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capacity. What is determinative of the nature of the cause of action are the allegations in the complaint. It is settled that the nature of a cause of action is determined by the facts alleged in the complaint as constituting the cause of action. The purpose of an action or suit and the law to govern it is to be determined not by the claim of the party filling [sic] the action, made in his argument or brief, but rather by the complaint itself, its allegations and prayer for relief.[15] (Emphasis supplied)

WHEREFORE, the Court *DENIES* the petition. The Court *AFFIRMS* the 17 August 2005 Decision and 27 February 2006 Resolution of the Court of Appeals in CA-G.R. CV No. 73212.

SO ORDERED.

Nachura, Peralta, Abad, and *Mendoza, JJ.,* concur.

SECOND DIVISION

[G.R. No. 171766. July 29, 2010]

ASIAWORLD PROPERTIES PHILIPPINE CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC 1997); CARRYOVER OF EXCESS INCOME TAX; TREATMENT; CONSTRUED. — Section 76 of the NIRC of 1997 clearly states: "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 therefore."

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[15] *Id.* at 559.

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Section 76 expressly states that "the option shall be considered irrevocable for **that taxable period"** — referring to the period comprising the "**succeeding taxable years**." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed **therefore**" — referring to "that taxable period" comprising the "succeeding taxable years." Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC. x x x Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years." Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.

APPEARANCES OF COUNSEL

Zenaida P. Alcantara for petitioner.
Wilmer B. Dekit for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 24 August 2005

[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

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Decision[2] and the 31 January 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 82027.

The Facts

Petitioner Asiaworld Properties Philippine Corporation (petitioner) is a domestic corporation with principal office at Asiaworld City, Aguinaldo Boulevard, Parañaque, Metro Manila. Petitioner is engaged in the business of real estate development.

For the calendar year ending 31 December 2001, petitioner filed its Annual Income Tax Return (ITR) on 5 April 2002. Petitioner declared a minimum corporate income tax (MCIT) due in the amount of ₱1,222,066.00, but with a refundable income tax payment in the sum of ₱6,473,959.00 computed as follows:

Income:		
Realized Gross Profit		₱49,234,453.00
Add: Other Income		11,868,847.00
Gross Income		₱61,103,300.00
Less: Deductions		58,148,630.00
Taxable Income		₱ 2,954,670.00
Tax Due (MCIT)		₱ 1,222,066.00
Less: Tax Credit/Payments		
a. Prior Year's Excess Credit	₱7,468,061.00	
b. Tax Payments For the First Three Quarters	–	
c. Creditable Tax Withheld For the First Three Quarters	160,000.00	
d. Creditable Tax Withheld For the Fourth Quarter	67,964.00	7,696,025.00
Total Amount of Overpayment		₱ 6,473,959.00

[2] *Rollo*, pp. 8-20. Penned by Associate Justice Mariano C. Del Castillo (now SC Associate Justice), with Associate Justices Salvador J. Valdez, Jr. and Magdangal M. De Leon, concurring.

[3] *Id*. at 22.

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In its 2001 ITR,[4] petitioner stated that the amount of ₱7,468,061.00 representing Prior Year's Excess Credits was net of year 1999 excess creditable withholding tax to be refunded in the amount of ₱18,477,144.00. Petitioner also indicated in its 2001 ITR its option to carry-over as tax credit next year/ quarter the overpayment of ₱6,473,959.00.

On 9 April 2002, petitioner filed with the Revenue District Office No. 52, BIR Region VIII, a request for refund in the amount of ₱18,477,144.00, allegedly representing partial excess creditable tax withheld for the year 2001. Petitioner claimed that it is entitled to the refund of its unapplied creditable withholding taxes.

On 12 April 2002, before the BIR Revenue District Office could act on petitioner's claim for refund, petitioner filed a Petition for Review with the Court of Tax Appeals to toll the running of the two-year prescriptive period provided under Section 229[5] of the National Internal Revenue Code (NIRC) of 1997.

In its Decision dated 11 September 2003, the Court of Tax Appeals denied the petition for lack of merit. Petitioner moved for reconsideration, which the Court of Tax Appeals denied in its Resolution dated 17 December 2003. In denying the petition, the Court of Tax Appeals explained:

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[4] Exhibit "A".

[5] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment; *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

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While we agree with the findings of the commissioned independent CPA that petitioner has unapplied creditable withholding taxes at source as of December 31, 2001, still the excess income tax payment cannot be refunded.

Upon scrutiny of the records of the case, this court noted that the amount sought to be refunded of ₱18,477,144.00 actually represents petitioner's excess creditable withholding taxes *for the year 1999* which petitioner opted to apply as tax credit to the succeeding taxable year as evidenced by its 1999 income tax return *(Exhibit K)*. Under Section 76 of the Tax Code, petitioner is precluded to claim the refund or credit of the excess income tax payment once it has chosen the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding years.[6]

Petitioner appealed to the Court of Appeals, which affirmed the Decision and Resolution of the Court of Tax Appeals.

The Ruling of the Court of Appeals

The Court of Appeals held that under Section 76 of the NIRC of 1997, when the income tax payment is in excess of the total tax due for the entire taxable income of the year, a corporate taxpayer may either carry-over the excess credit to the succeeding taxable years or ask for tax credit or refund of the excess income taxes paid. Section 76 explicitly provides that once the option to carry-over is chosen, such option is irrevocable for that taxable period and the taxpayer is no longer allowed to apply for cash refund or tax credit. In this case, petitioner chose to carry-over the excess tax payment it had made in the taxable year 1999 to be applied to the taxes due for the succeeding taxable years. The Court of Appeals ruled that petitioner's choice to carry-over its tax credits for the taxable year 1999 to be applied to its tax liabilities for the succeeding taxable years is irrevocable and petitioner is not allowed to change its choice in the following year. The carry-over of petitioner's tax credits is not limited only to the following year of 2000 but should be carried-over

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[6] *Rollo*, p. 87. (Italics in the original)

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to the succeeding years until the whole amount has been fully applied.

On 27 April 2006, petitioner filed a petition for review with this Court.

The Issue

The primary issue in this case is whether the exercise of the option to carry-over the excess income tax credit, which shall be applied against the tax due in the succeeding taxable years, prohibits a claim for refund in the subsequent taxable years for the unused portion of the excess tax credits carried over.

The Ruling of the Court

The petition has no merit.

The resolution of the case involves the interpretation of Section 76 of the NIRC of 1997, which 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 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 therefore. (Emphasis supplied)

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The confusion lies in the interpretation of the last sentence of the provision which imposes the irrevocability rule.

Petitioner maintains that the option to carry-over and apply the excess quarterly income tax against the income tax due in the succeeding taxable years is irrevocable only for the next taxable period when the excess payment was carried over. Thus, petitioner posits that the option to carry-over its 1999 excess income tax payment is irrevocable only for the succeeding taxable year 2000 and that for the taxable year 2001, petitioner is not barred from seeking a refund of the unused tax credits carried over from year 1999.

The Court cannot subscribe to petitioner's view. Section 76 of the NIRC of 1997 clearly states: "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 therefore." Section 76 expressly states that "the option shall be considered irrevocable for **that taxable period**" – referring to the period comprising the "**succeeding taxable years**." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed **therefore**" – referring to "that taxable period" comprising the "succeeding taxable years."

Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:

SEC. 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

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quarterly income tax liabilities for the taxable quarters of the **succeeding taxable year**. (Emphasis supplied)

Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only.[7] In contrast, under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."

Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years.[8] The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[9]

In this case, petitioner opted to carry-over its 1999 excess income tax as tax credit for the succeeding taxable years. As correctly held by the Court of Appeals, such option to carry-over is not limited to the following taxable year 2000, but should apply to the succeeding taxable years until the whole amount of the 1999 creditable withholding tax would be fully utilized.

WHEREFORE, we *DENY* the petition. We *AFFIRM* the Decision dated 24 August 2005 and the Resolution dated 31 January 2006 of the Court of Appeals in CA-G.R. SP No. 82027.

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[7] *Paseo Realty & Dev't. Corp. v. Court of Appeals*, 483 Phil. 254 (2004).

[8] *Philam Asset Management, Inc. v. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, 14 December 2005, 477 SCRA 761.

[9] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, 21 September 2007, 533 SCRA 776.

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SO ORDERED.

Velasco, Jr.,[*] *Peralta, Abad,* and *Mendoza, JJ.,* concur.

EN BANC

[G.R. No. 172027. July 29, 2010]

GONZALO S. GO, JR., *petitioner, vs.* **COURT OF APPEALS and OFFICE OF THE PRESIDENT,** *respondents.*

SYLLABUS

1. POLITICAL LAW; CIVIL SERVICE COMMISSION; EXCLUSIVE JURISDICTION OVER CASES INVOLVING PERSONNEL ACTIONS; CLARIFIED. — The appellate court is correct in ruling that the remedy availed of by Go is improper but not for the reason it proffered. Both Go and the appellate court overlooked the fact that the instant case involves personnel action in the government, *i.e.,* Go is questioning the reallocation and demotion directed by the DBM which resulted in the diminution of his benefits. Thus, the proper remedy available to Go is to question the DBM denial of his protest before the Civil Service Commission (CSC) which has exclusive jurisdiction over cases involving personnel actions, and not before the OP. This was our ruling involving personnel actions in *Mantala v. Salvador*, cited in *Corsiga v. Defensor* and as reiterated in *Olanda v. Bugayong*. In turn, the resolution of the CSC may be elevated to the CA under Rule 43 and, finally, before this Court. Consequently, Go availed himself of the wrong remedy when he went directly to the CA under Rule 43 without repairing first to the CSC.

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[*] Designated additional member per Raffle dated 26 July 2010.