

Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

EN BANC

SC & C COSMETECH CO., INC.,
Petitioner,

CTA E.B. NO. 126
(C.T.A. Case No. 6650)

Present:

Acosta, P.J.,
Castañeda, Jr.,
Bautista,
Jy,
Casanova, and
Palanca-Farquez, JJ

- versus -

COMMISSIONER OF INTERNAL
REVENUE,
Respondent.

Promulgated:

JUL 31 2006 

X-----v-----

DECISION

UY, J.:

Petitioner elevates its case to the Court *En Banc* by filing on November 9, 2005, a Petition for Review pursuant to Section 1, Rule 43 of the Revised Rules of Court, seeking the reversal of the Decision dated June 6, 2005 and the Resolution dated September 21, 2005 rendered by the First Division of this Court in CTA Case No. 6650, entitled "SC & C Cosmetech Co., Inc. v. Commissioner of Internal Revenue" denying petitioner's claim for refund and/or issuance of a

- 2) That the fact of withholding is established by a copy of statement [dix Form No. 1743.1 (now BIR Form No. 2307)] duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and
- 3) That the claim for refund was filed within the two (2) year period prescribed under Section 229 (then Section 230) of the National Internal Revenue Code (*Petition for Review, p. 7, Records, p. 37*)."

Petitioner submits that based on its uncontroverted testimonial and documentary evidence, it was able to comply with the foregoing requirements and the only remaining issue to be resolved is the proper interpretation of the last paragraph of Section 75 of the Tax Code, as amended, which provides that "[i]n 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 and underscoring supplied*).

Invoking the decision of the Court of Appeals in Commissioner of Internal Revenue vs. Oticorp Capital Phils., Inc. (CA-G.R. SP No. 68554, 12 April 2002),

during the taxable year is over the total tax due, the excess may be carried over and credited against the taxpayer's income tax liabilities for the succeeding taxable years. Once the option to carry over was chosen, the same shall be considered irrevocable; hence, no claim for refund is allowed (*pp. 184-185*). In the case at bench, the documentary evidence presented by petitioner, such as its Annual Income Tax Returns for the years 2001, 2002 and 2003, clearly show that petitioner exercised its option to carry-over its claimed 2000 unutilized creditable withholding taxes to the next succeeding years of 2001, 2002 and 2003, pursuant to Section 76 of the Tax Code, as amended.

The lone issue raised in this petition is whether or not petitioner is entitled to a cash refund and/or an issuance of a tax credit certificate in the amount of P3,135,723.00 representing its excess creditable income tax for taxable year 2000.

The Court *En Banc* rules in the negative.

Section 76 of the Tax Code, as amended, reads:

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:

- (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 ~~rec tec~~ 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. (Underlining Ours).

As clearly seen from this provision, the taxpayer is allowed three (3) options if the sum of its quarterly tax payments made during the taxable year is not equal to the total tax due for that year, to wit: (a) to pay the balance of the tax still due; (b) to carry-over the excess credit; or (c) to be credited or refunded the amount paid. If the taxpayer has paid excess quarterly income taxes, it may be entitled to a tax credit or refund as shown in its final adjustment return which may be carried over and applied against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. However, once the taxpayer has exercised the option to carry-over and to apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years, such option is irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed (*Paseo Realty and Development Corporation vs. Court of Appeals, 440 SCRA 235, at 250 [2004]; Emphasis supplied*).

Deposited: 2004/03/27

Impression that the tax due for the year 2002 was applied against the 1999 tax credits which it already opted to be refunded but actually carried over to the years 2000, 2001, 2002 and 2003.

To understand a little of petitioner's confusing income tax returns submitted in evidence, this Court has made a summary of petitioner's different declarations/computations as follows:

ORIGINAL RETURNS

Taxable Year 2000 (Exhibit A)

Breakdown of Excess Tax Credits
 at the end of the year:

Minimum Corporate Income Tax Due	P 661,366.00	
Less: Tax Credits		
Prior Year's Excess Credits (1999)	P 2,867,050.00	P 2,225,683.00 (2,867,050.00 less 661,366.00)
Creditable Taxes Withheld		
First Three Quarters	P 2,852,319.00	
Fourth Quarter	914,770.00	3,767,089.00
Total Tax Credits	P 5,654,139.00	
Tax Overpayment:	P 5,992,773.00	P 5,992,773.00

Taxable Year 2001 (Exhibit B)

Minimum Corporate Income Tax Due	P 436,891.00	
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 2,225,683.00	P 2,225,683.00
2000	3,767,089.00	P 5,992,771.00
Creditable Taxes Withheld		
First Three Quarters	P 3,045,904.00	
Fourth Quarter	2,236,777.00	5,282,681.00
Total Tax Credits	P 11,275,453.00	4,855,790.00 (5,282,681.00 less 436,891.00)
Tax Overpayment:	P 10,848,562.00	P 10,848,562.00

Taxable Year 2002 (Exhibit C)

Minimum Corporate Income Tax Due	P 841,373.00	
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 2,225,683.00	
2000	3,767,089.00	
2001	4,855,790.00	P 10,848,562.00

Creditable Taxes Withheld	
First Three Quarters	P 3,031,463.00
Fourth Quarter	<u>2,423,436.00</u> <u>7,454,899.00</u>
Total Tax Credits	<u>P 16,303,461.00</u>
Tax Overpayment	<u>P 17,662,083.00</u>

AMENDED RETURNS

Taxable Year 2000 (Exhibit B)

Breakdown of Excess Tax Credits
at the end of the year

Minimum Corporate Income Tax Due	<u>P 661,366.00</u>	
Less: Tax Credits		
Prior Year's Excess Credits (1999)	<u>P 2,867,089.00</u>	<u>P 2,867,089.00</u>
Creditable Taxes Withheld		
First Three Quarters	<u>P 2,852,319.00</u>	
Fourth Quarter	<u>514,773.00</u> <u>3,767,089.00</u>	<u>3,767,089.00</u> (3,767,089.00 less 661,366.00)
Total Tax Credits	<u>P 6,655,139.00</u>	
Tax Overpayment	<u>P 5,991,773.00</u>	<u>P 5,991,773.00</u>

Taxable Year 2001 (Exhibit C)

Minimum Corporate Income Tax Due	<u>P 426,891.00</u>	
Less: Tax Credits		
Prior Year's Excess Credits (1999)	<u>P 2,886,850.00</u>	<u>P 2,886,850.00</u> (2,886,850.00 less 426,891.00)
Creditable Taxes Withheld		
First Three Quarters	<u>P 3,046,904.00</u>	
Fourth Quarter	<u>2,282,681.00</u> <u>5,282,681.00</u>	<u>5,282,681.00</u>
Total Tax Credits	<u>P 8,169,531.00</u>	
Tax Overpayment	<u>P 7,742,640.00</u>	<u>P 7,742,640.00</u>

Taxable Year 2002 (Exhibit D)

Minimum Corporate Income Tax Due	<u>P 641,377.00</u>	
Less: Tax Credits		
Prior Year's Excess Credits		
1999	<u>P 2,459,959.00</u>	<u>P 1,818,587.00</u> (2,459,959.00 less 641,377.00)
2001	<u>5,282,681.00</u> <u>P 7,742,640.00</u>	<u>5,282,681.00</u>
Creditable Taxes Withheld		
First Three Quarters	<u>P 3,031,463.00</u>	
Fourth Quarter	<u>2,423,436.00</u> <u>7,454,899.00</u>	<u>7,454,899.00</u>
Total Tax Credits	<u>P 13,157,539.00</u>	
Tax Overpayment	<u>P 14,556,167.00</u>	<u>P 14,556,167.00</u>

ORIGINAL 2003 RETURN (Exhibit J)

Minimum Corporate Income Tax Due		P 300,371.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 1,818,587.00	
2001	5,282,680.00	
2002	<u>7,454,899.00</u>	14,556,166.00
Creditable Taxes Withheld		
First Three Quarters	P 3,451,596.00	
Fourth Quarter	<u>190,276.00</u>	<u>3,641,872.00</u>
Tax Overpayment		P 17,301,367.00

AMENDED 2003 RETURN (Exhibit H)

Minimum Corporate Income Tax Due		P 318,284.00
Less: Tax Credits		
Prior Year's Excess Credits		
1999	P 1,818,587.00	
2001	<u>5,282,680.00</u>	<u>7,101,267.00</u>
Tax Overpayment		P 6,182,983.00

From the above declarations/computations, petitioner applied its minimum corporate income tax (MCIT) due for the period against the 1999 excess tax credits in its original income tax return for the year 2000. For the year 2001, petitioner applied its MCIT against the 2001 excess tax credits in its original income tax return. And for the year 2002, this Court cannot determine where the MCIT for the period was applied against though looking at the original return submitted by petitioner, the MCIT was applied against its total tax credits for the same year.

However, in its amended return for the year 2000, petitioner applied the MCIT against the current or 2000 tax payments. But in its 2001 amended tax return, petitioner applied the MCIT for the period against its 1999 excess tax credits. And in the year 2002 amended income tax return, petitioner again applied the MCIT for the period against its 1999 excess tax credits.

With respect to petitioner's 2003 income tax returns, the MCIT declared in the original return differs from what was reflected

in its amended return. But it appears that it applied its MCIT due for the said year against its 1999 and 2001 excess tax credits.

