COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. THE PHILIPPINE AMERICAN LIFE AND GENERAL INSURANCE COMPANY, RESPONDENT.

G.R. No. 175124. September 29, 2010

Ponente: CARPIO, J.

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CARPIO, J.:

The Case

This petition for review[1] assails the 26 June 2006 Decision[2] and the 12 October 2006 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 73427. The Court of Appeals reversed the 4 June 2002 Decision[4] and 2 October 2002 Resolution[5] of the Court of Tax Appeals (CTA) in CTA Case No. 5978.

The Facts

On 15 April 1998, The Philippine American Life and General Insurance Company (respondent) filed with the Bureau of Internal Revenue (BIR) its Annual Income Tax Return (ITR) for the taxable year 1997,[6] declaring a net loss of P165,701,508.

On 16 December 1999, respondent filed with the BIR-Appellate Division a claim for refund in the amount of P9,326,979.35, representing a portion of its accumulated creditable withholding tax. The amount of P9,326,979.35 allegedly represents the creditable taxes withheld and remitted to the BIR by respondent's withholding agents from rentals and real property and dividend income during the calendar year 1997.

When the BIR-Appellate Division failed to act on respondent's claim, respondent filed with the CTA a petition for review on 23 December 1999. Respondent sought a refund in the amount of P9,326,979.35, which allegedly represented a portion of its overpaid and unapplied creditable taxes for the calendar year 1997. Respondent attached its 1998 ITR[7] to its Memorandum dated 7 January 2002.

In its Decision dated 4 June 2002, the CTA denied respondent's claim for refund for lack of merit due to respondent's failure to present its 1998 ITR.

Respondent filed a motion for reconsideration, which the CTA denied in its Resolution dated 2 October 2002. In denying the motion, the CTA stated:

> But even assuming for the sake of argument that we consider the 1998 Annual ITR which petitioner [The Philippine American Life and General Insurance Company] attached to its memorandum, the same would likewise not render support to petitioner's claim. Petitioner could not deny the fact that the alleged 1997 overpaid tax was indeed carried forward to the succeeding taxable year. From the face of the 1998 ITR, the amount P19,522,305 to which the 1997 tax refund claim of P9,326,979.35 formed part is indicated as "Prior year's excess credit." Considering that petitioner had a tax due of P8,025,705 for the year 1998, petitioner's allegation of non-use deserves scant consideration. Equally noteworthy is the fact that the excess portion of the

> 1997 tax credit after charging the 1998 tax due now forms part of the 1998 total overpaid tax which petitioner opted again to carry over to the next taxable year 1999. This further refutes its claim that the 1997 claimed amount was unutilized.
>
> As a recapitulation, the 1998 Income Tax Return attached to the Memorandum for petitioner is inadmissible in evidence. It was not presented and identified during the trial nor formally offered as evidence. And as the amount being claimed had been charged against its tax liabilities for 1998 and 1999, the claim for refund cannot be granted.[8]

Respondent appealed to the Court of Appeals which rendered its Decision dated 26 June 2006, reversing the CTA Decision and Resolution. The dispositive portion of the Court of Appeals' Decision reads:

> WHEREFORE, the petition is hereby GRANTED. The assailed Decision and Resolution of the Court of Tax Appeals in CTA Case No. 5978 dated 4 June 2002 and 2 October 2002 respectively are REVERSED and SET ASIDE and a new one rendered in favor of the petitioner [The Philippine American Life and General Insurance Company] ordering the refund of the sum of P9,326,979.35 representing petitioner's overpayment and unapplied creditable withholding tax for the taxable year 1997 to petitioner.
>
> SO ORDERED.[9]

The Commissioner of Internal Revenue (petitioner) filed a motion for reconsideration, which the Court of Appeals denied in its Resolution dated 12 October 2006. Hence, this petition for review.

The Ruling of the Court of Appeals

The Court of Appeals ruled that the CTA is not governed strictly by technical rules of evidence. Although respondent may have failed to strictly comply with the rules of procedure, the Court of Appeals held that respondent has established its claim for refund. The Court of Appeals stated that the 1998 ITR which respondent attached to its Memorandum filed with the CTA showed that respondent suffered a net loss in the amount of P165,701,508 and that respondent is entitled to a refund of P9,326,979.35. Furthermore, the 1998 ITR showed that the amount of P9,326,979.35 was not utilized nor used as income tax payment for that taxable year. Thus, the Court of Appeals concluded that respondent is entitled to a refund of the unused creditable withholding tax.

The Issue

The sole issue in this case is whether respondent is entitled to a refund of its excess income tax credit in the taxable year 1997 even if it had already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

The Ruling of the Court

We find the petition meritorious.

The resolution of the case involves the application of Section 76 of the National Internal Revenue Code (NIRC) of 1997, which reads:

> SEC. 76. Final Adjustment Return. - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or

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(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 therefore. (Emphasis supplied)

Petitioner maintains that Section 76 of the NIRC of 1997 clearly states that once a corporate taxpayer opts to carry-over the excess income tax and apply it as tax credits against the income tax due for the succeeding taxable years, such option is irrevocable and the corporate taxpayer can no longer apply for either a tax refund or an issuance of a tax credit certificate.[10]

On the other hand, respondent argues that the choice of the taxpayer to carry-over its excess tax credits to the succeeding taxable year does not necessarily preclude the taxpayer from requesting a tax refund when there was no actual carry-over of the tax credits due to a net loss suffered by the taxpayer in the succeeding year. Respondent alleges that there was no actual carry-over of its 1997 excess tax credits because its tax credits accumulated over the years were much more than the ensuing tax liabilities.[11]

The issue presented in this case is identical to the issue already resolved by the Court in the recent case of Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue.[12] In Asiaworld, the issue was whether the exercise of the option to carry-over the excess income tax credit, which shall be applied against the tax due in the succeeding taxable years, prohibits the claim for a refund in the subsequent taxable years for the unused portion of the excess tax credits. Ruling that the exercise of the option to carry-over precludes a claim for a refund, the Court explained:

> Section 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:
>
> 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."

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. (Emphasis supplied)

In this case, it is undisputed that respondent indicated in its 1997 ITR its option to carry-over as tax credit for the next year its tax overpayment. In its 1998 ITR, respondent again indicated its preference to carry-over the excess income tax credit against the tax liabilities for the succeeding taxable years. Clearly, respondent chose to carry-over and apply the overpaid tax against the income tax due in the succeeding taxable years. Under Section 76 of the NIRC of 1997, once the taxpayer exercises the option to carry-over and apply the excess creditable tax against the income tax due for the succeeding taxable years, such option is irrevocable.[13] Thus, respondent can no longer claim a refund of its excess income tax credit in the taxable year 1997 because it has already opted to carry-over the excess income tax credit against the tax due in the succeeding taxable years.

WHEREFORE, we GRANT the petition. We SET ASIDE the 26 June 2006 Decision and the 12 October 2006 Resolution of the Court of Appeals in CA-G.R. SP No. 73427. We REINSTATE the 4 June 2002 Decision and 2 October 2002 Resolution of the Court of Tax Appeals in CTA Case No. 5978.

SO ORDERED.

Peralta, Abad, Perez,[*] and Mendoza, JJ., concur

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[*] Designated additional member per Raffle dated 27 September 2010.

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

[2] Rollo, pp. 7-14. Penned by Associate Justice Enrico A. Lanzanas, with Associate Justices Bienvenido L. Reyes and Lucas P. Bersamin (now Associate Justice of this Court), concurring. The title of the Decision inadvertently misstated petitioner as "The Philippine Life and General Insurance Company" instead of "The Philippine American Life and General Insurance Company."

[3] Id. at 15-16.

[4] Id. at 52-56.

[5] Id. at 58-62.

[6] Id. at 63-64; Annex "G."

[7] Annex "F."

[8] Id. at 61-62.

[9] Id. at 13.

[10] Id. at 88-89.

[11] Id. at 78.

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

[13] Commissioner of Internal Revenue v. Bank of Philippine Islands, G.R. No. 178490, 7 July 2009, 592 SCRA 219.

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