REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.), *Petitioner,*	**CTA Case No. 9948**
	Members:
	DEL ROSARIO, *P.J., Chairperson, and*
- versus -	**MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** JUL 2 8 2021 9:25 am

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DECISION

DEL ROSARIO, P.J.:

Before this Court is a Petition for Review[1] filed on October 15, 2018 by petitioner GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) against respondent Commissioner of Internal Revenue, praying that judgment be rendered ordering respondent to refund or issue in favor of petitioner a Tax Credit Certificate (TCC) in the amount of ₱34,112,873.00, allegedly representing its excess and unutilized creditable withholding taxes (CWTs) for fiscal year ending June 30, 2016 (FY 2016).

THE PARTIES

Petitioner GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) is the Philippine Branch Office of GHD Pty Ltd., a foreign corporation organized and existing under the laws of Australia, with registered address at 11/F Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City.[2] It is a registered taxpayer

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[1] CTA Docket vol. 1, pp. 12-20.
[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket vol. I, p. 288; Exhibits "P-1-1" and "P-1-2", CTA Docket vol. I, pp. 384-394 and 395-474.

of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 048, with Taxpayer Identification No. 203-471-895-000.[3] Petitioner was granted by the Securities and Exchange Commission (SEC) a License to Transact Business as a branch office in the Philippines to engage in technical management consultancy in mining, defense, and water industry and public works, urban planning and developments, geotechnical and dams and power technology.[4]

Respondent is the duly-appointed Commissioner of Internal Revenue (CIR) empowered to perform the duties of said office, including, among others, the power to decide, approve and grant claims for refund or tax credits of erroneously paid or overpaid taxes, as provided by law. He may be served summons, pleadings, and other processes of this Court at his office at the Legal Division of Revenue Region No. 8, 2nd Flr., BIR Building, 313 Gil Puyat Ave., Makati City.[5]

THE FACTS

On October 15, 2016, petitioner filed with the BIR, through the electronic Filing and Payment System (eFPS), its Annual Income Tax Return (ITR) for FY 2016.[6]

Petitioner indicated on the face of its Annual ITR for FY 2016 its option to be refunded its income tax overpayment for FY 2016.[7]

On September 27, 2018, petitioner filed with the BIR RDO No. 048 an administrative claim for tax refund of its excess and unutilized CWTs for FY 2016 in the amount of ₱34,112,873.00.[8]

Due to the inaction of respondent and in order to preserve its right to judicially claim for refund its alleged excess and unutilized CWTs for FY 2016 within the prescribed two (2)-year period, petitioner filed the present Petition for Review before this Court on October 15, 2018.[9]

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[3] Par. 2, Admitted Facts, JSFI, CTA Docket vol. I, p. 288; Exhibit "P-2", CTA Docket vol. I, p. 475.
[4] Exhibits "P-1-1" and "P-1-2", CTA Docket vol. II, pp. 384-394 and 395-474.
[5] Par. 3, Admitted Facts, JSFI, CTA Docket vol. I, p. 289.
[6] Exhibit "P-3", CTA Docket vol. I, pp. 476-483.
[7] Exhibit "P-3", CTA Docket vol. I, p. 476.
[8] Exhibits "P-8" and "P-8-1", CTA Docket vol. I, p. 538-543.
[9] CTA Docket vol. I, p. 12.

On December 28, 2018, within the extended period,[10] respondent filed his Answer (with Motion to Dismiss),[11] raising the following special and affirmative defenses: *(i)* the Petition for Review states no cause of action; *(ii)* petitioner's claim for refund or issuance of TCC in the amount of ₱34,112,873.00 representing alleged excess and unutilized CWTs was inaccurate or erroneous since the same is still subject to investigation by the BIR; *(iii)* petitioner must show that it did not carry over its 2016 alleged unutilized CWTs to the succeeding taxable years; and, *(iv)* petitioner must show that it has complied with the provisions of Section 76, in relation to Sections 204 and 229, of the National Internal Revenue Code (NIRC) of 1997, as amended.

In his Motion to Dismiss, respondent avers that: (1) he interposes opposition to petitioner's manifestation that only a notarized copy of the Secretary's Certificate was attached to the Petition for Review and that the Secretary's Certificate authenticated by the Philippine Embassy in Australia will be submitted once its counsel receives it; (2) he moves for the dismissal of the petition on the ground that petitioner has no legal capacity to sue when it filed a defective Petition for Review; and, (3) the Court has no jurisdiction over the judicial claim for refund that was filed beyond the two (2)-year prescriptive period.

Respondent's Pre-Trial Brief[12] and Petitioner's Pre-Trial Brief[13] were both filed on May 27, 2019. The Pre-Trial Conference was held on May 30, 2019.[14]

During the Pre-Trial Conference, petitioner's counsel submitted the Philippine Consular Authentication of the Special Power of Attorney attached to the Petition for Review.[15]

On July 1, 2019, the parties filed their Joint Stipulation of Facts and Issues.[16] In the Resolution dated July 8, 2019, the Court approved the parties' Joint Stipulation of Facts and Issues and terminated the Pre-Trial.[17] On July 30, 2019, the Court issued the Pre-Trial Order.[18]

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[10] CTA Docket vol. I, p. 79.
[11] CTA Docket vol. I, pp. 81-86.
[12] CTA Docket vol. I, pp. 224-227.
[13] CTA Docket vol. I, pp. 229-243.
[14] CTA Docket vol. I, pp. 251-253 and 260-261.
[15] CTA Docket vol. I, pp. 260-261.
[16] CTA Docket vol. I, pp. 288-293.
[17] CTA Docket vol. I, p. 295.
[18] CTA Docket vol. I, pp. 310-317.

Upon motion[19] of petitioner, the Court commissioned Mr. Emmanuel Y. Mendoza as Independent Certified Public Accountant (ICPA) on July 25, 2019.[20]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Ms. Katrina S. Maninang,[21] petitioner's Tax Manager; and Mr. Emmanuel Y. Mendoza,[22] the Court-commissioned ICPA.

On November 4, 2019, petitioner filed its Formal Offer of Evidence.[23] Petitioner's exhibits were admitted in evidence in the Resolution dated February 11, 2020,[24] save for Exhibit "P-1-2" for failure of the exhibit formally offered and identified to correspond with the document actually marked; and, Exhibit "P-24-31-A", for not being found in the records of the case.

Petitioner filed a Motion for Reconsideration (Re: Resolution dated February 11, 2020) on March 4, 2020 moving for the reconsideration of the denial of its Exhibit "P-1-2".[25] This was granted by the Court in the Resolution dated September 21, 2020.[26]

Considering that respondent manifested during the Pre-Trial Conference that he will not present any evidence,[27] the Court directed the parties to file their respective memoranda within twenty (20) days from receipt of the September 21, 2020 Resolution.

Petitioner filed its Memorandum[28] on October 20, 2020 while respondent filed a Motion for Extension of Time to File Memorandum[29] on October 21, 2020. Respondent's Motion was expunged from the records for being a prohibited motion; and, the case was submitted for decision in the Resolution dated November 4, 2020.[30]

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[19] CTA Docket vol. I, pp. 270-273.
[20] CTA Docket vol. I, pp. 297-302.
[21] Exhibit "P-13", CTA Docket vol. I, pp. 110-122; and Minutes of Hearing dated July 30, 2019, CTA Docket vol. I, pp. 304-305.
[22] Exhibit "P-60", CTA Docket vol. I, pp. 329-341; and Minutes of Hearing dated September 24, 2019, CTA Docket vol. I, pp. 342-346.
[23] CTA Docket vol. I, pp. 363-382.
[24] CTA Docket vol. II, pp. 590-593.
[25] CTA Docket vol. II, pp. 598-603.
[26] CTA Docket vol. II, pp. 612-614.
[27] CTA Docket vol. I, pp. 253 and 260-261.
[28] CTA Docket vol. II, pp. 615-637.
[29] CTA Docket vol. II, pp. 638-641.
[30] CTA Docket vol. II, p. 644.

On November 10, 2020, the Memorandum (for Respondent) was filed through registered mail and received by the Court on November 24, 2020.[31] This was, however, expunged by the Court in the Resolution dated December 2, 2020.[32]

ISSUE

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to its claim for refund or issuance of a TCC in the amount of ₱34,112,873.00, representing petitioner's excess and unutilized CWTs for the FY ending June 30, 2016.[33]

PARTIES' ARGUMENTS

Petitioner argues that: *(i)* it is entitled to the refund of its excess and unutilized input CWTs for FY 2016 in the amount of ₱34,112,873.00 pursuant to Sections 58(D) and 76 of the NIRC of 1997, as amended; *(ii)* its administrative and judicial claims for refund were filed within the two (2)-year prescriptive period provided in Sections 204(C) and 229 of the NIRC of 1997, as amended; *(iii)* its excess and unutilized CWTs for FY 2016 are duly substantiated by documentary evidence; *(iv)* the income upon which the withholding was made was reported as part of the revenues declared in its ITR; *(v)* it did not exercise the option to carry over its excess and unutilized CWTs for FY 2016 to succeeding taxable periods; and, *(vi)* it applied its "prior year's excess credits" from FY ending June 30, 2015 (FY 2015) as payment for its Regular Corporate Income Tax (RCIT) for FY 2016.

Respondent, in his Answer, counter-argues that: *(i)* the Petition for Review states no cause of action; *(ii)* petitioner's claim for refund or issuance of TCC in the amount of ₱34,112,873.00 representing alleged excess and unutilized CWTs was inaccurate or erroneous since the same is still subject to investigation by the BIR; *(iii)* petitioner must show that it did not carry over its 2016 alleged unutilized CWTs to the succeeding taxable years; and, *(iv)* petitioner must prove that it has complied with the provisions of Section 76, in relation to Sections 204 and 229, of the NIRC of 1997, as amended.

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[31] CTA Docket vol. II, pp. 648-655.
[32] CTA Docket vol. II, p. 661.
[33] Issue, JSFI, CTA Docket vol. I, p. 289.

THE COURT'S RULING

In its Annual ITR for FY 2016, petitioner had total tax credits of ₱132,297,352.00, broken down as follows:[34]

Item	Amount
Prior Year's Excess Credits other than MCIT	₱ 97,201,828.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	17,987,460.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	17,108,064.00
Total Tax Credits/Payments	**₱ 132,297,352.00**

Petitioner claims that its RCIT for the period amounting to ₱14,819,027.00 was paid for using its Prior Year's Excess Credits other than MCIT in the amount of ₱97,201,828.00. This left a balance of ₱82,382,801.00 in its prior year's excess credits. Petitioner alleges that its CWTs in the total amount of ₱35,095,524.00 incurred during the current period were not utilized to cover its current income tax liability. Petitioner's own verification likewise revealed that CWTs in the amount of ₱982,651.00 were covered by duplicate CWT Certificates. Thus, there remained CWTs in the total amount of ₱34,112,873.00 which petitioner claims for refund, as follows:

Item	Amount	
CWTs from previous quarters	₱	17,987,460.00
CWTs for the fourth quarter		17,108,064.00
Total CWTs for FY ending June 30, 2016	₱	35,095,524.00
Less: Adjustment on Duplicate CWT Certificates		982,651.00
CWTs claimed for refund	**₱**	**34,112,873.00**

In support of its claim for refund, petitioner offered in evidence the following documents: Quarterly[35] and Annual[36] ITRs for FY 2016, Audited Financial Statements (AFS) for FY 2016,[37] Quarterly ITRs for FY ending June 30, 2017 (FY 2017),[38] Original[39] and Amended[40]

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[34] Exhibit "P-3", CTA Docket vol. I, pp. 482.
[35] Exhibits "P-5" to "P-7", CTA Docket vol. I, pp. 529-537.
[36] Exhibit "P-3", CTA Docket vol. I, pp. 476-483.
[37] Exhibit "P-4", CTA Docket vol. I, pp. 484-428.
[38] Exhibits "P-10" to "P-12", CTA Docket vol. I, pp. 560-565.
[39] Exhibit "P-9-2", CTA Docket vol. I, pp. 552-559.
[40] Exhibit "P-9-1", CTA Docket vol. I, pp. 544-551.

Annual ITRs for FY 2017, Schedule of CWTs for FY 2016,[41] Summary Alphalist of Creditable Withholding Tax (SAWT) for FY 2016,[42] General Ledger (GL) of Revenue for FY 2016,[43] GL of CWTs for FY 2016,[44] Annual ITRs for taxable years 2007 to 2015,[45] Prior Year's Certificates of CWTs at Source for FY 2015,[46] BIR Form 2307 supporting CWTs claims for revenue reported in the Annual ITR for FY 2016,[47] BIR Form 2307 supporting CWTs claims for revenue reported in Annual ITR for FY 2015 but collected in FY 2016,[48] official receipts (ORs) supporting CWTs claims for revenue reported in Annual ITR for FY 2016,[49] ORs supporting CWTs claims for revenue reported in Annual ITR for FY 2015 but collected in FY 2016,[50] billing statements (BS) supporting CWTs claims for revenue reported in ITRs for FY 2016,[51] Quarterly SAWT for FY 2015,[52] and Schedule of Reconciliation.[53]

Petitioner chose the option to be refunded in its Annual ITR

Pertinent to the resolution of the present case is Section 76 of the NIRC of 1997, as amended, which states:

> "**SEC. 76. *Final Adjustment Return.*** – Every corporation liable to tax under Section 27 shall file a final adjustment return

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[41] Exhibit "P-16".
[42] Exhibits "P-18-1" to "P-18-4".
[43] Exhibits "P-19-1" to "P-19-2".
[44] Exhibit "P-21".
[45] Exhibits "P-23-1" to "P-23-9".
[46] Exhibits "P-24-1-A" to "P-24-200-A", "P-24-201-A" to "P-24-207-A" and "P-24-208-A" to "P-24-223-A".
[47] Exhibits "P-25-1-A" to "P-25-44-A", "P-25-47-A" to "P-25-47-A" to "P-25-151-A", "P-26-1-A" to "P-26-14-A", "P-27-1-A", "P-28-1-A" to "P-28-3-A", "P-29-1-A" to "P-29-4-A", "P-30-1-A" to "P-30-4-A", "P-31-1-A", "P-32-1-A" to "P-32-16-A", "P-33-1-A", "34-1-A" to "P-34-4-A", "P-36-1-A" to "P-36-23-A", "P-37-1-A" to "P-37-8-A", "P-38-1-A" to "P-38-2-A", "P-39-1-A" and "P-40-1-A" to "P-40-40-2-A".
[48] Exhibits "P-25-67-A", "P-26-8-A", "P-26-9-A", "P-26-11-A", "P-36-12-A", "P-38-1-A" to "P-38-2-A", "P-41-1-A" to "P-41-5-A", "P-42-1-A" to "P-42-23-A", "P-43-1-A" to "P-43-2-A", "P-44-1-A", "P-46-1-A" to "P-46-4-A", "P-47-1-A" to "P-47-2-A", and "P-48-1-A" to "P-48-2-A".
[49] Exhibits "P-25-1-B" to "P-25-44-B", "P-25-47-B" to "P-25-151-B", "P-26-1-B" to "P-26-14-B", "P-28-1-B" to "P-28-3-B", "P-31-1-B", "P-32-1-B" to "P-32-16-B", "P-33-1-B", "P-34-1-B" to "P-34-2-B", "P-34-4-B", "P-35-1-B" to "P-35-2-B", "P-36-1-B" to "P-36-23-B", "P-37-1-B" to "P-37-8-B", "P-38-1-B" to "P-38-2-B", and "P-39-1-B".
[50] Exhibits "P-26-8-B", "P-26-9-B", "P-26-11-B", "P-36-12-B", "P-38-1-B", "P-41-1-B" to "P-41-5-B", "P-42-1-B" to "P-42-24-B", "P-44-1-B", "P-45-1-B", "P-46-1-B" to "P-46-4-B", "P-47-1-B" to "P-47-2-B", and "P-48-1-B" to "P-48-4-B".
[51] Exhibits "P-25-1-C" to "P-25-44-C", "P-25-47-C" to "P-25-151-C", "P-28-1-C" to "P-28-3-C", "P-31-1-C", "P-32-1-C" to "P-32-16-C", "P-33-1-C", "P-34-1-C" to "P-34-4-C", "P-35-1-C" to "P-35-2-C", "P-36-1-C" to "P-36-23-C", "P-27-1-C", and "P-37-1-C" to "P-37-8-C".
[52] Exhibit "P-49".
[53] Exhibit "P-50".

