COMMISSIONER OF INTERNAL REVENUE, PETITIONER, VS. BANK OF THE PHILIPPINE ISLANDS, RESPONDENT.

G.R. No. 178490. July 07, 2009

Ponente: CHICO-NAZARIO, J.

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CHICO-NAZARIO, J.:

This is a Petition for Review assailing the Decision[1] dated 29 April 2005 and the Resolution dated 20 April 2007 of the Court of Appeals in CA-G.R. SP No. 77655, which annulled and set aside the Decision dated 12 March 2003 of the Court of Tax Appeals (CTA) in CTA Case No. 6276, wherein the CTA held that respondent Bank of the Philippine Islands (BPI) already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000 and was, therefore, no longer entitled to claim the refund or issuance of a tax credit certificate for the amount thereof.

On 15 April 1999, BPI filed with the Bureau of Internal Revenue (BIR) its final adjusted Corporate Annual Income Tax Return (ITR) for the taxable year ending on 31 December 1998, showing a taxable income of P1,773,236,745.00 and a total tax due of P602,900,493.00.

For the same taxable year 1998, BPI already made income tax payments for the first three quarters, which amounted to P563,547,470.46.[2] The bank also received income in 1998 from various third persons, which, were already subjected to expanded withholding taxes amounting to P7,685,887.90. BPI additionally acquired foreign tax credit when it paid the United States government taxes in the amount of $151,467.00, or the equivalent of P6,190,014.46, on the operations of former's New York Branch. Finally, respondent BPI had carried over excess tax credit from the prior year, 1997, amounting to P59,424,222.00.

Crediting the aforementioned amounts against the total tax due from it at the end of 1998, BPI computed an overpayment to the BIR of income taxes in the amount of P33,947,101.00. The computation of BPI is reproduced below:

Total Income Taxes Due

P602,900,493.00

Less: Tax Credits:

Prior year's tax credits

P59,424,222.00

Quarterly payments

563,547,470.46

Creditable taxes withheld

7,685,887.90

Foreign tax credit

6,190,014.00

636,847,594.00

Net Tax Payable/(Refundable)

P(33,947,101.00)

BPI opted to carry over its 1998 excess tax credit, in the amount of P33,947,101.00, to the succeeding taxable year ending 31 December 1999.[3] For 1999, however, respondent BPI ended up with (1) a net loss in the amount of P615,742,102.00; (2) its still unapplied excess tax credit carried over from 1998, in the amount of P33,947,101.00; and (3) more excess tax credit, acquired in 1999, in the sum of P12,975,750.00. So in 1999, the total excess tax credits of BPI increased to P46,922,851.00, which it once more opted to carry over to the following taxable year.

For the taxable year ending 31 December 2000, respondent BPI declared in its Corporate Annual ITR: (1) zero taxable income; (2) excess tax credit carried over from 1998 and 1999, amounting to P46,922,851.00; and (3) even more excess tax credit, gained in 2000, in the amount of P25,207,939.00. This time, BPI failed to indicate in its ITR its choice of whether to carry over its excess tax credits or to claim the refund of or issuance of a tax credit certificate for the amounts thereof.

On 3 April 2001, BPI filed with petitioner Commissioner of Internal Revenue (CIR) an administrative claim for refund in the amount of P33,947,101.00, representing its excess creditable income tax for 1998.

The CIR failed to act on the claim for tax refund of BPI. Hence, BPI filed a Petition for Review before the CTA, docketed as CTA Case No. 6276.

The CTA promulgated its Decision in CTA Case No. 6276 on 12 March 2003, ruling therein that since BPI had opted to carry over its 1998 excess tax credit to 1999 and 2000, it was barred from filing a claim for the refund of the same.

The CTA relied on the irrevocability rule laid down in Section 76 of the National Internal Revenue Code (NIRC) of 1997, which states that once the taxpayer opts to carry over and apply its excess income tax to succeeding taxable years, its option shall be irrevocable for that taxable period and no application for tax refund or issuance of a tax credit shall be allowed for the same.

