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THIRD DIVISION

[G.R. No. 168331. October 11, 2012]

UNITED INTERNATIONAL PICTURES AB, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE OF 1997; CORPORATE INCOME TAX; OPTION TO CARRY-OVER EXCESS TAX; ONCE A CORPORATION EXERCISES THE OPTION TO CARRY-OVER, SUCH OPTION IS IRREVOCABLE FOR THAT TAXABLE PERIOD.— Section 76 of the NIRC of 1997 x x x is clear that once a corporation exercises the option to carry-over, such option is irrevocable "*for that taxable period*." Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment. To avoid confusion, this Court has properly explained the phrase "*for that taxable period*" in *Commissioner of Internal Revenue v. Bank of the Philippine Islands.* In said case, the Court held that the phrase merely identifies the excess income tax, subject of the option, by referring to the "***taxable period when it was acquired by the taxpayer***."

2. ID.; ID.; TAX REFUND; REQUIREMENTS.— In claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements: "(1) The claim for refund was filed within two years as prescribed under Section 229 of the NIRC of 1997; (2) The income upon which the taxes were withheld were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85); (3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85)."

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APPEARANCES OF COUNSEL

Lina Lavares Didulo & Leviste-Avellana Law Offices for petitioner.

The Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assails the Decision[1] dated August 31, 2004 and Resolution[2] dated May 17, 2005 of the Court of Appeals in CA-G.R. SP No. 76173.

The facts follow.

On April 15, 1999, petitioner filed with the Bureau of Internal Revenue (BIR) its Corporation Annual Income Tax Return for the calendar year ended December 31, 1998 reflecting, among others, a net taxable income from operations in the sum of ₱24,961,200.00, an income tax liability of ₱8,486,808.00, but with an excess income tax payment in the amount of ₱4,325,152.00 arising from quarterly income tax payments and creditable taxes withheld at source, computed as follows:

Gross Income	₱	42,905,466.00
Less: Deductions		17,944,266.00
Taxable Income	₱	24,961,200.00
Tax Due	₱	8,468,808.00
Less: Tax Credits/Payments		12,811,960.00
Tax Overpayment	**₱**	**4,325,152.00**

[1] Penned by Associate Justice Edgardo P. Cruz, with Associate Justices Godardo A. Jacinto and Jose C. Mendoza (now a member of this Court), concurring; *rollo*, pp. 97-105.

[2] *Id.* at 125.

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Petitioner opted to carry-over as tax credit to the succeeding taxable year the said overpayment by putting an "x" mark on the corresponding box.

On April 17, 2000, petitioner filed its Corporation Annual Income Tax Return for the calendar year ended December 31, 1999 wherein it reported, among others, a taxable income in the amount of ₱7,071,651.00, an income tax due of ₱2,333,645.00, but with an excess income tax payment in the amount of ₱9,309,292.00, detailed as follows:

Gross Income	₱ 25,240,148.00	
Less: Deductions	18,168,497.00	
Taxable Income	₱ 7,071,651.00	
Tax Due	₱ 2,333,645.00	
Less: Tax Credits/Payments		
a. Prior Years Excess Credits	₱ 4,325,152.00	
b. Creditable Tax Withheld	7,317,785.00	11,642,937.00
Tax Overpayment		**₱9,309,292.00**

On the face of the 1999 return, petitioner indicated its option by putting an "x" mark on the box "To be refunded."

On April 28, 2000, petitioner filed with the BIR an administrative claim for refund in the amount of ₱9,309,292.00.

As respondent did not act on petitioner's claim, the latter filed a petition for review before the Court of Tax Appeals (CTA) to toll the running of the two-year prescriptive period.

On September 12, 2001, the CTA rendered a Decision[3] denying petitioner's claim for refund for taxable year 1998. It reasoned that since petitioner opted to carry over the 1998 tax overpayment as tax credit to the succeeding taxable year, the same cannot be refunded pursuant to Section 76 of the National Internal Revenue Code (NIRC) of 1997. The decretal portion of the decision reads:

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[3] *Rollo*, pp. 11-20.

