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REPORT OF CASES

DECIDED BY THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 204687; April 24, 2023]

UNITED COCONUT PLANTERS BANK, substituted by LAND BANK OF THE PHILIPPINES, *Petitioner*, *v.* **COMMISSIONER OF INTERNAL REVENUE,** *Respondent*.

D E C I S I O N

SINGH, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court filed by the petitioner United Coconut Planters Bank **(UCPB)**, assailing the Decision,[2] dated August 23, 2012, and the Resolution,[3] dated November 21, 2012, of the Court of Tax Appeals **(CTA)** *En Banc* in CTA EB Case No. 725. The CTA denied UCPB's claim for a tax refund or the issuance of a tax credit certificate in its favor in the total amount of ₱43,484,162.00,

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1 *Rollo*, pp. 9-47.

2 Id. at 89-106. Penned by Associate Justice Caesar A. Casanova and concurred in by Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Olga Palanca-Enriquez, Cielito N. Mindaro-Grulla, and Amelia R. Cotangco-Manalastas. Associate Justice Esperanza R. Fabon-Victorino wrote a Dissenting Opinion.

3 Id. at 114-119.

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supposedly representing the unutilized creditable withholding taxes for the calendar year 2004.

The Facts

The petitioner UCPB, being in the banking business, allegedly had to continuously dispose of real properties acquired as payments for unpaid principal and interests by defaulting clients-borrowers during the taxable year 2004. In relation to this, Donabel R. Aala **(Aala)**, UCPB's Tax Management and Compliance Department Head, alleged in her Amended Judicial Affidavit[4] that:

> These sales of real properties that are considered ordinary assets are subject to 6% creditable withholding taxes. Also, some of the clients of the Petitioner are BIR-designated Top Ten Thousand Corporations which are required under existing BIR regulations to deduct 2% creditable withholding tax on their income payments, i.e., interests, service charges, etc. for services rendered by Petitioner. Rental income derived from leases of the Petitioner's properties is also subjected to 5% creditable withholding tax by its lessees. However, since the Petitioner did not have taxable income for taxable year 2004, these creditable taxes withheld by Petitioner's clients and lessees were not utilized.[5]

On April 15, 2005, UCPB, through the Bureau of Internal Revenue **(BIR)**'s Electronic Filing and Payment System **(EFPS)**, filed its original Annual Income Tax Return **(ITR)** for the year ended December 31, 2004. However, during the filing of such, UCPB allegedly had difficulty accomplishing the ITR through the EFPS thus resulting in errors. The ITR was not entirely filled up. On the same day, UCPB refiled its Annual ITR to complete the necessary details. This refiled ITR was allegedly captured by the BIR's system as an amended return.[6]

Subsequently, on May 19, 2005[7] and October 13, 2006,[8] UCPB filed its Amended Annual ITR, both reflecting losses and excess

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4 Id. at 145-159.

5 Id. at 149, Amended Judicial Affidavit.

6 Id. at 154, Amended Judicial Affidavit.

7 Id. at 184-185.

8 Id. at 190-191.

tax credits. Thus, UCPB claimed that since it has been posting net losses for the past several years including 2004, it was not liable for any income taxes for 2004. Consequently, the taxes withheld during the course of the taxable year took on the nature of erroneously collected/overpaid taxes at the end of the taxable year.[9]

On March 20, 2007, UCPB claimed for refund or for the issuance of a tax credit certificate of its unutilized creditable withholding tax for the taxable year 2004, pursuant to Section 58 (D)[10] of the National Internal Revenue Code (NIRC) of 1997 in the amount of ₱43,484,162.00 with the Large Taxpayers Audit & Investigation Division I of the BIR.[11]

Considering that the period to file a judicial claim for refund was expiring on April 15, 2007, a Sunday, and in view of respondent Commissioner of Internal Revenue **(CIR)**'s inaction on UCPB's claim, the latter filed a Petition for Review with the CTA Division on April 16, 2007.[12]

On May 23, 2007, an Answer was filed by the CIR, interposing the following arguments:

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau;

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[9] Id. at 120, UCPB's Letter to BIR, dated March 20, 2007.

[10] Section 58 (D) of the NIRC of 1997 provides:

SEC. 58. *Returns and Payment of Taxes Withheld at Source*. –

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(D) *Income of Recipient*. – Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.

All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent.

[11] *Rollo*, p. 120, UCPB's Letter to BIR, dated March 20, 2007.

[12] Id. at 64, CTA Division Decision.

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6. The amount of ₱43,484,162.00 being claimed by petitioner as alleged unutilized creditable withholding tax for taxable year 2004 was not properly documented;

7. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit;

8. The petition for review is premature. Since petitioner did not submit complete documents in support of its administrative claim for refund as indicated under Section 112 (D) of the NIRC of 1997, the 120-day period starts to run on 27 March 2007, the date when it filed its administrative claim for refund. The said period is yet to expire on 25 July 2007. Hence, the 30-day period within which to file the petition for review before this Honorable Court is yet to expire on 24 August 2007. This being so, this Honorable Court has no jurisdiction to act on the instant petition for review.

9. Petitioner must show that it has complied with the provisions of Sections 204 (C) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

10. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue v. Ledesma*, 31 SCRA 95) and such, they are looked upon with disfavor (*Western Minolco Corp. v. Commissioner of Internal Revenue*, 124 SCRA 1211).[13]

UCPB submits that it incurred/paid creditable withholding taxes in taxable year 2004 in the total amount of ₱43,484,162.00 while it was unable to apply or utilize the said creditable withholding taxes during the taxable year 2004. According to UCPB, it clearly indicated the option to apply for the refund/issuance of tax credit certificate in its amended 2004 Annual ITR, thereby making the said amount proper subject of the claim under Section 76 of the NIRC of 1997. Further, UCPB contends that the amount of ₱43,484,162.00 was not carried over and claimed as "prior year's excess tax credits" during the succeeding taxable years. Thus, it is entitled to the refund/issuance of tax credit certificate for its excess creditable withholding taxes for taxable year 2004.[14]

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[13] Id. at 64-65, CTA Division Decision.

[14] Id. at 66-67, CTA Division Decision.

On the other hand, the CIR contends that investigation disclosed that UCPB carried over its excess income tax for the year 2004 to the next quarter/s of the year 2005, as shown in all the originally filed Quarterly and Annual ITRs for the said year; that the amount of ₱67,660,606.00, per amended ITR for the year 2004, which was filed on May 19, 2005, including the amount of ₱43,484,162.00, the amount being claimed, were carried over to all the Quarterly and Annual ITRs originally filed by UCPB for the year 2005.[15]

The CIR emphasized that although UCPB ticked the box "to be issued a tax credit certificate" in the Amended ITR filed for the year 2004, the same was negated by the carrying-over of the excess credit to all the Quarterly and Annual ITRs originally filed for the year 2005.[16]

The Ruling of the CTA Division

In its Decision,[17] dated September 17, 2010, the CTA Division denied the Petition for Review. In so ruling, it held and disposed:

> To consider the remaining balance of ₱133,396.00 of the present claim as an amount available for refund or issuance of a tax credit certificate would be contrary to the provisions of Section 76 of the NIRC of 1997 and a departure from the ruling in the case of *Commissioner of Internal Revenue v. Bank of the Philippine Islands* that the "*two options under Section 76 are alternative in nature*" and that the "*choice of one precludes the other.*" Thus, once there is a finding that a portion of the excess amount, as shown on the final adjustment return, has been carried over, the remaining amount that had not been carried over, can no longer be the subject of a claim for refund.
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> In this connection, although it may be argued that petitioner's third Amended Annual Income Tax Return for taxable year 2004 had the effect of abandoning or superseding its second Amended Annual Income Tax Return for the same taxable year, petitioner cannot escape the legal consequences brought about by the carrying over of the excess amount of withholding tax reflected in its second Amended Annual Income Tax

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[15] Id. at 67, CTA Division Decision.

[16] Id.

[17] Id. at 62-74.

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Return for 2004, in its original Quarterly Income Tax Returns, and in its original and amended Annual Income Tax Return, for taxable year 2005.

Such being the case, the supposed remaining balance of ₱133,396.00 of the present claim should be treated as no longer available for refund or issuance of a tax credit certificate.

WHEREFORE, premises considered, the instant Petition for Review is hereby DENIED for lack of merit.

SO ORDERED.[18]

Aggrieved, UCPB filed a Motion for Reconsideration.

