REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10273

TULLETT PREBON (PHILIPPINES) INC.,
Petitioner,

- versus -

NOTICE OF DECISION

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MARVEEN B. DE LA PAZ
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

SALVADOR LLANILLO & BERNARDO
8th Floor, Tower One & Exchange Plaza
Ayala Triangle, Ayala Avenue
1226 Makati City

GREETINGS:

You are hereby notified by these presents that on **January 30, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **February 1, 2024.**

Atty. Maria Johoanna F. Chan-Te
Executive Clerk of Court II

REPUBLIC OF THE PHILIPPINES
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QUEZON CITY

SPECIAL FIRST DIVISION

TULLET PREBON (PHILIPPINES) INC., *Petitioner,*	**CTA Case No. 10273** Members:
-*versus*-	**DEL ROSARIO,** *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 3 0 2024 1:30PM

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DECISION

MANAHAN, *J.*:

Before the Court is a *Petition for Review*, praying that judgment be rendered ordering respondent to refund petitioner the amount of ₱8,574,699.00, allegedly representing petitioner's excess and unutilized creditable withholding taxes (CWTs) for calendar year (CY) ended December 31, 2017.[1]

THE FACTS

Petitioner Tullett Prebon (Philippines) Inc. is a domestic corporation duly organized and existing under Philippine laws,[2] with registered address at 14th Floor, 26th Street, RCBC Savings Bank Building, Bonifacio Global City, Taguig.[3] It is registered with the Bureau of Internal Revenue (BIR) under Tax Identification Number 004-653-622-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue vested under the laws with the authority to carry out the functions of their office, including the power to

[1] Prayer, *Petition for Review*, Docket – Vol. I, p. 21.
[2] Exhibit "P-1", Docket – Vol. I, pp. 464 to 474; and Docket – Vol. II, pp. 673 to 682.
[3] Exhibit "P-12", Docket – Vol. II, p. 603.
[4] *Id.*

decide claims for refund and/or tax credit of overpaid or erroneously paid or collected internal revenue taxes.[5]

On September 30, 2019, petitioner filed with the BIR Regular Large Taxpayers Audit Division II an *Application for Tax Credits / Refunds* (BIR Form No. 1914)[6] with the letter dated August 7, 2019,[7] requesting for the issuance of a tax credit certificate in the amount of ₱8,574,699.00 representing unutilized CWTs for CY 2017.

On April 8, 2020, petitioner filed the present *Petition for Review*.[8]

The Pre-Trial Conference was initially set on November 12, 2020.[9] It was reset to March 11, 2021,[10] then further reset to and finally held on May 20, 2021.[11] Prior thereto, respondent filed its *Pre-Trial Brief* on November 6, 2020,[12] while petitioner filed its *Pre-Trial Brief* on November 9, 2020.[13] The parties submitted their *Joint Stipulation of Facts and Issues* on June 9, 2021.[14] The same was approved by the Court in a *Resolution* dated June 30, 2021, and Pre-Trial was deemed terminated.[15] The Court issued the *Pre-Trial Order* dated July 7, 2021.[16]

On December 1, 2021, respondent transmitted to this Court the BIR Records for this case, consisting of 672 pages in two (2) folders.[17]

Trial ensued, with both parties presenting and offering their respective documentary and testimonial evidence.

Petitioner presented the following witnesses: (1) Mr. Philip G. Arabia,[18] petitioner's Finance Manager; and (2) Ms. Maria

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[5] Par. 1, Stipulated Facts, *Joint Stipulation of Facts and Issues (JSFI)*, Docket – Vol. I, p. 281.
[6] Exhibit "P-7-a", Docket – Vol. II, p. 569.
[7] Exhibit "P-7", Docket – Vol. II, pp. 566 to 568.
[8] Docket – Vol. I, pp. 14 to 22.
[9] *Notice of Pre-Trial Conference* dated September 14, 2020, Docket – Vol. I, pp. 83 to 85.
[10] *Order* dated November 18, 2020, Docket – Vol. I, p. 251.
[11] Order dated March 9, 2021, Docket – Vol. I, p. 263; Minutes of the hearing held on, and Order dated, May 20, 2021, Docket – Vol. I, pp. 265 to 266-A.
[12] Docket – Vol. I, pp. 89 to 91.
[13] Docket – Vol. I, pp. 235 to 25.
[14] Docket – Vol. I, pp. 281 to 286.
[15] Docket – Vol. I, p. 296.
[16] Docket – Vol. I, pp. 299 to 309.
[17] *Compliance* dated December 1, 2021, Docket – Vol. I, pp. 445 to 447.
[18] Exhibit "P-13", Docket – Vol. I, pp. 96 to 106; *Order* dated July 8, 2021, Vol. I, pp. 318-319, and Minutes of the Hearing held on July 18, 2021, Docket – Vol. I, pp. 310 to 316.

