

## THIRD DIVISION

**[ G.R. No. 178490, July 07, 2009 ]**

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

#### D E C I S I O N

#### CHICO-NAZARIO, J.:

This is a Petition for Review assailing the Decision<sup>[1]</sup> 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**.<sup>[2]</sup> 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	P602,900,493.00
Due	
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
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	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**.<sup>[3]</sup> 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 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.<sup>[4]</sup>

In the end, the CTA decreed:

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

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*<sup>[6]</sup> 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.<sup>[7]</sup>

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

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.<sup>[9]</sup>

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<sup>[10]</sup> 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**,<sup>[11]</sup> 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: