REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AC ENERGY, INC., Petitioner,	**CTA CASE NO. 10009**
	Members:
-versus-	**CASTAÑEDA, JR.**, *Chairperson, and* **BACORRO-VILLENA**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 25 2021 2:25 p.m.

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DECISION

CASTAÑEDA, JR., J.:

THE CASE

The *Petition for Review* filed on January 18, 2018 prays for the refund and/or issuance of tax credit certificate in the total amount of ₱19,857,466.67 allegedly representing petitioner's excess capital gains tax (CGT).[1]

THE PARTIES

Petitioner AC Energy, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines, with its principal office located in Makati City.[2]

Respondent Commissioner of Internal Revenue (CIR) is the chief of the Bureau of Internal Revenue (BIR), the government

[1] Summary of the Case, Pre-Trial Order dated August 8, 2019, Docket – Vol. I, p. 584.
[2] Exhibits "P-1-A" and "P-1-B", Docket – Vol. II, pp. 718 to 761.

agency mandated by law to assess and collect all national internal revenue taxes, fees and charges.[3]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On December 20, 2016, petitioner sold its 5,374,537 common shares (covered by Stock Certificate No. 024-C) and 5,374,537 preferred shares (covered by Stock Certificate No. 010-P) issued by South Luzon Thermal Energy Corporation (SLTEC) to Axia Power Holdings Philippines Corporation (Axia Power) for the amount of ₱2,525,311,665.78.[4]

Petitioner also sold its shares from various corporations to Santa Clara Group, Inc. (SCGI) on December 29, 2016, to wit:

a. 59,505 common shares (including shares held by petitioner's nominees) in PhilnewRiver Power Corporation (PhilnewRiver) for ₱21,569,058.08;[5]

b. 93,095 common shares (including shares held by petitioner's nominees) in PhilnewHydro Power Corporation (PhilnewHydro) for ₱13,844,317.18;[6]

c. 474,405 common shares (including shares held by petitioner's nominees) in Quadriver Energy Corporation (Quadriver) for ₱78,717,624.43;[7]

d. 2,358,690 preferred shares in Quadriver for ₱235,869,000.00.[8]

On January 18, 2017, petitioner filed its CGT Return and paid the CGT on its sale of the SLTEC common shares in the aggregate amount of ₱145,035,426.58.[9]

Petitioner likewise filed CGT Returns, on January 27, 2017, for the sales of the said PhilnewRiver common shares,[10] PhilnewHydro

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[3] Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 559.
[4] Exhibit "P-2", Docket – Vol. II, pp. 762 to 771.
[5] Exhibit "P-3", Docket – Vol. II, pp. 772 to 776.
[6] Exhibit "P-5", Docket – Vol. II, pp. 780 to 784.
[7] Exhibit "P-6", Docket – Vol. II, pp. 785 to 789.
[8] Exhibit "P-7", Docket – Vol. II, pp. 790 to 794.
[9] Exhibits "P-12" and "P-12", Docket – Vol. II, pp. 843 to 846.
[10] Exhibit "P-14", Docket – Vol. II, pp. 847 to 849.

common shares,[11] Quadriver common shares,[12] and Quadriver preferred shares,[13] to SCGI, disclosing losses or the lack of gain from the same.

Subsequently, on February 20, 2017, the BIR issued a *Certificate Authorizing Registration* (CAR) (*i.e.*, BIR Form No. 2313-P) with CAR No. C-2017-050-006256-M for the sale of petitioner's SLTEC shares. The said CAR provides in part:[14]

SHARE(S) OF STOCK

Name of Issuing Corp.	No. of Shares	Stock Cert. No.	Date of Issue	Par Value	Market Value	Selling Price / Substituted Basis
SLTEC	5,374,537	024-C	12/09/2016	₱537,453,700.00	₱619,307,898.51	₱1,262,655,832.89
SLTEC	5,374,537	010-P	12/09/2016	₱537,453,700.00	₱619,307,898.51	₱1,262,655,832.89
xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx
					Total Taxable Base of Shares:	₱1,450,404,265.78

*** *** ***

Date of Transaction: December 20, 2016	Total Taxable Base:	₱1,450,404,265.78
	Total Selling Price:	₱2,525,311,665.78

Details of Payment:

Kind of Tax	Date of Payment	BCS/ROR/ OR No.	Bank/RCO Code	Validation No.	Basic Tax	Total
CGT	01/18/2017	A-00014	BPI	Form 1707	₱145,035,426.58	₱145,035,426.58
DST	12/29/2015	A-20429	LBP	Form 2000-OT	4,030,902.75	4,030,902.75
xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx	xxxxx