Gracia L. Morfe, [19] the Court-commissioned Independent Certified Public Accountant (ICPA).[20] The ICPA submitted her *Amended Report* on November 29, 2021.[21]

On December 14, 2021, petitioner filed its *Formal Offer of Evidence.*[22] Respondent submitted his *Comment (On Petitioner's Formal Offer of Evidence)* on December 20, 2021.[23]

In a *Resolution* dated March 21, 2022,[24] the Court admitted petitioner's exhibits, except for: (1) Exhibit "P-1," for failure of the document offered and identified to correspond with the document marked; (2) Exhibits "P-25," "P-328," "P-347," "P-1342," "P-1871," and "P-2050," for not being found in the records of the case; and (3) Exhibits "P-751 to P-753," for not being found in the records of the case. Upon petitioner's *Motion for Partial Reconsideration (Re: Resolution dated March 21, 2022)* filed on April 18, 2022[25] without respondent's comment or opposition[26] the Court admitted Exhibits "P-1," "P-25," "P-278-1," "P-1342," and "P-1871."[27]

For his part, respondent presented Revenue Officer Cheryl G. Arbues as his lone witness.[28]

Respondent filed his *Formal Offer of Evidence* on September 30, 2022.[29] Petitioner filed its *Comment (Re: Respondent's Formal Offer of Evidence)* on October 13, 2022.[30] In a *Resolution* dated November 21, 2022, the Court admitted all of respondent's offered exhibits.[31]

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[19] Exhibit "P-14", Docket – Vol. I, pp. 390 to 402; *Order* dated November 23, 2021, Docket – Vol. I, pp. 417 to 419.
[20] *Oath of Commission* dated July 8, 2021, Docket – Vol. I, p. 314; *Order* dated July 8, 2021, Docket – Vol. I, pp. 315 to 316.
[21] Exhibit "P-2146", Docket – Vol. I, pp. 427 to 444. Although not marked, the submission thereof was allowed by the Court, and the identification thereof was stipulated by the parties. *See* Transcript of Stenographic Notes for hearing held on November 23, 2021, pp. 13 to 16.
[22] Docket – Vol. I, pp. 448 to 463.
[23] Docket – Vol. II, pp. 605 to 607.
[24] Docket – Vol. II, pp. 617 to 620.
[25] Docket – Vol. II, pp. 629 to 640.
[26] *Records Verification* dated May 24, 2022 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 656.
[27] *Resolution* dated August 9, 2022, Docket – Vol. II, pp. 684 to 692.
[28] Exhibit "R-4", Docket – Vol. I, pp. 258 to 262; *Order* dated September 20, 2022, Docket – Vol. II, pp. 696 to 697.
[29] Docket – Vol. II, pp. 700 to 704.
[30] Docket – Vol. II, pp. 707 to 710.
[31] Docket – Vol. II, pp. 712 to 713. *om*

Petitioner filed its *Memorandum* on December 28, 2022.[32] Respondent failed to file a memorandum.[33] The case was submitted for decision on January 30, 2023.[34]

THE ISSUES

The sole issue for resolution of the Court in this case, as stipulated by the parties, is the following:

> **Whether or not petitioner is entitled to its claim of refund of or issuance of a TCC for P8,574,699.00, representing petitioner's alleged excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2017.**[35]

Petitioner's arguments

Petitioner argues that it filed its administrative and judicial claims for the refund or tax credit of excess and unutilized CWTs for CY 2017 within the two-year prescriptive period provided under Sections 204(C) and 229 of the Tax Code. It avers that its claim of ₱8,574,699.00 is duly substantiated, that the income upon which the same were withheld is reported as part of the revenues declared in its annual income tax return, and that it did not exercise the option to carry over the same to the succeeding taxable period. Hence, petitioner asserts that it is entitled to its claim for refund or tax credit of ₱8,574,699.00 representing its excess and unutilized CWTs for CY 2017.

Respondent's counter-arguments

Respondent counters that petitioner failed to submit documents in support of its claim and that its application for refund or tax credit is pro forma. Consequently, there is no proper compliance with the requirement of the law that an administrative claim should have been made before instituting a judicial claim. Respondent insists that petitioner has the

[32] Docket – Vol. II, pp. 714 to 731.
[33] *Records Verification* dated January 13, 2023 issued by the Judicial Records Division of this Court, Docket – Vol. II, p. 732.
[34] *Minute Resolution* dated January 30, 2023, Docket – Vol. II., p. 733.
[35] Issue, *JSFI*, Docket – Vol. I, p. 282.

burden to establish its claim for refund or tax credit, and that such claim should be construed strictly against petitioner for the same partake the nature of a tax exemption.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

Aside from compliance with Section 76 of the National Internal Revenue Code of 1997, as amended (NIRC), jurisprudence and pertinent BIR Revenue Regulations outline the following requisites for a valid claim of refund or tax credit of excess unutilized CWTs:

1. The claim must be filed within the two-year prescriptive period under Sections 204(C) and 229 of the NIRC;
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 payee or recipient.[36]

For the orderly disposition of this case, the Court shall first discuss petitioner's compliance with Section 76 before delving into each of the above enumerated requisites.

Petitioner complied with Section 76 of the NIRC and has not carried over the CWTs claimed for refund.

Section 76 of the NIRC is quoted hereunder for ready reference:

> "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

[36] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, Oct. 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, Dec. 20, 1991; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, Oct. 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

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."

Said provision grants two options to a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due: 1.) carry-over the excess amount to the succeeding taxable quarters or years until it is fully utilized; or 2.) file a claim for refund (either in the form of cash or tax credit certificate). However, once the carry-over option is made, it becomes irrevocable for that taxable period.[37] The phrase "for that taxable period" qualifies the taxes paid during the taxable year to which the option to carry over was applied; it does not suggest that the option to carry-over can still be changed in the next taxable period.[38]

A perusal of petitioner's Annual Income Tax Return (ITR) for CY 2017[39] shows that it had income tax credits in the total amount of ₱28,146,553.00, consisting of the following:

(i) Prior year's excess tax credits in the amount of ₱19,571,854.00; and,

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[37] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, Aug. 1, 2018.
[38] *Commissioner of Internal Revenue v. Bank of the Philippine Islands*, G.R. No. 178490, Jul. 7, 2009.
[39] Exhibit "P-2", Docket – Vol. I, pp. 475 to 482.

(ii) CWTs accumulated during the four (4) quarters of CY 2017 in the total amount of ₱8,574,699.00.[40]

Petitioner claims that it paid its minimum corporate income tax (MCIT) due for CY 2017 amounting to ₱898,826.00 using a portion of its prior year's excess credits. This leaves a total of ₱27,247,727.00 unutilized as of December 31, 2017, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 19,571,854.00
Less: Tax Due (MCIT)	898,826.00
Balance of Prior Year's Excess Credits	₱ 18,673,028.00
Add: Creditable Taxes Withheld – CY 2017	8,574,699.00
Excess Creditable Taxes Withheld as of December 31, 2017	**₱ 27,247,727.00**

Under Section 2.58.3 of Revenue Regulations (RR) No. 2-98, the submission of petitioner's Annual ITR for CY 2016 is sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱19,571,854.00. Said provision states:

> "**Sec. 2.58.3.** *Claim for tax credit or refund.* —
>
> x x x
>
> (C) Excess Credits. – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall **automatically be allowed as a credit** against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period** showing the **amount of his excess withholding tax credits**, and on which return he has **not opted for a cash refund or tax credit certificate**." [Emphasis supplied]

Here, petitioner presented its Annual ITR for CY 2016 showing excess tax credits amounting to ₱30,847,724.00,[41] which consisted of prior year's excess credits in the amount of ₱19,571,854.00 and CWTs during CY 2016 in the amount of ₱11,275,870.00. Petitioner opted to be issued a tax credit certificate only for the CWTs during CY 2016.[42] Thus, the prior

[40] Exhibit "P-2", Schedule 7, Docket – Vol. I, p. 480.
[41] Exhibit "P-20", Part II-Line 20 and Schedule 7 of Annual ITR, USB.
[42] Exhibit "P-20", Part II-Line 21 of Annual ITR, USB.

year's excess credits of ₱19,571,854.00 was carried over to CY 2017. The latter was automatically allowed as credits to be applied against its MCIT due for CY 2017 in the amount of ₱898,826.00,[43] while its CWTs during CY 2017 in the amount of ₱8,574,699.00 remained unutilized as of the end of the same period.

In its Annual ITR for CY 2017, petitioner indicated its option to be issued a tax credit certificate for its excess and unutilized CWTs for CY 2017.[44] That such CWTs were not carried over in the succeeding taxable periods is reflected in petitioner's Quarterly ITRs and Annual ITR for CY 2018, which reflects only the amount of ₱18,673,028.00 and excludes the amount of ₱8,574,699.00 representing the CWTs for CY 2017.

Considering the foregoing, the excess and unutilized CWTs during CY 2017 in the amount of ₱8,574,699.00 may therefore be the subject of a claim for refund or issuance of a tax credit certificate under Section 76 of the NIRC.

We now proceed to discuss petitioner's compliance with the three requisites for entitlement to refund or tax credit of excess unutilized CWTs.

Petitioner filed its claim for refund within the two-year prescriptive period

Section 204(C) of the NIRC provides that "[n]o 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."

Relative thereto, Section 229 states that "[n]o 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 x x x 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." The same provision further states that "no such suit or proceeding shall be filed after the

[43] Exhibit "P-2", Line 16, Docket – Vol. I, p. 475.
[44] Exhibit "P-2", Line 21, Docket –Vol. I, p. 475.

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 x x x."

In other words, at the time petitioner's claims were filed, the rule is that an administrative claim must precede the judicial claim, and both claims must be filed within the two-year prescriptive period. It is settled in jurisprudence that the two-year prescriptive period for claiming a refund or tax credit of overpaid income tax or CWTs commences to run on the date of the filing of the Final Adjustment Return[45] (or Annual ITR). This is so because only then would the taxpayer know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures. It is only upon the filing of the Final Adjustment Return can it be determined whether the taxpayer paid an amount exceeding its annual income tax liability.[46]

Here, petitioner filed its Annual ITR[47] on April 13, 2018 via the electronic filing and payment system (or eFPS) of the BIR, and manually filed the same with the BIR on April 24, 2018.[48] Counting two years from April 13, 2018, which is considered the date of the filing of the final adjustment return,[49] petitioner had until April 13, 2020 within which to file its administrative and judicial claims.

Petitioner filed its administrative claim on September 30, 2019,[50] while the present judicial claim was filed on April 8, 2020.[51] Thus, both administrative and judicial claims were seasonably filed within the two-year prescriptive period.

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[45] *ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.*, G.R. No. 96322, Dec. 20, 1991; *Commissioner of Internal Revenue v. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, Jan. 15, 1992; *Commissioner of Internal Revenue v. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.

[46] *Metropolitan Bank & Trust Company v. The Commissioner of Internal Revenue*, G.R. No. 182582, Apr. 17, 2017.

[47] Exhibit "P-2", Docket – Vol. I, pp. 475 to 482.

[48] Exhibit "P-3", Docket – Vol. I, pp. 483 to 491.

[49] Per Revenue Memorandum Circular No. 24-2018 [SUBJECT: Guidelines in the Filing, Receiving and Processing of 2017 Income Tax Returns Including Its Attachments], Taxpayers who are mandated to use the eFPS under existing issuances shall file and pay directly using the eFPS facility. However, taxpayers who electronically filed shall also submit a copy of the electronically filed ITR with Filing Reference Number (FRN) thru eFPS facility, together with the required attachments, within fifteen (15) days from the deadline of filing or date of electronic filing of the return, whichever comes later. Hence, the counting of the two-year prescriptive period is reckoned from the date of the filing of the final adjustment return via eFPS.

[50] Exhibits "P-7" and "P-7-a", Docket – Vol. II, pp. 566 to 569.

[51] Docket – Vol. I, pp. 14 to 22. om

Petitioner has proven the fact of withholding of its CWTs for CY 2017 but only to the extent of ₱7,115,784.67

The second requisite mandates petitioner to prove the fact of withholding of the claimed CWTs through a copy of the statement duly issued by the payor (withholding agent) showing the names of the payor and the payee, the income payment, and the amount of tax withheld therefrom.[52] In *Commissioner of Internal Revenue v. Philippine National Bank*,[53] the Supreme Court held that the Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307), complete in relevant details, is the competent proof to establish the fact that taxes are withheld.

In this case, to prove the fact of withholding of the claimed CWTs, petitioner presented the pertinent BIR Forms No. 2307[54] issued by its clients and its Schedule of CWTs Subject for Refund[55] for CY 2017. These were examined by the ICPA.

Based on the findings of the ICPA, the following CWTs in the amount of ₱876,356.67 were <u>not</u> properly supported with BIR Forms No. 2307:

	Reference to ICPA Report	CWT Amount
CWT certificates reflecting an amount lower than the amount of claims	Annex 2	₱ 161,262.55
CWT certificates that are scanned or photocopies only	Annex 3	541,927.07
CWT without certificates	Annex 4	173,167.05
Total		**₱ 876,356.67**

As to the amount of ₱161,262.55 pertaining to petitioner's overclaimed CWTs, there shall be an adjustment in the amount of ₱749.98 as detailed below, due to the ICPA's incorrect appreciation or determination of the amounts of CWTs per BIR Form No. 2307 in Annex 2 of its *ICPA Report*:

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[52] Section 2.58.3(B), RR No. 2-98.
[53] G.R. No. 180290, September 29, 2014.
[54] Exhibits "P-21" to "P-455", USB.
[55] Exhibit "P-2146," Annex 1 of *ICPA Report*. *am*

	CWT per claim (a)	CWT per Annex 2 of ICPA Report (b)	Difference per Annex 2 of ICPA Report (c = a - b)	CWT per BIR Form No. 2307[56] (d)	Difference per verification (e = a - d)	**Adjustment on Difference** (f = c - e)
PHILIPPINE BUSINESS BANK	₱6,604.42	₱6,064.38	₱540.04	₱ 6,604.38	₱0.04	₱540.00
MAYBANK PHILIPPINES INC	43,410.27	43,210.24	200.03	43,410.24	0.03	200.00
CHINATRUST (PHILIPPINES) COMMERCIAL BANK CORP	8,332.24	8,322.26	9.98	8,332.26	(0.02)	9.98[57]
Total Adjustment						**₱749.98**

Consequently, based on the findings of the ICPA, the CWTs amounting to ₱875,606.69, *i.e.* ₱876,356.67 – ₱749.98, shall be disallowed for being unsupported by valid BIR Forms No. 2307.

In addition to the above disallowances, CWTs in the amount of ₱583,307.57 shall likewise be disallowed due to the grounds stated hereunder:

Exhibit No.	Client Name	CWT Amount
CWTs supported by BIR Forms No. 2307 dated outside the period of claim		
"P-52"	DEUTSCHE BANK AG	₱ 7,221.59
"P-107"	STERLING BANK	6,216.91
CWTs supported by BIR Forms No. 2307 but the CWT amounts per BIR Forms No. 2307 are lower than the CWT amounts per claim		
"P-66"	JP MORGAN CHASE BANK NA (₱30,738.07 per claim less ₱30,600.88 per 2307)	137.19
"P-70"	LAND BANK OF THE PHILIPPINES (₱6,102.00 per claim less ₱4,068.00 per 2307)	2,034.00
"P-58"	DEVELOPMENT BANK OF THE PHILIPPINE (₱4,261.15 per claim less ₱2,840.77 per 2307)	1,420.38
"P-102"	SECURITY BANK CORP (₱29,603.68 per claim less ₱14,843.84 per 2307)	14,759.84
"P-132"	AUSTRALIA & NEW ZEALAND BANKING GROUP LTD (₱82,991.85 per claim less ₱76,568.48 per 2307)	6,423.37
"P-209"	SECURITY BANK CORP (₱48,397.23 per claim less ₱19,829.33 per 2307)	28,567.90
"P-433"	SECURITY BANK CORP (₱33,903.29 per claim less ₱33,443.96 per 2307)	459.33

[56] Exhibits "P-193", "P-286", and "P-377", USB.
[57] The amount of adjustment was limited only to the ₱9.98 overclaim included in Annex 2 of the *ICPA Report*.