From the foregoing evidence, it is undisputed that petitioner is confused on what is the proper thing to do. For one, it applied its MCIT either from its current or prior year's excess tax credits. Petitioner should have followed the first in first out principle. For another, despite the choice of being refunded for its 1999 excess tax credits, petitioner still carried over the same to the succeeding years. Likewise, having opted to be issued a tax credit certificate for its 2000 excess tax credits, petitioner actually carried over the same to the succeeding years 2001 and 2002. When petitioner amended these returns, it no longer reflected the 2000 excess tax credits. But when it amended its 2003 tax returns, it again carried over the 2000 excess tax credits. Clearly, petitioner's interpretation of the law has gone haywire and this Court cannot countenance the same (*Assailed Decision, pp. 5-10, Rollo, pp. 14-19*).

To summarize, in petitioner's original 2000 Annual Income Tax Return filed on April 10, 2001, petitioner did not mark any box found in Line 31 to signify its option. And as correctly held in the assailed Decision, if the taxpayer fails to signify his option by marking an "x" on the appropriate box provided in line 31 of BIR Form No. 1702, it is provided in page 4 thereof that "the excess payments shall be automatically be carried-over to the next taxable period".

For the subsequent year, it made simultaneous choices in its 2001 income tax return by marking two options, to be refunded and to be carried over as tax credit next year/quarter, but petitioner's income tax return for the year 2003 showed that petitioner carried over its 2002 tax credits. Thereafter on July 29, 2003, petitioner simultaneously amended its 2001 and 2002 income tax returns so as not to reflect the 2000 excess tax credits. And in its original income tax

return for the year 2003 filed on April 15, 2004, petitioner did not declare its excess tax credits for the year 2000. However, when it amended the said return on May 27, 2004, petitioner again included as among the carried over prior years' excess tax credits, the amount of P3,105,723.00 which is the 2000 excess tax credits but excluded the same in computing the excess tax payment for the same period.

Clearly from the foregoing, petitioner exercised varied options relative to its unutilized creditable withholding taxes. In this regard, the Supreme Court ruled in the case of *Phil-Am Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 15, 2005, that "[u]nder Section 76 of the National Internal Revenue Code, a taxable corporation with excess quarterly income tax payments may apply for either a tax refund or a tax credit, but not both. The choice of one precludes the other. It further held that the carry-over option under Section 76 is permissive. A corporation that is entitled to a tax refund or a tax credit for excess payment of quarterly income taxes may carry over and credit the excess income taxes paid in a given taxable year against the estimated income tax liabilities of the succeeding quarters. Once chosen, the carry-over option shall be considered irrevocable for that taxable period, and no application for a tax refund or issuance of a tax credit certificate shall be allowed.

return filed on April 15, 2002, petitioner actually carried over the amount of P3,767,089.00 as its 2000 excess tax credits and even applied it against its tax due for the year 2001 under the principle of first in first out basis (*Assailed Decision, p. 12, Rollo, p. 213*).

Again, it bears stressing that tax refunds are in the nature of tax exemptions. As such, they are regarded as derogation of sovereign authority and to be considered *strictissimi juris* against the person or entity claiming the refund (*Commissioner vs. S.C. Johnson & Sons, Inc. and Court of Appeals, 309 SCRA 87 [1999]; Commissioner vs. Procter and Gamble Philippine Manufacturing Corporation and The Court of Tax Appeals, 204 SCRA 377 [1991]*).

With respect to petitioner's reliance on the decisions of the Honorable Court of Appeals in the cases of Commissioner of Internal Revenue vs. Cidcorp Capital Phils., Inc. (CA-G.R. SP No. 68554, 12 April 2002) and Commissioner of Internal Revenue vs. Hopewell Tleman Power Systems, Inc. (CA-G.R. SP No. 60898, 12 March 2002), let it be noted that upon the effectivity of Republic Act No. 9282 on April 23, 2004, expanding the jurisdiction of this Court and elevating its rank equal to that of the Court of Appeals, decisions of the latter court are merely persuasive, but no longer binding, upon this Court. Moreover, the subject issue has been said to rest in the ruling of the Supreme Court in the

consolidated cases of *Phil-Am Management, Inc. vs. Commissioner of Internal Revenue*, discussed earlier.

WHEREFORE, the Petition for Review is hereby **DISMISSED** for lack of merit. The assailed Decision dated June 6, 2005 and Resolution dated September 21, 2005 are affirmed in toto.

SO ORDERED.


ERLINDA P. UY
Associate Justice

WE CONCUR:


ERNESTO D. ACOSTA
Associate Justice


JUANITO C. CASTAÑEDA, JR.
Associate Justice


LOVELL R. BAUTISTA
Associate Justice


CAESAR A. CASANOVA
Associate Justice


OLGA PALANCA-ENRIQUEZ
Associate Justice

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, It is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court *En Banc*.


ERNESTO D. ACOSTA
Presiding Justice