> covering the total taxable 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 income of that year, the corporation shall either:
>
> (A) Pay the balance of 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 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."

Pursuant to the above-mentioned provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid essentially has two (2) options, either: (a) to carry-over the excess credit and apply the same against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year; or (2) to apply for a cash refund or issuance of a TCC within the prescribed period. If the carry-over option is selected, such is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[54]

In exercising its option, the corporation must signify in its Annual ITR (by marking the option box provided therein) its intention, either to carry over the excess credit or to claim a refund.[55] To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

In this case, petitioner marked the box corresponding to the option "To be refunded" in its Annual ITR for FY 2016.[56] Evidently, petitioner chose the option to be refunded under Section 76 of the NIRC of 1997, as amended.

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[54] *University Physicians Services Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.
[55] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[56] Exhibit "P-3", CTA Docket vol. I, p. 476.

Likewise, a perusal of petitioner's Annual ITR for FY 2017 shows that the amount of ₱34,112,873.00 representing its excess and unutilized CWTs requested to be refunded has not been carried over to the succeeding taxable periods. The presentation of the Annual ITR for the succeeding taxable year would suffice in proving that prior year's excess credits were not utilized for the succeeding taxable year in order to make a final determination of the total tax due.[57]

The "Prior Year's Excess Credits Other Than MCIT" found in petitioner's Original[58] and Amended[59] Annual ITR for FY 2017 shows the amount of ₱82,382,801.00. This amount is the exact balance of the prior year's excess credits of petitioner for FY 2016, which means that the amount prayed to be refunded in this case has not been carried over to the succeeding FY 2017. What was used as "Prior Year's Excess Credits Other Than MCIT" in the Annual ITR for FY 2017 was only the balance of the prior year's excess credits that was carried over to the succeeding taxable period. Thus, the unutilized CWTs for FY 2016 in the amount of ₱34,112,873.00 may accordingly be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

Petitioner's compliance with the other requisites to claim a tax credit or refund of excess and unutilized CWTs

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the prescriptive period in the filing of administrative and judicial claims for refund or recovery of tax erroneously or illegally collected, respectively, to wit:

> "SEC. 204. ***Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes. –***
>
> The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the

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[57] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[58] Exhibit "P-9-2", CTA Docket vol. I, p. 557.
[59] Exhibit "P-9-1", CTA Docket vol. I, p. 549.

> purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund.
>
> xxx xxx xxx
>
> SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."

Based on the foregoing provisions, a claimant for refund must first file an administrative claim for refund before the respondent, prior to filing a judicial claim before the Court. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[60]

While the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, thus, reflecting the results of the operations of a business enterprise.[61]

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[60] *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

[61] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.

In addition to the foregoing, Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, as amended, provides:

> "*Sec. 2.58.3.* ***Claim for tax credit or refund.*** **–**
>
> (A) xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that **the income payment has been declared as part of the gross income** and **the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. xxx" *(Boldfacing supplied)*

In fine, petitioner must satisfy the following three (3) essential requisites for the grant of a claim for refund of excess and unutilized CWTs, to wit:

(1) The claim must be filed within the two (2)-year period from the date of payment of the tax, and/or the filing of the Annual ITR;

(2) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld; and,

(3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.[62]

First requisite: The administrative and judicial claims for refund were filed on time

In this case, petitioner electronically filed its Annual ITR for FY 2016 on October 15, 2016.[63] Thus, petitioner had until October 15, 2018 within which to file both its administrative and judicial claims for refund. The administrative claim was filed by petitioner on September 27, 2018 as evidenced by its Application for Tax Credits/Refunds[64] with attached Letter dated September 25, 2018 addressed to BIR Revenue

[62] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013.
[63] Exhibit "P-3", CTA Docket vol. I, p. 476.
[64] Exhibit "P-8", CTA Docket vol. I, p. 538.

District Office No. 48.[65] Without waiting for the decision of the respondent on its application, petitioner filed the present Petition for Review on October 15, 2018.[66] Both the administrative and judicial claims were filed within the two (2)-year prescriptive period in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended.

Second Requisite: Fact of withholding is established by copies of withholding statements duly issued by the payor

The second requisite mandates petitioner to prove the fact of withholding of the claimed CWTs by a copy of the statement duly issued by the payor, acting as the withholding agent, to the payee, showing the names of the payor and payee, the income payment, the amount of tax withheld, and the nature of the tax paid.

Records show that the Court-commissioned ICPA was able to trace the total revenue recorded, reported and collected in 2016 in the amount of ₱232,407,198.95, which was subjected by petitioner's customers to CWTs in the amount of ₱28,304,239.99, broken down as follows:[67]

Findings	**Exhibit**	**Income Payment**	**CWTs**
Transactions in Philippine Peso			
CWTs were properly supported by BIR Form 2307 issued by the petitioner's customers while the revenues were properly supported by official receipts and billing statements	P-25-1-A to P-25-44-A P-25-47-A to P-25-151-A P-25-1-B to P-25-44-B P-25-47-B to P-25-151-B P-25-1-C to P-25-44-C P-25-47-C to P-25-151-C	₱ 125,456,258.33	₱ 15,039,783.75
CWTs were properly supported by BIR Form 2307 issued by the petitioner's customers while the revenues were supported by official receipts but without billing statements	P-26-1-A to P-26-14-A P-26-1-B to P-26-14-B	20,164,645.81	1,999,775.03
CWTs were properly supported by BIR Form 2307 and revenues were supported only by billing statement and without or with incomplete official receipt but reported in the FY 2016 Income Tax Return	P-29-1-A to P-29-4-A P-29-1-C to P-29-4-C P-28-1-A to P-28-3-A P-28-1-B to P-28-3-B P-28-1-C to P-28-3-C	5,517,019.42	827,552.92

[65] Exhibit "P-8-1", CTA Docket vol. I, pp. 539-543.
[66] CTA Docket vol. I, p. 12.
[67] Exhibit "P-61", ICPA Report, pp. 9-10.

CWTs were properly supported by BIR Form 2307 and revenues were reported in the FY 2016 Income Tax Return	P-30-1-A to P-30-4-A	3,056,788.00	189,972.91
Declared revenues were properly supported by Official Receipts and Billing Statements while the CWTs were supported by BIR Form 2307 but dated outside the period of claim	P-31-1-A P-31-1-B P-31-1-C	530,317.14	79,547.57
CWTs supported only by photocopied BIR Form 2307 while the revenues were properly supported by official receipts and billing statements	P-32-1-A to P-32-16-A P-32-1-B to P-32-16-B P-32-1-C to P-32-16-C	8,494,650.08	929,527.46
CWTs were supported by BIR Form 2307 but the payor's TIN indicated in the BIR Form 2307 is incorrect	P-33-1-A P-33-1-B P-33-1-C P-51-1	1,215,000.00	182,250.00
CWTs were supported by BIR Form 2307 but the petitioner's TIN is not indicated nor incorrect	P-34-1-A to P-34-4-A P-34-1-B to P-34-2-B P-34-4-B P-34-1-C to P-34-4-C	5,442,352.00	426,742.80
Declared revenues were properly supported by official receipts and billing statements but without supporting BIR Form 2307	P-35-1-B to P-35-2-B P-35-1-C to P-35-2-C	902,468.00	135,370.20
CWTs were supported by duplicate CWT Certificates (BIR Form 2307) and inadvertently included in the FY 2016 Income Tax Return		2,754,688.00	413,203.20
Claimed CWTs were supported by BIR Form 2307 with electronic signature while revenues were supported by official receipt and billing statement	P-36-1-A to P-36-23-A P-36-1-B to P-36-23-B P-36-1-C to P-36-23-C	17,238,121.77	2,491,123.78
CWTs were supported by BIR Form 2307 with electronic signature and revenues were supported only by billing statement and without official receipt but reported in the FY 2016 Income Tax Return	P-27-1-A P-27-1-C	1,339,285.71	200,892.86
Subtotal		₱ 192,111,594.26	₱ 22,915,742.49
Transactions in foreign currency			
Declared revenues were properly supported by Official Receipts and billing statements and the CWTs were supported by BIR Form 2307	P-37-1-A to P-37-8-A P-37-1-B to P-37-8-B P-37-1-C to P-37-8-C	25,078,551.19	3,472,639.21
Revenues were properly supported by Official Receipts but without billing statements and the CWTs were supported by BIR Form 2307	P-38-1-A to P-38-2-A P-38-1-B to P-38-2-B	13,367,752.55	1,638,463.33

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Claimed CWTs were supported by BIR Form 2307 and official receipt but revenue declared in BIR Form 2307 is more than the revenue in the official receipt. The revenue declared in the BIR Form 2307 is reported in the FY 2016 Income Tax Return	P-39-1-A P-39-1-B	627,980.47	94,197.07
Claimed CWTs were supported by BIR Form 2307 and revenues were reported in the FY 2016 Income Tax Return	P-40-1-A P-40-2-A	1,221,319.25	183,197.89
Subtotal		₱ 40,295,603.46	₱ 5,388,497.49
Unaccounted difference		₱ 1.23	
Total		₱ 232,407,198.95	₱ 28,304,239.99

The ICPA noted that the following items in the above-mentioned breakdown were not properly substantiated, *viz.*:[68]

Findings	Exhibit	Income Payment	CWT
Declared revenues were properly supported by Official Receipts and Billing Statements while CWTs were supported by BIR Form 2307 but dated outside the period of claim	P-31-1-A P-31-1-B P-31-1-C	₱ 530,317.14	₱ 79,547.57
CWTs were supported only by photocopied BIR Form 2307 while revenues were properly supported by official receipts and billing statements	P-32-1-A to P-32-16-A P-32-1-B to P-32-16-B P-32-1-C to P-32-16-C	8,494,650.08	929,527.46
CWTs were supported by BIR Form 2307 but the payor's TIN indicated in the BIR Form 2307 is incorrect	P-33-1-A P-33-1-B P-33-1-C P-51-1	1,215,000.00	182,250.00
CWTs were supported by BIR Form 2307 but the petitioner's TIN is not indicated nor incorrect	P-34-1-A to P-34-4-A P-34-1-B to P-34-2-B P-34-4-B P-34-1-C to P-34-4-C	5,442,352.00	426,742.80
Declared revenues were properly supported by official receipts and billing statements but without supporting BIR Form 2307	P-35-1-B to P-35-2-B P-35-1-C to P-35-2-C	902,468.00	135,370.20
CWTs were supported by duplicate CWT Certificates (BIR Form 2307) and inadvertently included in the FY 2016 Income Tax Return		2,754,688.00	413,203.20
Total		₱ 19,339,475.22	₱ 2,166,641.23

Anent the income payment of ₱5,442,352.00 and its corresponding CWTs of ₱426,742.80 covered by CWT Certificates (BIR Form 2307) where petitioner's Tax Identification Number (TIN) is

[68] Exhibit "P-61", ICPA Report, pp. 16-17.

not indicated or incorrect, further verification by the Court of the said CWT Certificates[69] yielded the following:

