

## THIRD DIVISION

**[ G.R. No. 206362, August 01, 2018 ]**

**RHOMBUS ENERGY, INC., PETITIONER, VS. COMMISSIONER OF  
INTERNAL REVENUE, RESPONDENT.**

### D E C I S I O N

**BERSAMIN, J.:**

At issue is whether or not the taxpayer is barred by the irrevocability rule in claiming for the refund of its excess and/or unutilized creditable withholding tax.

#### The Case

This appeal assails the decision promulgated on October 11, 2012 in CTA EB Case No. 803,<sup>[1]</sup> whereby the Court of Tax Appeals *En Banc* (CTA *En Banc*) reversed and set aside the decision dated March 23, 2011 of the CTA First Division granting the claim for refund of excess and/or unutilized creditable withholding tax in the total amount of P1,500,653.00 filed by Rhombus Energy, Inc. (Rhombus).<sup>[2]</sup>

#### Antecedents

The factual and procedural antecedents are synthesized by the CTA *En Banc* in its assailed decision as follows:

Records show that from October 1998 to July 2007, respondent was registered with and was under the jurisdiction of Revenue Region No. 8, Revenue District Office ("RDO") No. 50 (South Makati) of the BIR with Taxpayer Identification No. 005-650-790-000. However, due to respondent's change of address from Suite 1402, BDO Plaza, 8737 Paseo de Roxas, Salcedo Village, Makati City to Suite 208, 2<sup>nd</sup> Floor, the Manila Bank Corporation Condominium Building, 6772 Ayala Avenue, Makati City, respondent filed an application for change of home RDO.

Thus, on July 18, 2007, respondent was transferred to the jurisdiction of RDO No. 47, with Certificate of Registration No. OCN9RC0000211342.

In the meantime, on April 17, 2006, respondent filed its Annual Income Tax Return ("ITR") for taxable year 2005, detailed, as follows:

Sales/Revenues/Receipts/Fees	P59,551,116.00
Less: Cost of Sales	<u>22,351,923.00</u>
Gross Income from Operations	37,199,193.00
Add: Non-Operating and Other Income	<u>209,320,181.00</u>
Gross Income	P246,519,374.00
Less: Deductions	<u>144,421,350.00</u>

Taxable Income		P102,098,024.00
Income Tax		33,181,858.00
Less: Prior year's Excess Credits	P0.00	
Tax Payments for the First 3 Quarters	6,159,215.00	
Creditable Tax Withheld for the 1st 3 Quarters	<u>28,523,296.00</u>	
Total Tax Credits/Payments		P34,682,511.00
Tax Payable/(Overpayment)		<b>1,500,653.00</b>

In said Annual ITR for taxable year 2005, respondent indicated that its excess creditable withholding tax ("CWT") for the year 2005 was "To be refunded".

On May 29, 2006, respondent filed its Quarterly Income Tax Return for the first quarter of taxable year 2006 showing prior year's excess credits of P1,500,653.00.

On August 25, 2006, respondent filed its Quarterly Income Tax Return for the second quarter of taxable year 2006 showing prior year's excess credits of P1,500,653.00.

On November 27, 2006, respondent filed its Quarterly Income Tax Return for the third quarter of taxable year 2006 showing prior year's excess credits of P1,500,653.00.

On December 29, 2006, respondent filed with the Revenue Region No. 8 an administrative claim for refund of its alleged excess/unutilized CWT for the year 2005 in the amount of P1,500,653.00.

On April 2, 2007, respondent filed its Annual Income Tax Return for taxable year 2006 showing prior year's excess credits of P0.00.

On December 7, 2007, pending petitioner's action on respondent's claim for refund or issuance of a tax credit certificate of its excess/unutilized CWT for the year 2005 and before the lapse of the period for filing an appeal, respondent filed the instant Petition for Review.

In her Answer, by way of special and affirmative defenses, the CIR alleged: assuming without admitting that respondent filed a claim for refund, the same is subject to investigation by the BIR; respondent failed to demonstrate that the tax was erroneously or illegally collected; taxes paid and collected are presumed to have been made in accordance with laws and regulations, hence, not refundable; it is incumbent upon respondent to show that it has complied with the provisions of *Section 204(C), in relation to Section 229 of the Tax Code, as amended*, upon which its claim for refund was premised; in an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim; and claims for refund are construed strictly against the claimant, as the same partake of the nature of exemption from taxation.

After trial on the merits, on March 23, 2011, the First Division rendered the assailed Decision granting the Petition for Review.

On April 14, 2011, petitioner CIR filed a "Motion for Reconsideration", which was denied for lack of merit by the First Division in a Resolution dated June 30, 2011.

Not satisfied, petitioner CIR filed the instant Petition for Review x x x.<sup>[3]</sup>

### **Decision of the CTA *En Banc***

Citing *Commissioner of Internal Revenue v. Mirant (Philippines) Operations, Corporation*,<sup>[4]</sup> the CTA *En Banc* reversed and set aside the decision dated March 23, 2011 of the CTA First Division, explaining and holding thusly:

x x x Section 76 is 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 (*Commissioner of Internal Revenue vs. Bank of the Philippine Islands 592 SCRA 231*). 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' (*supra*).

Applying the foregoing rulings to the instant case, considering that petitioner opted to carry-over its unutilized creditable withholding tax of P1,500,653.00 for taxable year 2005 to the first, second and third quarters of taxable year 2006 when it had actually carried-over said excess creditable withholding tax to the first, second and third quarters in its Quarterly Income Tax Returns for taxable year 2006, said option to carryover becomes irrevocable. Petitioner's act of reporting in its Annual Income Tax Return for taxable year 2006 of prior year's excess credits other than MCIT as 0.00, will not change the fact that petitioner had already opted the carry-over option in its first, second and third quarters Quarterly Income Tax Returns for taxable year 2006, and said choice is irrevocable. As previously mentioned, whether or not petitioner actually gets to apply said excess tax credit is irrelevant and would not change the carry-over option already made.

Thus, the present petition praying for refund or issuance of a TCC of its unutilized creditable withholding tax for taxable year 2005 in the amount of P1,500,653.00 must perforce be denied in view of the irrevocability rule on carry-over option of unutilized creditable withholding tax.

**WHEREFORE**, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, the Decision of the First Division dated March 23, 2011 and Resolution dated June 30, 2011 are hereby **REVERSED** and **SET ASIDE**, and another one is hereby entered

**DISMISSING** the Petition for Review filed in C.T.A. Case No. 7711.

**SO ORDERED.**<sup>[5]</sup>

On March 13, 2013, the CTA *En Banc* denied Rhombus' motion for reconsideration.<sup>[6]</sup>

Hence, Rhombus appeals to resolve whether or not it has proved its entitlement to the refund.

### **Ruling of the Court**

The appeal is meritorious.

The irrevocability rule is enunciated in Section 76 of the National Internal Revenue Code (NIRC), *viz.*:

Section 76. *Final Adjusted Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar of 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 the 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 years 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.** (Bold underscoring supplied to highlight the relevant portion)

The application of the irrevocability rule is explained in *Republic v. Team (Phils.) Energy Corporation (formerly Mirant [Phils.] Energy Corporation*,<sup>[7]</sup> where the Court stated:

In *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, the Court, citing the pronouncement in *Philam Asset Management, Inc.*, points out that Section 76 of the NIRC of 1997 is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*. The Court explains: