REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

ARROW FREIGHT CORPORATION, *Petitioner,*	**CTA Case No. 9809**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: DEC 07 2020 2:05 pm

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D E C I S I O N

MANAHAN, *J.:*

This is a *Petition for Review* filed on April 12, 2018 by petitioner Arrow Freight Corporation (AFC) against respondent Commissioner of Internal Revenue (CIR), praying for the refund of the amount of ₱18,683,586.00, representing petitioner's alleged unutilized creditable withholding taxes (CWTs) for the year 2015.[1]

THE PARTIES

Petitioner AFC is a domestic corporation duly organized under and by virtue of the laws of the Philippines, with principal address at 368 F. San Diego Street Viente Reales, Valenzuela City.[2]

Respondent CIR, on the other hand, is the head of the Bureau of Internal Revenue (BIR) with office address at the BIR National Building, Quezon City, Metro Manila.[3]

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[1] Docket, CTA Case No. 9809, Statement of the Case, Pre-Trial Order dated May 30, 2019, p. 495.
[2] *Id.*, Par. A(1), Joint Stipulation of Facts and Issues (JSFI), p. 325.
[3] Docket, Par. A(2), JSFI, p. 325.

THE FACTS

On July 1, 2016, petitioner filed with the BIR an administrative claim for refund of excess and unutilized CWTs for taxable year (TY) 2015 in the amount of ₱18,683,586.00.[4]

However, said administrative claim for refund has not been acted upon by the respondent and the lapse of the two (2)-year prescriptive period was near.[5]

Thus, on April 12, 2018, petitioner filed the present *Petition for Review*.[6]

Subsequently, respondent's *Answer to the Petition for Review* was filed on July 4, 2018,[7] interposing the following special and affirmative defenses, to wit:

"**SPECIAL AND AFFIRMATIVE DEFENSES**

There is no sufficient proof to established (sic) **that the Petitioner is entitled to claim refund in the amount of P18,683,586.00 because there was no overpayment.**

8. Arrow Freight Corporation is engaged in the business of hauling and transporting passengers, freight goods, wares, produce, merchandise and other property by means of trucks, buses, trailers, vans and other forms of motor vehicles or conveyances as a common carrier or otherwise, in any point or part of the Philippines, and in such foreign countries as may be allowed by Philippine laws. Its ultimate parent company is Benguet Corporation (BC), a listed entity incorporated and domiciled in the Philippines.

9. On July 1, 2016, Arrow Freight Corporation sent a letter request, through *Emmanuel C. Alcantara & Associates Law Offices*, to the Bureau of Internal Revenue for the refund of the amount of P 18,683,586.00, representing its alleged unutilized creditable-withholding taxes for the taxable year 2015

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[4] *Id.*, Par. 10, *Petition for Review*, vis-à-vis Par. 2, *Answer To The Petition for Review*, pp. 13 and 84, respectively; Docket, Exhibits "P-10", pp. 610 to 611.
[5] *Id.*, Paragraph 9, Petitioner's Memorandum, p. 702.; Docket, Paragraph 11, Petition for Review, p. 13.
[6] *Id.*, pp. 10 to 22.
[7] *Id.*, pp. 84 to 89.

10. Acting upon the Administrative Claim for Refund dated July 1, 2016 (referred to as Annex G of the Petition for Review) filed by herein Petitioner, the BIR, through Regional Director Jose N. Tan, issued Letter of Authority (LOA) No. LOA-024-2016-00000221 dated July 20, 2016, authorizing the examination of the books and accounts and other accounting records of the Petitioner for INCOME TAXES (IT) for the period from January 1, 2015 to December 31, 2016 pursuant to MANDATORY AUDIT-CLAIM FOR INCOME TAX CREDIT CERTIFICATE. Photocopy of the said LOA is hereto attached as Annex R-1.

11. In the course of mandatory audit, Revenue Officer conducted examination in accordance with RAMO 1-1999, RMO 16-2007 and RMC 44-2013. Thereafter, she found out, that petitioner is liable for deficiency Income Tax in the amount of Php148,383,268.70 due to its undeclared revenues (Related Party), undeclared sales, undeclared source of income, and Unaccounted Source of Cash.

12. The undeclared revenues, the assigned revenue officer upon verification and reconciliation with the third party information acquired from AITEID against the analysis based on the Financial Statements submitted by the taxpayer, she found that there was a material difference on purchases declared by Benguet Nickel Mines Inc. and Benguet Corporation as against the revenues reported by the Arrow Freight Corporation. Accordingly, these discrepancies were Undeclared Sales.

13. The undeclared sales, the assigned revenue officer after further verification of the documents available for audit, the documents were compared and reconciled with those listed in the VAT Returns and those reported in the Financial Statements, she found out that a material variance in collections declared to be Undeclared Collection on Sale of Goods, tantamount to Undeclared Sales.

14. On the other hand, the undeclared source of income, the assigned revenue officer upon verification disclosed that there was a material variance on the Net Book Value of PPE reported per Financial Statements as against the Lapsing schedule of PPE. The difference was tantamount to Undeclared Source of Income pursuant to Section 32 of the Tax Code.