In a Resolution,[19] dated January 26, 2011, the CTA Division reversed its position on the irrevocability rule, and held that the option to seek either refund or carry-over is irrevocable, hence, UCPB's option to be issued a tax credit certificate must prevail.[20]

Notwithstanding such reversal, UCPB's Motion for Reconsideration was denied on the ground that UCPB failed to comply with the second requisite for a refund claim when it failed to prove that the income payment subjected to withholding tax was declared as part of the gross income in its 2004 annual ITR.[21]

Thereafter, UPCB filed a Petition for Review[22] with the CTA *En Banc*.

The Ruling of the CTA En Banc

The CTA *En Banc* affirmed the CTA Division. It held, in relevant part:

Clearly, a careful reading of the provision of Section 76 of the 1997 NIRC will reveal that indeed the irrevocability rule applies solely on the option to carry-over. Nowhere in Section 76 was it stated that the option to claim refund or issuance of tax credit certificate, once chosen,

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[18] Id. at 72-73.

[19] Id. at 76-87.

[20] Id. at 81, CTA Resolution.

[21] Id. at 84, CTA Resolution.

[22] CTA *rollo*, pp. 1-31.

is irrevocable. Likewise, the Supreme Court, in numerous cases, consistently interpreted the law as such. Thus, this Court is constrained to rule that the irrevocability rule is applicable only on the option to carry-over and not on the option to refund or issuance of tax credit certificate.

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It may have been petitioner's initial choice to claim a refund of the excess creditable income tax payments, as shown when it marked the option "To be issued a Tax Credit Certificate" in its first and second 2004 Amended Income Tax Returns. However, such choice was negated when it actually exercised its option to carry-over its excess credits and included the same to the prior year credits to the taxable year 2005 as shown on the original quarterly income tax returns for the first, second, third quarters of the taxable year 2005 and the original Annual Income Tax Return for the taxable year 2005. As the law and jurisprudence provide that the option to carry-over, once chosen, is irrevocable, petitioner cannot now renege on its choice to carry-over the excess credits.

The fact that petitioner later on amended its 2004 and 2005 Annual Income to reflect its choice of claim for refund is of no moment. Petitioner cannot hide behind its right to amend its income tax returns and attempt to revert to its initial choice of claim for refund after actually carrying-over its excess tax payments to the subsequent quarters. Authorizing such action to the present case will be tantamount to allowing petitioner to circumvent the rules and violate the irrevocability rule on the option to carry-over. Settled is the fact that petitioner, in actually carrying-over the excess credits to the subsequent quarters, clearly negated its earlier choice of claim for refund. Thus, We have no recourse but to deny the present claim.

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It is a well-settled rule that tax refunds are in the nature of tax exemptions, hence, are construed strictissimi juris against the taxpayer.

Lastly, this Court notes that "tax refunds are a derogation of the State's taxing power. Hence, like tax exemptions, they are construed strictly against the taxpayer and liberally in favor of the State. Consequently, he who claims a refund or exemption from taxes has the burden of justifying the exemption by words too plain to be mistaken and too categorical to

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be misinterpreted. In the case at bench, petitioner failed to sufficiently establish its claim for refund. Its act of actually carrying-over its excess credits to the subsequent taxable quarters negated its initial choice of claim for refund. Hence, the present petition must fail.

In view of the foregoing, this Court affirms the ruling of the CTA Former Second Division denying petitioner's claim for refund or issuance of tax credit certificate in relation to its unutilized excess creditable income taxes withheld for taxable year 2004 on the ground that the irrevocability rule under Section 76 of the 1997 NIRC applies only on the option to carry-over the excess credits. It is not applicable to the option for a refund or issuance of a tax credit certificate. Petitioner made its choice to claim for a refund or for the issuance of a tax credit certificate but later on negated its previous intention when its subsequent quarterly income tax returns showed that it carried over the amount subject of the claim and included the same in the prior year's excess credits. As the law and the rules are clear that the option to carry over is irrevocable, petitioner cannot now turn its back on its later choice and choose to revert to its first option when its present circumstances prove that the latter is more advantageous for its benefit. The irrevocability rule simply does not allow such action. Thus, this Court has no other recourse but to deny its claim for refund or issuance of tax credit certificate.

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In sum, the *CTA En Banc* finds no cogent justification to disturb the findings and conclusion spelled out in the Assailed Decision promulgated by the CTA Former Second Division. What the instant petition seeks is for the Court *En Banc* to view and appreciate the arguments/discussions raised by the petitioner in its own perspective of things, which unfortunately had already been considered and passed upon by the Court.