The CTA Decision adjudged:

> A close scrutiny of the 1998 income tax return of [BPI] reveals that it opted to carry over its excess tax credits, the amount subject of this claim, to the succeeding taxable year by placing an "x" mark on the corresponding box of said return (Exhibits A-2 & 3-a). For the year 1999, [BPI] again manifested its intention to carry over to the succeeding taxable period the subject claim together with the current excess tax credits (Exhibit J). Still unable to apply its prior year's excess credits in 1999 as it ended up in a net loss position, petitioner again carried over the said excess credits in the year 2000 (Exhibit K).
>
> The court already categorically ruled in a number of cases that once the option to carry-over and apply the excess quarterly income tax against the income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable and no application for cash refund or issuance of a

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> tax credit certificate shall be allowed therefore (Pilipinas Transport Industries vs. Commissioner of Internal Revenue, CTA Case No. 6073, dated March 1, 2002; Pilipinas Hino, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6074, dated April 19, 2002; Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, CTA Case No. 6210, dated May 2, 2002; The Philippine Banking Corporation (now known as Global Business Bank, Inc.) vs. Commissioner of Internal Revenue, CTA Resolution, CTA Case No. 6280, August 16, 2001. Since [BPI] already exercised the irrevocable option to carry over its excess tax credits for the year 1998 to the succeeding years 1999 and 2000, it is, therefore, no longer entitled to claim for a refund or issuance of a tax credit certificate.[4]

In the end, the CTA decreed:

> IN VIEW OF ALL THE FOREGOING, the instant petition for review is hereby DENIED for lack of merit.[5]

BPI filed a Motion for Reconsideration of the foregoing Decision, but the CTA denied the same in a Resolution dated 3 June 2003.

BPI filed an appeal with the Court of Appeals, docketed as CA-G.R. SP No. 77655. On 29 April 2005, the Court of Appeals rendered its Decision, reversing that of the CTA and holding that BPI was entitled to a refund of the excess income tax it paid for 1998.

The Court of Appeals conceded that BPI indeed opted to carry over its excess tax credit in 1998 to 1999 by placing an "x" mark on the corresponding box of its 1998 ITR. Nonetheless, there was no actual carrying over of the excess tax credit, given that BPI suffered a net loss in 1999, and was not liable for any income tax for said taxable period, against which the 1998 excess tax credit could have been applied.

The Court of Appeals added that even if Section 76 was to be construed strictly and literally, the irrevocability rule would still not bar BPI from seeking a tax refund of its 1998 excess tax credit despite previously opting to carry over the same. The phrase "for that taxable period" qualified the irrevocability of the option of BIR to carry over its 1998 excess tax credit to only the 1999 taxable period; such that, when the 1999 taxable period expired, the irrevocability of the option of BPI to carry over its excess tax credit from 1998 also expired.

The Court of Appeals further reasoned that the government would be unjustly enriched should the appellate court hold that the irrevocability rule barred the claim for refund of a taxpayer, who previously opted to carry-over its excess tax credit, but was not able to use the same because it suffered a net loss in the succeeding year.

Finally, the appellate court cited BPI-Family Savings Bank, Inc. v. Court of Appeals[6] wherein this Court held that if a taxpayer suffered a net loss in a year, thus, incurring no tax liability to which the tax credit from the previous year could be applied, there was no reason for the BIR to withhold the tax refund which rightfully belonged to the taxpayer.[7]

In a Resolution dated 20 April 2007, the Court of Appeals denied the Motion for Reconsideration of the CIR.[8]

Hence, the CIR filed the instant Petition for Review, alleging that:

> I
>
> THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE "IRREVOCABILITY RULE" UNDER SECTION 76 OF THE TAX CODE DOES NOT OPERATE TO BAR PETITIONER FROM ASKING FOR A TAX REFUND.
>
> II
>
> THE COURT OF APPEALS COMMITTED GRAVE ERROR WHEN IT REVERSED AND SET ASIDE THE DECISION OF THE COURT OF TAX APPEALS AND HELD THAT RESPONDENT IS ENTITLED

TO THE CLAIMED TAX REFUND.

The Court finds merit in the instant Petition.

The Court of Appeals erred in relying on BPI-Family, missing significant details that rendered said case inapplicable to the one at bar.

In BPI-Family, therein petitioner BPI-Family declared in its Corporate Annual ITR for 1989 excess tax credits of P185,001.00 from 1988 and P112,491.00 from 1989, totaling P297,492.00. BPI-Family clearly indicated in the same ITR that it was carrying over said excess tax credits to the following year. But on 11 October 1990, BPI-Family filed a claim for refund of its P112,491.00 tax credit from 1989. When no action from the BIR was forthcoming, BPI-Family filed its claim with the CTA. The CTA denied the claim for refund of BPI-Family on the ground that, since the bank declared in its 1989 ITR that it would carry over its tax credits to the following year, it should be presumed to have done so. In its Motion for Reconsideration filed with the CTA, BPI-Family submitted its final adjusted ITR for 1989 showing that it incurred P52,480,173.00 net loss in 1990. Still, the CTA denied the Motion for Reconsideration of BPI-Family. The Court of Appeals likewise denied the appeal of BPI-Family and merely affirmed the judgment of the CTA. The Court, however, reversed the CTA and the Court of Appeals.

This Court decided to grant the claim for refund of BPI-Family after finding that the bank had presented sufficient evidence to prove that it incurred a net loss in 1990 and, thus, had no tax liability to which its tax credit from 1989 could be applied. The Court stressed in BPI Family that "the undisputed fact is that [BPI-Family] suffered a net loss in 1990; accordingly, it incurred no tax liability to which the tax credit could be applied. Consequently, there is no reason for the BIR and this Court to withhold the tax refund which rightfully belongs to the [BPI-Family]." It was on the basis of this fact that the Court granted the appeal of BPI-Family, brushing aside all procedural and technical objections to the same through the following pronouncements:

> Finally, respondents argue that tax refunds are in the nature of tax exemptions and are to be construed strictissimi juris against the claimant. Under the facts of this case, we hold that [BPI-Family] has established its claim. [BPI-Family] may have failed to strictly comply with the rules of procedure; it may have even been negligent. These circumstances, however, should not compel the Court to disregard this cold, undisputed fact: that petitioner suffered a net loss in 1990, and that it could not have applied the amount claimed as tax credits.
>
> Substantial justice, equity and fair play are on the side of [BPI-Family]. Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens. If the State expects its taxpayers to observe fairness and honesty in paying their taxes, so must it apply the same standard against itself in refunding excess payments of such taxes. Indeed, the State must lead by its own example of honor, dignity and uprightness.[9]

It is necessary for this Court, however, to emphasize that BPI-Family involved tax credit acquired by the bank in 1989, which it initially opted to carry over to 1990. The prevailing tax law then was the NIRC of 1985, Section 79[10] of which provided:

> Sec. 79. 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. (Emphases ours.)

By virtue of the afore-quoted provision, the taxpayer with excess income tax was given the option to either (1) refund the amount; or (2) credit the same to its tax liability for succeeding taxable periods.

Section 79 of the NIRC of 1985 was reproduced as Section 76 of the NIRC of 1997,[11] with the addition of one important sentence, which laid down the irrevocability rule:

> 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 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 tax refund or issuance of a tax credit certificate shall be allowed therefor. (Emphases ours.)

When BPI-Family was decided by this Court, it did not yet have the irrevocability rule to consider. Hence, BPI-Family cannot be cited as a precedent for this case.

The factual background of Philam Asset Management, Inc. v. Commissioner of Internal Revenue,[12] cited by the CIR, is closer to the instant Petition. Both involve tax credits acquired and claims for refund filed more than a decade after those in BPI-Family, to which Section 76 of the NIRC of 1997 already apply.

The Court, in Philam, recognized the two options offered by Section 76 of the NIRC of 1997 to a taxable corporation whose total quarterly income tax payments in a given taxable year exceeds its total income tax due. These options are: (1) filing for a tax refund or (2) availing of a tax credit. The Court further explained:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the [Final Adjustment Return (FAR)] of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in Philippine Bank of Communications v. Commissioner of Internal Revenue, the Court ruled that a corporation must signify its intention -- whether to request a tax refund or claim a tax credit -- by marking the corresponding option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.[13] x x x

The Court categorically declared in Philam that: "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.

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Hence, the controlling factor for the operation of the irrevocability rule is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, "no application for tax refund or issuance of a tax credit certificate shall be allowed therefor."