Name of Customer	Customer's TIN	Exhibit No.	Date		Income Declared	Tax Withheld
			From	To		
Petitioner's TIN is incorrect but name and address match with BIR Certificate of Registration						
JG Summit Petrochemical Corporation	003-676-075-000	P-34-1-A	15-Oct-15	15-Oct-15	470,640.00	70,596.00
JG Summit Petrochemical Corporation	003-676-075-000	P-34-2-A	19-Apr-16	19-Apr-16	1,457,600.00	218,640.00
JG Summit Petrochemical Corporation	003-676-075-000	P-34-3-A	29-Jun-16	29-Jun-16	517,112.00	77,566.80
Subtotal					**₱ 2,445,352.00**	**₱ 366,802.80**
CWT Certificate does not indicate petitioner's TIN and address						
J.V. Angeles Construction Corporation	000-282-265-000	P-34-4-A	18-Sep-15	18-Sep-15	2,997,000.00	59,940.00
Subtotal					**₱ 2,997,000.00**	**₱ 59,940.00**
Total					**₱ 5,442,352.00**	**₱ 426,742.80**

The Court finds that the withholding tax certificates which indicate petitioner's name and address, and the amount of CWTs withheld by the payor, albeit without petitioner's TIN, are complete in relevant details necessary to aid the Court in evaluating the subject refund claim. Petitioner's name and address appearing on said certificates may be cross-referenced with petitioner's BIR Certificate of Registration.[70] Therefore, even with an incorrect TIN, it can be reasonably inferred that the CWT Certificates pertain to petitioner as the same recipient of such income subjected to withholding tax because the name and address appearing on the CWT Certificates match with the details appearing on petitioner's BIR Certificate of Registration. Thus, it is proper to allow the CWT Certificates with reported income of ₱2,445,352.00 and corresponding CWTs of ₱366,802.80.

Considering the foregoing adjustments, the total CWTs disallowances amounts to ₱1,799,838.59, computed below:

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[69] Exhibits "P-34-1-A" to "P-34-4-A".
[70] Exhibit "P-2", CTA Docket vol. I, p. 475.

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Findings	Income Payment	CWT
Disallowances made by ICPA	₱ 19,339,475.22	₱ 2,166,641.23
Less: Allowed by the Court upon verification	2,445,352.00	366,802.80
Total	₱ 16,894,123.22	₱ 1,799,838.59

The Court also notes the finding of the ICPA, that there are revenues recorded and reported in the FY 2015 ITR in the total amount of ₱49,023,111.37 but the corresponding CWT Certificates were dated and received by petitioner in FY 2016. The breakdown of the revenues and corresponding CWTs is as follows:[71]

Findings	Exhibits	Revenue per Schedule of CWT	CWT
Transactions in Philippine Peso			
CWTs were properly supported by BIR Form 2307 issued by the Petitioner's Customers while revenues were properly supported by Official Receipts and Billing Statements	P-41-1-A to P-41-5-A P-26-8-A P-41-1-B to P-41-5-B P-26-8-B P-41-1-C to P-41-6-C	₱ 4,339,286.40	₱ 646,180.46
CWTs were properly supported by BIR Form 2307 issued by the Petitioner's Customers while revenues were properly supported by Official Receipts but without Billing Statements	P-42-1-A to P-42-23-A P-25-67-A P-26-11-A P-26-9-A P-42-1-B to P-42-24-B P-26-11-B P-26-9-B	26,717,700.19	2,631,042.39
Claimed CWTs were properly supported by BIR Form 2307 but without supporting Official Receipts and Billing Statements	P-43-1-A to P-43-2-A	4,309,130.32	646,369.55
CWTs were supported by BIR Form 2307, billing statements and official receipts but amount withheld per BIR Form 2307 is more than claimed CWTs per official receipt	P-44-1-A P-44-1-B P-44-1-C	407,150.00	61,072.50
CWTs were not supported by BIR Form 2307 while revenues were supported by official receipt but without billing statement	P-45-1-B	103,840.00	10,384.00
Claimed CWTs were supported by BIR Form 2307 with electronic signature while revenues were supported only by official receipt and without billing statement	P-46-1-A to P-46-4-A P-36-12-A P-46-1-B to P-46-4-B P-36-12-B	5,559,160.71	811,384.11
CWTs were supported only by photocopied BIR Form 2307	P-47-1-A to P-47-2-A P-47-1-B to P-47-2-B P-47-1-C	1,936,483.00	290,472.45
Subtotal		₱ 43,372,750.62	₱5,096,905.46
Transactions in Foreign Currency			
CWTs were properly supported by BIR Form 2307 issued by the Petitioner's Customers while revenues were properly	P-48-1-A to P-48-2-A P-38-1-A to P-38-2-A P-48-1-B to P-48-4-B P-38-1-B	₱ 5,650,361.86	₱ 711,727.10

[71] Exhibit "P-61", ICPA Report, p. 7.

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supported by Official Receipts but without Billing Statements			
Subtotal		₱ 5,650,361.86	₱ 711,727.10
Unaccounted difference		₱ (1.11)	
Total		**₱ 49,023,111.37**	**₱5,808,632.56**

The foregoing resulted to a discrepancy between gross sales subject to withholding tax per schedule of CWTs and sales per GL. Notwithstanding the timing difference, the ICPA found that the income was still recorded and reported by petitioner as part of its gross income, albeit during a different taxable period.

