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Let a copy of this Decision be furnished to the Office of the Court Administrator for its information and appropriate action.

**SO ORDERED.**

*Carpio*[*] (*Chairperson*), *Peralta, Perlas-Bernabe*, and *Reyes, Jr., JJ.*, concur.

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**THIRD DIVISION**

[G.R. No. 205955. March 7, 2018]

**UNIVERSITY PHYSICIANS SERVICES INC.-MANAGEMENT, INC.,** *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

**SYLLABUS**

**1. TAXATION; NATIONAL INTERNAL REVENUE CODE; CORPORATE INCOME TAX; FINAL ADJUSTMENT RETURN; CARRY-OVER OPTION; THE IRREVOCABILITY RULE IS LIMITED ONLY TO THE OPTION TO CARRY OVER SUCH THAT THE TAXPAYER IS STILL FREE TO CHANGE ITS CHOICE AFTER ELECTING A REFUND OF ITS EXCESS TAX CREDIT.—** We cannot subscribe to the suggestion that the irrevocability rule enshrined in Section 76 of the National Internal Revenue Code (NIRC) applies to either of the options of refund or carry-over. Our reading of the law assumes the interpretation that the irrevocability is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. But once it opts to carry over such excess creditable tax, after electing refund or issuance of tax credit certificate, the carry-over option becomes

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[*] Acting Chief Justice per Special Order No. 2539 dated February 28, 2018.

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irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted. x x x The irrevocability rule is provided in the last sentence of Section 76. A perfunctory reading of the law unmistakably discloses that the irrevocable option referred to is the carry-over option only. There appears nothing therein from which to infer that the other choice, i.e., cash refund or tax credit certificate, is also irrevocable. If the intention of the lawmakers was to make such option of cash refund or tax credit certificate also irrevocable, then they would have clearly provided so. 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. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

2. **ID.; ID.; ID.; ID.; OVERPAYMENT OF INCOME TAX; OPTIONS.—** Under x x x [Section 76 of the NIRC], there are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to **carry over** and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a **cash refund** or issuance of a **tax credit certificate** within the prescribed period. Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

3. **ID.; ID.; PROTESTING AN ASSESSMENT; PRELIMINARY ASSESSMENT; MAY BE DISPENSED WITH WHEN THE DISCREPANCY OR DEFICIENCY IS SO GLARING OR REASONABLY WITHIN THE TAXPAYER'S KNOWLEDGE.—** The provision [of Section 228 of the NIRC] contemplates three scenarios: (1) Deficiency in the payment or remittance of tax to the government (paragraphs [a], [b] and [d]); (2) Overclaim of refund or tax credit (paragraph [c]); and (3) Unwarranted claim of tax exemption (paragraph [e]). In

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each case, the government is deprived of the rightful amount of tax due it. The law assures recovery of the amount through the issuance of an assessment against the erring taxpayer. However, the usual two-stage process in making an assessment is not strictly followed. Accordingly, the government may immediately proceed to the issuance of a final assessment notice (FAN), thus dispensing with the preliminary assessment (PAN), for the reason that the discrepancy or deficiency is so glaring or reasonably within the taxpayer's knowledge such that a preliminary notice to the taxpayer, through the issuance of a PAN, would be a superfluity.

**4. ID.; ID.; ID.; DOUBLE RECOVERY OF OVERPAID INCOME TAX UNDER SECTION 228 (C); MEANS THAT THE TAXPAYER HAD PREVIOUSLY ASKED FOR AND SUCCESSFULLY RECOVERED FROM THE BUREAU OF INTERNAL REVENUE ITS EXCESS CREDITABLE WITHHOLDING TAX THROUGH REFUND OR TAX CREDIT CERTIFICATE.—** [P]aragraph (c) [of Section 228 of the NIRC] contemplates a double recovery by the taxpayer of an overpaid income tax that arose from an over-withholding of creditable taxes. The refundable amount is the excess and unutilized creditable withholding tax. This paragraph envisages that the taxpayer had **previously asked for** and **successfully recovered** from the BIR its **excess creditable withholding tax through refund or tax credit certificate**; it could not be viewed any other way. If the government had already granted the refund, but the taxpayer is determined to have automatically applied the excess creditable withholding tax against its estimated quarterly tax liabilities in the succeeding taxable year(s), the taxpayer would undeservedly recover twice the same amount of excess creditable withholding tax. There appears, therefore, no other viable remedial recourse on the part of the government except to assess the taxpayer for the double recovery. In this instance, x x x the government can right away issue a FAN. If, on the other hand, an administrative claim for refund or issuance of TCC is still ***pending*** but the taxpayer had in the meantime automatically carried over the excess creditable tax, it would appear not only wholly unjustified but also tantamount to adopting an unsound policy if the government should resort to the remedy of assessment. x x x Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an

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application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.