15. Lastly, the Unaccounted Source of Cash, the assigned revenue officer upon verification of the data declared in the VAT returns, it was found that the excess creditable input tax reflected per VAT returns was not properly reported as asset in the Balance Sheet. This is tantamount to unaccounted source of cash, hence, the subject taxpayer should be assessed of deficiency Income Tax pursuant to Section 32 of the Tax Code and as held in the

case of ***Perez v. CTA and CIR (G.R. No. L-10507 date May 30, 1958)***, which states that in case of reflected source of funds not accounted for in the taxpayer's tax returns, it will lead to the inference that part of his income had not been reported.

16. While the Petitioner claims that it is entitled to refund in the amount of P18,683,586.00 as, allegedly, unutilized creditable withholding tax for taxable year 2015, the Respondent would have to disagree since as per mandatory audit, the findings of deficiency income tax liability by the BIR indicates that there is really no such overpayment.

Claims for refund partake the nature of tax exemption, hence, are not favored and to be construed *strictissimi juris* against the person or entity claiming the refund

14. Petitioner has the *burden of proof* to show that it is entitled to the refund of the amounts claimed as refundable because taxes are *presumed* to have been collected in accordance with laws and regulations (*Caltex Phils., Inc. vs. Commissioner of Internal Revenue, CTA Case No. 2871, January 29, 1986)*.

15. Claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation. Failure on the part of the petitioner to prove the same is fatal to its claim for tax refund *(Meralco Electric Co. vs. Commissioner of Internal Revenue, 67 SCRA 351; Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)*.

16. Petitioner must prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years.

17. Considering that the Petition for Review failed to sufficiently illustrate that the second and third requirements laid down in the case of Commissioner of Internal Revenue vs. Far East Bank & Trust Company, G.R. No. 173854, 15 March 2010, for the claim of refund for creditable withholding tax, the claim for refund has no basis in fact and in law.

15. Since there has been found a huge amount of undeclared sales, undeclared revenues, undeclared source of income, and unaccounted source of cash, it cannot be readily and categorically ruled that there is overpayment of taxes as claimed by the petitioner to entitle it to claim for

refund. The doubt created by the results of audit findings made by the BIR should be properly addressed and explained first by the petitioner to support its claim that there is really overpayment, and in doing so, also prove that there is no case of under declaration of sales or income equivalent to tax evasion.

16. Claims for Refund are not proper when it has been established that there is really no actual overpayment of taxes. In this case, since the BIR, in its mandatory audit, found out certain violations committed by the Petitioner, there can be no other logical conclusion than that refund is [not] due the Petitioner."

The Pre-Trial Conference was initially set on August 9, 2018,[8] but was subsequently reset to,[9] and held on, February 7, 2019.[10] In the meantime, the *Pre-Trial Brief (For the Petitioner)* was filed on August 2, 2018,[11] while *Respondent's Pre-Trial Brief* was submitted on August 3, 2017.[12]

The parties filed their *Joint Stipulation of Facts and Issues* (JSFI) on February 22, 2019.[13] In the Resolution dated March 6, 2019,[14] the Court, *inter alia,* approved the parties' JSFI and deemed the termination of the Pre-Trial. The Court then issued the Pre-Trial Order dated May 30, 2019.[15]

During trial, petitioner presented its documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Paulino R. Roque,[16] petitioner's Finance Manager; and (2) Ms. Madonna Mia S.

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[8] Docket, *Notice of Pre-Trial Conference* dated July 20, 2018, pp. 95 to 96.

[9] *Id.*, Respondent's *Urgent Motion to Reset* Hearing, pp. 270 to 271; Docket, Resolution dated August 8, 2018, pp. 280 to 281; Docket, Respondent's *Manifestation with Urgent Motion to Reset* Hearing, pp. 282 to 284; Docket, Order dated September 4, 2018, p. 291; Docket, Order dated September 27, 2018, p. 293; Docket, Notice of Resetting, p. 295; Docket, Minutes of the hearing held on, and Order dated, November 15, 2018, pp. 300 and 301 to 302, respectively.

[10] *Id.*, Minutes of the hearing held on, and Order dated, February 7, 2019, pp. 317 to 320 and 321 to 323, respectively.

[11] *Id.*, pp. 101 to 112.

[12] *Id.*, pp. 258 to 261.

[13] *Id.*, pp. 325 to 329.

[14] *Id.*, pp. 355 to 356.

[15] *Id.*, pp. 495 to 501.

[16] *Id.*, Exhibit "P-12", pp. 380 to 390; Docket, Minutes of the hearing held on, and Order dated, May 30, 2019, pp. 502 to 508.

Dayego,[17] the Court-commissioned Independent Certified Public Accountant (ICPA).[18]

The *Report* of the ICPA was submitted to the Court on May 14, 2019.[19]

Petitioner then filed its *Formal Offer of Evidence* (FOE) on June 14, 2019.[20] Respondent failed to file his comment on petitioner's FOE.[21] In the Resolution dated August 5, 2019,[22] the Court admitted petitioner's Exhibits, but *denied* admission to the following:

1) Exhibit "P-8", for failure to present the original for comparison;

2) Exhibit "P-9", for failure of the marked exhibit to correspond to the description in the FOE; and

3) Exhibits "P-20-4-1" to "P-20-4-12", and "P-37", for not being found in the records.

Thereafter, the Court, in the Order dated August 13, 2019,[23] deemed waived respondent's opportunity to present evidence, considering that neither petitioner nor respondent appeared, despite notice, in the scheduled presentation of respondent's evidence.

Petitioner then filed an *Omnibus Motion (For Partial Reconsideration, and to Admit Petitioner's Exhibits).*[24] Respondent failed to file his comment on the said *Omnibus Motion.*[25]

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[17] *Id.*, Exhibit "P-37", pp. 487 to 492; Docket, Minutes of the hearing held on, and Order dated, May 30, 2019, pp. 502 to 508.
[18] *Id.*, *Oath of Commission* dated March 26, 2019, p. 370; Docket, Exhibit "P-11", pp. 340 to 345; Docket, Minutes of the hearing held on, and Order dated, March 26, 2019, pp. 367 to 369, and 371 to 373, respectively.
[19] Docket, Minute Resolution dated May 15, 2019, p. 480.
[20] *Id.*, pp. 521 to 531.
[21] *Id.*, Records Verification Report dated July 18, 2019 issued by the Judicial Records Division of this Court, p. 612.
[22] *Id.*, pp. 618 to 619.
[23] *Id.*, pp. 621 to 622.
[24] *Id.*, pp. 628 to 632.
[25] *Id.*, Records Verification Report dated October 17, 2019 issued by the Judicial Records Division of this Court, p. 719.

Petitioner's *Memorandum* was filed on September 11, 2019;[26] while respondent failed to file his memorandum.[27]

In the Resolution dated December 20, 2019,[28] the Court granted petitioner's *Omnibus Motion*, and admitted Exhibits "P-8", "P-9", "P-20-4-1" to "P-20-4-12", "P-37", and "P-37-A". In the same Resolution, the Court deemed the instant case submitted for decision.

ISSUE

The parties submitted the following issue for resolution of this Court:

> "WHETHER PETITIONER IS ENTITLED FOR TAX REFUND OF THE UNUTILIZED CREDITABLE WITHOLDING TAXES (CWT) FOR THE YEAR 2015 AMOUNTING TO ₱18,683,586.00."[29]

Petitioner's Arguments[30]

Petitioner argues that the claim for refund should be granted because all elements necessary are present.

Respondent's Arguments[31]

Respondent counter-argues that there is no sufficient proof to establish that the petitioner is entitled to claim refund in the amount of ₱18,683,586.00 because there was no overpayment. According to respondent, claims for refund are to be construed strictly against the petitioner, the same being in the nature of an exemption from taxation, and that failure on the part of petitioner to prove the same is fatal to its claim for tax refund.

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[26] *Id.*, pp. 699 to 717.
[27] *Id.*, Records Verification Report dated October 17, 2019 issued by the Judicial Records Division of this Court, p. 719.
[28] *Id.*, pp. 724 to 726.
[29] Docket, JSFI, pp. 325 to 326.
[30] *Supra.*, Note 25.
[31] *Supra.*, Note 6.

RULING OF THE COURT

This Court shall determine first whether the instant petition is within the Court's jurisdiction.

The Court of Tax Appeals (CTA) is a court of special jurisdiction and can only take cognizance of such matters as are clearly within its jurisdiction.[32] The jurisdiction of the CTA regarding claims for refund is provided under Section 7(a)(2) of Republic Act (RA) No. 1125, as amended by RA Nos. 9282 and 9503, which provides:

> "SEC. 7. *Jurisdiction.* – The CTA shall exercise:
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> (a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
>
> (1) xxx xxx;
>
> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes,** fees or other charges, penalties in relations thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;" (*Emphasis supplied*)

Similarly, Section 3(a)(2) of Rule 4 of the Revised Rules of the Court of Tax Appeals states:

> "SEC. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:
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> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
>
> (1) xxx xxx;
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> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal

[32] *Commissioner of Internal Revenue vs. Silicon Philippines, Inc. (formerly Intel Philippines Manufacturing, Inc.)*, G.R. No. 169778, March 12, 2014.

> Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided*, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and *Provided, still further,* that in the case of claims for refund of taxes erroneously or illegally collected, **the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code**; (*Emphasis supplied*)

Based on the foregoing, the Court in Division shall exercise exclusive jurisdiction to review by appeal the inaction of petitioner CIR in cases involving claim for refund provided that the petition for review is filed within the two-year period prescribed under Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended.

In the instant case, the petition for review was filed on April 12, 2018 by petitioner due to respondent's inaction of its administrative claim for refund filed on July 1, 2016. Considering that the 2-year prescriptive period shall end on April 13, 2018 (2 years from filing of Annual Income Tax Return (ITR) on April 13, 2016), the filing of petitioner's judicial claim for refund on April 12, 2018 was on time. Thus, this Court has jurisdiction on the instant case.

Petitioner's compliance with Section 76 of the 1997 NIRC, as amended

Section 76 of the 1997 NIRC, as amended, provides:

> "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:
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> (A) Pay the balance of tax still due; or
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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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."