Thereafter, on April 12, 2017, petitioner filed its Annual CGT Return covering the above-stated transactions for the year ended December 31, 2016, which reflected an overpayment/refundable CGT amounting to ₱19,857,466.67,[15] computed as follows:

Total Capital Gains	₱1,450,404,265.78
Less: Total Capital Loss	198,574,666.66
Net Capital Gain (Loss)	₱1,251,829,599.12
Tax Due (5% on the first ₱100,000; 10% on any amount in excess of ₱100,000)	₱125,177,959.91
Less: Total Tax Paid	145,035,426.58
Tax Still Payable/(Overpayment)	**₱ (19,857,466.67)**

[11] Exhibit "P-15", Docket – Vol. II, pp. 850 to 852.
[12] Exhibit "P-16", Docket – Vol. II, pp. 853 to 855.
[13] Exhibit "P-17", Docket – Vol. II, pp. 856 to 858.
[14] Par. 12, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 14 and 140, respectively; Exhibit "P-18", Docket – Vol. II, p. 859.
[15] Exhibit "P-19", Docket – Vol. II, pp. 860 to 861.

On September 8, 2017, the BIR issued the following certificates covering the shares sold to SGCI, to wit:

a. CAR with No. C-2017-050-007620-M for the PhinewRiver shares;

b. CAR with No. C-2017-050-07617-M for the PhilnewHydro shares;

c. CAR with No. C-2017-050-007619-M for the Quadriver common shares; and

d. CAR with No. C-2017-050-007618-M for the Quadriver preferred shares.[16]

On September 29, 2017, petitioner filed with the BIR an *Application for Tax Credits / Refunds* (BIR Form No. 1914) and letter dated September 27, 2017,[17] requesting for the issuance of a tax credit certificate in the amount of ₱19,857,466.67, allegedly representing overpaid CGT for taxable year 2016.

PROCEEDINGS BEFORE THE COURT

Petitioner filed its *Petition for Review* on January 18, 2019.[18]

On April 10, 2019, respondent filed his *Answer*,[19] interposing certain special and affirmative defenses, to wit: (1) the petition must fail because there is no erroneously paid tax in the first place; and (2) claims for refund are construed strictly against the taxpayer and in favor of the government.

The pre-trial conference was initially set on May 23, 2019,[20] but was reset and held on July 18, 2019.[21] Prior thereto, petitioner filed its *Pre-Trial Brief* on July 12, 2019,[22] whereas *Respondent's Pre-Trial*

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[16] Par. 17, *Petition for Review*, vis-à-vis Par. 1, *Answer*, Docket – Vol. I, pp. 16 and 140, respectively; Exhibits "P-20" to "P-23", Docket – Vol. II, pp. 862 to 865.
[17] Exhibit "P-24", Docket – Vol. II, pp. 866 to 869.
[18] Docket – Vol. I, pp. 10 to 25.
[19] Docket – Vol. I, pp. 140 to 145.
[20] *Notice of Pre-Trial Conference* dated April 15, 2019, Docket – Vol. I, pp. 147 to 148.
[21] Minutes of the hearing, and Order dated, May 23, 2019, Docket – Vol. I, pp. 164 and 166, respectively; Minutes of the hearing, and Order dated, July 18, 2019, Docket – Vol. I, pp. 201 to 202.
[22] Docket – Vol. I, pp. 173 to 193.

Brief was submitted on July 15, 2019.[23] On July 29, 2019, petitioner filed an *Omnibus Motion*, attaching its *Amended Pre-Trial Brief*.[24]

In the meantime, respondent transmitted the *BIR Records* for the instant case on April 25, 2019.[25] Later on, respondent submitted an *updated BIR Records* for the instant case.[26]

The parties submitted their *Joint Stipulation of Facts and Issue* (JSFI)[27] via petitioner's *Manifestation and Submission* filed on August 5, 2019.[28] Thereafter, the Pre-Trial Order dated August 8, 2019 was issued by the Court,[29] thereby admitting, approving and adopting the said JSFI, as well as deeming the termination of the pre-trial.

Trial proceeded.

During trial, petitioner presented testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Princess Marie A. Tayag,[30] petitioner's Assistant Vice President for Finance; (2) Atty. Dodjie D. Lagazo,[31] Head of Legal and Regulatory Group of petitioner; and (3) Atty. Esther Marie B. Amular-Bantog,[32] SLTEC's Corporate Secretary.

On September 16, 2019, petitioner's *Formal Offer of Documentary Exhibits* was filed.[33] Respondent filed his *Comment (Re: Formal Offer of Evidence dated 16 September 2019)* on September 23, 2019.[34] In the Resolution dated October 24, 2019,[35] the Court admitted all of petitioner's exhibits.

