REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

SONOMA SERVICES, INC.,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 9249

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
MANAHAN, *JJ.*

Promulgated:

AUG 15 2018

1:00 p.m.

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DECISION

CASTAÑEDA, JR., *J.:*

THE CASE

This is a Petition for Review[1] filed by Sonoma Services, Inc. to seek the refund or issuance of tax credit certificate in the amount of ₱4,733,500.00, allegedly representing its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2013.

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[1] Docket, pp. 12-19.

THE FACTS

Petitioner Sonoma Services, Inc. is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 3rd Floor, Makati Stock Exchange Building, Ayala Triangle, Ayala Avenue, Makati City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue Region No. 8, Revenue District Office (RDO) No. 50 with Taxpayer Identification No. 220-868-954-000.[3]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (CIR), vested under the appropriate laws with authority to carry out all the functions, duties, and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 12, 2014, petitioner filed with the BIR its Annual Income Tax Return (AITR)[4] for CY 2013, through the Electronic Filing and Payment System (eFPS). It indicated therein its choice to claim the refund of its alleged excess and unutilized CWT for CY 2013. Consequently, petitioner did not carry over its excess and unutilized CWT for CY 2013 in the amount of ₱4,733,500.00 to the succeeding taxable year.

On June 16, 2015, petitioner filed with the BIR RDO No. 50 an administrative claim for refund of excess and unutilized CWT for CY 2013 in the amount of ₱4,733,500.00.[5]

Due to respondent's inaction on its administrative claim for refund, petitioner filed the present Petition for Review on January 27, 2016.[6]

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[2] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 188.
[3] Par. 2, Admitted Facts, JSFI, Docket, p. 188.
[4] Exhibit "P-1", Docket, pp. 284-291.
[5] Exhibits "P-6" and "P-6-1", Docket, pp. 332-343.
[6] Docket, pp. 12-19.

Within the extended time granted by the Court,[7] respondent filed his Answer[8] through registered mail on March 21, 2016 and was received by this Court on April 5, 2016. Respondent interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

3. She reiterates and repleads the preceeding (sic) paragraphs of this Answer as part of her Special and Affirmative Defenses;

4. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable.

5. In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim.

6. Petitioner's claim for refund/ issuance of tax credit in the amount of **Php4,733,500.00**, as alleged excess and unutilized creditable income taxes withheld for taxable year 2013 were not fully substantiated by proper documentary evidence, such as, but not limited to certificates of income taxes withheld at source, official receipts and other relevant tax returns.

7. Petitioner failed to prove that the amount of **Php4,733,500.00**, as alleged excess and unutilized creditable income taxes withheld for taxable year 2013 was included as part of its gross income for taxable year 2013 and the same was not utilized in payment of its income tax liability for the succeeding taxable quarters/years;

[7] Order dated March 7, 2016, Docket, p. 71.
[8] Docket, pp. 72-74.

8. Petitioner has already exercised its option to carry-over to the succeeding taxable quarters/years the subject of its claim, pursuant to Section 76 of the 1997 Tax Code.

9. Petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR.

10. Petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code.

11. Petitioner evidently failed to comply with the requirements under Revenue Regulations No. 2-98, as amended by Revenue Regulations No. 2-2006, relative to its claim for refund of excess/unutilized creditable income taxes withheld for taxable year 2013.

12. It is incumbent upon the latter to show that it has complied with the provisions under *Sections 204 of the 1997 Tax Code in relation to Section 229 of the same Code*. Otherwise, its failure to prove the same is fatal to its claim for refund.

13. Claims for refund are construed strictly against herein petitioner for the same partakes the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95*) and as such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

The Pre-Trial Conference was set on May 12, 2016.[9] Thus, the Respondent's Pre-Trial Brief[10] was filed on May 2, 2016; while the Petitioner's Pre-Trial Brief[11] was filed on May 6, 2016.

[9] Notice of Pre-Trial Conference, Docket, pp. 76-77.
[10] Docket, pp. 78-80.
[11] Docket, pp. 81-92.

On May 27, 2016, the parties filed their Joint Stipulation of Facts and Issues[12]. This was approved and adopted by the Court in the Pre-Trial Order[13] issued on June 22, 2016.