The above provision prescribes two options to a taxable corporation whose total quarterly income tax payment in a given taxable year exceeds its total income tax due. The taxpayer may either file a tax refund (either in the form of cash or tax credit certificate) or carry over the excess credit. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[33] 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.[34]

In exercising its option, the corporation must signify in its final adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[35]

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[33] *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue,* G.R. Nos. 156637/162004. December 14, 2005; *Systra Philippines, Inc., vs. Commissioner of Internal Revenue,* G.R. No. 176290. September 21, 2007.

[34] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

[35] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.,* G.R. No. 112024, January 28, 1999.

A perusal of the Annual ITR of petitioner for TY 2015[36] shows that it had total tax credits of ₱53,002,432.00[37], which consisted of the following:

Prior Year's Excess Credits other than MCIT		₱ 34,318,846.00
Add: Creditable Taxes Withheld – taxable year 2015		
Creditable tax withheld for the first three quarters	₱10,983,299.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	7,700,287.00	18,683,586.00
Total tax credits		**₱ 53,002,432.00**

Petitioner claims that its income tax due for taxable year 2015 in the amount of ₱9,797,872.00[38] was paid using a portion of its prior year's excess credits of ₱34,318,846.00, thus leaving the prior year's excess credits in the amount of ₱24,520,974.00, and the creditable taxes withheld during the taxable year 2015, in the amount of ₱18,683,586.00 or a total of ₱43,204,560.00, unutilized as of December 31, 2015, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 34,318,846.00
Less: Tax Due (RCIT)	9,797,872.00
Balance of Prior Year's Excess Credits	₱ 24,520,974.00
Add: Creditable Taxes Withheld –Taxable Year 2015	18,683,586.00
Excess Creditable Withholding Taxes as of December 31, 2015	**₱ 43,204,560.00**

To prove the existence of the prior year's excess credits of ₱34,318,846.00, petitioner submitted various *Certificates of Creditable Taxes Withheld at Source* for the taxable years 2012[39] and 2013[40] issued by its withholding agents, as well as the *Schedules of Creditable Taxes Withheld* for the taxable years 2012[41] and 2013,[42] reflecting CWTs in the respective amounts of ₱15,739,930.16 and ₱25,671,845.14, totaling ₱41,411,775.30.

Upon verification, the Court finds that out of the CWTs from prior years of ₱41,411,775.30, the amount of ₱1,825,996.85 should be disallowed for the following reasons:

Exhibit	Payor	TIN	Tax Withheld

[36] Docket, Exhibit "P-4", pp. 546 to 553.
[37] *Id.*, Exhibit "P-4", Schedule 7, p. 551.
[38] *Id.*, Exhibit "P-4", Line 42, p. 547.
[39] Exhibits "P-32-1" to "P-32-259".
[40] Exhibits "P-35-1" to "P-32-211".
[41] Exhibit "P-31".
[42] Exhibit "P-34".

Supporting Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) were not signed by the payor			
"P-32-7"	Benguet Corporation	000-051-037-000	₱ 930.00
"P-32-29"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	33,592.72
"P-32-67"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	169,481.65
"P-32-68"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	140,733.88
"P-32-119"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	92,310.80
"P-32-121"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	173,574.72
"P-32-139"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	118,025.37
"P-32-141"	BenguetCorp Nickel Mines, Inc.	007-417-235-000	215,739.29
"P-35-33"	BenguetCorp Nickel Mines Inc.	007-417-235-000	174,276.56
"P-35-98"	BenguetCorp Nickel Mines Inc.	007-417-235-000	76,000.00
"P-35-119"	BenguetCorp Nickel Mines Inc.	007-417-235-000	561,473.51
	Subtotal		***₱ 1,756,138.50***
With incorrect TIN of the payor indicated in the certificate			
"P-32-74"	BenguetCorp Nickel Mines, Inc.	000-051-037-000	69,858.39
	TOTAL		**₱ 1,825,996.89**

Consequently, petitioner's prior years' tax credits amounted only to ₱39,585,778.41, which shall then be utilized to pay the prior years' income tax liabilities in the total amount of ₱18,369,160.00, thus, leaving the prior years' excess tax credits in the amount of ₱21,216,617.41 only, as computed below:

CWTs for Taxable Year 2012 per schedule		₱ 15,739,930.16
CWTs for Taxable Year 2013 per schedule		25,671,845.14
Total		₱ 41,411,775.30
Less: Disallowances		1,825,997.89
Valid CWTs for Taxable Years 2012 and 2013		₱ 39,585,777.41
Less: Income Taxes Due		
Taxable Year 2012[43]	₱ 5,258,991.00	
Taxable Year 2013[44]	7,844,539.00	
Taxable Year 2014[45]	5,265,630.00	18,369,160.00
Excess tax credits as of December 31, 2014		**₱ 21,216,617.41**

Apparently, the substantiated prior year's excess tax credits of ₱21,216,617.41 is sufficient to cover petitioner's tax liability for taxable year 2015 in the amount of ₱9,797,872.00.

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[43] Exhibit "P-14-1 (3/4)", Line 28.
[44] Exhibit "P-14-2 (2/9)", Line 42.
[45] Exhibit "P-14-3 (2/8)", Line 42.

Considering that petitioner opted for a refund by marking the box corresponding to the option *"To be refunded"* [46] in its Annual ITR for the taxable year 2015 and carried over only the amount of ₱24,520,974.00, which is the balance of its prior year's excess credits, net of taxable year 2015 income tax due, in its Annual ITR for the taxable year 2016,[47] the CWTs for the taxable year 2015 in the amount of ₱18,683,586.00 may be a proper subject of a claim for credit or refund, pursuant to the aforequoted Section 76 of the NIRC of 1997.

Petitioner's compliance with the requisites to claim a refund or credit for unutilized excess CWT.

In addition to the requirement provided under Section 76 of the 1997 NIRC, as amended in filing a claim for refund or credit, pertinent BIR Revenue Regulations (RR) and jurisprudence further require compliance with the following requisites:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of NIRC of 1997, 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.[48]

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

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* — The Commissioner may —

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[46] Exhibit "P-4", Line 21, Docket, p. 546.
[47] Exhibit "P-14-5 (6/8)", Line 1.
[48] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

> 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 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."

The above-stated provisions mandate that the administrative and judicial remedy of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax. For actions for refund of excess corporate income tax, the Supreme Court ruled that the two-year prescriptive period should be counted from the filing of the Final Adjustment Return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.[49]

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[49] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

The present claim pertains to TY 2015 for which petitioner filed its Annual ITR on April 13, 2016.[50] Counting from this date, petitioner had until April 13, 2018 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim[51] for refund on July 1, 2016 and its judicial claim[52] for refund through the instant *Petition for Review* on April 12, 2018.[53]

With regard to the *second and third requisites,* they are required under Section 2.58.3 (B) of RR No. 02-98, as amended, which states:

> "Sec. 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)*

Hence, this Court shall proceed to determine whether the *second* and *third* requisites have been satisfied by petitioner.

To prove the fact of withholding of the subject claim, petitioner submitted various *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307)[54] duly issued by its various withholding agents covering the subject period, as well as the *Schedule of Creditable Taxes Withheld* for taxable year 2015,[55] reflecting CWTs in the total amount of ₱18,683,586.00, with related income payments of ₱751,389,997.71.

As ascertained by the Court-commissioned ICPA, Ms. Madonna Mia S. Dayego, the CWTs in the amount of ₱574,471.95, as detailed below, were not supported by certificates, and thus were deducted from petitioner's claim:

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[50] Docket, Exhibit "P-4", pp. 546 to 553.
[51] *Id.*, Exhibits "P-10", pp. 610 to 611.
[52] *Id.*, pp. 10 to 18.
[53] *Id.*, Statement of the Case, Pre-Trial Order dated May 30, 2019, p. 495.
[54] Exhibits "P-17-1" to "P-17-144".
[55] Exhibit "P-16".

Not supported by original Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307)			
Benguetcorp Nickel Mines Inc	007-417-235-000	₱ 23,883,156.00	₱ 477,663.12
Victoria Devt Const Supply	000-000-000-000	645,372.50	12,907.45
PACER Construction c/o Victoria	000-000-000-000	4,195,069.50	83,901.39
TOTAL		***₱28,723,598.00***	***₱ 574,471.96***

Upon further verification, the Court also disallowed the CWTs in the total amount of ₱8,099,849.71, although supported by withholding tax certificates, for the reasons stated hereinbelow:

Exhibit	Payor	TIN	Income Payment	Tax Withheld
Supporting Certificates of Creditable Tax Withheld At Source (BIR Form No. 2307) were not signed by the payor				
"P-17-16"	Benguetcorp Nickel Mines Inc	007-417-235-000	₱ 1,785,714.29	₱ 35,714.29
"P-17-17"	Benguetcorp Nickel Mines Inc	007-417-235-000	3,571,428.57	71,428.57
"P-17-18"	Benguetcorp Nickel Mines Inc	007-417-235-000	3,670,528.35	73,410.57
"P-17-50"	Benguetcorp Nickel Mines Inc	007-417-235-000	19,017,681.17	380,353.62
"P-17-72"	Benguetcorp Nickel Mines Inc	007-417-235-000	3,624,883.60	72,497.67
"P-17-80"	Benguetcorp Nickel Mines Inc	007-417-235-000	8,328,850.29	166,577.00
"P-17-87"	Benguetcorp Nickel Mines Inc	007-417-335-000	5,750,412.53	115,008.25
"P-17-91"	Benguetcorp Nickel Mines Inc	007-417-335-000	14,310.00	286.20
"P-17-124"	Benguetcorp Nickel Mines Inc	007-417-235-000	3,230,536.29	64,610.73
"P-17-135"	Benguetcorp Nickel Mines Inc	007-417-235-000	7,410,821.34	148,216.43
	Subtotal		***₱ 56,405,166.43***	***₱ 1,128,103.33***
With incorrect TIN of the payor indicated in the certificate				
"P-17-83"	Benguetcorp Nickel Mines Inc	007-417-335-000	₱ 7,904,067.81	158,081.35
"P-17-84"	Benguetcorp Nickel Mines Inc	007-417-335-000	2,678,571.43	53,571.43
"P-17-86"	Benguetcorp Nickel Mines Inc	007-417-335-000	133,270.00	2,665.40
"P-17-88"	Benguetcorp Nickel Mines Inc	007-417-335-000	3,869,905.00	77,398.10
"P-17-89"	Benguetcorp Nickel Mines Inc	007-417-335-000	164,730.55	3,294.61
"P-17-90"	Benguetcorp Nickel Mines Inc	007-417-335-000	823,687.75	16,473.76
"P-17-92"	Benguetcorp Nickel Mines Inc	007-417-335-000	19,486,969.29	389,739.39
"P-17-94"	Benguetcorp Nickel Mines Inc	007-417-335-000	892,857.14	17,857.14
"P-17-96"	Benguetcorp Nickel Mines Inc	007-417-335-000	892,857.14	17,857.14
"P-17-97"	Benguetcorp Nickel Mines Inc	007-417-335-000	97,880.39	4,894.02
"P-17-98"	Benguetcorp Nickel Mines Inc	007-417-335-000	200,847.73	10,042.39
"P-17-99"	Benguetcorp Nickel Mines Inc	007-417-335-000	2,678,571.43	53,571.43
"P-17-101"	Benguetcorp Nickel Mines Inc	007-417-335-000	1,785,714.29	35,714.29
"P-17-102"	Benguetcorp Nickel Mines Inc	007-417-335-000	2,232,142.86	44,642.86
"P-17-103"	Benguetcorp Nickel Mines Inc	007-417-335-000	3,125,000.00	62,500.00
"P-17-104"	Benguetcorp Nickel Mines Inc	007-417-335-000	7,820,191.61	391,009.57
"P-17-107"	Benguetcorp Nickel Mines Inc	007-417-335-000	2,411,626.34	48,232.53
"P-17-108"	Benguetcorp Nickel Mines Inc	007-417-335-000	20,047,475.58	1,002,373.80
"P-17-109"	Benguetcorp Nickel Mines Inc	007-417-335-000	41,107,682.49	2,055,384.17
"P-17-110"	Benguetcorp Nickel Mines Inc	007-417-335-000	16,897,367.89	844,868.44
"P-17-111"	Benguetcorp Nickel Mines Inc	007-417-335-000	8,889,999.13	444,499.96
"P-17-112"	Benguetcorp Nickel Mines Inc	007-417-335-000	3,558,958.87	177,947.93
"P-17-113"	Benguetcorp Nickel Mines Inc	007-417-335-000	9,519,623.35	475,981.17
"P-17-114"	Benguetcorp Nickel Mines Inc	007-417-335-000	10,036,848.29	501,842.38

"P-17-115"	Benguetcorp Nickel Mines Inc	007-417-335-000	203,648.45	4,072.97
"P-17-116"	Benguetcorp Nickel Mines Inc	007-417-335-000	39,882.70	797.65
"P-17-117"	Benguetcorp Nickel Mines Inc	007-417-335-000	3,571,428.57	71,428.57
"P-17-130"	Benguetcorp Nickel Mines Inc	007-417-335-000	156,696.43	3,133.93
	Subtotal		***₱171,228,502.51***	***₱ 6,969,876.38***
The supporting Certificate of Creditable Tax Withheld At Source (BIR Form No. 2307) was dated outside the Taxable Year 2015				
"P-17-95"	Benguetcorp Nickel Mines Inc	007-417-235-000	93,500.00	1,870.00
	Subtotal		***93,500.00***	***1,870.00***
	TOTAL		**₱227,727,168.94**	**₱ 8,099,849.71**

Consequently, only the amount of ₱10,009,264.33 was duly supported by certificates, as computed below:

CWT claimed for refund		₱ 18,683,586.00
Less: Disallowances		
Per ICPA Report - Not supported by original certificates	₱ 574,471.96	
Per this Court's further verification	8,099,849.71	8,674,321.67
CWTs duly supported by certificates		**₱ 10,009,264.33**

Accordingly, petitioner was able to satisfy the *second requisite* but only to the extent of the said duly substantiated CWTs in the amount of ₱10,009,264.33.

As regards the *third requisite*, to prove that the income payments related to the claimed CWTs formed part of petitioner's declared income per ITR, petitioner presented its *Statement of Accounts* (SOA),[56] *Summary of Accounts Receivable Adjustments* (SARA),[57] *General Ledgers* (GL),[58] *Monthly Trial Balance* (MTB)[59] and *Monthly Revenue Summary* (MRS),[60] for TYs 2014 and 2015.

According to the ICPA, part of the income payments related to the claimed CWTs were reported as part of the petitioner's gross income subject to tax in the taxable year 2015.

As part of its verification, the ICPA traced the payor's name and amount of income payments totaling ₱722,666,399.71 with corresponding CWTs of

[56] Exhibits "P-19-1" to "P-19-511".
[57] Exhibit "P-19-512.
[58] Exhibits "P-25-1" and "P-26-1"
[59] Exhibits "P-25" and "P-26"
[60] Exhibits "P-20-1-1" to "P-20-1-12"; "P-20-2-1" to "P-20-2-12"; "P-20-3-1" to "P-20-3-12"; "P-20-4-1" to "P-20-4-12".

₱18,109,114.04[61] against the customer's name and the amount of income reflected in the SOAs and the SARA. The results of such verification are summarized as follows:[62]

CWTs in the name of the petitioner traced to SOA and SARA

Exhibit No.	Particulars	Amount of Income Payment	Amount of Taxes Withheld
"P-17"	Per Summary of Creditable Taxes Withheld supported by original Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by payor in the petitioner's name	**₱722,666,399.71**	**₱18,109,114.05**
"P-19"	Traced to SOA		
	Taxable year 2014	150,132,293.87	6,123,250.79
"P-19-512"	SOA adjustments per SARA, net of VAT	208,163.04	(247,990.90)
	Overstatement of income payments per SOA compared to BIR Form No. 2307	(12,919,952.70)	-
		137,420,504.21	5,875,259.89
	Taxable year 2015	576,533,137.91	11,884,781.59
"P-19-512"	SOA adjustments per SARA, net of VAT	(5,855,793.49)	(117,323.42)
	Overstatement of income payments per SOA compared to BIR Form No. 2307	(10,380.69)	(0.15)
		570,666,963.73	11,767,458.02
		708,087,467.94	**17,642,717.91**
	Difference	**₱ 14,578,931.77**	**₱ 466,396.14**

As ascertained by the ICPA, the resulting difference of ₱466,396.14, as shown in the above table, represents tax withheld per BIR Form No. 2307, for which the corresponding SOAs were not presented. As such, there was no basis for tracing the recording in the books of the related income payments of ₱14,578,931.77. Hence, this resulted to a downward adjustment of ₱466,396.14 to petitioner's claim.

Thereafter, the income payments of ₱708,087,467.94 per SOAs, with the corresponding CWTs of ₱17,642,717.91, were traced to the petitioner-prepared MRS for the taxable years 2014 and 2015. The results of the comparison and tracing are summarized as follows:

SOA Traced to MRS

Per SOA (Exhibit P-19)			Per MRS - Related o Petitioner's Claim				Difference	
TY	**Amount of Income Payment**	**Amount of Taxes Withheld**	**Exhibit No.**	**Account Title**	**Amount of Income Payment**	**Amount of Taxes Withheld**	**Amount of Income Payment**	**Amount of Taxes Withheld**
			"P-21"	Revenue from SCNP-BNMI	₱ 130,625,430.81	₱ 5,707,650.71		

[61] With supporting CWT certificates per ICPA (₱18,683,586.00 less 574,471.96).
[62] Exhibit "P-13", Table 8, p. 10 of 23.

			"P-22"	Freight-General Cargo/Revenue-Tacloban	1,481,000.00	29,620.00		
				Rounding-off	(0.07)	0.01		
2014	₱ 137,420,504.21	₱ 5,875,259.89			132,106,430.74	5,737,270.72	₱ 5,314,073.47	₱ 137,989.17
			"P-23"	Revenue from SCNP-BNMI	559,941,211.99	11,549,793.95		
			"P-24"	Freight-General Cargo/Revenue-Tacloban	668,953.57	13,379.07		
				Rounding-off	1.74	(0.08)		
2015	570,666,963.73	11,767,458.02			560,610,167.30	11,563,172.94	10,056,796.43	204,285.08
	₱708,087,467.94	**₱17,642,717.91**			**₱692,716,598.04**	**₱17,300,443.66**	**₱15,370,869.90**	**₱342,274.25**

The difference in the income payments amounting to ₱15,370,869.90, with corresponding tax withheld of ₱342,274.25, pertained to revenues from trucking services per SOA which were not traced to the petitioner-prepared MRS due to the absence of supporting details/breakdown to match the information in the petitioner-prepared MRS. As such, this again caused a downward adjustment of ₱342,274.25 to the petitioner's claim.

The total revenues per petitioner-prepared MRS were then traced to the total revenues recorded per Journal Vouchers[63] and Year-end Client's Adjusting Entries[64] posted in the GL for TYs 2014 and 2015, and summarized in the MTB for TYs 2014 and 2015 under Revenue from SCNP-BNMI and Freight-General Cargo/Revenue-Tacloban. The results of the foregoing procedures are summarized as follows:

	Amount of Income Payments							**Rounding-off Difference**	
	Per MRS								
Particulars	**Exhibit No.**	**Related to Petitioner's Claim (a)**	**Other Transactions (b)**	**Total (c)=(a)+(b)**	**Exhibit No.**	**Per JVs (d)**	**Per GL/MTB (e)**	**MRS vs JVs (c-d)**	**JV vs. MTB/GL (d-e)**
TY 2014 Revenue from SCNP-BNMI	"P-21-1"	₱ 130,625,430.81	₱ 455,306,924.54	₱ 585,932,355.35		₱ 585,932,353.97	₱ 585,932,353.97	₱ 1.38	₱ -
Freight-General Cargo				-		9,998,099.06	9,998,099.07		
Freight-Tacloban				-		20,804,496.98	20,804,496.98		-
	"P-22-1"	1,481,000.00	29,321,596.05	30,802,596.05		30,802,596.04	30,802,596.05	0.01	(0.01)
Total – TY 2014		**₱132,106,430.81**	**₱484,628,520.59**	**₱616,734,951.40**	"P-27"	**₱616,734,950.01**	**₱616,734,950.02**	**₱ 1.39**	**₱(0.01)**
TY 2015 Revenue from SCNP-BNMI	"P-23-1"	₱ 559,941,211.99	₱ 207,238,336.58	₱ 767,179,548.57		₱ 767,179,548.54	₱ 767,179,548.54	₱ 0.03	-
Freight-General Cargo				-		4,229,242.86	4,229,242.86		-
Freight-Tacloban				-		16,075,540.31	16,075,540.31		-
	"P-24-1"	668,953.57	19,635,829.62	20,304,783.19		20,304,783.17	20,304,783.17	0.02	-
Total – TY 2015		**₱560,610,165.56**	**₱226,874,166.20**	**₱787,484,331.76**	"P-28"	**₱787,484,331.71**	**₱787,484,331.71**	**₱ 0.05**	-