The last sentence of Section 76 of the NIRC of 1997 reads: "Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for tax refund or issuance of a tax credit certificate shall be allowed therefor." The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer. In the present case, the excess income tax credit, which BPI opted to carry over, was acquired by the said bank during the taxable year 1998. The option of BPI to carry over its 1998 excess income tax credit is 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. This would mean that since the tax credit in this case was acquired in 1998, and BPI opted to carry it over to 1999, then the irrevocability of the option to carry over expired by the end of 1999, leaving BPI free to again take another option as regards its 1998 excess income tax credit. This construal effectively renders nugatory the irrevocability rule. 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. The interpretation of the Court of Appeals only delays the flip-flopping to the end of each succeeding taxable period.

The Court similarly disagrees in the declaration of the Court of Appeals that to deny the claim for refund of BPI, because of the irrevocability rule, would be tantamount to unjust enrichment on the part of the government. The Court addressed the very same argument in Philam, where it elucidated that there would be no unjust enrichment in the event of denial of the claim for refund under such circumstances, because there would be no forfeiture of any amount in favor of the government. The amount being claimed as a refund would remain in the account of the taxpayer until utilized in succeeding taxable years,[14] as provided in Section 76 of the NIRC of 1997. It is worthy to note that unlike the option for refund of excess income tax, which prescribes after two years from the filing of the FAR, there is no prescriptive period for the carrying over of the same. Therefore, the excess income tax credit of BPI, which it acquired in 1998 and opted to carry over, may be repeatedly carried over to succeeding taxable years, i.e., to 1999, 2000, 2001, and so on and so forth, until actually applied or credited to a tax liability of BPI.

Finally, while the Court, in Philam, was firm in its position that the choice of option as regards the excess income tax shall be irrevocable, it was less rigid in the determination of which option the taxpayer actually chose. It did not limit itself to the indication by the taxpayer of its option in the ITR.

Thus, failure of the taxpayer to make an appropriate marking of its option in the ITR does not automatically mean that the taxpayer has opted for a tax credit. The Court ratiocinated in G.R. No. 156637[15] of Philam:

> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid. Failure to signify one's intention in the FAR does not mean outright barring of a valid request for a refund, should one still choose this option later on. A tax credit should be construed merely as an alternative remedy to a tax refund under Section 76, subject to prior verification and approval by respondent.

> The reason for requiring that a choice be made in the FAR upon its filing is to ease tax administration, particularly the self-assessment and collection aspects. A taxpayer that makes a choice expresses certainty or preference and thus demonstrates clear diligence. Conversely, a taxpayer that makes no choice expresses uncertainty or lack of preference and hence shows simple negligence or plain oversight.
>
> x x x x
>
> x x x Despite the failure of [Philam] to make the appropriate marking in the BIR form, the filing of its written claim effectively serves as an expression of its choice to request a tax refund, instead of a tax credit. To assert that any future claim for a tax refund will be instantly hindered by a failure to signify one's intention in the FAR is to render nugatory the clear provision that allows for a two-year prescriptive period.[16] (Emphases ours.)

Philam reveals a meticulous consideration by the Court of the evidence submitted by the parties and the circumstances surrounding the taxpayer's option to carry over or claim for refund. When circumstances show that a choice has been made by the taxpayer to carry over the excess income tax as credit, it should be respected;but when indubitable circumstances clearly show that another choice - a tax refund - is in order, it should be granted. "Technicalities and legalisms, however exalted, should not be misused by the government to keep money not belonging to it and thereby enrich itself at the expense of its law-abiding citizens."

Therefore, as to which option the taxpayer chose is generally a matter of evidence. It is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund. Tax refunds, like tax exemptions, are construed strictly against the taxpayer.[17]

In the Petition at bar, BPI was unable to discharge the burden of proof necessary for the grant of a refund. BPI expressly indicated in its ITR for 1998 that it was carrying over, instead of refunding, the excess income tax it paid during the said taxable year. BPI consistently reported the said amount in its ITRs for 1999 and 2000 as credit to be applied to any tax liability the bank may incur; only, no such opportunity arose because it suffered a net loss in 1999 and incurred zero tax liability in 2000. In G.R. No. 162004 of Philam, the Court found:

> First, the fact that it filled out the portion "Prior Year's Excess Credits" in its 1999 FAR means that it categorically availed itself of the carry-over option. In fact, the line that precedes that phrase in the BIR form clearly states "Less: Tax Credits/Payments." The contention that it merely filled out that portion because it was a requirement - and that to have done otherwise would have been tantamount to falsifying the FAR - is a long shot.
>
> The FAR is the most reliable firsthand evidence of corporate acts pertaining to income taxes. In it are found the itemization and summary of additions to and deductions from income taxes due. These entries are not without rhyme or reason. They are required, because they facilitate the tax administration process.[18]

BPI itself never denied that its original intention was to carry over the excess income tax credit it acquired in 1998, and only chose to refund the said amount when it was unable to apply the same to any tax liability in the succeeding taxable years. There can be no doubt that BPI opted to carry over its excess income tax credit from 1998; it only subsequently changed its mind - which it was barred from doing by the irrevocability rule.

The choice by BPI of the option to carry over its 1998 excess income tax credit to succeeding taxable years, which it explicitly indicated in its 1998 ITR, is irrevocable, regardless of whether it was able to actually apply the said amount to a tax liability. The reiteration by BPI of the carry over option in its ITR for 1999 was already a superfluity, as far as its 1998 excess income tax credit was concerned, given the irrevocability of the initial choice made by the bank to carry over the said amount. For the same reason, the failure of BPI to indicate any option in its ITR for 2000 was already immaterial to its 1998 excess income tax credit.

WHEREFORE, the instant Petition for Review of the Commissioner for Internal Revenue is GRANTED. The Decision dated 29 April 2005 and the Resolution dated 20 April 2007 of the Court of Appeals in CA-G.R. SP No. 77655 are REVERSED and SET ASIDE. The Decision dated 12 March 2003 of the Court of Tax Appeals in CTA Case No. 6276, denying the claim of respondent Bank of the Philippine Islands for the refund of its 1998 excess income tax credits, is REINSTATED. No costs.

SO ORDERED.

Ynares-Santiago, (Chairperson), Velasco, Jr., Nachura, and Peralta, JJ., concur.

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[1] Penned by Associate Justice Bienvenido L. Reyes with Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente concurring. Rollo, pp. 25-33.

[2] Computed as follows:

Quarter covered Date filed Quarterly Income Tax Paid

1[st] Quarter 06-01-98 378,564,898.34

2[nd] Quarter 08-31-98 184,982,572.12

3[rd] Quarter 11-27-98 ---

Total 563,547,470.46

[3] Exhibit "A-2."

[4] CA rollo, pp. 28-29.

[5] CA rollo, p. 29.

[6] 386 Phil. 719 (2000).

[7] Id. at 727.

[8] Rollo, pp. 34-39.

[9] BPI-Family Savings Bank, Inc. v. Court of Appeals, supra note 6 at 728-729.

[10] The provision was erroneously cited as Section 69 in BPI-Family. While the said provision was indeed Section 69 of the NIRC of 1977, it was already re-numbered as Section 79 of the NIRC of 1985.

[11] Took effect on 1 January 1998.

[12] G.R. No. 156637 and No. 162004, 14 December 2005, 477 SCRA 761.

[13] Id. at 772.

[14] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, supra note 12 at 768.

[15] Philam actually involved two consolidated cases, G.R. No. 156637 and G.R. No. 162004. In G.R. No. 156637, therein petitioner Philam paid excess income tax for 1997. It did not indicate its option to carry over or refund said excess income tax in its ITR for 1997. On 11 September 1998, however, it filed a claim for refund of the same. In G.R. No. 162004, Philam incurred a net loss in 1998 and had unapplied excess creditable income tax for the same period in the amount of P459,756.07. In its ITR for the succeeding year of 1999, Philam reported a

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tax due of only P80,042.00, creditable withholding tax of P915,995.00, and excess credit carried over from 1998 of P459,756.07. On 14 November 2000, Philam filed a claim for tax refund, alleging that its tax liability for 1999 was deducted from its creditable withholding tax for the same taxable period; leaving its excess tax credit carried over from 1998 still unapplied.

[16] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, supra note 12 at 772, 776. See also Commissioner of Internal Revenue v. PERF Realty Corporation, G.R. No. 163345, 4 July 2008.

[17] Paseo Realty and Development Corporation v. Court of Appeals, G.R. No. 119286, 13 October 2004, 440 SCRA 235, 247.

[18] Philam Asset Management, Inc. v. Commissioner of Internal Revenue, supra note 12 at 778.

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