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WHEREFORE, in view of the foregoing, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED** to **REFUND,** or in the alternative, **ISSUE A TAX CREDIT CERTIFICATE** to petitioner in the amount of ₱7,269,078.40 representing unutilized creditable withholding tax for the year 1999.[4]

Dissatisfied, both parties filed their respective motions for reconsideration, but the same were denied by the CTA per Resolution dated March 11, 2003.

Consequently, respondent elevated the case to the Court of Appeals (CA).

In its petition, respondent argued that petitioner is not entitled to the refund awarded by the CTA, because it failed to present sufficient proof that the subject taxes were erroneously or illegally collected.

On August 31, 2004, the CA annulled and set aside the decision of the CTA. The CA ruled in this wise:

All told, the CTA erred in granting respondent's claim for tax refund, albeit in a reduced amount. As earlier discussed, the law specifically outlines the evidentiary requirements for the grant of tax credit or refund and failure on the part of the taxpayer to justify its claim in accordance with said standard is fatal to its cause. Considering the doubts cast on the documentary evidence presented by respondent in support of its claim, said evidence cannot be the basis for the grant of a refund. Indeed, it is the height of absurdity to allow a taxpayer to claim a refund when there is doubt as to whether it had, in fact, paid the correct amount of taxes due to the government.

WHEREFORE, the instant petition is **GRANTED**. The assailed decision of the Court of Tax Appeals is **ANNULLED** and **SET ASIDE** and another rendered **DISMISSING** the claim for tax refund of respondent.

SO ORDERED.[5]

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[4] *Id*. at 20. (Emphasis in the original.)

[5] *Id*. at 104-105. (Emphasis in the original.)

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Thereafter, petitioner filed a motion for reconsideration against the aforementioned decision, but the same was denied in a Resolution dated May 17, 2005.

Accordingly, petitioner filed a petition for review on *certiorari* before this Court praying that the decision of the CA be set aside and that an income tax refund or tax credit certificate in the full amount of ₱9,260,585.40 be issued in its favor.

In its petition, petitioner submitted the following issues for this Court's disposition:

A. THE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN ANNULLING THE DECISION OF THE COURT OF TAX APPEALS THEREBY DENYING THE CLAIM FOR REFUND OF [PETITIONER] UIP.

B. WHETHER UIP IS PERPETUALLY PRECLUDED FROM [SUBMITTING] AN APPLICATION FOR INCOME TAX REFUND ON ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAXES FOR THE YEAR 1998 AFTER IT HAS INDICATED ITS OPTION TO CARRY-OVER THIS EXCESS CREDITABLE INCOME TAX TO THE FOLLOWING TAXABLE YEAR 1999.[6]

The foregoing issues can be simplified as follows: *first*, whether petitioner is perpetually barred to refund its tax overpayment for taxable year 1998 since it opted to carry-over its excess tax; and *second*, whether petitioner has proven its entitlement to the refund.

Let us discuss the issues *in seriatim*.

Anent the first issue, petitioner asserts that there is nothing in the law which perpetually prohibits the refund of carried over excess tax. It maintains that the option to carry-over is irrevocable only for the next "taxable period" where the excess tax payment was carried over.

We are not convinced.

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[6] *Id.* at 137.

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Section 76 of the NIRC of 1997 states –

Section 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 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)

From the aforequoted provision, it is clear that once a corporation exercises the option to carry-over, such option is irrevocable *"for that taxable period."* Having chosen to carry-over the excess quarterly income tax, the corporation cannot thereafter choose to apply for a cash refund or for the issuance of a tax credit certificate for the amount representing such overpayment.[7]

To avoid confusion, this Court has properly explained the phrase "*for that taxable period*" in *Commissioner of*

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[7] *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*, G.R. Nos. 171742 and 176165, June 15, 2011, 652 SCRA 80, 89-90.

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Internal Revenue v. Bank of the Philippine Islands.[8] In said case, the Court held that the phrase merely identifies the excess income tax, subject of the option, by referring to the "***taxable period when it was acquired by the taxpayer***." Thus:

x x x **Section 76 remains clear and unequivocal. Once the carry-over option is taken, actually or constructively, it becomes irrevocable.** It mentioned no exception or qualification to the *irrevocability rule*.

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 therefore." **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 irrevocable; it cannot later on opt to apply for a refund of the very same 1998 excess income tax credit.

The Court of Appeals mistakenly understood the phrase "for that taxable period" as a prescriptive period for the *irrevocability rule* x x x. The evident intent of the legislature, in adding the last sentence to Section 76 of the NIRC of 1997, is to keep the taxpayer from flip-flopping on its options, and avoid confusion and complication as

[8] G.R. No. 178490, July 7, 2009, 592 SCRA 219.

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regards said taxpayer's excess tax credit. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.[9]

Plainly, petitioner's claim for refund for 1998 should be denied as its option to carry over has precluded it from claiming the refund of the excess 1998 income tax payment.

Apropos, we now resolve the issue of whether petitioner had sufficiently proven entitlement to refund its tax overpayments for taxable year 1999.

As to this issue, petitioner contends that the CA erred when it annulled the decision of the CTA and insists that it had substantially established its claim for refund through documentary and testimonial evidence.

For its part, respondent maintains that petitioner is not entitled to the refund awarded by the CTA, because it failed to present sufficient proof that the subject taxes were erroneously or illegally collected. It asserts that the 1999 certificate of withholding tax is defective, since petitioner failed to file the same together with the 1999 corporate return and include in its return income payments from which the taxes were withheld.

We find for respondent.

In claiming for the refund of excess creditable withholding tax, petitioner must show compliance with the following basic requirements:

(1) The claim for refund was filed within two years as prescribed under Section 229[10] of the NIRC of 1997;

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[9] *Commissioner of Internal Revenue v. Bank of the Philippine Islands, supra*, at 231-232. (Emphasis supplied.)

[10] Section 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 penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected without authority, until a claim for refund or credit has been duly filed with the Commissioner; but such suit

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(2) The income upon which the taxes were withheld were included in the return of the recipient (Section 10, Revenue Regulations No. 6-85);

(3) The fact of withholding is established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85).

Here, it is undisputed that the claim for refund was filed within the two-year prescriptive period prescribed under Section 229 of the NIRC of 1997 and that the taxpayer was able to present its certificate of creditable tax withheld from its payor. However, records show that petitioner failed to reconcile the discrepancy between income payments per its income tax return and the certificate of creditable tax withheld.

A perusal of the certificate of tax withheld would reveal that petitioner earned ₱146,355,699.80. On the contrary, its annual income tax return reflects a gross income from film rentals in the amount of ₱145,381,568.00. However, despite the ₱974,131.80 difference, both the certificate of taxes withheld and income tax return filed by petitioner for taxable year 1999 indicate the same amount of ₱7,317,785.00 as creditable tax withheld. What's more, petitioner failed to present sufficient proof to allow the Court to trace the discrepancy between the certificate of taxes withheld and the income tax return.

Parenthetically, the Office of the Solicitor General correctly pointed out that the amount of income payments in the income

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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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tax return must correspond and tally to the amount indicated in the certificate of withholding, since there is no possible and efficacious way by which the BIR can verify the precise identity of the income payments as reflected in the income tax return.

Therefore, petitioner's claim for tax refund for taxable year 1999 must be denied, since it failed to prove that the income payments subjected to withholding tax were declared as part of the gross income of the taxpayer.

WHEREFORE, in view of the foregoing, the instant petition is hereby **DENIED.** The Decision dated August 31, 2004 and Resolution dated May 17, 2005 of the Court of Appeals are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[*] *Abad,* and *Perez,*[**] *JJ.,* concur.

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[*] Designated as Acting Member in lieu of Associate Justice Jose Catral Mendoza, per Raffle dated October 1, 2012.

[**] Designated Acting Member, per Special Order No. 1299 dated August 28, 2012.