Upon motion of petitioner,[14] the Court commissioned Ms. Ma. Milagros F. Padernal as the Independent Certified Public Accountant (ICPA) for the case.[15]

During trial, petitioner presented the following witnesses: (1) Ms. Myra O. Aranel[16], its Financial Accountant; and (2) Ms. Ma. Milagros F. Padernal[17], the Court-commissioned ICPA.

Thereafter, petitioner filed its Formal Offer of Evidence[18] on February 14, 2017. In the Resolution[19] dated March 29, 2017, the Court admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-6-1", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-12-1", "P-12-2", "P-12-3", "P-12-4", "P-12-5", "P-12-6", "P-12-7", "P-12-8", "P-12-10", "P-13", "P-14", "P-14-1" to "P-14-24", "P-15", "P-15-1" to "P-15-1-24", "P-15-2", "P-16", "P-16-1", "P-17", "P-17-1" & "P-17-1-1", "P-17-2" & "P-17-2-1", "P-17-3" & "P-17-3-1", "P-17-4" & "P-17-4-1", "P-17-5" & "P-17-5-1", "P-17-6" & "P-17-6-1", "P-17-7" & "P-17-7-1", "P-17-8" & "P-17-8-1", "P-17-9" & "P-17-9-1", "P-17-10" & "P-17-10-1", "P-17-11" & "P-17-11-1", "P-18", "P-19", "P-20", "P-20-1" to "P-20-20", "P-21", "P-22", "P-22-1" to "P-22-20", "P-23", "P-24", "P-25", "P-25-1", "P-25-2", "P-25-3", "P-26", "P-27", "P-27-1" to "P-27-45", "P-28", "P-29", "P-29-1" to "P-29-23", "P-30", "P-30-1", "P-31", "P-32", "P-32-1" to "P-32-24", "P-33", "P-33-1", "P-34", "P-34-a", "P-35", and "P-35-a". However, Exhibits "P-12-9" and "P-20-21" to "P-20-54" were denied admission for not being found in the records of the case.

Petitioner then filed a Motion for Partial Reconsideration (Re: Resolution dated March 29, 2017)[20] on April 12, 2017. This was

[12] Docket, pp. 188-193.
[13] Docket, pp. 195-199.
[14] Docket, pp. 204-207.
[15] Oath of Commission, Docket, p. 222.
[16] Minutes of the Hearing dated September 19, 2016, Docket, p. 223; Exhibit "P-11", Sworn Statement of Ms. Myra O. Aranel to Questions Propounded by Atty. Ma. Carmela A. Esquivias, Docket, pp. 93-102.
[17] Minutes of the Hearing dated January 25, 2017, Docket, p. 257; Exhibit "P-34", Sworn Statement of Ms. Ma. Milagros F. Padernal to Questions Propounded by Atty. Ma. Carmela A. Esquivias, Docket, pp. 230-242; Exhibit "P-35", Supplemental Sworn Statement of Ms. Ma. Milagros F. Padernal to Questions Propounded by Atty. Ma. Carmela A. Esquivias, Docket, pp. 250-255.
[18] Docket, pp. 263-282.
[19] Docket, pp. 380-381.
[20] Docket, pp. 386-389.

granted by the Court in the Resolution[21] dated September 14, 2017 and Exhibits "P-12-9" and "P-20-21" to "P-20-54" were admitted into evidence.

On the other hand, respondent's counsel manifested during the hearing on October 9, 2017 that since there is no report of investigation, he would instead submit the case for decision of the Court.[22]

Petitioner filed its Memorandum[23] on November 23, 2017; while respondent failed to file his memorandum[24]. Accordingly, the Court declared the present case submitted for decision on December 18, 2017.[25]

THE ISSUES

The parties stipulated that the main issue[26] to be resolved in this case is:

> "Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for its excess and unutilized CWT for CY 2013 in the amount of ₱4,733,500.00."
>
> The afore-mentioned issue is broken down into the following sub-issues:
>
> 1. Whether or not petitioner's excess and unutilized CWT for CY 2013 in the amount ₱4,733,500.00 are duly substantiated by documentary evidence.
>
> 2. Whether or not the income from which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in petitioner's Annual ITR. *ge*

[21] Docket, pp. 396-397.
[22] Minutes of the Hearing dated October 9, 2017, Docket, p. 400.
[23] Docket, pp. 410-428.
[24] Records Verification dated December 6, 2017, Docket, p. 429.
[25] Resolution, Docket, p. 430.
[26] Issues, JSFI, Docket, p. 189.

3. Whether or not petitioner exercised the option to carry over its excess and unutilized CWT for CY 2013 to the succeeding taxable periods.

4. Whether or not petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CY 2013 within the two-year prescription period provided under Sections 204(C) and 229, National Internal Revenue Code of 1997 (the "Tax Code").

THE COURT'S RULING

The Petition shall be granted.

Petitioner anchors its claim on Sections 58(D) and 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, which provide:

> "SEC. 58. *Returns and Payment of Taxes Withheld at Source.* –
>
> xxx xxx xxx
>
> (D) *Income of Recipient.* – Income upon which any creditable tax is required to be withheld under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204; xxx"
>
> "SEC. 76. *Final Adjustment Return.* – Every corporation liable to tax under Section 27 shall file a final adjustment return 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."

Under the cited law, there are two options available to the corporation whenever it overpays its income tax for the taxable year: (1) to carry over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period.[27]

If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[28] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[29]

In exercising its option, the corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention, either to carry over the excess credit or to

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[27] *University Physicians Services Inc. - Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.

[28] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 777.

[29] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009, 592 SCRA 219, 231-232.

claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[30]

A perusal of its Annual Income Tax Return (AITR) for CY 2013[31] shows that petitioner had total credits of ₱11,225,875.00[32], which consisted of the prior year's excess tax credits in the amount of ₱6,492,375.00 and creditable taxes withheld during the year 2013 in the amount of ₱4,733,500.00 (₱4,723,500.00 plus ₱10,000.00).

Petitioner claims that its regular corporate income tax (RCIT) due for CY 2013 in the amount of ₱971,659.00[33] was paid using a portion of its prior year's excess credits of ₱6,492,375.00. This leaves the prior year's excess tax credits in the amount of ₱5,520,716.00 and creditable taxes withheld during CY 2013 in the amount of ₱4,733,500.00 totaling ₱10,254,216.00 unutilized as of December 31, 2013, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 6,492,375.00
Less: Tax Due (RCIT)	971,659.00
Balance of Prior Year's Excess Credits	₱ 5,520,716.00
Add: Creditable Taxes Withheld – CY 2013	4,733,500.00
Excess Creditable Taxes Withheld as of December 31, 2013	**₱ 10,254,216.00**

The prior year's excess tax credits of ₱6,492,375.00 were accounted for by the Court-commissioned Independent Certified Public Accountant as follows:[34]

Excess CWT carried over from previous period - CY 2012	₱ 2,515,357.05
Add: CWT found to be properly supported in CTA Case No. 7613[35] but were denied refund in CTA EB No. 697 due to petitioner's failure to prove that it did not exercise the option to carry over the said CWT to the succeeding quarters of CY 2005[36]	4,357,499.04
Less: Adjustment to CY 2010 income tax due	380,481.09
Total Prior Year's Excess Credits other than MCIT - CY 2013	**₱6,492,375.00**

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[30] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007, 533 SCRA 776, 776-785. citing *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[31] Exhibit "P-1", Docket, pp. 284-291.
[32] Exhibit "P-1", Schedule 7, Docket, p. 289.
[33] Exhibit "P-1", Line 16, Docket, p. 284.
[34] Exhibit "P-30", pp. 5-6.
[35] Exhibit "P-25-1".
[36] Exhibit "P-25-2".

The adjustment to CY 2010 income tax due amounting to ₱380,481.00 arose from the difference between the income tax due per 2010 AITR and income tax due as disclosed in the 2010 Audited Financial Statements (AFS), to wit:

2010 AITR income tax due[37]	₱ 178,931.38
2010 AFS - Note 11 (Current provision for income tax)[38]	559,413.00
Unpaid portion of CY 2010 income tax due	**₱(380,481.62)**

The above unpaid portion of ₱380,481.62 was settled by reducing the prior year's excess tax credits other than MCIT reported in the AITR for CY 2013.

The prior year's excess credits of ₱2,515,357.00 originated from the creditable taxes withheld for the year 2011 in the amount of ₱4,386,654.40, which is duly supported with Certificates of Creditable Taxes Withheld at Source (BIR Form No. 2307)[39] after deducting therefrom part of the income tax due for CY 2011 in the amount of ₱392,088.24 and the entire income tax due for CY 2012 in the amount of ₱1,479,209.10, as can be gleaned from the ICPA's summary of the movements of the excess CWT reflected in petitioner's AITRs from CYs 2003 to 2013, reproduced hereunder:[40]

Particulars	**Prior Years Excess Credits**	**CWT for the Year**	**Total**
2003			
Tax credits/payments	₱ -	₱ 2,506,600.00	₱ 2,506,600.00
Less application of excess tax credits against RCIT due	-	(289,502.00)	(289,502.00)
Amount carried over to 2004	₱ -	₱ 2,217,098.00	₱ 2,217,098.00
2004			
Tax credits/payments	₱ 2,217,098.00	₱ 5,188,970.00	₱ 7,406,068.00
Less:			
Application of excess tax credits against RCIT due	(550,220.00)	-	(550,220.00)
Amount claimed for refund of or issuance of TCC (CTA Case No. 7613)	-	(5,188,970.00)	(5,188,970.00)
Amount carried over to 2005	₱ 1,666,878.00	₱ -	₱ 1,666,878.00

[37] Exhibit "P-12-8", Line 29.
[38] Exhibit "P-24(16/20)".
[39] Exhibits "P-22-1" to "P-22-20" summarized in Exhibit "P-21".
[40] Exhibit "P-30", pp. 3-5.

Particulars	Prior Years Excess Credits	CWT for the Year	Total
2005			
Tax credits/payments	₱ 1,666,878.00	₱ 5,070,932.00	₱ 6,737,810.00
Less:			
Application of excess tax credits against RCIT due	(1,029,302.00)	–	(1,029,302.00)
Amount claimed for refund of or issuance of TCC (CTA Case No. 7757)	–	(5,070,932.00)	(5,070,932.00)
Amount carried over to 2006	₱ 637,576.00	₱ –	₱ 637,576.00
2006			
Tax credits/payments	₱ 637,576.00	₱ 3,991,800.00	₱ 4,629,376.00
Less:			
Application of excess tax credits against RCIT due	(434,043.00)	–	(434,043.00)
Amount claimed for refund of or issuance of TCC (CTA Case No. 7911)	–	(3,991,800.00)	(3,991,800.00)
Amount carried over to 2007	₱ 203,533.00	₱ –	₱ 203,533.00
2007			
Tax credits/payments	₱ 203,533.00	₱ 3,643,050.00	₱ 3,846,583.00
Less application of excess tax credits against RCIT due	(203,533.00)	(553,207.00)	(756,740.00)
Amount carried over to 2008	₱ –	₱ 3,089,843.00	₱ 3,089,843.00
2008			
Tax credits/payments	₱ 3,089,843.00	₱ 3,683,100.00	₱ 6,772,943.00
Less:			
Application of excess tax credits against RCIT due	(827,408.40)	–	(827,408.40)
Amount claimed for refund of or issuance of TCC (CTA Case No. 8266)	–	(3,683,100.00)	(3,683,100.00)
Amount carried over to 2009	₱ 2,262,434.60	₱ –	₱ 2,262,434.60
2009			
Tax credits/payments	₱ 2,262,434.60	₱ 4,045,410.00	₱ 6,307,844.60
Less:			
Application of excess tax credits against RCIT due	(995,903.10)	–	(995,903.10)
Amount claimed for refund of or issuance of TCC (CTA Case No. 8458)	–	(4,045,410.00)	(4,045,410.00)
Amount carried over to 2010	₱ 1,266,531.50	₱ –	₱ 1,266,531.50
2010			
Tax credits/payments	₱ 1,266,531.50	₱ 3,911,850.00	₱ 5,178,381.50
Less:			
Application of excess tax credits against minimum corporate income tax (MCIT) due	(178,931.38)	–	(178,931.38)
Amount claimed for refund of or issuance of TCC (CTA Case No. 8639)	–	(3,911,850.00)	(3,911,850.00)
Amount carried over to 2011	₱ 1,087,600.12	₱ –	₱ 1,087,600.12

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Particulars	Prior Years Excess Credits	CWT for the Year	Total
2011			
Tax credits/payments	₱ 1,087,600.12	₱ **4,386,654.40**	₱ 5,474,254.52
Less: Application of excess tax credits against RCIT due	(1,087,600.12)	**(392,088.24)**	(1,479,688.36)
Amount carried over to 2012	₱ –	₱ **3,994,566.16**	₱ 3,994,566.16
2012			
Tax credits/payments	₱ **3,994,566.15***	₱ 4,880,190.40	₱ 8,874,756.55
Less:			
Application of excess tax credits against RCIT due	**(1,479,209.10)**	–	(1,479,209.10)
Amount claimed for refund of or issuance of TCC (CTA Case No. 9026)		(4,880,190.40)	(4,880,190.40)
Amount carried over to 2013	₱ **2,515,357.05**	₱ –	₱ 2,515,357.05
**Amount rounded-off*			
2013			
Tax credits/payments	₱ **2,515,357.05**	₱ 4,733,500.00	₱ 7,248,857.05
Add reinstatement of 2004 CWT disallowed by the CTA (per decision in CTA EB Case No. 697 dated April 20, 2012)	4,357,499.04	–	4,357,499.04
Less adjustment made by the Petitioner	(380,481.09)	–	(380,481.09)
	6,492,375.00	4,733,500.00	11,225,875.00
Less:			
Application of excess tax credits against RCIT due	(971,659.00)	–	(971,659.00)
Amount claimed for refund of or issuance of TCC (CTA Case No. 9249)	–	(4,733,500.00)	(4,733,500.00)
Amount carried over to 2014	₱ 5,520,716.00	₱ –	₱ 5,520,716.00

Since petitioner marked the box corresponding to the option "To be Refunded"[41] in its AITR, the CWT for CY 2013 in the amount of ₱4,733,500.00 may be a proper subject of a claim for cash refund pursuant to Section 76 of the Tax Code.

This refund option was further affirmed by petitioner when it carried over only the amount of ₱5,520,716.00 as prior year's excess tax credits other than MCIT in its Quarterly[42] and Annual[43] Income Tax Returns for CY 2014. Said amount already excludes the CWT being claimed for refund in this case amounting to ₱4,733,500.00.

[41] Exhibit "P-1", Line 21, Docket, p. 284.
[42] Exhibits "P-8", "P-9" and "P-10", Line 31A, Docket, pp. 366, 371 and 375.
[43] Exhibit "P-7", Schedule 7, Line 1, Docket, p. 349.

However, in addition to the requisites provided under Section 76 of the Tax Code, jurisprudence and pertinent BIR Revenue Regulations provide that the following requisites must be complied with in order that the refund claim may be granted:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the Tax Code, as amended;

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

3. The income upon which the taxes were withheld must be included in the return of the recipient.[44]

With respect to the first requisite, the pertinent provisions are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide:

> "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 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**

[44] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015, 746 SCRA 41, 41-50; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012, 684 SCRA 23; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997, 280 SCRA 459; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991, 204 SCRA 957; Section 2.58, Revenue Regulations No. 2-98, as amended.

> **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." *(Emphasis supplied)*
>
> "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." *(Emphasis supplied)*

It is well-settled that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return.[45] It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[46]

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[45] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991, 204 SCRA 957; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992, 205 SCRA 184; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995, 244 SCRA 446.

[46] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992, 205 SCRA 184.

Moreover, in the case of *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*[47], the Supreme Court held that it is only logical to reckon the two-year prescriptive period from the time the Final Adjustment Return or the Annual Income Tax Return was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.

In the present case, petitioner electronically filed its AITR for CY 2013 on April 12, 2014.[48] Counting from this date, petitioner had until April 12, 2016 within which to file its administrative claim for refund or issuance of tax credit certificate, and to institute the corresponding judicial action. Considering that petitioner's administrative claim for refund was filed on June 16, 2015[49] and the subsequent appeal was filed before this Court on January 27, 2016, clearly, both the administrative and the judicial claims were filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC of 1997, as amended.

The second and third requisites are imposed by Section 2.58.3(B) of Revenue Regulations No. 02-98, as amended, which states:

> "SECTION 2.58.3. *Claim for Tax Credit or Refund.* –
>
> xxx xxx 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.**" *(Emphasis supplied)* gr

[47] G.R. No. 182582, April 17, 2017.
[48] Exhibit "P-1", Docket, p. 283.
[49] Exhibit "P-6", Docket, pp. 332-333.

In order to prove the fact of withholding, petitioner presented the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307)[50] duly issued to it by various withholding agents for CY 2013, reflecting total CWT of ₱4,733,500.00 on management fees of ₱31,690,000.00 received by petitioner for the said year, detailed as follows:

Exhibit No.	Period Covered	Payor	Income Payments	CWT
Management Fees				
P-14-1	1st quarter	Corullon Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-2	3rd quarter	Corullon Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-3	1st quarter	Elija Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-4	3rd quarter	Gracie Square Holdings,Inc.*	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-5	1st quarter	FBC Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-6	3rd quarter	FBC Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-7	1st quarter	FBC Steps Realty, Inc.	₱ 300,000.00	₱ 45,000.00
P-14-8	3rd quarter	FBC Steps Realty, Inc.	300,000.00	45,000.00
		Subtotal	*₱ 600,000.00*	*₱ 90,000.00*
P-14-9	1st quarter	Fercat Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-10	3rd quarter	Fercat Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-11	2nd quarter	Francisco R. Elizalde Jr. (Steps Dance Studio)	₱ 100,000.00	₱ 10,000.00
P-14-12	3rd quarter	Francisco R. Elizalde Jr. (Steps Dance Studio)	100,000.00	10,000.00
P-14-13	3rd quarter	Francisco R. Elizalde Jr. (Steps Dance Studio)	100,000.00	10,000.00
P-14-14	4th quarter	Francisco R. Elizalde Jr. (Steps Dance Studio)	100,000.00	10,000.00
		Subtotal	*₱ 400,000.00*	*₱ 40,000.00*
P-14-15	1st quarter	Gilmon Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-16	3rd quarter	Gilmon Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*

[50] Exhibits "P-14-1" to "P-14-24".

P-14-17	1st quarter	Mermac, Inc.	₱ 2,345,000.00	₱ 351,750.00
P-14-18	3rd quarter	Mermac, Inc.	2,345,000.00	351,750.00
		Subtotal	*₱ 4,690,000.00*	*₱ 703,500.00*
P-14-19	1st quarter	Reinosa Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-20	3rd quarter	Reinosa Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-21	1st quarter	San Puente Holdings, Inc.	₱ 1,750,000.00	₱ 262,500.00
P-14-22	3rd quarter	San Puente Holdings, Inc.	1,750,000.00	262,500.00
		Subtotal	*₱ 3,500,000.00*	*₱ 525,000.00*
P-14-23	1st quarter	Zobel de Ayala, Jaime Pfitz	₱ 805,000.00	₱ 120,750.00
P-14-24	3rd quarter	Zobel de Ayala, Jaime Pfitz	695,000.00	104,250.00
		Subtotal	*₱ 1,500,000.00*	*₱ 225,000.00*
		Total	**₱ 31,690,000.00**	**₱ 4,733,500.00**

Regarding the third requisite, petitioner complied therewith as the ₱31,690,000.00 management fees related to the CWT of ₱4,733,500.00 were traced to petitioner's official receipts (ORs)[51], cash receipts book (CRB)[52], and general ledger (GL)[53], and in turn were reported in its AFS[54] and AITR[55] for CY 2013.

While the amount of ₱50,000,000.00 management fees reflected per petitioner's 2013 AFS and AITR is higher than the amount of ₱31,690,000.00 shown in the certificates, the discrepancy of ₱18,310,000.00 was verified against petitioner's ORs[56] and CRB[57] as pertaining to management fees upon which no withholding of CWT was made by petitioner's clients/payors.

In sum, petitioner has sufficiently proven its entitlement to a cash refund in the amount of ₱4,733,500.00 representing unutilized excess CWT for CY 2013.

WHEREFORE, the present Petition for Review is **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO** *gc*

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51 Exhibits "P-15-1-1" to "P-15-1-24".
52 Exhibit "P-15-2".
53 Exhibit "P-16-1".
54 Exhibit "P-2", Docket, p. 298.
55 Exhibit "P-1", Line 30, Docket, p. 285.
56 Exhibits "P-32-1" to "P-32-24".
57 Exhibit "P-15-2".

ISSUE A TAX CREDIT CERTIFICATE in the amount of **₱4,733,500.00** in favor of petitioner, representing its excess and unutilized CWT for CY 2013.

SO ORDERED.

Juanito C. Castañeda, J.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

I attest 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's Division.

Juanito C. Castañeda, J.
JUANITO C. CASTAÑEDA, JR.
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, 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