WHEREFORE, premises considered, the Assailed Decision dated September 17, 2010 promulgated by the CTA Former Second Division is hereby AFFIRMED *in toto* and the instant Petition for Review is hereby DISMISSED for lack of merit.

SO ORDERED.[23]

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[23] *Rollo*, pp. 101-105.

UCPB filed a Motion for Reconsideration,[24] but this was denied.[25]

Hence, this Petition.

The Issue

Did the CTA *En Banc* err in affirming the ruling of the CTA Division, which denied UCPB's claim for refund or issuance of tax credit certificate in relation to its unutilized creditable withholding taxes for the taxable year 2004?

The Ruling of the Court

The Court affirms the CTA *En Banc*.

Section 76 of the NIRC of 1997 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 income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid; as the case may be.
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> 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)

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[24] CTA *rollo*, pp. 148-180.

[25] *Rollo*, pp. 114-119.

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In *Asiaworld Properties Philippine Corporation v. CIR*,[26] the Court held:

> 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.[27]

This was emphasized in *Rhombus Energy, Inc. v. CIR* **(*Rhombus*)**,[28] where the Court, citing *Republic v. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation*, held:

> Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."
>
> The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option **shall be considered irrevocable for that taxable period** and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is

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[26] 640 Phil. 230 (2010).

[27] Id. at 237.

[28] 838 Phil. 69 (2018).

irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.[29] (Emphasis in the original)

Interestingly, despite this, the Court in *Rhombus* held that Rhombus had already exercised the option for its unutilized creditable withholding tax for year 2005 to be refunded and was therefore precluded from carrying-over the same. The Court held, in relevant part:

> In the case of Rhombus, therefore, its marking of the box "To be refunded" in its 2005 annual ITR constituted its exercise of the option, and from then onwards Rhombus became precluded from carrying-over the excess creditable withholding tax. The fact that the prior year's excess credits were reported in its 2006 quarterly ITRs did not reverse the option to be refunded exercised in its 2005 annual ITR. As such, the CTA *En Banc* erred in applying the irrevocability rule against Rhombus.[30]

Contrary to the pronouncement in *Rhombus*, a reading of the law unmistakably discloses that the irrevocability rule applies exclusively to the carry-over option. If the intention of the lawmakers was to make such option of cash refund or tax credit also irrevocable, then they would have clearly provided so. *Expressio unius est exclusion alterius*. As jurisprudence provides:

> In other words, the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting to the carry-over of the excess creditable taxes to the taxable quarters of the succeeding taxable years. However, in case the taxpayer decides to shift its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule. As Section 76 unequivocally provides, once the option to carry over has been made, it shall be irrevocable.[31]

To clarify, therefore, the taxpayer's options under Section 76 of the NIRC is qualified by the irrevocability rule only as to the option to carry-over, not the option to claim a refund, as is evident from the wording of the law.

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[29] Id. at 76-77.

[30] Id. at 79.

[31] *University Physicians Services, Inc.-Management, Inc. v. CIR*, 827 Phil. 376, 388-389 (2018).

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In the case of UCPB, it marked the option to "To be issued a Tax Credit Certificate" with respect to its income tax overpayment in its first, second, and third amended annual ITRs for the taxable year 2004. However, in its original Quarterly Income Tax Returns for taxable year 2005,[32] it carried over the same as "Prior Year's Excess Credits."

UCPB's option to be issued a tax credit certificate was negated by its very act of carrying over the excess amount as excess tax credits in its 2005 Quarterly ITRs. And since UCPB used its option to carry-over, it may no longer revert to its original choice due to the irrevocability rule.

Thus, the CTA *En Banc* did not err when it denied UCPB's claim for refund or issuance of tax credit certificate in relation to its unutilized creditable withholding taxes for the taxable year 2004.

WHEREFORE, the Petition for Review on *Certiorari* of United Coconut Planters Bank is **DENIED**. The Decision, dated August 23, 2012, and the Resolution, dated November 21, 2012, of the Court of Tax Appeals *En Banc* in CTA EB Case No. 725 are **AFFIRMED**.

SO ORDERED.

Caguioa (Chairperson), Inting, Gaerlan, and *Dimaampao, JJ.*, concur.

APPEARANCES OF COUNSEL

Du-Baladad & Associates for petitioner.
Office of the Solicitor General for respondent.

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[32] *Rollo*, pp. 393-394, 397-398 and 401-402.