**APPEARANCES OF COUNSEL**

*Office of the Solicitor General* for respondent.
*Kalaw Sy Selva & Campos* for petitioner.

**D E C I S I O N**

**MARTIRES, *J.*:**

When a corporation overpays its income tax liability as adjusted at the close of the taxable year, it has two options: (*1*) to be refunded or issued a tax credit certificate, or (*2*) to carry over such overpayment to the succeeding taxable quarters to be applied as tax credit against income tax due.[1] Once the carry-over option is taken, it becomes irrevocable such that the taxpayer cannot later on change its mind in order to claim a cash refund or the issuance of a tax credit certificate of the very same amount of overpayment or excess income tax credit.[2]

Does the irrevocability rule apply exclusively to the carry-over option? Such is the novel issue presented in this case.

**THE FACTS**

Before the Court is a petition for review under Rule 45 of the Rules of Court filed by petitioner University Physicians Services Inc.-Management, Inc. (UPSI-MI) which seeks the reversal and setting aside of the 8 February 2013 Decision[3] of

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[1] See Section 76, National Internal Revenue Code.

[2] *Id.*

[3] *Rollo*, pp. 9-24; penned by Associate Justice Erlinda P. Uy with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Caesar A. Casanova and Amelia R. Cotangco-Manalastas, concurring. Associate Justice Esperanza R. Fabon-Victorino, joined in by Associate Justice Cielito N. Mindaro-Grulla, wrote a dissenting opinion.

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the Court of Tax Appeals (CTA) En Banc in CTA-EB Case No. 828. Said decision of the CTA En Banc affirmed the 5 July 2011 Decision and 8 September 2011 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 7908. The CTA Division denied the application of UPSI-MI for tax refund or issuance of Tax Credit Certificate (TCC) of its excess unutilized creditable income tax for the taxable year 2006.

**The Antecedents**

As narrated by the CTA, the facts are uncomplicated, *viz*:

UPSI-MI is a corporation incorporated and existing under and by virtue of laws of the Republic of the Philippines, with business address at 1122 General Luna Street, Paco. Manila. Respondent on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act upon claims for refund or tax credit of overpaid internal revenue taxes, with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 16, 2007, petitioner filed its Annual Income Tax Return (ITR) for the year ended December 31, 2006 with the Revenue District No. 34 of the Revenue Region No. 6 of the Bureau of Internal Revenue (BIR), reflecting an income tax overpayment of ₱5,159,341.00, computed as follows:[4]

| | |
|---|---|
| Sales/Revenues/Receipts/Fees | ₱ 28,808,960.00 |
| Less: Cost of Sales/Services | 23,834,605.00 |
| Gross Income from Operation | ₱ 4,974,355.00 |
| Add: Non-Operating & Other Income | 5,375.00 |
| Total Gross Income | ₱ 4,979,730.00 |
| Less: Deductions | ₱ 4,979,730.00 |
| **Taxable Income** | - |
| | |
| Tax Rate (except MCIT Rate ) | 35% |

[4] *Id*. at 10-11.

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| | |
|---|---|
| Income Tax | - |
| Minimum Corporate Income Tax (MCIT) | ₱ 99,595.00 |
| | |
| **Aggregate Income Tax Due** | **₱ 99,595.00** |
| Less: Tax Credits/Payments | |
| Prior Year's Excess Credits | ₱ 2,331,102.00 |
| Creditable Tax Withheld for the First Three Quarters | - |
| Creditable Tax Withheld for the Fourth Quarter | 2,972,834.00 |
| **Total Tax Credits/Payments** | **₱ 5,258,936.00** |
| **Tax Payable/(Overpayment)** | **₱ (5,159,341.00)** |

Subsequently, on November 14, 2007, petitioner filed an Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the income tax overpayment of ₱5,159.341 from the previous period as "*Prior Year's Excess Credit*", as follows:[5]

| | |
|---|---|
| Sales/Revenues/Receipts/Fees | ₱ 7,489,259 |
| Less: Cost of Sales/Services | 6,461,650 |
| Gross Income from Operation | ₱ 1,027,609 |
| Add: Non-Operating & Other Income | 479 |
| Total Gross Income | ₱ 1,028,088 |
| Less: Deductions | 1,206,543 |
| **Taxable Income** | (178,455) |
| | |
| Tax Rate (except MCIT Rate )35% | |
| Income Tax | - |
| Minimum Corporate Income Tax ( MCIT) | ₱ 20,562 |

[5] *Id*. at 11.

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| | |
|---|---|
| Aggregate Income Tax Due | ₱ 20,562 |
| Less:Tax Credits/Payments | |
| **Prior Year's Excess Credits** | **₱ 5,159,341** |
| Creditable Tax Withheld for the First Three Quarters | 1,107,228 |
| Creditable Tax Withheld for the Fourth Quarter | 6,266,569 |
| **Total Tax Credits/Payments** | **₱ 6,266,569** |
| **Tax Payable/(Overpayment)** | **₱ (6,246,007)** |

On the same date, petitioner filed an amended Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the removal of the amount of the instant claim in the "*Prior Year's Excess Credit*". Thus, the amount thereof was changed from ₱ 5,159,341 to ₱ 2,231,507.

On October 10, 2008, petitioner filed with the respondent's office, a claim for refund and/or issuance of a Tax Credit Certificate (TCC) in the amount of ₱ 2,927,834.00, representing the alleged excess and unutilized creditable withholding taxes for 2006.

In view of the fact that respondent has not acted upon the foregoing claim for refund/tax credit, petitioner filed with a Petition for Review on April 14, 2009 before the Court in Division.

### *The Ruling of the CTA Division*

After trial, the CTA Division denied the petition for review for lack of merit. It reasoned that UPSI-MI effectively exercised the carry-over option under Section 76 of the National Internal Revenue Code (NIRC) of 1997. On motion for reconsideration, UPSI-MI argued that the irrevocability rule under Section 76 of the NIRC is not applicable for the reason that it did not carry over to the succeeding taxable period the 2006 excess income tax credit. UPSI-MI added that the subject excess tax credits were inadvertently included in its original 2007 ITR, and such mistake was rectified in the amended 2007 ITR. Thus,

UPSI-MI insisted that what should control is its election of the option "*To be issued a Tax Credit Certificate*" in its 2006 ITR.

The CTA Division ruled that UPSI-MI's alleged inadvertent inclusion of the 2006 excess tax credit in the 2007 original ITR belies its own allegation that it did not carry over the said amount to the succeeding taxable period. The amendment of the 2007 ITR cannot undo UPSI-MI's actual exercise of the carry-over option in the original 2007 ITR, for to do so would be against the irrevocability rule. The dispositive portion of the CTA Division's decision reads:

**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.[6]

Aggrieved, UPSI-MI appealed before the CTA En Banc.

***The Ruling of the CTA En Banc***

The CTA En Banc ruled that UPSI-MI is barred by Section 76 of the NIRC from claiming a refund of its excess tax credits for the taxable year 2006. The barring effect applies after UPSI-MI carried over its excess tax credits to the succeeding quarters of 2007, even if such carry-over was allegedly done inadvertently. The court emphasized that the prevailing law and jurisprudence admit of no exception or qualification to the irrevocability rule. Thus, the CTA En Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated July 5, 2011 and Resolution dated September 8, 2011 both rendered by the Court in Division in CTA Case No. 7908 are hereby **AFFIRMED**.

**SO ORDERED.**[7]

Notably, the said decision was met by a dissent from Justice Esperanza R. Fabon-Victorino. Invoking *Philam Asset Management,*

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[6] *Id*. at 9-10.

[7] *Id*. at 23-24.

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*Inc. v. Commissioner (Philam)*[8] Justice Fabon-Victorino took the view that the irrevocability rule applies as much to the option of refund or tax credit certificate. She wrote:

> A contextual appreciation of the ruling [*Philam*] would tell us that any of the two alternatives once chosen is irrevocable — be it for refund or carry over. **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**.

Unsatisfied with the decision of the CTA En Banc, UPSI-MI appealed before this Court.

**The Present Petition for Review**

UPSI-MI interposed the following reasons for its petition:

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED AND DECIDED IN A MANNER NOT IN ACCORDANCE WITH THE LAW, PREVAILING JURISPRUDENCE, AND FACTUAL MILIEU SURROUNDING THE CASE, WHEN IT ADOPTED THE DECISION OF THE COURT OF TAX APPEALS IN DIVISION AND RULED THAT:**

a. Petitioner is not entitled to the refund or issuance of a Tax Credit Certificate in the amount of ₱2,927,834.00 representing its 2006 excess tax credits because of the application of the "irrevocability rule" under Section 76 of the NIRC of 1997.

b. The amendment of the original ITR for fiscal year ended 31 March 2007 does not take back, cancel or rescind the original option to refund through tax credit certificate based on the argument that the Petitioner allegedly made an option to carry-over the excess credits.

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT IGNORED THAT ON JOINT STIPULATIONS, THE RESPONDENT ADMITTED THE FACT THAT PETITIONER INDICATED IN THE CORRESPONDING BOX ITS INTENTION TO BE ISSUED A TAX CREDIT CERTIFICATE REPRESENTING ITS UNUTILIZED CREDITABLE WITHHOLDING TAX WITHHELD FOR THE**

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[8] 514 Phil. 147 (2005).

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**TAXABLE YEAR 2006 BY MARKING THE APPROPRIATE BOX.**

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT DECIDED ON THE ISSUE OF WHETHER OR NOT PETITIONER CARRIED OVER ITS 2006 EXCESS TAX CREDITS TO THE SUCCEEDING SHORT TAXABLE PERIOD OF 2007 WHEN THE SAME WAS NEVER RAISED IN THE JOINT STIPULATION OF FACTS.**

UPSI-MI faults the CTA En Banc for banking too much on the irrevocability of the option to carry over. It contends that even the option to be refunded through the issuance of a TCC is likewise irrevocable. Taking cue from the dissent of Justice Pabon-Victorino, UPSI-MI cites *Philam* in restating this Court's pronouncement that "the options of a corporate taxpayer, whose total quarterly income tax payments exceed its tax liability, are alternative in nature and the choice of one precludes the other." It also cites C*ommissioner v. PL Management International Philippines, Inc. (PL Management)*[9] that reiterated the rule that the choice of one precludes the other. Thus, when it indicated in its 2006 Annual ITR the option "To be issued a Tax Credit Certificate," such choice precluded the other option to carry over.[10]

In other words, UPSI-MI proposes that the options of refund on one hand and carry-over on the other hand are both irrevocable by nature. Relying again on the dissent of Justice Fabon-Victorino, UPSI-MI also points to BIR Form 1702 (Annual Income Tax Return) itself which expressly states under line 31 thereof:

"If overpayment, mark one box only:
(once the choice is made, the same is irrevocable)"

***Resumé of relevant facts***

To recapitulate, UPSI-MI had, as of 31 December 2005, an outstanding amount of ₱2,331,102.00 in excess and unutilized creditable withholding taxes.

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[9] 662 Phil. 431 (2011), per *J.* Bersamin.

[10] *Id.* at 436.

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For the subsequent taxable year ending 31 December 2006, the total sum of creditable taxes withheld on the management fees of UPSI-MI was ₱2,927,834.00. Per its 2006 Annual Income Tax Return (ITR), UPSI-MI's income tax due amounted to ₱99,105.00. UPSI-MI applied its "Prior Year's Excess Credits" of ₱2,331,102.00 as tax credit against such 2006 Income Tax due, leaving a balance of ₱2,231,507.00 of still unutilized excess creditable tax. Meanwhile, the creditable taxes withheld for the year 2006 (₱2,927,834.00) remained intact and unutilized. In said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the amount ₱2,927,834.00, representing unutilized excess creditable taxes for the taxable year ending 31 December 2006. The figures are summarized in the table below:

| Taxable Year | Excess Creditable Withholding Tax (CWT) | Income Tax Due | Less Tax Credit | Tax Payable | Balance of Excess CWT |
|---|---|---|---|---|---|
| 2005 | ₱ 2,331,102.00 | - - - | - - - | - - - | ₱ 2,231,507.00 |
| 2006 | ₱ 2,927,834.00 | ₱ 99,105.00 (MCIT) | ₱ 99,105.00 (A portion of the excess credit of Php2,331,102.00 in 2015) | ₱ 0.00 | ₱ 2,927,834.00 |

In the following year, UPSI-MI changed its taxable period from calendar year to fiscal year ending on the last day of March. Thus, it filed on 14 November 2007 an Annual ITR covering the short period from January 1 to March 31 of 2007. In the original 2007 Annual ITR, UPSI-MI opted to carry over as "Prior Year's Excess Credits" the total amount of ₱5,159,341.00 which included the 2006 unutilized creditable withholding tax of ₱2,927,834.00. UPSI-MI amended the return by excluding the sum of ₱2,927,834.00 under the line "Prior Year's Excess Credits" which amount is the subject of the refund claim.

In sum, the question to be resolved is whether UPSI-MI may still be entitled to the refund of its 2006 excess tax credits in the amount of ₱2,927,834.00 when it thereafter filed its income

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tax return (for the short period ending 31 March 2007) indicating the option of carry-over.

**OUR RULING**

We affirm the CTA.

We cannot subscribe to the suggestion that the irrevocability rule enshrined in Section 76 of the National Internal Revenue Code (NIRC) applies to either of the options of refund or carry-over. Our reading of the law assumes the interpretation that the irrevocability is limited only to the option of carry-over such that a taxpayer is still free to change its choice after electing a refund of its excess tax credit. But once it opts to carry over such excess creditable tax, after electing refund or issuance of tax credit certificate, the carry-over option becomes irrevocable. Accordingly, the previous choice of a claim for refund, even if subsequently pursued, may no longer be granted.

The aforementioned Section 76 of the NIRC provides:

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 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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Under the cited law, there are two options available to the corporation whenever it overpays its income tax for the taxable year: (*1*) to **carry over** and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (*2*) to apply for a **cash refund** or issuance of a **tax credit certificate** within the prescribed period.[11] Such overpayment of income tax is usually occasioned by the over-withholding of taxes on the income payments to the corporate taxpayer.

The irrevocability rule is provided in the last sentence of Section 76. A perfunctory reading of the law unmistakably discloses that the irrevocable option referred to is the carry-over option only. There appears nothing therein from which to infer that the other choice, i.e., cash refund or tax credit certificate, is also irrevocable. If the intention of the lawmakers was to make such option of cash refund or tax credit certificate also irrevocable, then they would have clearly provided so.

In other words, the law does not prevent a taxpayer who originally opted for a refund or tax credit certificate from shifting

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[11] The prescriptive period for the application for refund or issuance of tax credit certificate is two (2) years from the date of payment. The rule is provided in Section 229 of the NIRC, to wit:

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, 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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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. Furthermore, the provision seems to suggest that there are no qualifications or conditions attached to the rule on irrevocability.

Law and jurisprudence unequivocally support the view that only the option of carry-over is irrevocable.

Aside from the uncompromising last sentence of Section 76, Section 228 of the NIRC recognizes such freedom of a taxpayer to change its option from refund to carry-over. This law affords the government a remedy in case a taxpayer, who had previously claimed a refund or tax credit certificate (TCC) of excess creditable withholding tax, subsequently applies such amount as automatic tax credit. The pertinent text of Section 228 reads:

SEC. 228. Protesting of Assessment. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: Provided, however, That a pre-assessment notice shall not be required in the following cases:

(a) When the finding for any deficiency tax is the result of mathematical error in the computation of the tax as appearing on the face of the return; or

(b) When a discrepancy has been determined between the tax withheld and the amount actually remitted by the withholding agent; or

(c) When a taxpayer who **opted to claim a refund or tax credit of excess creditable withholding tax** for a taxable period was determined to have **carried over and automatically applied** the same amount claimed **against the estimated tax liabilities** for the taxable quarter or quarters of the succeeding taxable year; or

(d) When the excise tax due on exciseable articles has not been paid; or

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(e) When the article locally purchased or imported by an exempt person, such as, but not limited to, vehicles, capital equipment, machineries and spare parts, has been sold, traded or transferred to non-exempt persons.

The taxpayers shall be informed in writing of the law and the facts on which the assessment is made; otherwise, the assessment shall be void. x x x (emphasis supplied)

The provision contemplates three scenarios:

(1) Deficiency in the payment or remittance of tax to the government (paragraphs [a], [b] and [d]);

(2) Overclaim of refund or tax credit (paragraph [c]); and

(3) Unwarranted claim of tax exemption (paragraph [e]).

In each case, the government is deprived of the rightful amount of tax due it. The law assures recovery of the amount through the issuance of an assessment against the erring taxpayer. However, the usual two-stage process in making an assessment is not strictly followed. Accordingly, the government may immediately proceed to the issuance of a final assessment notice (FAN), thus dispensing with the preliminary assessment (PAN), for the reason that the discrepancy or deficiency is so glaring or reasonably within the taxpayer's knowledge such that a preliminary notice to the taxpayer, through the issuance of a PAN, would be a superfluity.

Pertinently, paragraph (c) contemplates a double recovery by the taxpayer of an overpaid income tax that arose from an over-withholding of creditable taxes. The refundable amount is the excess and unutilized creditable withholding tax.

This paragraph envisages that the taxpayer had **previously asked for** and **successfully recovered** from the BIR its **excess creditable withholding tax through refund or tax credit certificate**; it could not be viewed any other way. If the government had already granted the refund, but the taxpayer is determined to have automatically applied the excess creditable withholding tax against its estimated quarterly tax liabilities in the succeeding taxable year(s), the taxpayer would undeservedly

recover twice the same amount of excess creditable withholding tax. There appears, therefore, no other viable remedial recourse on the part of the government except to assess the taxpayer for the double recovery. In this instance, and in accordance with the above rule, the government can right away issue a FAN.

If, on the other hand, an administrative claim for refund or issuance of TCC is still ***pending*** but the taxpayer had in the meantime automatically carried over the excess creditable tax, it would appear not only wholly unjustified but also tantamount to adopting an unsound policy if the government should resort to the remedy of assessment.

*First*, on the premise that the carry-over is to be sustained, there should be no more reason for the government to make an assessment for the sum (equivalent to the excess creditable withholding tax) that has been justifiably returned already to the taxpayer (through automatic tax credit) and for which the government has no right to retain in the first place. In this instance, all that the government needs to do is to deny the refund claim.

*Second*, on the premise that the carry-over is to be disallowed due to the pending application for refund, it would be more complicated and circuitous if the government were to grant first the refund claim and then later assess the taxpayer for the claim of automatic tax credit that was previously disallowed. Such procedure is highly inefficient and expensive on the part of the government due to the costs entailed by an assessment. It unduly hampers, instead of eases, tax administration and unnecessarily exhausts the government's time and resources. It defeats, rather than promotes, administrative feasibility.[12] Such could not have been intended by our lawmakers. Congress is deemed to have enacted a valid, sensible, and just law.[13]

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[12] Administrative feasibility is one of the canons of a sound tax system. It simply means that the tax system should be capable of being effectively administered and enforced with the least inconvenience to the taxpayer. (*Diaz v. Secretary of Finance*, 669 Phil. 371, 393 (2011)).

[13] *Lawyers Against Monopoly and Poverty (LAMP), et al. v. The Secretary of Budget and Management, et al.*, 686 Phil. 357, 372-373 (2012), citing *Fariñas v. The Executive Secretary*, 463 Phil. 179, 197 (2003).

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Thus, in order to place a sensible meaning to paragraph (c) of Section 228, it should be interpreted as contemplating only that situation when an application for refund or tax credit certificate had already been previously granted. Issuing an assessment against the taxpayer who benefited twice because of the application of automatic tax credit is a wholly acceptable remedy for the government.

Going back to the case wherein the application for refund or tax credit is still pending before the BIR, but the taxpayer had in the meantime automatically carried over its excess creditable tax in the taxable quarters of the succeeding taxable year(s), the only judicious course of action that the BIR may take is to deny the pending claim for refund. To insist on giving due course to the refund claim only because it was the first option taken, and consequently disallowing the automatic tax credit, is to encourage inefficiency or to suppress administrative feasibility, as previously explained. Otherwise put, imbuing upon the choice of refund or tax credit certificate the character of irrevocability would bring about an irrational situation that Congress did not intend to remedy by means of an assessment through the issuance of a FAN without a prior PAN, as provided in paragraph (c) of Section 228. It should be remembered that Congress' declared national policy in passing the NIRC of 1997 is to rationalize the internal revenue tax system of the Philippines, including tax administration.[14]

The foregoing simply shows that the lawmakers never intended to make the choice of refund or tax credit certificate irrevocable. Sections 76 and 228, paragraph (c), unmistakably evince such intention.

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[14] Section 2 of R.A. No. 8424 provides:

SECTION 2. *State Policy*. — It is hereby declared the policy of the State to promote sustainable economic growth through the rationalization of the Philippine internal revenue tax system, including tax administration; to provide, as much as possible, an equitable relief to a greater number of taxpayers in order to improve levels of disposable income and increase economic activity; and to create a robust environment for business to enable firms to compete better in the regional as well as the global market, at the same time that the State ensures that Government is able to provide for the needs of those under its jurisdiction and care.

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***Philam and PL Management cases did not categorically declare the option of refund or TCC irrevocable.***

The petitioner hinges its claim of irrevocability of the option of refund on the statement of this Court in *Philam* and *PL Management* that "the options *x x x* are alternative and the choice of one precludes the other." This also appears as the basis of Justice Fabon-Victorino's stance in her dissent to the majority opinion in the assailed decision.

We do not agree.

The cases cited in the petition did not make an express declaration that the option of cash refund or TCC, once made, is irrevocable. Neither should this be inferred from the statement of the Court that the options are alternative and that the choice of one precludes the other. Such statement must be understood in the light of the factual milieu obtaining in the cases.

*Philam* involved two cases wherein the taxpayer failed to signify its option in the Final Adjustment Return (FAR).

In the first case (*G.R. No. 156637*), the Court ruled that such failure did not mean the outright barring of the request for a refund should one still choose this option later on. The taxpayer did in fact file on 11 September 1998 an administrative claim for refund of its 1997 excess creditable taxes. We sustained the refund claim in this case.

It was different in the second case (*G.R. No. 162004*) because the taxpayer filled out the portion "Prior Year's Excess Credits" in its subsequent FAR. The court considered the taxpayer to have constructively chosen the carry-over option. It was in this context that the court determined the taxpayer to be bound by its initial choice (of automatic tax credit), so that it is precluded from asking for a refund of the excess CWT. It must be so because the carry-over option is irrevocable, and it cannot be allowed to recover twice for its overpayment of tax.

Unlike the second case, there was no flip-flopping of choices in the first one. The taxpayer did not indicate in its 1997 FAR

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the choice of carry-over. Neither did it apply automatic tax credit in subsequent income tax returns so as to be considered as having constructively chosen the carry-over option. When it later on asked for a refund of its 1997 excess CWT, the taxpayer was expressing its option for the first time. It must be emphasized that the Court sustained the application for refund but without expressly declaring that such choice was irrevocable.

In either case, it is clear that the taxpayer cannot avail of both refund and automatic tax credit at the same time. Thus, as *Philam* declared: "One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid." This is the import of the Court's pronouncement that the options under Section 76 are alternative in nature.

In declaring that "the choice of one (option) precludes the other," the Court in *Philam* cited *Philippine Bank of Communications v. Commissioner of Internal Revenue (PBCom)*,[15] a case decided under the aegis of the old NIRC of 1977 under which the irrevocability rule had not yet been established. It was in *PBCom* that the Court stated for the first time that "the choice of one precludes the other."[16] However, a closer perusal of *PBCom* reveals that the taxpayer had opted for an automatic tax credit. Thus, it was precluded from availing of the other remedy of refund; otherwise, it would recover twice the same excess creditable tax. Again, nowhere is it even suggested that the choice of refund is irrevocable. For one thing, it was not the choice taken by the taxpayer. For another, the irrevocability rule had not yet been provided.

As in *PBCom*, the Court also said in *PL Management* that the choice of one (option) precludes the other. Similarly, the taxpayer in *PL Management* initially signified in the FAR its choice of automatic tax credit. But unlike in *PBCom, PL Management* was decided under the NIRC of 1997 when the irrevocability rule was already applicable. Thus, although *PL Management* was unable to actually apply its excess creditable

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[15] 361 Phil. 916 (1999).

[16] *Id*. at 932.

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tax in the next succeeding taxable quarters due to lack of income tax liability, its subsequent application for TCC was rightfully denied by the Court. The reason is the irrevocability of its choice of carry-over.

In other words, previous incarnations of the words "the options are alternative... the choice of one precludes the other" did not lay down a doctrinal rule that the option of refund or tax credit certificate is irrevocable.

Again, we need not belabor the point that insisting upon the irrevocability of the option for refund, even though the taxpayer subsequently changed its mind by resorting to automatic tax credit, is not only contrary to the apparent intention of the lawmakers but is also clearly violative of the principle of administrative feasibility.

Prior to the NIRC of 1997, the alternative options of refund and carry-over of excess creditable tax had already been firmly established. However, the irrevocability rule was not yet in place.[17] As we explained in *PL Management*, Congress added the last sentence of Section 76 in order to lay down the irrevocability rule. More recently, in *Republic v. Team (Phils.) Energy Corp.*,[18] we said that the rationale of the rule is to avoid confusion and complication that could be brought about by the flip-flopping on the options, viz:

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[17] The predecessor provision of Section 76 of the 1997 NIRC was Section 79 of the 1985 NIRC which then provided:

Section 76. 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 quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

[18] 750 Phil. 700 (2015).

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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 regards said taxpayer's excess tax credit.[19]

The current rule specifically addresses the problematic situation when a taxpayer, after claiming cash refund or applying for the issuance of tax credit, and during the pendency of such claim or application, automatically carries over the same excess creditable tax and applies it against the estimated quarterly income tax liabilities of the succeeding year. Thus, the rule not only eases tax administration but also obviates double recovery of the excess creditable tax.

Further, nothing in the contents of BIR 1702 expressly declares that the option of refund or TCC is irrevocable. Even on the assumption that the irrevocability also applies to the option of refund, such would be an interpretation of the BIR that, as already demonstrated in the foregoing discussion, is contrary to the intent of the law. It must be stressed that such erroneous interpretation is not binding on the court. *Philippine Bank of Communications v. CIR*[20] is apropos:

> It is widely accepted that the interpretation placed upon a statute by the executive officers, whose duty is to enforce it, is entitled to great respect by the courts. Nevertheless, such interpretation is not conclusive and will be ignored if judicially found to be erroneous. Thus, courts will not countenance administrative issuances that override, instead of remaining consistent and in harmony with, the law they seek to apply and implement.[21]

Applying the foregoing precepts to the given case, UPSI-MI is barred from recovering its excess creditable tax through refund or TCC. It is undisputed that despite its initial option to refund its 2006 excess creditable tax, UPSI-MI subsequently

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[19] *Id*. at 715, citing *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 609 Phil. 678, 690.

[20] *Supra* note 15.

[21] *Id*. at 929.

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indicated in its 2007 short-period FAR that it carried over the 2006 excess creditable tax and applied the same against its 2007 income tax due. The CTA was correct in considering UPSI-MI to have constructively chosen the option of carry-over, for which reason, the irrevocability rule forbade it to revert to its initial choice. It does not matter that UPSI-MI had not actually benefited from the carry-over on the ground that it did not have a tax due in its 2007 short period. Neither may it insist that the insertion of the carry-over in the 2007 FAR was by mere mistake or inadvertence. As we previously laid down, the irrevocability rule admits of no qualifications or conditions.

In sum, the petitioner is clearly mistaken in its view that the irrevocability rule also applies to the option of refund or tax credit certificate. In view of the court's finding that it constructively chose the option of carry-over, it is already barred from recovering its 2006 excess creditable tax through refund or TCC even if it was its initial choice.

However, the petitioner remains entitled to the benefit of carry-over and thus may apply the 2006 overpaid income tax as tax credit in succeeding taxable years until fully exhausted. This is because, unlike the remedy of refund or tax credit certificate, the option of carry-over under Section 76 is not subject to any prescriptive period.

**WHEREFORE**, the petition is **DENIED** for lack of merit. The 8 February 2013 Decision of the Court of Tax Appeals in CTA-EB Case No. 828 is hereby **AFFIRMED**.

**SO ORDERED.**

*Velasco, Jr.* (*Chairperson*), *Bersamin, Leonen*, and *Gesmundo, JJ.*, concur.