In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*,[72] the Supreme Court elucidated that the delay in the receipt of CWT Certificates is not fatal as what is important is that the income per CWT Certificates were reported in the ITRs, albeit for prior years, *viz.*:

> "**It must be noted that while the income payments from which the CWTs which were declared in its return covered the years 2006, 2008, 2009 and 2010, there was nothing wrong with it as what is important is that the respondent complied with the third requisite, that is, the income which the taxes were withheld was included in the returns of the respondent**.
>
> The CTA *En Banc* correctly appreciated the explanation of the independent CPA (ICPA) why the income payments from which the CWT amounting to P12,729,617.90 were withheld, were declared in its returns covering the years 2006, 2008, 2009 and 2010. In gist, the ICPA suggests that there were delays in collection of certain income payments to respondent. For one, certain sales made by respondent to its dealers in 2008 and 2009 were only paid in 2010. In other words, there were certain income payments which, although respondent expected to receive in 2006, 2008 and 2009, were only remitted to it in 2010. **As concluded by the CTA *En Banc*, the delay in collection of certain income payments of respondent caused the timing difference between the actual reporting of the income by respondent and the actual withholding of the corresponding creditable income tax by respondent's customers**. What is important is that the creditable withholding taxes corresponding to the related income in the respondent's books for CY's 2006, 2008 and 2009 were not yet claimed as income tax credits in respondent's annual ITRs corresponding to the said years. Hence, it is just proper that these income payments should form part of respondent's tax credit for 2010." (*Boldfacing supplied*)

In this case, however, petitioner failed to present the AFS, GL, journal entries, reconciliation schedules, and other related documents

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[72] G.R. No. 231581, April 10, 2019.

that would aid the Court in verifying whether the income of ₱49,023,111.37 as declared in the CWT Certificates received by petitioner in 2016 was actually reported and declared as part of the gross income in the Annual ITR for FY 2015. Without such pieces of evidence, the Court is unable to properly trace whether the said amount was included in petitioner's Annual ITR for FY 2015. As such, it is appropriate for the Court to disallow said CWT Certificates.

Of the remaining CWT Certificates offered by petitioner in evidence, verification by the Court shows that the following CWT Certificates, in the total amount of ₱215,029.86, shall likewise be denied based on the following grounds:

Name of Customer	Customer's TIN	Exhibit No.	Date		Income Declared	Tax Withheld
			From	To		
No name of payor's authorized representative						
Degremont-Philippine Branch	008-642-753-000	P-25-21-A	1-Oct-15	31-Dec-15	₱ 1,300,000.00	₱ 26,000.00
Subtotal					**₱ 1,300,000.00**	**₱ 26,000.00**
Unreadable CWTs amount						
FCF Minerals Corporation	238-154-069-000	P-25-26-A	1-May-16	31-May-16	₱ 905,246.00	₱ 135,786.90
Subtotal					**₱ 905,246.00**	**₱ 135,786.90**
No income amount reported in CWT Certificate						
Laguna AAA Water Corporation	218-595-528-000	P-25-151-A	12-Apr-16	12-Apr-16	₱ 783,540.00	₱ 7,835.40
Subtotal					**₱ 785,540.00**	**₱ 7,835.40**
Different signature of payor's authorized representative						
SN Aboitiz Power-Magat Inc.	242-224-593-000	P-26-10-A	1-Nov-15	30-Nov-15	₱ 155,608.00	₱ 22,749.31
SN Aboitiz Power-Magat Inc.	242-224-593-000	P-30-3-A	1-Nov-15	30-Nov-15	151,055.00	22,658.25
Subtotal					**₱ 306,663.00**	**₱ 45,407.56**
Total					**₱ 3,297,449.00**	**₱ 215,029.86**

In summary, the total disallowances found by the ICPA and the Court amounts to ₱7,823,501.01, thus, leaving a balance of ₱26,289,374.54 on petitioner's refund claim, as follows:

Findings		**Amount**
Petitioner's claim		₱ 34,112,875.55
Less:		
Disallowances made by ICPA, as adjusted	₱ 1,799,838.59	
CWTs with revenue recorded and reported in FY 2015 Income Tax Return and collected in FY 2016	5,808,632.56	
Disallowances upon further verification by the Court	215,029.86	₱ 7,823,501.01
Total Valid Claim		**₱ 26,289,374.54**

Third requisite: The income received was declared as part of the gross income

The third requisite mandates petitioner to prove that the income payments that were subjected to CWTs were reported or declared as part of its gross income in its Annual ITR for FY 2016.

In the Report of the Court-commissioned ICPA,[73] the latter traced the income payments appearing in each of the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) to the Schedule of CWTs for FY 2016 prepared by petitioner.[74] The Schedule of CWTs was then compared with the sales per GL,[75] which showed a total variance of ₱76,474,533.97, as follows:[76]

Period Covered	Gross Sales Subject to Withholding Tax per Schedule	Sales per General Ledger	Difference
1st Quarter	₱ 46,292,022.44	₱ 71,023,019.44	₱ (24,730,997.00)
2nd Quarter	114,361,838.94	123,850,202.06	(9,488,363.12)
3rd Quarter	55,468,148.00	73,873,561.57	(18,405,413.57)
4th Quarter	65,308,300.94	89,158,061.22	(23,849,760.28)
Total	₱ 281,430,310.32	₱ 357,904,844.29	₱ (76,474,533.97)

The ICPA was able to reconcile the difference in sales between the withholding taxes per schedule and per GL amounting to ₱76,474,533.97, as follows:[77]

Description	Reference (in ICPA Report)	Amount
Difference between gross sales subject to withholding tax per schedule against sales per general ledger		**₱ (76,474,533.97)**
Reconciling Items		
a. Revenue recorded and reported in FY 2015 Income Tax Return and collected in FY 2016	Annex B-1 to B-8	₱ 49,023,111.37
b. Revenue not subjected to withholding tax by petitioner's clients	Annex C	(126,347,038.18)
c. Foreign exchange difference per petitioner's books and CWT Certificates	Annex A-14 to A-17	290,483.05