"P-433"	SECURITY BANK CORP (₱35,126.56 per claim less ₱34,887.39 per 2307)	239.17
The exhibit reference for the purported supporting BIR Form No. 2307 does not pertain to the client per the schedule of claim		
"P-61"	FIRST METRO INVESTMENT CORP	6,969.86
The exhibit references for the purported supporting BIR Forms No. 2307 already pertained to other period and/or income payment and CWT amounts		
"P-100"	SECURITY BANK CORP	38,393.61
"P-166"	DEVELOPMENT BANK OF THE PHILIPPINES	6,906.95
"P-100"	SECURITY BANK CORP	36,755.80
"P-169"	INTERNATIONAL NEDERLAND BANK	30,959.31
"P-207"	RIZAL COMMERCIAL BANKING CORP	34,419.85
"P-207"	RIZAL COMMERCIAL BANKING CORP	22,220.25
CWT with exhibit reference but the same was withdrawn as offer by petitioner in its Motion for Partial Reconsideration (Re: Resolution dated March 21, 2022)[58]		
"P-328"	STERLING BANK	800.00
CWTs without supporting BIR Forms No. 2307		
	CITIBANK NA	22,129.94
	METROPOLITAN BANK & TRUST COMPANY	61,622.52
	METROPOLITAN BANK & TRUST COMPANY	57,183.37
	METROPOLITAN BANK & TRUST COMPANY	73,790.73
	CHINA BANKING CORPORATION	5,077.97
	SECURITY BANK CORP	5,400.00
	SECURITY BANK CORP	14,429.31
	RIZAL COMMERCIAL BANKING CORP	33,465.79
	AUSTRALIA & NEW ZEALAND BANKING GROUP LTD	16,041.91
	AUSTRALIA & NEW ZEALAND BANKING GROUP LTD	8,005.72
	RIZAL COMMERCIAL BANKING CORP	41,255.00
Total		**₱583,307.57**

Thus, insofar as its compliance with the second requisite is concerned, petitioner has proven the fact of withholding of its CWTs for CY 2017 to the extent of ₱7,115,784.67, computed as follows:

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[58] Docket – Vol. II, p. 634, par. 21. *om*

	CWT Amount
CWT per schedule of claim	₱ 8,574,698.93
Less: Disallowances	
Per ICPA findings	₱ 875,606.69
Per Court's further verification	583,307.57
Total	₱ 1,458,914.26
Net Amount	**₱ 7,115,784.67**

Petitioner has proven that it declared the income upon which the substantiated CWTs were withheld as part of its gross income but only with respect to CWTs amounting to ₱6,978,758.87

In compliance with the third requisite, *i.e.* the income payment upon which the taxes were withheld must be included in the return of the payee or recipient,[59] petitioner presented its Annual Audited Financial Statements (AFS) for year ended December 31, 2017,[60] Billing Invoices,[61] Official Receipts,[62] and General Ledgers (GLs) for CYs 2016 and 2017.[63] As aptly found by the ICPA, the revenue (brokerage fees - net of discounts) reported per petitioner's Annual ITR and AFS for CYs 2016 and 2017 in the respective amounts of ₱121,000,676.00[64] and ₱96,028,880.00[65] tallies with the amounts reported as Net Brokerage per the Summary of Revenue Ledger [Annexes 7 (for CY 2017) & 9 (for CY 2016) of *ICPA Report*] for the same period as derived from petitioner's GLs.

However, a verification of the Summary of Revenue Ledger and the Schedule of CWT subject for refund (Annex 1 of *ICPA Report*) reveals that out of the income payments upon which the substantiated CWTs of ₱7,115,784.67 were withheld, the amount of ₱1,490,053.23, as detailed below, with the corresponding CWTs of ₱137,025.80 were not traced in the

[59] Section 2.58.3(B), RR No. 2-98.
[60] Exhibit "P-3-a", Docket – Vol. II, pp. 492-543.
[61] Exhibits "P-456" to "P-1396" and "P-2117 to "P-2144", USB.
[62] Exhibits "P1397" to "P-2112" and "P-2145", USB.
[63] Exhibits "P-2148" and "P-2149", USB.
[64] Exhibit "P-3-a", Docket – Vol. II, p. 530, Item 14; Exhibit "P-20" (Line 30), Page 2 of Annual ITR, USB.
[65] Exhibit "P-3-a", Docket – Vol. II, p. 530, Item 14; Exhibit "P-2" (Line 30), Docket – Vol. I, p. 476.

revenues per GLs. Hence, such amount was not established as forming part of the gross income declared by petitioner in its Annual ITRs for CYs 2016 and 2017:

Client Name	Income payment per BIR Form No. 2307 or per CWT claim (the lesser of the two amounts)		Per Annex 7 or 9 of ICPA Report			Amount not traced to GL/invoice	CWT Amount
	Exhibit No./ Reference	Amount	Invoice Exhibit No.	Invoice No.	Net Brokerage		
INTERNATIONAL NEDERLAND BANK	"P-65"	₱ 252,795.41	"P-537"	105504	₱ 156,734.55	₱ 96,060.86	₱ 9,606.09
JP MORGAN CHASE BANK NA	"P-66"	306,008.80	"P-484"	105449	85,353.85	220,654.95	22,065.50
LAND BANK OF THE PHILIPPINES	"P-70"	40,680.00			-	40,680.00	4,068.00
BANCO DE ORO	Annex 1 of ICPA Report (see also "P-146")	830,405.80	"P-767"	105736	586,703.17		
			"P-780"	105750	10,500.00		
					₱ 597,203.17	233,202.63	23,320.26
RIZAL COMMERCIAL BANKING CORP	"P-207"	406,421.90	"P-826"	105683	113,458.63		
			"P-866"	105835	124,000.00		
			"P-878B"	105747	28,000.00		
			"P-1213"	105524	64,960.00		
					₱ 330,418.63	76,003.27	7,600.33
STANDARD CHARTERED BANK LIMITED	"P-214"	456,319.70	"P-805"	105775	180,139.00		
			"P-816"	105786	23,533.84		
			"P-842"	105811	152,268.66		
			"P-886"	105855	56,000.00		
					₱ 411,941.50	44,378.20	4,437.82
UNION BANK OF THE PHILIPPINES	"P-235"	327,691.68	"P-689"	105660	149,330.78		
			"P-715"	105687	106,736.21		
			"P-745"	105717	56,000.00		
					₱ 312,066.99	15,624.69	1,562.47
AUSTRALIA & NEW ZEALAND BANKING GROUP LTD	Annex 1 of ICPA Report (see also "P-238")	263,549.70	"P-946"	105915	89,200.00		
			"P-968"	105937	45,404.10		
					₱ 134,604.10	128,945.60	12,894.56
BANK OF THE PHILIPPINE ISLANDS	Annex 1 of ICPA Report (see also "P-247")	318,405.50	"P-942"	105911	32,161.24		
			"P-943"	105912	136,500.00		
					₱ 168,661.24	149,744.26	2,994.89
BANCO DE ORO	Annex 1 of ICPA Report (see also "P-253")	872,396.35	"P-937"	105906	585,864.21		
			"P-978"	105947	48,515.45		
					₱ 634,379.66	238,016.69	23,801.67
CITIBANK NA	Annex 1 of ICPA Report (see also "P-263")	548,676.60	"P-923"	105892	213,777.83		
			"P-1001"	105970	222,138.08		
			"P-1028"	105997	112,000.00		
					₱ 547,915.91	760.69	76.07
STERLING BANK	Annex 1 of ICPA Report (see also "P-331")	85,503.50			-	85,503.50	8,550.35
BANK OF TOKYO-MITSUBISHI UFJ LTD	"P-340"	71,712.80	"P-1004"	105973	70,702.80	1,010.00	101.00
UNION BANK OF THE PHILIPPINES	Annex 1 of ICPA Report (see also "P-343")	347,942.30	"P-956"	105925	190,070.08		
			"P-981"	105950	2,404.00		
					₱ 192,474.08	155,468.22	15,546.82
ASIA UNITED BANK CORPORATION	Annex 1 of ICPA Report (see also "P-351")	79,770.40	"P-1304"	106286	75,770.73	3,999.67	399.97
Total		**₱5,208,280.44**			**₱3,718,227.21**	**₱1,490,053.23**	**₱137,025.80**

Thus, out of the substantiated CWTs in the amount of ₱7,115,784.67, only ₱6,978,758.87 satisfied the third requisite as shown below:

Properly substantiated CWTs	₱ 7,115,784.67
Less: CWTs, the income payments of which were not traced to GLs	137,025.80
Valid CWTs	**₱ 6,978,758.87**

Verily, petitioner sufficiently proved its entitlement to the refund of or issuance of a tax credit certificate for its excess and unutilized CWTs for CY 2017 but only to the extent of ₱6,978,758.87.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED**. Respondent is hereby ordered to refund petitioner the amount of **₱6,978,758.87** representing the latter's excess and unutilized CWTs for the CY ended December 31, 2017.

SO ORDERED.

Catherine T. Manahan
CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

Marian Ivy F. Reyes-Fajardo
MARIAN IVY F. REYES-FAJARDO
Associate 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

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