Republic of the Philippines
Supreme Court
Manila

THIRD DIVISION

NOTICE

Sirs/Mesdames:

Please take notice that the Court, Third Division, issued a Resolution dated **October 14, 2020**, *which reads as follows:*

"**G.R. No. 230847** ***(Axia Power Holdings Philippines Corporation v. Commissioner of Internal Revenue).*** – This is an appeal from the April 6, 2017 Amended Resolution[1] and December 2, 2015 Decision[2] rendered by the Court of Tax Appeals *En Banc* in CTA EB No. 1203 entitled *Axia Power Holdings Philippines Corporation (Axia) v. Commissioner of Internal Revenue (CIR)*. The CTA *En Banc* denied petitioner's claim for a tax refund or tax credit on the grounds that petitioner failed to exhaust administrative remedies and such claim is barred by the irrevocability rule embodied in Section 76 of the 1997 National Internal Revenue Code *(NIRC)*.

Marubeni Energy Services Corporation *(MESC)* was a corporation duly organized and existing under Philippine law. On April 15, 2008, it filed with the Bureau of Internal Revenue *(BIR)* its annual Income Tax Return *(ITR)* for the Calendar Year *(CY)* ending December 31, 2007. It indicated on the face of its ITR its intention to have its unutilized creditable withholding tax *(CWT)* carried over as a tax credit for the succeeding year. Hence, the amount of ₱16,370,326.00 was carried over as a tax credit to the succeeding taxable year 2008, including the other unutilized withholding tax credits for the years 2004 to 2006.[3]

On December 22, 2009, the Board of Directors of *MESC* approved its merger with Axia, Marubeni Pacific Energy Holdings Corporation *(MPEHC)* and Marubeni Pacific II Energy Holdings Corporation *(MPEHCII)*, with Axia as the surviving entity. The merger was approved by the Securities and Exchange Commission *(SEC)*. The Certificate of Filing of Articles and Plan of Merger dated March 29, 2010 specifically mentioned that the entire assets and liabilities of MPEHC and MESC will be transferred to and be absorbed

[1] *Rollo*, pp. 23-27.
[2] Id. at 8-18.
[3] Id. at 9.

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by Axia.[4]

On April 15, 2010, MESC filed with respondent *CIR* a written claim for refund or issuance of tax credit certificate of its unutilized CWT for the CY ending December 31, 2007 in accordance with Sec.204(c) of the 1997 NIRC, as amended. On the same date, MESC filed by registered mail a Petition for Review with the Court of Tax Appeals, which was docketed as CTA Case No. 8092.[5] On October 15, 2010, petitioner filed an Amended Petition for Review solely for the purpose of properly designating the correct petitioner in the case, *i.e.*, from MESC to Axia, the surviving corporation in them erger.[6]

After trial, the CTA First Division held that since MESC filed its 2007 Annual ITR on April 15, 2008 and the original Petition for Review was filed on April 15, 2010, petitioner's judicial claim for refund of excess CWT for CY ending December 31, 2007 was filed within the two (2)-year prescriptive period provided under Sec. 229 of the NIRC.[7]

Nonetheless, the CTA First Division denied the Amended Petition on the basis of the "Irrevocability Rule" under Sec.76 of the 1997 NIRC. Under this rule, once the option to carry-over excess CWT is chosen by the taxpayer, such option shall be irrevocable for the taxable period, and are fund of excess CWT shall not be allowed. Upon the effectivity of the merger among MESC, MPEHC, and MPEHC II, as the absorbed corporations, and Axia, as the surviving corporation, the rights, assets and obligations of the absorbed corporations were transferred to Axia. Since MESC has chosen to carry over its excess CWT for the CY ended December 31, 2007, as shown in its 2007 ITR, petitioner, having succeeded to the rights, properties and liabilities of MESC as a result of the merger, cannot claim for a refund of MESC's excess CWT for CY ended December 31, 2007. Axia may nonetheless carry over MESC's excess CWT to the succeeding taxable years and use the same as tax credits against its future tax liabilities, untilfully utilized, provided that said excess CWT of MESC is duly substantiated.[8]

Petitioner moved for reconsideration, but the CTA Resolution First Division denied it.[9] Hence, it filed a Petition for Review before the CTA *En Banc*. On December 2, 2015, the latter rendered the assailed Decision, the dispositive portion of which states:

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[4] Id.
[5] Id. at 9-10.
[6] Id. at164.
[7] Id. at170.
[8] Id. at 171, 173-174.
[9] Id. at 176-178.

> **WHEREFORE**, the instant "Petition for Review" is hereby **DISMISSED**; the petition filed in CTA Case No. 8092 is likewise dismissed for petitioner's failure to exhaust administrative remedies.[10]

The CTA *En Banc* held when the merger among MESC, Axia, and other companies was approved by the SEC on March 29, 2010, MESC ceased to exist. Consequently, it had no more legal personality to file the administrative claim on April 15, 2010. Since the surviving company, Axia, did not file an administrative claim itself, no administrative claim can be considered filed and no suit or proceeding can be maintained in any court for the recovery of the excess tax allegedly collected by the CIR.[11] Petitioner cannot benefit from a claim of a non-entity. In effect, petitioner failed to exhaust administrative remedies.[12]

The CTA *En Banc* also found that MESC's original petition was verified by Ryukichi Kawaguchi *(Kawaguchi)*, the alleged president of MESC. There was, however, no corresponding Board Resolution or Secretary's Certificate attached to the petition that would evidence his authority to sign the petition. Likewise, the Amended Petition was signed by Kazonobu Takijima *(Takijima)* but the Secretary's Certificate attached to the Amended Petition did not show that he was authorized to sign the same. The absence of a valid verification violates Sec. 2, Rule 6 of the Rules of the Court of Tax appeals, and is another ground to dismiss the petition.[13]

Petitioner filed a Motion for Reconsideration, but the CTA *En Banc* denied it through the assailed Amended Resolution dated April 6, 2017. The tax court reiterated its finding that there was failure to exhaust administrative remedies, and held that this failure is not cured by a showing that Kawaguchi and Takijima were in fact authorized to verify the original Petition for Review and Amended Petition for Review, respectively, filed before the CTA First Division. In any event, the CTA *En Banc* held that the CTA First Division had adequately discussed the merits of petitioner's claim and found it not entitled to are fund due to their revocability rule.[14]

Undaunted, petitioner filed the present Petition for Review, which raises the following errors supposedly committed by the CTA *En Banc*:

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[10] Id. at 68.
[11] Id. at15.
[12] Id.
[13] Id. at 16-17.
[14] Id. at 24-25.

I.

THE HONORABLE COURT OF TAX APPEALS *EN BANC* ERRED IN HOLDING THAT MARUBENI [ENERGY] SERVICES CORPORATION (MESC) HAD NO LEGAL PERSONALITY TO FILE ITS ADMINISTRATIVE CLAIM ON APRIL 15, 2010 IN THAT WHILE IT WAS DEEMED DISSOLVED ON MARCH 29, 2010 WHEN THE SECURITIES AND EXCHANGE COMMISSION ISSUED A CERTIFICATE OF MERGER, MESC, FOR TAX PURPOSES, WAS NOT DISSOLVED UNTIL CLEARED OF ANY TAX LIABILITY PURSUANT TO SECTION 235(E) IN RELATION TO SECTION 52(C) OF THE NATIONAL INTERNAL REVENUE CODE OF 1997, ASAMENDED.

II.

THE HONORABLE CTA *EN BANC*'S FINDING THAT THE ORIGINAL PETITION FOR REVIEW HAS NO CORRESPONDING BOARD RESOLUTION OR SECRETARY'S CERTIFICATE ATTACHED TO IT IS CONTRARY TO THE EVIDENCE ON RECORD ESTABLISHING THAT A SECRETARY'S CERTIFICATE DATED SEPTEMBER 14, 2009 EXECUTED BY RODOLFO B. BERNARDO, THE CORPORATE SECRETARY OF MESC, WAS ATTACHED AS ANNEX "C" TO THE ORIGINAL PETITION FOR REVIEW.

III.

THE HONORABLE CTA *EN BANC*'S FINDING THAT MR. KAZUNOBU TAKIJIMA WAS NOT AUTHORIZED TO VERIFY AND SIGN THE AMENDED PETITION FOR REVIEW IS CONTRARY TO AND NEGATED BY THE SECRETARY'S CERTIFICATE SUBSEQUENTLY SUBMITTED ATTESTING TO MR. TAKIJIMA'S AUTHORITY.

IV.

THE HONORABLE CTA *EN BANC* ERRED IN APPLYING THE IRREVOCABILITY RULE IN THAT MESC WAS ALREADY EFFECTIVELY AND PERMANENTLY DISSOLVED WHEN IT WAS ISSUED BY THE BUREAU OF INTERNAL REVENUE A CERTIFICATE OF TAX

CLEARANCE ON JANUARY 11, 2015.[15]

Petitioner argues that while Art. 79 of the Corporation Code states that a corporation shall cease to exist upon the issuance by the SEC of a Certificate of Merger, under Sec. 235(e) of the NIRC the constituent corporations in a merger shall not be dissolved until they have been cleared of any tax liability. Sec. 52(C) of the NIRC, as amended, provides that a Certificate of Tax Clearance is necessary before the SEC issues a Certificate of Dissolution to a company. Here, the SEC's issuance of the Certificate of Filing of the Articles and Plan of Merger dated March 29, 2010 was premature considering that MESC had not yet obtained a tax clearance from the BIR beforehand. Hence, MESC still had the legal personality to file an administrative claim on April 15, 2010.[16]

As regards the authority to file the petitions, petitioner alleged that it had attached to the original Petition for Review the Secretary's Certificate dated September 14, 2009 executed by Rodolfo B. Bernardo, Corporate Secretary of MESC, attesting that Kawaguchi had authority to verify and sign the original petition being one of the duly-elected officers of MESC for the year 2008-2009, and who shall remain in his post until a successor has been duly elected and qualified.[17]

Likewise, as regards Takijima's authority to sign the Amended Petition, petitioner referred to the Manifestation submitted to the CTA *En Banc* in which it explained that through honest mistake, the wrong Secretary's Certificate was attached to its Amended Petition for Review. The attached Secretary's Certificate dated January 14, 2016 attests to the fact that during the special meeting of the Board of Directors on October 1, 2010, Mr. Naoto Tagore signed as President of Axia and Mr. Takijima was elected as its new President.

Finally, petitioner argues that the CTA *En Banc* erred in holding that the exception to the irrevocability rule does not apply in the case of dissolution of a company by operation of law on account of merger.

The Court's Ruling

We deny the petition.

First, the authority of the officials of MESC and Axia to respectively verify the original and amended petitions filed with the CTA First Division is

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[15] Id. at 38-40.
[16] Id. at 40-45.
[17] Id. at 46.

no longer an issue. Both MESC and Axia had presented the relevant Secretary's Certificates showing such authority. Axia explained that it inadvertently attached the wrong Secretary's Certificate to the Amended Petition and subsequently submitted the correct one attesting to Takijima's authority to sign the said pleading as the President and duly authorized representative of Axia. In fact, the CTA *En Banc* already acknowledged the authority of said officers when it held in its Amended Resolution dated April 6, 2017 that "[t]he failure to exhaust administrative remedies is not cured by showing the authority of Ryukichi Kawaguchi and Kazonobu Takijima, respectively, to verify the original Petition for Review and the Amended Petition for Review filed before the Court in Division."[18]

In any event, even without the Secretary's Certificates, MESC President Kawaguchi and Axia President Takijima could have validly signed the Petition and Amended Petition, respectively. In filing a suit, jurisprudence has recognized the authority of the President of a corporation to sign the verification and the certification of non-forum shopping even without a board resolution as said officer is presumed to have sufficient knowledge to swear to the truth of the allegations stated in the complaint or petition.[19]

Thus, the only issues for resolution of the Court in the present Petition are: 1) whether MESC had legal personality to file the administrative claim for tax refund or tax credit with the CIR on April 15, 2010, and 2) whether petitioner may claim a tax refund or tax credit certificate for the amount of ₱16,370,326.00 representing MESC's excess and unutilized CWT for CY ending December 31, 2007.

On the first issue, the CTA *En Banc* held that MESC ceased to exist when its merger with Axia was approved by the SEC on March 29, 2010. The fact that it was MESC and not Axia, the surviving corporation, that filed the administrative claim on Aprill 5, 2010 is fatal to the claim since MESC no longer had legal personality to do so. Hence, no administrative claim can be considered filed, and no suit or proceeding can be maintained in any court for the recovery of the tax.[20]

We disagree.

A merger is the union of two or more existing corporations in which the surviving corporation absorbs the others and continues the combined business.[21] Indeed, Sec. 80 of the Corporation Code[22] provides that one of the

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[18] Id. at 25.
[19] *Colegio Medico-Farmaceutico de Filipinas, Inc. v. Lim,* G.R. No. 212034, July 2, 2018, 869 SCRA 298, 305-306; *Hutama-RSEA/Supermax Phils., J.V. v. KCD Builders Corporation*, 628 Phil. 52, 61 (2010).
[20] *Rollo,* p. 15.
[21] *Bank of Commerce v. Heirs of Dela Cruz,* 816 Phil. 747, 764 (2017).
[22] "Corporation Code" in this Resolution pertains to *Batas Pambansa Blg.* 68.

effects of merger is the cessation of the separate existence of the constituent corporations. The merger dissolves the non-surviving corporations.[23] Hence, upon approval by the SEC of the merger in this case, MESC's legal personality was dissolved.

However, that is just one part of the story.

Before the Corporation Code took effect in 1980, the law had taken steps to protect government revenue by ensuring that taxes are collected from companies planning to dissolve. This is by way of the tax clearance requirement. Retiring corporations were obliged to report the incomes they earned for the purpose of determining the amount of imposable tax.[24] Once a corporation has completely paid of fits tax liabilities, the BIR will issue a Certificate of Tax Clearance which confirms that the corporation no longer has any outstanding tax obligations to the government.[25] The tax clearance is then submitted to the SEC as a requirement before the latter may issue a Certificate of Dissolution. The law clearly provides that corporations shall not be dissolved until cleared of any tax liability.

The foregoing requisites, which were formerly embodied in Secs. 45(C)[26] and 235(e)[27] of the National Internal Revenue Code of 1977, are now carried over to the present 1997 NIRC, through the following provisions:

> **SEC. 52.** *Corporation Returns.* – x x x x
>
> (C) *Return of Corporation Contemplating Dissolution or Reorganization.* – x x x x
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> The dissolving or reorganizing corporation shall, prior to the issuance by the Securities and Exchange Commission of the Certificate of Dissolution or Reorganization, as may be defined by rules and regulations prescribed by the Secretary of Finance, upon recommendation of the Commissioner, secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

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[23] *Bank of Commerce v. Heirs of Dela Cruz,* supra note 21.
[24] *Philippine Deposit Insurance Corp. v. Bureau of Internal Revenue,* 711 Phil. 17, 23 (2013).
[25] *Philippine Deposit Insurance Corp. v. Bureau of Internal Revenue,* 540 Phil. 142, 168 (2006).
[26] Sec. 45(c) of the 1977 NIRC provides:
> Sec. 45. Corporation Returns.—
> x x x x
> (C) Return of Corporation Contemplating Dissolution—x x x The dissolving corporation prior to the issuance of the Certificate of Dissolution by the Securities and Exchange Commission shall secure a certificate of tax clearance from the Bureau of Internal Revenue which certificate shall be submitted to the Securities and Exchange Commission.

[27] Sec. 235(e) of the 1977 NIRC provides:
> Sec. 235. Preservation of Books of Accounts and Other Accounting Records.—
> x x x x
> (e) x x x Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.

> x x x x
>
> **SEC. 235.** *Preservation of Books and Accounts and Other Accounting Records.* – x x x
>
> x x x x
>
> (e) x x x Corporations and partnerships contemplating dissolution must notify the Commissioner and shall not be dissolved until cleared of any tax liability.
>
> x x x x

Here, the SEC approved the merger on March 29, 2010[28] without the requisite tax clearance submitted by MESC. In fact, the latter applied for a tax clearance only on April 15, 2010, and was granted one on January 11, 2015. Nonetheless, We are not being asked in this Petition to look into and rule upon the apparent premature issuance by the SEC of the Articles of Merger without the requisite tax clearance from the BIR.

The unique circumstances in this case have seemingly created an impasse. MESC is considered dissolved under Sec. 79 of the Corporation Code as of March 29, 2010, but not insofar as Sec. 235(e) of the NIRC is concerned, since it had not obtained a tax clearance prior to dissolution. Can a corporation then be considered both dissolved and not dissolved at the same time?

Debatable questions are for the legislature to decide.[29] To be sure, the duty of the courts is to apply or interpret the law, and not to make or amend it.[30] But fully conscious of the Civil Code directive that no court shall decline to render judgment by reason of the silence, obscurity, or insufficiency of the law,[31] We should find a way to resolve the issue, and We do so by statutory construction.

There exists a valid presumption that undesirable consequences were never intended by a legislative measure, and that a construction of which the statute is fairly susceptible is favored, which will avoid all objectionable, mischievous, indefensible, wrongful, evil, and injurious consequences. Courts are not to give words a meaning that would lead to absurd or unreasonable consequences. The case thus calls for the application of the cardinal rule of statutory construction that the intent or spirit must prevail over the letter of the

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[28] Under Sec. 79 of the Corporation Code, "[i]f the Commission is satisfied that the merger or consolidation of the corporationsconcernedisnotinconsistentwiththeprovisionsofthisCodeandexistinglaws, it shall issue a certificate of merger or of consolidation, at which time the merger or consolidation shall be effective." The SEC in this case issued the Certificate of Filing of Articles and Plan of Merger on March 29, 2010 (*Rollo*, p. 9).

[29] *Bank of the Philippine Islands v. Commissioner of Internal Revenue,* 416 Phil. 345, 354 (2001).

[30] *Silverio v. Republic of the Philippines,* 562 Phil. 953, 973 (2007).

[31] Art. 9 of the Civil Code states: No judge or court shall decline to render judgment by reason of the silence, obscurity or insufficiency of the laws.

statutory construction that the intent or spirit must prevail over the letter of the law, for whatever is within the spirit of a statute is within the statute.[32]

As discussed above, the purpose of the tax clearance requirement under Sec. 52(c) of the NIRC is to ensure that a corporation contemplating dissolution does not renege on its tax liabilities and thereby irreparably deprive the government of much needed revenues. Consequently, Sec. 235(e) prevents the corporation from being dissolved without having been cleared by the BIR. In light of the purpose of the law, We hold that MESC is considered *not* dissolved prior to its obtaining a tax clearance, but *only for tax purposes*.

Not only is this interpretation within the spirit of the NIRC, it is also similar to Sec. 122 of the Corporation Code which allows a corporation whose corporate existence has been terminated to nonetheless continue performing limited activities for a period of three (3) years from its dissolution. Thus:

> **Sec. 122. *Corporate liquidation.*** - Every corporation whose charter expires by its own limitation or is annulled by forfeiture or otherwise, or whose corporate existence for other purposes is terminated in any other manner, shall nevertheless be continued as a body corporate for three (3) years after the time when it would have been so dissolved, for the purpose of prosecuting and defending suits by or against it and enabling it to settle and close its affairs, to dispose of and convey its property and to distribute its assets, but not for the purpose of continuing the business for which it was established.
>
> At any time during said three (3) years, the corporation is authorized and empowered to convey all of its property to trustees for the benefit of stockholders, members, creditors, and other persons in interest. From and after any such conveyance by the corporation of its property in trust for the benefit of its stockholders, members, creditors and others in interest, all interest which the corporation had in the property terminates, the legal interest vests in the trustees, and the beneficial interest in the stockholders, members, creditors or other persons in interest.

If a corporation is allowed to carry on certain activities for its own benefit and the benefit of its stakeholders after dissolution under the above circumstances, there should be nothing to prevent a corporation from maintaining a limited existence if only to serve the public interest in settling its tax liabilities.

In sum, We hold that MESC was not yet dissolved for tax purposes prior to its obtaining a tax clearance, and thus had legal personality as of April 15, 2010 to file a claim for tax refund or issuance of tax credit with the BIR. In this view, petitioner is considered to have exhausted administrative remedies.

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[32] *Millares v. NLRC*, 434 Phil. 524, 536 (2002).

Nonetheless, We deny petitioner's claim for tax refund or tax credit.

The CTA *En Banc* and First Division were unanimous in holding that petitioner is not entitled to a tax refund or issuance of a tax credit certificate in the amount of ₱16,370,326.00, representing MESC's excess and unutilized CWT for CY ending December 31, 2007 since MESC had chosen to carry over its excess CWT for the succeeding taxable period.

The pertinent provision of the NIRC states:

> **SEC. 76. -** ***Final Adjustment Return.*** – x x x
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> x x x x
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> 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 therefor.** (emphasis supplied)

Petitioner argues that MESC has been permanently dissolved when it was issued a tax clearance on January 11, 2015. Since it no longer operates its business and its corporate personality is different from petitioner's, the rationale for the irrevocability rule no longer applies.[33] This does not hold water.

MESC indeed has been permanently dissolved, but its rights, immunities, powers, duties and liabilities survived in petitioner. Sec. 80 of the Corporation Code is clear on the effects of merger or consolidation. Thus:

> **Sec. 80.** ***Effects or merger or consolidation.*** - The merger or consolidation shall have the following effects:
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> x x x x
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> 3. The surviving or the consolidated corporation shall possess all the rights, privileges, immunities and powers and shall be subject to all the duties and liabilities of a corporation organized under this Code;

[33] *Rollo*, p. 48.

> 4. The surviving or the consolidated corporation shall thereupon and thereafter possess all the rights, privileges, immunities and franchises of each of the constituent corporations; and all property, real or personal, and all receivables due on whatever account, including subscriptions to shares and other choses in action, and all and every other interest of, or belonging to, or due to each constituent corporation, shall be deemed transferred to and vested in such surviving or consolidated corporation without further act or deed; and
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> 5. The surviving or consolidated corporation shall be responsible and liable for all the liabilities and obligations of each of the constituent corporations in the same manner as if such surviving or consolidated corporation had itself incurred such liabilities or obligations; and any pending claim, action or proceeding brought by or against any of such constituent corporations may be prosecuted by or against the surviving or consolidated corporation. The rights of creditors or liens upon the property of any of such constituent corporations shall not be impaired by such merger or consolidation.

In this connection, the CTA First Division aptly pointed out the Court's ruling in various cases[34] that "[a]lthough there is a dissolution of the absorbed or merged corporations, there is no winding up of their affairs or liquidation of their assets because the surviving corporation automatically acquires all their rights, privileges, and powers, as well as their liabilities."

Hence, MESC may have been dissolved, but its assets were not liquidated nor its affairs wound up. As the surviving corporation to the merger, Axia stepped into the shoes of MESC. It is a corporate personality possessed of derivative rights and obligations. In fact, Sec. 80 of the Corporation Code allowed petitioner to maintain this proceeding that MESC commenced. Having succeeded to the rights and obligations of MESC, Axia cannot obtain what MESC itself could not have obtained under the law. Since the latter chose to carry over its excess CWT for CY ending December 31, 2007 to the succeeding taxable period, Axia is bound by that choice and consequently cannot claim for a tax refund or issuance of a tax credit certificate for the same tax.

In *Asiaworld Properties Philippine Corporation v. Commissioner of Internal Revenue*[35] We held that 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 are fund for that same excess

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[34] *Mindanao Savings and Loan Association, Inc. v. Willkom,* 648 Phil. 505, 513 (2010); *Associated Bank v. Court of Appeals,* 353 Phil. 702, 712 (1998).
[35] 640 Phil. 230 (2010).

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. To emphasize, the amount will not be forfeited in favor of the government but will remain in the taxpayer's account.[36]

Here, the unutilized excess tax credits of MESC will now remain in Axia's account, and the latter can use it as tax credits to be applied against its future tax liabilities until fully utilized, provided the CWT is substantiated.

Petitioner laments that a ruling that it can use the tax credits against its future tax liabilities would not be just and equitable since it is a holding company that does not generate business income and has practically zero tax liability.[37] Evidently, petitioner is concerned that it will not be able to utilize the tax credits. It seems that this is the driving force behind the petition. However, We see no reason to depart from the restrictive policy of Sec.76 of the NIRC. It is settled that a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer and the latter has the burden to prove strict compliance with the conditions for the grant of the tax refund or credit.[38] The burden was not discharged in this case. *Dura lex sed lex.* The law may be harsh, but that is the law.

This is consistent with our ruling in *Commissioner of Internal Revenue v. Bank of the Philippine Islands*,[39] that:

> x x x [T]he 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." (emphasis supplied)

In *Systra Philippines, Inc. v. Commissioner of Internal Revenue*,[40] We explicitly declared that once the carry-over option was made, actually or constructively, it became forever irrevocable **regardless of whether the excess tax credits were actually or fully utilized**. Petitioner can only take comfort in the assurance that the amount will not be forfeited in favour of the government but will remain in its account, to be carried over in the succeeding taxable years, creditable against its future income tax liabilities until fully utilized.

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[36] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, 560 Phil. 261, 274 (2007).
[37] *Rollo*, p. 50.
[38] *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*, 778 Phil. 709, 721 (2016).
[39] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, 609 Phil. 678 (2009).
[40] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, supra note 36.

WHEREFORE, the petition is **DENIED**. The December 2, 2015 Decision and April 6, 2017 Amended Resolution issued by the Court of Tax Appeals *En Banc* in CTA EB No. 1203 is **AFFIRMED**.

SO ORDERED." (**Leonen, *J.,*** *on wellness leave.*)

By authority of the Court:

MisRDCBatt
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