[63] Exhibits "P-27-1" to "P-27-108" and "P-28-1" to "P-28-124".
[64] Exhibits "P-27-109" and "P-28-125".

The amounts of revenue from trucking services for the taxable years 2014 and 2015 tallied with the revenues from trucking services account reflected in the petitioner-prepared Schedule of Computation of Taxable Income for TYs 2014 and 2015.[65] Also, the amounts of Gross Revenue reflected in the taxable income column of the petitioner-prepared Schedule of Computation of Taxable Income for the taxable years 2014 and 2015 tally with the total amounts of Sales/Revenues/Fees, and Non-Operating and Other Income reflected in the Annual ITRs for TYs 2014[66] and 2015.[67]

In view of the foregoing, petitioner has sufficiently proved that the income payments related to the CWTs of ₱17,300,443.65 formed part of the gross income declared in its Annual ITR for the subject period of claim, determined as follows:

Particulars	**Amount of Income Payment**	**Tax Withheld**
Amount of Claim per Schedule of Creditable Taxes Withheld	₱ 751,389,997.71	₱ 18,683,586.00
Less: Downward Adjustments		
CWT not supported by BIR Form No. 2307	28,723,598.00	574,471.96
Statement of Accounts not presented for review	14,578,931.77	466,396.14
Not traced to MRS	15,370,869.90	342,274.25
Total downward adjustments	58,673,399.67	1,383,142.35
Total	**₱ 692,716,598.04**	**₱ 17,300,443.65**

Verily, petitioner is considered to have complied with the *third requisite*, relative to the amount of ₱17,300,443.65.

In sum, petitioner has sufficiently proven its entitlement to a partial grant of tax refund, representing unutilized excess CWTs for TY 2015, in the amount of ₱9,200,593.94, computed as follows:

Particulars	**Tax Withheld**
Amount of Claim per Schedule of Creditable Taxes Withheld	₱ 18,683,586.00
Less: Downward Adjustments	
CWT not supported by BIR Form No. 2307	574,471.96
Statement of Accounts not presented for review	466,396.14
Income Not traced to MRS	342,274.25
Total downward adjustments	1,383,142.35
Total	**₱ 17,300,443.65**
Less: Disallowed CWTs as per this Court's verification of the supporting BIR Form No. 2307 (as discussed under the *second requisite)*	8,099,849.71
Valid CWTs	**₱ 9,200,593.94**

[65] Exhibits "P-29" and "P-30".
[66] Exhibit "P-15-3".
[67] Exhibit "P-4".

Respondent's bare allegations are not proof.

Respondent claims that as per mandatory audit, the findings of deficiency income tax liability by the BIR indicates that there is really no such overpayment, and thus petitioner is not entitled to refund in the amount of ₱18,683,586.00, as alleged unutilized CWTs for TY 2015. According to respondent, he finds petitioner liable for deficiency income tax in the amount of ₱148,383,268.70 due to its undeclared revenues (Related Party), undeclared sales, undeclared source of income, and unaccounted source of cash.

The Court cannot give credence to respondent's allegations considering that respondent failed to present the required certifications or confirmation from the alleged third-party sources to support the integrity of the data acquired from the Audit Information, Tax Exemption and Incentives Division (AITEID), among others.[68] In fact, respondent failed to present any evidence at all considering that the Court deemed waived his opportunity to present evidence for his and petitioner's failure to appear despite notice, in the scheduled presentation of his evidence.

Basic is the rule in evidence that the burden of proof lies on the party who makes the allegations — *ei incumbit probatio, qui dicit, non qui negat; cum per rerum naturam factum negantis probatio nulla sit.*[69] "Bare allegations, unsubstantiated by evidence, are not equivalent to proof under our Rules."[70] Respondent's allegations about petitioner's undeclared revenues, undeclared sales, undeclared source of income, and unaccounted source of cash involve questions of fact, and the burden rests upon respondent to prove the same. Without any proof to support his findings of petitioner's deficiency income tax liability, respondent's contention that petitioner is not entitled to refund due to the absence of overpayment must be rejected.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **PARTIALLY GRANTED**. Accordingly, respondent is ordered to refund petitioner the

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[68] *Benchmark Marketing Corp. vs. Commissioner of Internal Revenue,* CTA Case No. 9224, February 12, 2019.
[69] *Acabal vs. Acabal,* G.R. No. 148376, March 31, 2005.
[70] *Philippine National Bank vs. CA,* 266 SCRA 136, January 6, 1997.

reduced amount of **₱9,200,593.94**, representing excess and unutilized CWTs for taxable year 2015.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice