax Code bars a taxpayer from claiming the excess tax credits for refund even if the amount remains unutilized in the succeeding taxable year. Petitioner contends that it does not.

We disagree.

Section 76 of the Tax Code provides:

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 net income of that year the corporation shall either:

- (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 supplied)

A corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.^[20]

This is known as the irrevocability rule and is embodied in the last sentence of Section 76 of the Tax Code. The phrase “such option shall be considered irrevocable for that taxable period” means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked.

The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund.^[21]

In this case, it was in the year 2000 that petitioner derived excess tax credits and exercised the irrevocable option to carry them over as tax credits for the next taxable year. Under Section 76 of the Tax Code, a claim for refund of such excess credits can no longer be made. The excess credits will only be applied “against income tax due for the taxable quarters of the succeeding taxable years.”

The legislative intent to make the option irrevocable becomes clearer when Section 76 is

viewed in comparison to Section 69 of the (old) 1977 Tax Code:

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 tax credit or 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.

Under Section 69 of the 1977 Tax Code, there was no irrevocability rule. Instead of claiming a refund, the excess tax credits could be “credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year,” that is, *the immediately following year only*. In contrast, Section 76 of the present Tax Code formulates an irrevocability rule which stresses and fortifies the nature of the remedies or options as alternative, not cumulative. It also provides that the excess tax credits “may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable **years**” until fully utilized.

Furthermore, this case is closely similar to *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*.^[22] In that case, Philam Asset Management, Inc. had an unapplied creditable withholding tax in the amount of ₱459,756.07 for the year 1998. It carried over the said excess tax to the following taxable year, 1999. In the next succeeding year, it had a tax due in the amount of ₱80,042 and a creditable withholding tax in the amount of ₱915,995. As such, the amount due for the year 1999 (₱80,042) was credited to its ₱915,995 creditable withholding tax for that year. Thus, its 1998 creditable withholding tax in the amount of ₱459,756.07 remained unutilized. Thereafter, it filed a claim for refund with respect to the unapplied creditable withholding tax of ₱459,756.07 for the year 1998. *The*

Court denied the claim and ruled:

Section 76 [is] 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 ₱459,756.07, 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. (emphasis supplied)

Since petitioner elected to carry over its excess credits for the year 2000 in the amount of ₱4,627,976 as tax credits for the following year, it could no longer claim a refund. Again, at the risk of being repetitive, once the carry over option was made, actually or constructively, it became forever irrevocable regardless of whether the excess tax credits were actually or fully utilized. Nevertheless, as held in *Philam Asset Management, Inc.*, the amount will not be forfeited in favor of the government but will remain in the taxpayer's account. Petitioner may claim and carry it over in the succeeding taxable years, creditable against future income tax liabilities until fully utilized. ^[23]

WHEREFORE, petitioner's motion for leave to file a second motion for reconsideration and the second motion for reconsideration are hereby **DENIED**.

Costs against petitioner.

No further pleadings shall be entertained. Let entry of judgment be made in due course.

SO ORDERED.

RENATO C. CORONA

Associate Justice

WE CONCUR :

REYNATO S. PUNO

Chief Justice

Chairperson

ANGELINA SANDOVAL-GUTIERREZ

Associate Justice

ADOLFO S. AZCUNA

Associate Justice

CANCIO C. GARCIA

Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, I certify that the conclusions in the above resolution had been reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

REYNATO S. PUNO

Chief Justice

[1]

Rollo, pp. 40-50.

[2]

Integrated Bar of the Philippines.

[3]

Official receipt.

[4]

Under RA 9282 which took effect on April 23, 2004, decisions of the CTA are no longer appealable to the CA but directly to this Court. *See also* note 17.

[5]

CA-G.R. SP No. 77655, 29 April 2005.

[6]

CA-G.R. SP No. 80296, 11 April 2005.

[7]

Id.

[8]

Id.

[9]

Section 2, Rule 52 in relation to Section 4, Rule 56 of the Rules of Court.

[10]

324 Phil. 483 (1996).

[11]

Id.

[12]

Santos v. Court of Appeals, G.R. No. 92862, 04 July 1991, 198 SCRA 806.

[13]

Spouses Galang v. Court of Appeals, G.R. No. 76221, 29 July 1991, 199 SCRA 683.

[14]

Id.

[15]

Id.

[16]

The fact that the amount involved is claimed to be substantial is neither a compelling nor an extraordinarily persuasive reason. It is a subjective standard. What may be a pittance for one may be a fortune for another. And all properties, substantial or not, deserve protection under the laws.

[17]

An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating Its Rank to the Level of a Collegiate Court With Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections of Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.

[18]

Republic of the Philippines v. Maj. Gen. Garcia, G.R. No. 167741, 17 July 2007.

[19]

Supra note 1, pp. 41-43.

[20]

Philippine Bank of Communications v. Commissioner of Internal Revenue, 361 Phil. 916 (1999).

[21]

De Leon, Hector, THE NATIONAL INTERNAL REVENUE CODE, Seventh Edition, 2000, p. 430.

[22]

G.R. Nos. 156637/162004, 14 December 2005, 477 SCRA 761.

[23]

Where, however, the corporation permanently ceases its operations 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. *Cessante ratione legis, cessat ipse lex*.