

## THIRD DIVISION

[ G.R. No. 205955, March 07, 2018 ]

**UNIVERSITY PHYSICIANS SERVICES INC.-MANAGEMENT, INC.,  
PETITIONER, V. COMMISSIONER OF INTERNAL REVENUE,  
RESPONDENT.**

### DECISION

**MARTIRES, J.:**

When a corporation overpays its income tax liability as adjusted at the close of the taxable year, it has two options: (1) to be refunded or issued a tax credit certificate, or (2) to carry over such overpayment to the succeeding taxable quarters to be applied as tax credit against income tax due.<sup>[1]</sup> Once the carry-over option is taken, it becomes irrevocable such that the taxpayer cannot later on change its mind in order to claim a cash refund or the issuance of a tax credit certificate of the very same amount of overpayment or excess income tax credit.<sup>[2]</sup>

Does the irrevocability rule apply exclusively to the carry-over option? Such is the novel issue presented in this case.

### THE FACTS

Before the Court is a petition for review under Rule 45 of the Rules of Court filed by petitioner University Physicians Services Inc.-Management, Inc. (UPSI-MI) which seeks the reversal and setting aside of the 8 February 2013 Decision<sup>[3]</sup> of the Court of Tax Appeals (CTA) En Banc in CTA-EB Case No. 828. Said decision of the CTA En Banc affirmed the 5 July 2011 Decision and 8 September 2011 Resolution of the CTA Second Division (CTA Division) in CTA Case No. 7908. The CTA Division denied the application of UPSI-MI for tax refund or issuance of Tax Credit Certificate (TCC) of its excess unutilized creditable income tax for the taxable year 2006.

### The Antecedents

As narrated by the CTA, the facts are uncomplicated, *viz*:

UPSI-MI is a corporation incorporated and existing under and by virtue of laws of the Republic of the Philippines, with business address at 1122 General Luna Street, Paco, Manila. Respondent on the other hand, is the duly appointed Commissioner of Internal Revenue, with power, among others, to act upon claims for refund or tax credit of overpaid internal revenue taxes, with office address at the Fifth Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 16, 2007, petitioner filed its Annual Income Tax Return (ITR) for the year ended December 31, 2006 with the Revenue District No. 34 of the Revenue Region No. 6 of the Bureau of Internal Revenue (BIR),

reflecting an income tax overpayment of 5,159,341.00, computed as follows:<sup>[4]</sup>

Sales/Revenues/Receipts/Fees	P 28,808,960.00
Less: Cost of Sales/Services	<u>23,834,605.00</u>
Gross Income from Operation	P 4,974,355.00
Add: Non-Operating & Other Income	<u>5,375.00</u>
Total Gross Income	P 4,979,730.00
Less: Deductions	<u>4,979,730.00</u>
<b>Taxable Income</b>	-
Tax Rate (except MCIT Rate )	35%
Income Tax	-
Minimum Corporate Income Tax ( MCIT)	P 99,595.00
<b>Aggregate Income Tax Due</b>	<b>P 99,595.00</b>
Less: Tax Credits/Payments	
Prior Year's Excess Credits	P 2,331,102.00
Creditable Tax Withheld for the First Three Quarters	-
Creditable Tax Withheld for the Fourth Quarter	2,972,834.00
<b>Total Tax Credits/Payments</b>	<b>P 5,258,936.00</b>
<b>Tax Payable/(Overpayment)</b>	<b>P (5,159,341.00)</b>

Subsequently, on November 14, 2007, petitioner filed an Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the income tax overpayment of 5,159.341 from the previous period as "*Prior Year's Excess Credit*", as follows:<sup>[5]</sup>

Sales/Revenues/Receipts/Fees	P 7,489,259
Less: Cost of Sales/Services	<u>6,461,650</u>
Gross Income from Operation	P 1,027,609
Add: Non-Operating & Other Income	<u>479</u>
Total Gross Income	P 1,028,088
Less: Deductions	<u>1,206,543</u>
<b>Taxable Income</b>	<b>(178,455)</b>
Tax Rate (except MCIT Rate )	35%

Income Tax	-
Minimum Corporate Income Tax ( MCIT)	P 20,562
<b>Aggregate Income Tax Due</b>	P <u>20,562</u>
Less: Tax Credits/Payments	
<b>Prior Year's Excess Credits</b>	<b>P 5,159,341</b>
Creditable Tax Withheld for the First Three Quarters	1,107,228
Creditable Tax Withheld for the Fourth Quarter	6,266,569
<b>Total Tax Credits/Payments</b>	<b>P 6,266,569</b>
<b>Tax Payable/(Overpayment)</b>	<b>P (6,246,007)</b>

On the same date, petitioner filed an amended Annual ITR for the short period fiscal year ended March 31, 2007, reflecting the removal of the amount of the instant claim in the "*Prior Year's Excess Credit*". Thus, the amount thereof was changed from P 5,159,341 to P 2,231,507.

On October 10, 2008, petitioner filed with the respondent's office, a claim for refund and/or issuance of a Tax Credit Certificate (TCC) in the amount of P 2,927,834.00, representing the alleged excess and unutilized creditable withholding taxes for 2006.

In view of the fact that respondent has not acted upon the foregoing claim for refund/tax credit, petitioner filed with a Petition for Review on April 14, 2009 before the Court in Division.

### ***The Ruling of the CTA Division***

After trial, the CTA Division denied the petition for review for lack of merit. It reasoned that UPSI-MI effectively exercised the carry-over option under Section 76 of the National Internal Revenue Code (NIRC) of 1997. On motion for reconsideration, UPSI-MI argued that the irrevocability rule under Section 76 of the NIRC is not applicable for the reason that it did not carry over to the succeeding taxable period the 2006 excess income tax credit. UPSI-MI added that the subject excess tax credits were inadvertently included in its original 2007 ITR, and such mistake was rectified in the amended 2007 ITR. Thus, UPSI-MI insisted that what should control is its election of the option "*To be issued a Tax Credit Certificate*" in its 2006 ITR.

The CTA Division ruled that UPSI-MI's alleged inadvertent inclusion of the 2006 excess tax credit in the 2007 original ITR belies its own allegation that it did not carry over the said amount to the succeeding taxable period. The amendment of the 2007 ITR cannot undo UPSI-MI's actual exercise of the carry-over option in the original 2007 ITR, for to do so would be against the irrevocability rule. The dispositive portion of the CTA Division's decision reads:

**WHEREFORE**, the instant Petition for Review is hereby **DENIED** for lack of merit.<sup>[6]</sup>

Aggrieved, UPSI-MI appealed before the CTA En Banc.

### ***The Ruling of the CTA En Banc***

The CTA En Banc ruled that UPSI-MI is barred by Section 76 of the NIRC from claiming a refund of its excess tax credits for the taxable year 2006. The barring effect applies after UPSI-MI carried over its excess tax credits to the succeeding quarters of 2007, even if such carry-over was allegedly done inadvertently. The court emphasized that the prevailing law and jurisprudence admit of no exception or qualification to the irrevocability rule. Thus, the CTA En Banc affirmed the assailed decision and resolution of the CTA Division, disposing as follows:

**WHEREFORE**, all the foregoing considered, the instant Petition for Review is hereby **DENIED**. The assailed Decision dated July 5, 2011 and Resolution dated September 8, 2011 both rendered by the Court in Division in CTA Case No. 7908 are hereby **AFFIRMED**.

**SO ORDERED.**<sup>[7]</sup>

Notably, the said decision was met by a dissent from Justice Esperanza R. Fabon-Victorino. Invoking *Philam Asset Management, Inc. v. Commissioner (Philam)*,<sup>[8]</sup> Justice Fabon-Victorino took the view that the irrevocability rule applies as much to the option of refund or tax credit certificate. She wrote:

A contextual appreciation of the ruling [*Philam*] would tell us that any of the two alternatives once chosen is irrevocable - be it for refund or carry over. **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.**

Unsatisfied with the decision of the CTA En Banc, UPSI-MI appealed before this Court.

### **The Present Petition for Review**

UPSI-MI interposed the following reasons for its petition:

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED AND DECIDED IN A MANNER NOT IN ACCORDANCE WITH THE LAW, PREVAILING JURISPRUDENCE, AND FACTUAL MILIEU SURROUNDING THE CASE, WHEN IT ADOPTED THE DECISION OF THE COURT OF TAX APPEALS IN DIVISION AND RULED THAT:**

- a. Petitioner is not entitled to the refund or issuance of a Tax Credit Certificate in the amount of P2,927,834.00 representing its 2006 excess tax credits because of the application of the "irrevocability rule" under Section 76 of the NIRC of 1997.
- b. The amendment of the original ITR for fiscal year ended 31 March 2007 does not take back, cancel or rescind the original option to refund through tax credit certificate based on the

argument that the Petitioner allegedly made an option to carry-over the excess credits.

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT IGNORED THAT ON JOINT STIPULATIONS, THE RESPONDENT ADMITTED THE FACT THAT PETITIONER INDICATED IN THE CORRESPONDING BOX ITS INTENTION TO BE ISSUED A TAX CREDIT CERTIFICATE REPRESENTING ITS UNUTILIZED CREDITABLE WITHHOLDING TAX WITHHELD FOR THE TAXABLE YEAR 2006 BY MARKING THE APPROPRIATE BOX.**

**THE HONORABLE COURT OF TAX APPEALS (En Banc) SERIOUSLY ERRED WHEN IT DECIDED ON THE ISSUE OF WHETHER OR NOT PETITIONER CARRIED OVER ITS 2006 EXCESS TAX CREDITS TO THE SUCCEEDING SHORT TAXABLE PERIOD OF 2007 WHEN THE SAME WAS NEVER RAISED IN THE JOINT STIPULATION OF FACTS.**

UPSI-MI faults the CTA En Banc for banking too much on the irrevocability of the option to carry over. It contends that even the option to be refunded through the issuance of a TCC is likewise irrevocable. Taking cue from the dissent of Justice Pabon-Victorino, UPSI-MI cites *Philam* in restating this Court's pronouncement that "the options of a corporate taxpayer, whose total quarterly income tax payments exceed its tax liability, are alternative in nature and the choice of one precludes the other." It also cites *Commissioner v. PL Management International Philippines, Inc. (PL Management)*<sup>[9]</sup> that reiterated the rule that the choice of one precludes the other. Thus, when it indicated in its 2006 Annual ITR the option "To be issued a Tax Credit Certificate," such choice precluded the other option to carry over.<sup>[10]</sup>

In other words, UPSI-MI proposes that the options of refund on one hand and carry-over on the other hand are both irrevocable by nature. Relying again on the dissent of Justice Fabon-Victorino, UPSI-MI also points to BIR Form 1702 (Annual Income Tax Return) itself which expressly states under line 31 thereof:

"If overpayment, mark one box only:  
(once the choice is made, the same is irrevocable)"

### ***Resumé of relevant facts***

To recapitulate, UPSI-MI had, as of 31 December 2005, an outstanding amount of P2,331,102.00 in excess and unutilized creditable withholding taxes.

For the subsequent taxable year ending 31 December 2006, the total sum of creditable taxes withheld on the management fees of UPSI-MI was P2,927,834.00. Per its 2006 Annual Income Tax Return (ITR), UPSI-MI's income tax due amounted to P99,105.00. UPSI-MI applied its "Prior Year's Excess Credits" of P2,331,102.00 as tax credit against such 2006 Income Tax due, leaving a balance of P2,231,507.00 of still unutilized excess creditable tax. Meanwhile, the creditable taxes withheld for the year 2006 (P2,927,834.00) remained intact and unutilized. In said 2006 Annual ITR, UPSI-MI chose the option "To be issued a tax credit certificate" with respect to the amount P2,927,834.00, representing unutilized excess creditable taxes for the taxable year ending 31 December 2006. The figures are summarized in the table below:

Taxable	Excess	Income	Less Tax Credit	Tax	Balance of
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