COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. MCGEORGE FOOD INDUSTRIES, INC., RESPONDENT.

G.R. No. 174157. October 20, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

For review[1] are the rulings[2] of the Court of Appeals affirming a tax refund despite an earlier decision of the corporate taxpayer to apply its overpayment to future tax liability.

The Facts

On 15 April 1998, more than three months after Republic Act No. 8424 or the Tax Reform Act of 1997 (1997 NIRC) took effect on 1 January 1998, respondent McGeorge Food Industries, Inc. (respondent) filed with the Bureau of Internal Revenue (BIR) its final adjustment income tax return for the calendar year ending 31 December 1997. The return indicated a tax liability of P5,393,988 against a total payment of P10,130,176 for the first three quarters,[3] resulting in a net overpayment of P4,736,188. Exercising its option to either seek a refund of this amount or carry it over to the succeeding year as tax credit, respondent chose the latter, indicating in its 1997 final return that it wished the amount "to be applied as credit to next year."[4]

On 15 April 1999, respondent filed its final adjustment return for the calendar year ending 31 December 1998, indicating a tax liability of P5,799,056. Instead of applying to this amount its unused tax credit carried over from 1997 (P4,736,188), as it was supposed to do, respondent merely deducted from its tax liability the taxes withheld at source for 1998 (P217,179) and paid the balance of P5,581,877.

On 14 April 2000, respondent simultaneously filed with the BIR and the Court of Tax Appeals (CTA) a claim for refund of its overpayment in 1997 of P4,736,188. Petitioner Commissioner of Internal Revenue (petitioner) opposed the suit at the CTA, alleging that the action preempted his own resolution of respondent's parallel claim for refund, and, at any rate, respondent has to prove its entitlement to refund.

The Ruling of the Court of Tax Appeals

The CTA[5] ruled for respondent and ordered petitioner to refund the reduced amount of P4,598,716.98 to account for two tax payments allegedly withheld at source which respondent failed to substantiate. The CTA held that refund was proper because respondent complied with the requirements of timely filing of the claim and its substantiation.

Petitioner sought reconsideration, contending that respondent is precluded from seeking a refund for its overpayment in 1997 after respondent opted to carry-over and apply it to its future tax liability, following Section 76 of the 1997 NIRC which provides that "[o]nce 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." Petitioner claimed that Section 76 applies to respondent because by the time respondent filed its final adjustment return for 1997 on 15 April 1998, the 1997 NIRC was already in force, having taken effect on 1 January 1998.

The CTA denied reconsideration,[6] holding that the 1997 NIRC only covers transactions done after 1 January 1998. As the transactions subject of respondent's claim for refund took place before this cut-off date, respondent is covered by Section 69[7] of the former tax code, Presidential Decree No. 1158 (National Internal Revenue Code of 1977 [1977 NIRC]) which, unlike Section 76 of the 1997 NIRC, does not carry an "irrevocability of option" clause. Instead, Section 69 of the 1977 NIRC merely provides that "[i]n 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."

Petitioner appealed to the Court of Appeals.

The Ruling of the Court of Appeals

The Court of Appeals affirmed the CTA. Upholding the applicability of Section 69 of the 1977 NIRC, the appellate court reasoned:

> [T]he subject claim for refund pertains to the unutilized creditable withheld taxes for the year 1997 and the transactions which gave rise to the claim for refund occurred in taxable year 1997. Such being the case, the right to claim for refund or tax credit of these taxes must be governed by the law in effect at the time the excess credits were earned. Thus, the pertinent law applicable to the case at bar is Section 69 of the old Tax Code x x x. Hence, respondent corporation aside from opting to carry-over the excess tax to the next succeeding quarter, may likewise avail of the remedy of refund, because the old Tax Code does not preclude the exercise of one to the exclusion of the other.[8]

The Court of Appeals likewise sustained the CTA's finding on the timeliness and substantiation of respondent's refund claim.

Petitioner sought but was denied reconsideration.[9]

Hence, this petition. Petitioner reiterates his submission that the 1997 NIRC controls this case, precluding respondent from seeking a refund after it had opted to carry-over and apply its creditable overpayment in 1997 to its 1998 tax liability. On the other hand, respondent invokes the rulings of the CTA and Court of Appeals applying in its favor Section 69 of the 1977 NIRC which does not provide for the irrevocability of a taxpayer's preference to seek refund or off-set its credit to future liability.

The Issue

The question is whether respondent is entitled to a tax refund for overpayment in 1997 after it opted, but failed, to credit such to its tax liability in 1998.

The Ruling of the Court

We hold that respondent is not entitled to a refund under Section 76 of the 1997 NIRC, the law in effect at the time respondent made known to the BIR its preference to carry over and apply its overpayment in 1997 to its tax liability in 1998. In lieu of refund, respondent's overpayment should be applied to its tax liability for the taxable

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years following 1998 until it is fully credited.

Section 76 of the 1997 NIRC Controls

Section 76 of the 1997 NIRC which provides:

> 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)

is, like its predecessor Section 69 of the 1977 NIRC, a tax administration measure crafted to ease tax collection.[10] By requiring corporate taxpayers to indicate in their final adjustment return whether, in case of overpayment, they wish to have the excess amount refunded or carried-over and applied to their future tax liability, the provision aims to properly manage claims for refund or tax credit.[11] Administratively speaking, Section 76 serves the same purpose as its companion provisions in Title II, Chapter XII of the 1997 NIRC, namely, Section 74 on the declaration of income tax by individuals, Section 75 on the declaration of quarterly corporate income tax, and Section 77 on the place and time of filing and payment of quarterly corporate income tax - they are all tools designed to promote rational and efficient functioning of the tax system. These provisions should be distinguished from the provisions in Title II, Chapter IV (Tax on Corporations) and Chapter VII (Allowable Deductions), among others, relating to the question on the intrinsic taxability of corporate transactions.

Thus treated, Section 76 and its companion provisions in Title II, Chapter XII should be applied following the general rule on the prospective application of laws[12] such that they operate to govern the conduct of corporate taxpayers the moment the 1997 NIRC took effect on 1 January 1998. There is no quarrel that at the time respondent filed its final adjustment return for 1997 on 15 April 1998, the deadline under Section 77 (B) of the 1997 NIRC (formerly Section 70(b) of the 1977 NIRC), the 1997 NIRC was already in force, having gone into effect a few months earlier on 1 January 1998. Accordingly, Section 76 is controlling.

The lower courts grounded their contrary conclusion on the fact that respondent's overpayment in 1997 was based on transactions occurring before 1 January 1998. This analysis suffers from the twin defects of missing the gist of the present controversy and misconceiving the nature and purpose of Section 76. None of respondent's corporate transactions in 1997 is disputed here. Nor can it be argued that Section 76 determines the taxability of corporate transactions. To sustain the rulings below is to subscribe to the untenable proposition that, had Congress in the 1997 NIRC moved the deadline for the filing of final adjustment returns from 15 April to 15 March of each year, taxpayers filing returns after 15 March 1998 can excuse their tardiness by invoking the 1977 NIRC because the transactions subject of the returns took place before 1 January 1998. A keener appreciation of the nature and purpose of the varied provisions of the 1997 NIRC cautions against sanctioning this reasoning.

Under Section 76, the Exercise of an Option
is Irrevocable and a Decision to Carry-over and Apply Tax
Overpayment Continues Until the Overpayment
has been Fully Applied to Tax Liabilities

Section 76 of the 1997 NIRC wrought two changes to its predecessor, Section 69 of the 1977 NIRC: first, it mandates that the taxpayer's exercise of its option to either seek refund or crediting is irrevocable; and second, the taxpayer's decision to carry-over and apply its current overpayment to future tax liability continues until the overpayment has been fully applied, no matter how many tax cycles it takes. We explained in Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue:[13]

> [S]ection 76 of the NIRC of 1997 clearly states: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore." Section 76 expressly states that "the option shall be considered irrevocable for that taxable period" - referring to the period comprising the "succeeding taxable years." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed therefore" - referring to "that taxable period" comprising the "succeeding taxable years."
>
> Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:
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> SEC. 69. Final Adjustment Return. - Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable net income of that year the corporation shall either:
>
> (a) Pay the excess tax still due; or
> (b) Be refunded the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

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

Thus, once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.[14] (Boldfacing in the original; italicization supplied)

As respondent opted to carry-over and credit its overpayment in 1997 to its tax liability in 1998, Section 76 makes respondent's exercise of such option irrevocable, barring it from later switching options to "[apply] for cash refund." Instead, respondent's overpayment in 1997 will be carried over to the succeeding taxable years until it has been fully applied to respondent's tax liabilities.

We are not unaware of our ruling in another case allowing refund for excess tax payment in 1997 despite the

taxpayer's selection of the carry-over and credit option, following Section 69 of the 1977 NIRC.[15] However, the issue of the applicability of the 1997 NIRC was never raised in that case. In the present case, the applicability of Section 76 of the 1997 NIRC over Section 69 of the 1977 NIRC was squarely raised as the core issue. In two other cases where the applicability of Section 76 of the 1997 NIRC was also squarely raised, the Court applied the irrevocability of the option clause under Section 76 to deny, as here, claims for refund without prejudice to the application of the overpayments to the taxpayers' liability in the succeeding tax cycles.[16] We held in the leading case of Philam Asset Management, Inc. v. Commissioner of Internal Revenue:[17]

> [S]ection 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 P459,756.07, 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. (Emphasis supplied)

Accordingly, we hold that under Section 76 of the 1997 NIRC, respondent's claim for refund is unavailing. However, respondent is entitled to apply its unused creditable overpayment in 1997 to its tax liability arising after 1998 until such has been fully applied.

WHEREFORE, we GRANT the petition. We REVERSE the Decision dated 31 January 2006 and the Resolution dated 21 July 2006 of the Court of Appeals.

SO ORDERED.

Leonardo-De Castro,[*] Brion,[**] Peralta, and Mendoza, JJ., concur.

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[*] Designated additional member per Special Order No. 905 dated 5 October 2010.

[**] Designated additional member per Raffle dated 20 October 2010.

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

[2] In the Decision dated 31 January 2006 and Resolution dated 21 July 2006, penned by Associate Justice Monina Arevalo-Zenarosa with Associate Justices Andres B. Reyes, Jr. and Rosmari D. Carandang, concurring.

[3] Consisting of P9,898,413 overpayment and P231,763 creditable tax withheld at source.

[4] Rollo, p. 62.

[5] In a Decision dated 3 September 2001, per Associate Judge Amancio Q. Saga, with Presiding Judge Ernesto D. Acosta, concurring.

[6] Under its Resolution dated 30 October 2001 (Rollo, pp. 77-80).

[7] Successively renumbered as Section 86 under Presidential Decree No. 1705, Section 79 under Presidential Decree No. 1994 and Section 76 under Executive Order No. 273.

[8] Rollo, p. 17.

[9] Under the Resolution dated 21 July 2006.

[10] Philippine Bank of Communications v. Commissioner of Internal Revenue, 361 Phi. 916, 932 (1999).

[11] Paseo Realty and Dev't. Corp. v. Court of Appeals, 483 Phil. 254, 271 (2004).

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[12] Article 4 of the Civil Code provides: "Laws shall have no retroactive effect, unless the contrary is provided."

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

[14] Id. at pp. 6-7 (internal citations omitted). See also Commissioner of Internal Revenue v. Bank of the Philippine Islands, G.R. No. 178490, 9 July 2009, 592 SCRA 219.

[15] State Land Investment Corporation v. Commissioner of Internal Revenue, G.R. No. 171956, 542 SCRA 114 (2008) (allowing refund of overpayment in 1997 after the taxpayer was unable to comply with its option to carry-over and apply the overpayment to its tax liability in 1998 and 1999 due to a net loss in the latter year).

[16] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, G.R. Nos. 156637 and 162004, 14 December 2005, 477 SCRA 761; Systra Philippines, Inc. v. Commissioner of Internal Revenue, G.R. No. 176290, 21 September 2007, 533 SCRA 776.

[17] G.R. Nos. 156637 and 162004, 14 December 2005, 477 SCRA 761, 780.

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