[73] Exhibit "P-61".
[74] Exhibit "P-16".
[75] Exhibits "P-19-1" and "P-19-2".
[76] Exhibit "P-61", ICPA Report, p. 5.
[77] Exhibit "P-61", ICPA Report, p. 6.

d. Petitioner's reimbursable expenses recorded as part of revenue but was not subjected to withholding taxes	Annex A-1	(506,876.00)
e. Petitioner's retention fees not subjected to withholding taxes	Annex A-1, A-5 and A-9	(2,080,630.00)
f. Revenue declared in the CWTs was erroneous	Annex A-1 and A-5	391,730.00
g. Revenue reported in the FY 2016 general ledger that were inadvertently included twice in the revenue per schedule of CWT	Annex A-11	2,754,688.00
Unaccounted difference		₱ (2.21)
Total reconciling items		₱ **(76,474,533.97)**
Balance after reconciliation		₱ -

Further reconciliation by the ICPA shows that of the total revenue per GL of ₱357,904,844.29, the amount of ₱232,407,198.95 represents the total revenue that were recorded, reported and collected in FY 2016 that were subjected to CWTs, as follows:[78]

	Reference (in ICPA Report)	**Tax Base**	**Tax Withheld**
Revenue per General Ledger		**₱ 357,904,844.29**	**₱ 28,304,239.99**
Less: Revenue not yet subjected to withholding tax by the petitioner's clients		(126,347,038.18)	
Total income recorded and reported in 2016 and collected in 2016	Annex A	**₱ 231,557,806.11**	
Add: Foreign exchange difference per petitioner's books and CWT Certificates	Annex A-14 to A-17	290,483.05	
Less: Petitioner's reimbursable expenses recorded as part of revenue but were not subjected by petitioner's customers to withholding taxes	Annex A-1	(506,876.00)	
Less: Petitioner's retention fees not subjected to withholding taxes	Annex A-1, A-5 and A-9	(2,080,630.00)	
Add: Revenue declared in the CWTs was erroneous	Annex A-1 and A-5	391,730.00	
Add: Revenue reported in the FY 2016 general ledger that were inadvertently included in the revenue per schedule of CWT	Annex A-11	2,754,688.00	
Less: Unaccounted difference		(2.21)	
Total revenue recorded, reported and collected in 2016 subjected by petitioner's customer to creditable withholding tax		**₱ 232,407,198.95**	**₱ 28,304,239.99**

[78] Exhibit "P-61", ICPA Report, p. 9.

For FY 2016, petitioner reported in its Annual ITR the amount of ₱459,801,346.00 as net sales/revenues/receipts/fees.[79] Comparing the same to the total revenues per GL in the amount of ₱357,904,844.29, there is a variance of ₱101,896,501.71, reconciled by the ICPA below:

		Amount
Revenue per Annual Income Tax Return for FY 2016		₱459,801,346.00
**Revenue subjected to CWTs per General Ledger		
Fees (528-71-0-114001) (***Exhibit P-19-1)***	₱350,051,657.64	
Fees (528-55-0-114001) (***Exhibit P-19-2)***	7,853,186.65	357,904,844.29
Difference		**101,896,501.71**
Sales not subjected to CWT		
1. International Sales:	(53,979,562.00)	
2. Unbilled work:	(51,302,371.00)	
3. International Sales subjected to Foreign Taxes	3,385,432.00	**(101,896,501.00)**
Unaccounted difference		**₱0.71**

However, the difference of ₱101,896,501.71 between the amount of revenues reflected in the Annual ITR for FY 2016 (₱459,801,346.00) and the GL (₱357,904,844.29) is not supported by any evidence on record. Perusal of the Judicial Affidavits of Ms. Katrina S. Maninang, petitioner's tax manager,[80] and the ICPA[81] shows that the said reconciling items were not discussed nor explained. Moreover, no supporting documentary evidence as to the supposed "International Sales", "Unbilled work", and "International Sales subjected to Foreign Taxes" were submitted to corroborate such reconciliation made by the ICPA. Thus, the Court cannot reasonably verify if the amounts recorded in the GL would tally with the amounts reported in the Annual ITR for FY 2016.

Sans any supporting evidence, the veracity of the amounts reflected in the GL *vis-à-vis* those declared and reported in the Annual ITR for FY 2016 becomes doubtful. Such doubt is compounded when the amount of revenue reported in petitioner's AFS does not also match with the amount of revenue declared in the Annual ITR for FY 2016, and for which petitioner was likewise unable to explain, as follows:

	Amount
Service Fees revenue per AFS	₱463,186,778.00
Sale of Services per Annual ITR	459,801,346.00
Unaccounted difference	**₱ 3,385,432.00**

[79] Exhibit "P-3", CTA Docket vol. I, pp. 477-478.
[80] Exhibit "P-13", CTA Docket vol. I, pp.110-122.
[81] Exhibit "P-60", CTA Docket vol. I, pp. 329-341.

Considering that the amount of revenue reported in the GL of petitioner does not tally with those reported in the AFS and Annual ITR for FY 2016, the Court finds that petitioner failed to comply with the third requisite. Petitioner's non-compliance therewith is fatal to its claim.

Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government.[82] The burden in claiming tax refund rests upon the taxpayer which petitioner has failed to discharge. For failing to prove its entitlement to a tax refund, petitioner's claim must perforce be denied.

WHEREFORE, premises considered, the present Petition for Review is **DENIED** for lack of merit.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

[82] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25,2015.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice