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THIRD DIVISION

[G.R. Nos. 156637/162004. December 14, 2005]

PHILAM ASSET MANAGEMENT, INC., *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; CORPORATE INCOME TAX; A TAXABLE CORPORATION WHOSE TOTAL QUARTERLY INCOME TAX PAYMENTS IN A GIVEN YEAR EXCEEDS ITS TOTAL INCOME TAX DUE MAY CLAIM A TAX REFUND OR AVAIL OF A TAX CREDIT.**— Section 76 [of the NIRC (or Tax Code) of 1997] offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. These options are (1) filing for a *tax refund* or (2) availing of a *tax credit*. 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. The second option works by applying the refundable amount, as shown on the FAR [Final Adjustment Return]of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year. These two options under Section 76 are alternative in nature. The choice of one precludes the other. xxx One cannot get a *tax refund* and *a tax credit* at the same time for the same excess income taxes paid.

2. **ID.; ID.; ID.; ID.; FAILURE TO SIGNIFY ONE'S INTENTION IN THE FINAL ADJUSTMENT RETURN [FAR] DOES NOT BAR OUTRIGHT A VALID REQUEST FOR A REFUND, SHOULD THIS OPTION BE CHOSEN LATER ON.**— Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent. The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly

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the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.

3. **ID.; ID.; ID.; TAX REFUND; THE FILING OF THE FINAL ADJUSTMENT RETURN FOR THE PRECEDING TAXABLE YEAR IS REQUIRED.**— Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence. xxx Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* — not the succeeding — taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR.

4. **ID.; ID.; ID.; ID.; EXERCISING THE OPTION FOR A TAX REFUND OR A TAX CREDIT DOES NOT *IPSO FACTO* CONFER UPON A TAXPAYER THE RIGHT TO IMMEDIATE AVAILMENT OF THE CHOICE MADE.**— [T]here is no automatic grant of a *tax refund.* As a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity" of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.

5. **ID.; ID.; ALLOWS THE REFUND OF TAXES TO A TAXPAYER WITHIN TWO YEARS AFTER PAYMENT OF THE TAXES ERRONEOUSLY RECEIVED BY THE BIR.**— [T]he Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR. Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression

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of its choice to request a *tax refund*, instead of a *tax credit*. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

6. **ID.; ID.; CORPORATE INCOME TAX; CARRY-OVER OPTION; SHALL BE CONSIDERED IRREVOCABLE AND NO APPLICATION FOR A TAX REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE SHALL THEN BE ALLOWED.**— The carry-over option under Section 76 [of R.A. No. 8424] 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 then be allowed.

7. **ID.; ID.; TAX REFUNDS; CONSTRUED STRICTLY AGAINST THE TAXPAYER.**— "[T]ax refunds x x x are construed strictly against the taxpayer." Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for a *tax refund*.

APPEARANCES OF COUNSEL

Celestino R. Miranda and *Joselito F. De Asas* for petitioner.
BIR Legal Division for respondent.

D E C I S I O N

PANGANIBAN, *J.*:

Under 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. Failure to indicate a choice, however, will not bar a valid request for a refund, should this option be chosen by the taxpayer later on.

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The Case

Before us are two consolidated Petitions for Review[1] under Rule 45 of the Rules of Court, seeking to review and reverse the December 19, 2002 Decision[2] of the Court of Appeals (CA) in CA-GR SP No. 69197 and its January 30, 2004 Decision[3] in CA-GR SP No. 70882.

The dispositive portion of the assailed December 19, 2002 Decision, on the one hand, reads as follows:

"**WHEREFORE**, the petition is hereby ***DENIED***. The assailed decision and resolution of the Court of Tax Appeals are ***AFFIRMED***."[4]

That of the assailed January 30, 2004 Decision, on the other hand, was similarly worded, except that it referred to the May 2, 2002 Decision of the Court of Tax Appeals (CTA).[5]

The Facts

In GR No. 156637, the CA adopted the CTA's narration of the facts as follows:

"Petitioner, formerly Philam Fund Management, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines. It acts as the investment manager of both Philippine Fund, Inc. (PFI) and Philam Bond Fund, Inc. (PBFI), which are open-end investment companies[,] in the sale of their shares of stocks and in the investment of the proceeds of these sales into a diversified portfolio of debt and equity securities. Being an investment manager,

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[1] GR No. 156637, *rollo*, pp. 8-25; GR No. 162004, *rollo*, pp. 9-29.

[2] Seventeenth Division. Penned by Justice Bernardo P. Abesamis (Division chair), with the concurrence of Justices Juan Q. Enriquez Jr. and Edgardo F. Sundiam (members).

[3] Fourth Division. Penned by Justice Elvi John S. Asuncion, with the concurrence of Justices Godardo A. Jacinto (Division chair) and Lucas P. Bersamin (member).

[4] December 19, 2002 CA Decision, p. 6; GR No. 156637, *rollo*, p. 32. Uppercase, boldface and italics in the original.

[5] January 30, 2004 CA Decision, p. 7; GR No. 162004, *rollo*, p. 36.

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[p]etitioner provides management and technical services to PFI and PBFI. Petitioner is, likewise, PFI's and PBFI's principal distributor which takes charge of the sales of said companies' shares to prospective investors. Pursuant to the separate [m]anagement and [d]istribution agreements between the [p]etitioner and PFI and PBFI, both PFI and PBFI [agree] to pay the [p]etitioner, by way of compensation for the latter's services and facilities, a monthly management fee from which PFI and PBFI withhold the amount equivalent to [a] five percent (5%) creditable tax[,] pursuant to the Expanded Withholding Tax Regulations.

"On April 3, 1998, [p]etitioner filed its [a]nnual [c]orporate [i]ncome [t]ax [r]eturn for the taxable year 1997 representing a net loss of ₱2,689,242.00. Consequently, it failed to utilize the creditable tax withheld in the amount of Five Hundred Twenty-Two Thousand Ninety-Two Pesos (₱522,092.00) representing [the] tax withheld by [p]etitioner's withholding agents, PFI and PBFI[,] on professional fees.

"The creditable tax withheld by PFI and PBFI in the amount of ₱522,092.00 is broken down as follows:

PFI	₱496,702.05
PBFI	25,389.66
Total	₱522,091.71

"On September 11, 1998, [p]etitioner filed an administrative claim for refund with the [Bureau of Internal Revenue (BIR)] — Appellate Division in the amount of ₱522,092.00 representing unutilized excess tax credits for calendar year 1997. Thereafter, on July 28, 1999, a written request was filed with the same division for the early resolution of [p]etitioner's claim for refund.

"Respondent did not act on [p]etitioner's claim for refund[;] hence, a Petition for Review was filed with this Court[6] on November 29, 1999 to toll the running of the two-year prescriptive period."[7]

On October 9, 2001, the CTA rendered a Decision denying petitioner's Petition for Review. Its Motion for Reconsideration was likewise denied in a Resolution dated January 29, 2002.

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[6] Referring to the Court of Tax Appeals (CTA).

[7] December 19, 2002 CA Decision, pp. 1-3 & 27-29 (citations omitted); *rollo*, pp. 28-29.

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In GR No. 162004, the antecedents are narrated by the CA in this wise:

"On April 13, 1999, [petitioner] filed its Annual Income Tax Return with the [BIR] for the taxable year 1998 declaring a net loss of ₱1,504,951.00. Thus, there was no tax due against [petitioner] for the taxable year 1998. Likewise, [petitioner] had an unapplied creditable withholding tax in the amount of ₱459,756.07, which amount had been previously withheld in that year by petitioner's withholding agents[,] namely x x x [PFI], x x x [PBFI], and Philam Strategic Growth Fund, Inc. (PSGFI).

"In the next succeeding year, [petitioner] had a tax due in the amount of ₱80,042.00, and a creditable withholding tax in the amount of ₱915,995.00. [Petitioner] likewise declared in its 1999 tax return the amount of ₱459,756.07, which represents its prior excess credit for taxable year 1998.

"Thereafter, on November 14, 2000, [petitioner] filed with the Revenue District Office No. 50, Revenue Region No. 8, a written administrative claim for refund with respect to the unapplied creditable withholding tax of ₱459,756.07. According to [petitioner,] the amount of ₱80,042.00, representing the tax due for the taxable year 1999 has been credited from its ₱915,995.00 creditable withholding tax for taxable year 1999, thus leaving its 1998 creditable withholding tax in the amount of ₱459,756.07 still unapplied.

"The claim for refund yielded no action on the part of the BIR. [Petitioner] then filed a Petition for Review before the CTA on December 26, 2000, asserting that it is entitled [to] the refund [of ₱459,756.07,] since said amount has not been applied against its tax liabilities in the taxable year 1998.

"On May 2, 2002, the CTA rendered [a] x x x decision denying [petitioner's] Petition for Review. x x x."[8]

Ruling of the Court of Appeals

The CA denied the claim of petitioner for a refund of the latter's excess creditable taxes withheld for the years 1997 and

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[8] January 30, 2004 CA Decision, pp. 1-2; GR No. 162004, *rollo*, pp. 30-31.

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1998, despite compliance with the basic requirements of Revenue Regulations (RR) No. 12-94. The appellate court pointed out that, in the respective Income Tax Returns (ITRs) for both years, petitioner did not indicate its option to have the amounts either refunded or carried over and applied to the succeeding year. It was held that to request for either a refund or a credit of income tax paid, a corporation must signify its intention by marking the corresponding option box on its annual corporate adjustment return.

The CA further held in GR No. 156637 that the failure to present the 1998 ITR was fatal to the claim for a refund, because there was no way to verify if the tax credit for 1997 could not have been applied against the 1998 tax liabilities of petitioner.

In GR No. 162004, however, the subsequent acts of petitioner demonstrated its option to carry over its tax credit for 1998, even if it again failed to tick the appropriate box for that option in its 1998 ITR. Under RR 12-94, its failure to indicate that option resulted in the automatic carry-over of any excess tax credit for the prior year. The appellate court said that the government would not be unjustly enriched by denying a refund, because there would be no forfeiture of the amount in its favor. The amount claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years.

Hence, these Petitions.[9]

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[9] These consolidated cases were deemed submitted for Decision on December 1, 2005, upon this Court's receipt of respondent's Memorandum in GR No. 162004, signed by Solicitor General Alfredo L. Benipayo, Asst. Sol. Gen. Raul J. Mandin, and Solicitor Raymund I. Rigodon. Petitioner's Memorandum, signed by Attys. Celestino R. Miranda and Joselito F. de Asas, was received on April 8, 2005. Respondent's Memorandum in GR No. 156637 — signed by Solicitor General Alfredo L. Benipayo, Solicitors Elma M. Rafallo Lingan and Romeo D. Galzote — was received by this Court on February 11, 2004. That of petitioner, signed by its counsels in GR No. 162004, was received on December 17, 2003. The cases were consolidated, per Resolution dated January 31, 2005.

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The Issues

Petitioner raises two issues in GR No. 156637 for the Court's consideration:

"A.

"Whether or not the failure of the [p]etitioner to indicate in its [a]nnual [i]ncome [t]ax [r]eturn the option to refund its creditable withholding tax is fatal to its claim for refund.

"B.

"Whether or not the presentation in evidence of the [p]etitioner's [a]nnual [i]ncome [t]ax [r]eturn for the succeeding calendar year is a legal requisite in a claim for refund of unapplied creditable withholding tax."[10]

In GR No. 162004, petitioner raises one question only:

"Whether or not the petitioner is entitled to the refund of its unutilized creditable withholding tax in the taxable year 1998 in the amount of ₱459,756.07."[11]

In both cases, a simple issue needs to be resolved: whether petitioner is entitled to a refund of its creditable taxes withheld for taxable years 1997 and 1998.

The Court's Ruling

The Petition in GR No. 156637 is meritorious, but that in GR No. 162004 is not.

Main Issue:
Entitlement to Refund

The provision on the final adjustment return (FAR) was originally found in Section 69 of Presidential Decree (PD) No. 1158, otherwise known as the "National Internal Revenue Code

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[10] Petitioner's Memorandum, p. 5; GR No. 156637, *rollo*, p. 91.

[11] Petitioner's Memorandum, p. 7, GR No. 162004, *rollo*, p. 98. Original in uppercase and boldface.

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of 1977."[12] On August 1, 1980, this provision was restated as Section 86[13] in PD 1705.[14]

On November 5, 1985, all prior amendments and those introduced by PD 1994[15] were codified[16] into the National Internal Revenue Code (NIRC) of 1985, as a result of which Section 86 was renumbered[17] as Section 79.[18]

On July 31, 1986, Section 24 of Executive Order (EO) No. 37 changed all "net income" phrases appearing in Title II of the NIRC of 1977 to "taxable income." Section 79 of the NIRC of 1985,[19] however, was not amended.

On July 25, 1987, EO 273[20] renumbered[21] Section 86 of the NIRC[22] as Section 76,[23] which was also rearranged[24] to fall

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[12] PD 1158 was issued by then President Ferdinand E. Marcos on June 3, 1977.

[13] §14 of PD 1705.

[14] PD 1705 was issued also by then President Marcos to amend PD 1158.

[15] PD 1994 took effect January 1, 1986.

[16] Pursuant to §42 of PD 1994.

[17] §45 of PD 1994.

[18] §69 of PD 1158 was also renumbered as §67 by PD 1994; and on July 31, 1986, the same §69 was repealed by §21 of Executive Order (EO) No. 37 issued by then President Corazon C. Aquino. Although repealed, §69 still reappeared as the same section in an undated NIRC of 1993.

[19] Moreover, EO 37 did not amend §67 of the NIRC of 1985.

[20] Also issued by then President Corazon C. Aquino, EO 273 took effect on January 1, 1988.

[21] §23 of EO 273.

[22] The references to the NIRC is not clear in EO 273. The latter law generally referred to the NIRCs of 1977 and 1985.

[23] Without specifically referring to 1977 or 1985, EO 273 also renumbered §67 of the NIRC as §66.

[24] §24 of EO 273.

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under Chapter 10 of Title II of the NIRC. Section 79, which had earlier been renumbered by PD 1994, remained unchanged.

Thus, Section 69 of the NIRC of 1977 was renumbered as Section 86 under PD 1705; later, as Section 79 under PD 1994;[25] then, as Section 76 under EO 273.[26] Finally, after being renumbered and reduced to the chaff of a grain, Section 69 was repealed by EO 37.

Subsequently, Section 69 reappeared in the NIRC (or Tax Code) of 1997 as Section 76, which 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[27] 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[28] 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."

GR No. 156637

This section applies to the first case before the Court. Differently numbered in 1977 but similarly worded 20 years

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[25] PD 1994 took effect January 1, 1986.

[26] Issued by then President Corazon C. Aquino, EO 273 took effect on January 1, 1988.

[27] Technically, "net income" refers to income *after* deducting income tax, while "taxable income" refers to income *before* deducting income tax. However, the phrase "net income" has been changed to "taxable income" by §24 of EO 37.

[28] "Taxable net income" seems to have been reworded from the old "taxable income," although the phrase "net income" has already been changed to "taxable income" by §24 of EO 37.

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later (1997), Section 76 offers two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are (1) filing for a *tax refund* or (2) availing of a *tax credit*.

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.

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.

These two options under Section 76 are alternative in nature.[29] The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*,[30] 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.[31] 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. Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.[32]

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[29] *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*, 228 SCRA 135, 142, November 23, 1993.

[30] 361 Phil. 916, January 28, 1999.

[31] *Id.*, p. 932.

[32] *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*, *supra*.

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The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration,[33] particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.

In the present case, respondent denied the claim of petitioner for a refund of excess taxes withheld in 1997, because the latter (1) had not indicated in its ITR for that year whether it was opting for a credit or a refund; and (2) had not submitted as evidence its 1998 ITR, which could have been the basis for determining whether its claimed 1997 tax credit had not been applied against its 1998 tax liabilities.

Requiring that the ITR or the FAR of the *succeeding* year be presented to the BIR in requesting a *tax refund* has no basis in law and jurisprudence.

First, Section 76 of the Tax Code does not mandate it. The law merely requires the filing of the FAR for the *preceding* — not the succeeding — taxable year. Indeed, any refundable amount indicated in the FAR of the preceding taxable year may be credited against the estimated income tax liabilities for the taxable quarters of the succeeding taxable year. However, nowhere is there even a tinge of a hint in any of the provisions of the Tax Code that the FAR of the taxable year following the period to which the *tax credits* are originally being applied should also be presented to the BIR.

Second, Section 5[34] of RR 12-94, amending Section 10(a) of RR 6-85, merely provides that claims for the refund of income

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[33] *Philippine Bank of Communications v. Commissioner of Internal Revenue; supra*, p. 932.

[34] "SECTION 5. Section 10 of the Revenue Regulations No. 6-85 is hereby amended to read as follows:

"Sec. 10. *Claim for Tax Credit or Refund.* –

(a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is

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taxes deducted and withheld from income payments shall be given due course only (1) when it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and (2) when the fact of withholding is established by a copy of the withholding tax statement, duly issued by the payor to the payee, showing the amount paid and the income tax withheld from that amount.[35]

Undisputedly, the records do not show that the income payments received by petitioner have not been declared as part of its gross income, or that the fact of withholding has not been established. According to the CTA, "[p]etitioner substantially complied with the x x x requirements" of RR 12-94 "[t]hat the fact of withholding is established by a copy of a

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shown on the return that the income payment received has been declared as part of the gross income and the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

(b) Excess Credits. – A taxpayer's excess expanded withholding tax credits for the taxable quarter/taxable year shall automatically be allowed as a credit for purposes of filing his income tax return for the taxable quarter/taxable year immediately succeeding the taxable quarter/taxable year in which the aforesaid excess credit arose, provided, however, he submits with his income tax return a copy of his income return for the aforesaid previous taxable period showing the amount of his aforementioned excess withholding tax credits.

"If the taxpayer, in lieu of the 'aforesaid automatic application of his excess credit, wants a cash refund' or a tax credit certificate for use in payment of his other national internal tax liabilities, he shall make a written request therefor. Upon filing of his request, the taxpayer's income tax return showing the excess of expanded withholding tax credits shall be examined. The excess expanded withholding tax, if any, shall be determined and refunded/credited to the taxpayer-applicant. The refund/credit shall be made within a period of sixty (60) days from date of the taxpayer's request provided, however, that the taxpayer-applicant submitted for audit all his pertinent accounting records and that the aforesaid records established the veracity of his claim for a refund/credit of his excess expanded withholding tax credits."

[35] *Calamba Steel Center, Inc. (formerly JS Steel Corp.) v. Commissioner of Internal Revenue*, GR No. 151857, April 28, 2005, p. 9.

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statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and x x x [t]hat the income upon which the taxes were withheld were included in the return of the recipient."[36]

The established procedure is that a taxpayer that wants a cash refund shall make a written request for it, and the ITR showing the excess expanded withholding tax credits shall then be examined by the BIR. For the grant of refund, RRs 12-94 and 6-85 state that all pertinent accounting records should be submitted by the taxpayer. These records, however, actually refer only to (1) the withholding tax statements; (2) the ITR of the present quarter to which the excess withholding tax credits are being applied; and (3) the ITR of the quarter for the previous taxable year in which the excess credits arose.[37] To stress, these regulations implementing the law do not require the proffer of the FAR for the taxable year following the period to which the *tax credits* are being applied.

Third, there is no automatic grant of a *tax refund*. As a matter of procedure, the BIR should be given the opportunity "to investigate and confirm the veracity"[38] of a taxpayer's claim, before it grants the refund. Exercising the option for a tax refund or a tax credit does not *ipso facto* confer upon a taxpayer the right to an immediate availment of the choice made. Neither does it impose a duty on the government to allow tax collection to be at the sole control of a taxpayer.[39]

Fourth, the BIR ought to have on file its own copies of petitioner's FAR for the succeeding year, on the basis of which it could rebut the assertion that there was a subsequent credit

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[36] October 9, 2001 CTA Decision, p. 4; GR No. 156637, *rollo*, unnumbered page following p. 38.

[37] §10(b) of Revenue Regulations (RR) No. 6-85, as amended by §5 of RR 12-94.

[38] *San Carlos Milling Co., Inc. v. Commissioner of Internal Revenue*, *supra*, p. 141, per Padilla, *J.*

[39] *Ibid.*

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of the excess income tax payments for the previous year. Its failure to present this vital document to support its contention against the grant of a *tax refund* to petitioner is certainly fatal.

Fifth, the CTA should have taken judicial notice[40] of the fact of filing and the pendency of petitioner's subsequent claim for a refund of excess creditable taxes withheld for 1998. The existence of the claim ought to be known by reason of its judicial functions. Furthermore, it is decisive to and will easily resolve the material issue in this case. If only judicial notice were taken earlier, the fact that there was no carry-over of the excess creditable taxes withheld for 1997 would have already been crystal clear.

Sixth, the Tax Code allows the refund of taxes to a taxpayer that claims it in writing within two years after payment of the taxes erroneously received by the BIR.[41] Despite the failure of petitioner to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a *tax refund*, instead of a *tax credit*. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.

In fact, in *BPI-Family Savings Bank v. CA*,[42] this Court even ordered the refund of a taxpayer's excess creditable taxes, despite the express declaration in the FAR to apply the excess to the succeeding year.[43] When circumstances show that a choice of tax credit has been made, it should be respected. But when indubitable circumstances clearly show that another choice — a tax refund — is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the

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[40] §2 of Rule 129 of the Rules of Court.

[41] §204 of PD 1158 as amended by §32 of PD 1773 on January 16, 1981.

[42] 386 Phil. 719, April 12, 2000.

[43] *Ibid.*

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government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."[44]

In the present case, although petitioner did not mark the refund box in its 1997 FAR, neither did it perform any act indicating that it chose a tax credit. On the contrary, it filed on September 11, 1998, an administrative claim for the refund of its excess taxes withheld in 1997. In none of its quarterly returns for 1998 did it apply the excess creditable taxes. Under these circumstances, petitioner is entitled to a *tax refund* of its 1997 excess tax credits in the amount of ₱522,092.

GR No. 162004

As to the second case, Section 76 also applies. Amended by Republic Act (RA) No. 8424, otherwise known as the "Tax Reform Act of 1997," it now states:

"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 therefor."

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[44] *Id.*, p. 729, per Panganiban, *J.*

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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[45] for that taxable period, and no application for a *tax refund* or issuance of a *tax credit certificate* shall then be allowed.

According to petitioner, it neither chose nor marked the carry-over option box in its 1998 FAR.[46] As this option was not chosen, it seems that there is nothing that can be considered irrevocable. In other words, petitioner argues that it is still entitled to a refund of its 1998 excess income tax payments.

This argument does not hold water. The subsequent acts of petitioner reveal that it has *effectively chosen* the carry-over option.

First, the fact that it filled out the portion "Prior Year's Excess Credits" in its 1999 FAR means that it categorically availed itself of the carry-over option. In fact, the line that precedes that phrase in the BIR form clearly states "Less: Tax Credits/Payments." The contention that it merely filled out that portion because it was a requirement — and that to have done otherwise would have been tantamount to falsifying the FAR — is a long shot.

The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process.

Failure to indicate the amount of "prior year's excess credits" does not mean falsification by a taxpayer of its current year's

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[45] *Paseo Realty & Development Corp. v. CA*, 440 SCRA 235, 250-251, October 13, 2004, per Quisumbing, *J.*

[46] Annex "F" of the Petition; GR No. 162004, *rollo*, p. 57.

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FAR. On the contrary, if an application for a *tax refund* has been — or will be — filed, then that portion of the BIR form should necessarily be blank, even if the FAR of the previous taxable year already shows an overpayment in taxes.

Second, the resulting redundancy in the claim of petitioner for a *refund* of its 1998 excess tax credits on November 14, 2000[47] cannot be countenanced. It cannot be allowed to avail itself of a *tax refund* and a *tax credit* at the same time for the *same* excess income taxes paid. Besides, disallowing it from getting a *tax refund* of those excess tax credits will not enervate the two-year prescriptive period under the Tax Code. That period will apply if the carry-over option has not been chosen.

Besides, "tax refunds x x x are construed strictly against the taxpayer."[48] Petitioner has failed to meet the burden of proof required in order to establish the factual basis of its claim for a *tax refund*.

Third, the "first-in first-out" (FIFO) principle enunciated by the CTA[49] does not apply.[50] Money is fungible property.[51] The amount to be applied against the ₱80,042 income tax due in the 1998 FAR[52] of petitioner may be taken from its excess credits in 1997 or from those withheld in 1998 or from both. Whichever of these the amount will be taken from will not make a difference.

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[47] Annex "C" of the Petition; GR No. 162004, *rollo*, p. 40.

[48] *Citibank, N.A. v. CA*, 345 Phil. 695, 709, October 10, 1997, per Panganiban, *J.*; *Atlas Consolidated Mining & Dev. Corp. v. Commissioner of Internal Revenue*, 356 Phil. 1026, September 22, 1998.

[49] May 2, 2002 CTA Decision, p. 6; GR No. 162004, *rollo*, p. 54.

[50] The "first-in first-out" or FIFO principle is usually applied in periodic inventory systems of merchandising and manufacturing concerns.

[51] Not having a distinct individuality, money has the quality of being substituted by others of the same kind. Tolentino, *Commentaries and Jurisprudence on the Civil Code of the Philippines*, Vol. II (1992), pp. 27-28.

[52] Annex "F" of the Petition; GR No. 162004, *rollo*, p. 57.

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Even if the FIFO principle were to be applied, the tax credits would have to be in consonance with the usual and normal course of events. In fact, the FAR is cumulative in nature.[53] Following a natural sequence, the prior year's excess tax credits will have to be reduced first to answer for any current tax liabilities before the current year's withheld amounts can be applied. Otherwise, there will be no sense in requiring a taxpayer to fill out the line items in the FAR to segregate its sources of tax credits.

Whether the FIFO principle is applied or not, Section 76 remains 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.

WHEREFORE, the Petition in GR No. 156637 is ***GRANTED*** and the assailed December 19, 2002 Decision ***REVERSED*** and ***SET ASIDE***. No pronouncement as to costs.

The Petition in GR No. 162004 is, however, ***DENIED*** and the assailed January 30, 2004 Decision ***AFFIRMED***. Costs against petitioner.

SO ORDERED.

Sandoval-Gutierrez, Corona, Carpio Morales, and *Garcia, JJ.,* concur.

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[53] See *Commissioner of Internal Revenue v. TMX Sales, Inc.*, 205 SCRA 184, 192, January 15, 1992.