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[23] Docket – Vol. I, pp. 197 to 199.
[24] Docket – Vol. I, pp. 213 to 258.
[25] *Compliance* dated April 25, 2019, Docket – Vol. I, pp. 149 to 151.
[26] *Manifestation* dated August 28, 2019, Docket – Vol. II, pp. 641 to 643.
[27] Docket – Vol. I, pp. 559 to 579.
[28] Docket – Vol. I, pp. 556 to 558.
[29] Docket – Vol. I, pp. 584 to 604.
[30] Exhibit "P-65" (*N.B.*: This exhibit was submitted via petitioner's *Manifestation* dated July 29, 2019, Docket – Vol. I, pp. 544 to 545); Minutes of the hearing held on, and Order dated, August 14, 2019, Docket – Vol. I, pp. 634 to 635.
[31] Exhibit "P-66", Docket – Vol. I, pp. 259 to 296; Minutes of the hearing held on, and Order dated, September 11, 2019, Docket – Vol. II, pp. 664 to 665.
[32] Exhibit "P-67", Docket – Vol. I, pp. 608 to 615; Minutes of the hearing held on, and Order dated, September 11, 2019, Docket – Vol. II, pp. 664 to 665.
[33] Docket – Vol. II, pp. 666 to 717.
[34] Docket – Vol. III, pp. 1484 to 1485.
[35] Docket – Vol. III, pp. 1489 to 1491.

For his part, counsel for respondent manifested, at the hearing held on September 11, 2019,[36] that respondent has no witness to present.

On January 3, 2020, petitioner posted its *Memorandum* on January 16, 2020;[37] and on February 6, 2020, respondent filed his *Memorandum*.[38]

The instant case was considered submitted for decision on February 13, 2020.[39]

THE ISSUES

The parties raised the following issues for this Court's resolution, to wit:

> "1. Whether [petitioner] is entitled to a refund or tax credit in the amount of P19,857,466.67 representing overpaid CGT on the sales of its shares in various corporations in the year 2016; and
>
> 2. Based on the documents submitted in the administrative level, whether [petitioner] is entitled to a refund or tax credit in the amount of ₱19,857,466.67 representing CGT on the sales of its shares in various corporations in the year 2016."[40]

Petitioner's arguments:

Petitioner submits that after deducting its capital losses from its capital gains in the year 2016, it is entitled to the refund/credit of the CGT it overpaid for that year in the amount ₱19,857,466.67.

[36] Minutes of the hearing held on, and Order dated, September 11, 2019, Docket – Vol. II, pp. 664 and 665, respectively.
[37] Docket – Vol. III, pp. 1510 to 1531.
[38] Docket – Vol. III, pp. 1534 to 1538.
[39] Resolution dated February 13, 2020, Docket – Vol. III, p. 1540.
[40] Issues, JSFI, Docket – Vol. I, pp. 559 to 560.

Respondent's counter-arguments:

Respondent, on the other hand, counters that the petition must fail because there is no erroneously paid tax in the first place; and that claims for refund are construed strictly against the taxpayer and in favor of the government.

THE RULING

The instant *Petition for Review* is meritorious.

Anent the first issue to be resolved, Section 229 of the National Internal Revenue Code (NIRC) of 1997 reads:

> "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." *(Emphases added)*

The foregoing provision allows the recovery of taxes erroneously or illegally collected. An "erroneous or illegal tax" is defined as *one levied without statutory authority,* or upon property not subject to taxation, or by some officer having no authority to levy the tax, or one which is some other similar aspect is illegal.[41] Thus, to be entitled to the refund claim, the concerned taxpayer must prove that the same involves an "erroneous or illegal tax". *ge*

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[41] *Commissioner of Internal Revenue vs. Pilipinas Shell Petroleum Corporation,* G.R. No. 188497, April 25, 2012, citing the definition provided in BLACK'S LAW DICTIONARY, Fifth Edition, p. 486.

As already stated, petitioner submits that after deducting its capital losses from its capital gains in the year 2016, it is entitled to the refund/credit of the CGT it overpaid for that year in the amount ₱19,857,466.67.

For his part, respondent opines that at the time of the execution of the contract, the payment of CGT was valid and lawful and thus, it follows that there is no tax erroneously paid by petitioner; that neither can there be said to be any overpayment of CGT; that when the CGT was paid by petitioner, the amount paid is presumed to be the correct amount; and that petitioner has not presented evidence to refute the presumption.

This Court rules for petitioner.

Section 27(D)(2) of the NIRC of 1997, as amended, states as follows:

> "SEC. 27. *Rates of Income tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (D) *Rates of Tax on Certain Passive Incomes.* –
>
> xxx xxx xxx
>
> (2) *Capital Gains from the Sale of Shares of Stock Not Traded in the Stock Exchange.* – A final tax at the prescribed below shall be imposed on net capital gains realized during the taxable year from the sale, exchange or other disposition of shares of stock in a domestic corporation except shares sold or disposed of through the stock exchange:
>
> Not over P100,000 .... 5%
> Amount in excess of P100,000 .... 10%"

Based on the foregoing provision, a CGT is imposed on the net capital gains realized by a domestic corporation during the taxable year from the sale, exchange or other disposition of shares of stock in another domestic corporation which are not traded in the stock exchange. *Je*

Relative thereto, Sections 52(D) and 56(A)(3) of the NIRC of 1997 provides the rules pertaining to the filing of CGT Returns and the payment of income tax (including the above-stated CGT), to wit:

> "SEC. 52. *Corporation Returns.* –
>
> xxx xxx xxx
>
> (D) ***Return on Capital Gains Realized from Sale of Shares of Stock <u>not Traded in the Local Stock Exchange</u>.*** – **Every corporation deriving capital gains from the sale or exchange of shares of stock <u>not traded thru a local stock exchange as prescribed</u>** under Sections 24 (C), 25(A)(3), **<u>27(E)(2)</u>**, 28(A)(8)(c) and 28(B)(5)(c), **shall file a return within thirty (30) days after each transaction and a final consolidated return of all transactions during the taxable year on or before the fifteenth (15th) day of the fourth (4th) month following the close of the taxable year.**" *(Emphases and underscoring added)*
>
> "SEC. 56. *Payment and Assessment of Income Tax for Individuals and Corporation.* –
>
> (A) *Payment of Tax.-*
>
> xxx xxx xxx
>
> (3) ***<u>Payment of Capital Gains Tax</u>.*** – **The total amount of tax imposed and prescribed under Section**s 24(C), 24(D), **<u>27(E)(2)</u>**, 28(A)(8)(c) and 28(B)(5)(c) **shall be paid on the date the return prescribed therefor is filed by the person liable thereto**: xxx." *(Emphases and underscoring added)*

Based on the foregoing provisions, every corporation which derives capital gains from the sale or exchange of shares of stock not traded thru a local stock exchange shall file a return within thirty (30) days after each transaction and a final consolidated return of all transactions during the taxable year before the 15th day of the 4th month following the close of the said taxable year. On the date of filing of the pertinent tax return, the corresponding CGT, if any, shall be simultaneously paid.

Parenthetically, it is apparent that Sections 52(D) and 56(A)(1) of the NIRC of 1997 specifically refers to, *inter alia*, Section "27(E)(2)", and that the earlier quoted Section 27(D)(2) – the law imposing the subject CGT – is not in any way mentioned therein. However, it is reasonable to conclude that the said Sections 52(D) and 56(A)(1) are actually referring to Section "27(D)(2)", instead of Section "27(E)(2)". This must be so because Section 27(E)(2) of the

NIRC of 1997, as amended, does not impose, or even mention, any CGT; rather, it provides the rule regarding the carrying forward of excess minimum corporate income tax, to wit:

> "SEC. 27. *Rates of Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (E) *Minimum Corporate Income Tax on Domestic Corporations.* –
>
> xxx xxx xxx
>
> (2) *Carry Forward of Excess Minimum Tax.* – Any excess of the minimum corporate income tax over the normal income tax as computed under Subsection (A) of this Section shall be carried forward and credited against the normal income tax for the three (3) immediately succeeding taxable years."

Needless to state, the foregoing provision is remotely related to the imposition of the subject CGT. As a corollary, it must be emphasized that Section 52(D) of the NIRC of 1997 specifically governs the filing of returns *"on Capital Gains Realized from Sale of Shares of Stock not Traded in the Local Stock Exchange"*; while Section 56(A)(1) thereof governs the payment of CGT. Thus, the reference to Section "27(D)(2)", instead of Section "27(E)(2)", by Sections 52(D) and 56(A)(1) of the NIRC of 1997, is at best a typographical error.

Thus, Sections 52(D) and 56(A)(1) of the NIRC of 1997 must perforce be applied to the filing of CGT Returns and the payment of the above-stated CGT.

In this case, the crux of respondent's stance is to the effect that at the time of the execution of subject contracts, *i.e.*, the subject Deeds of Absolute Sale,[42] the payment of the CGT was valid and lawful. Thus, according to respondent, it follows that there is no tax erroneously paid by petitioner.

We disagree with respondent.

It is not hard to discern that respondent's argument hinges on the notion that each transaction relative to the sale or exchange by a domestic corporation of shares of stock not traded thru a local stock

[42] Exhibits "P-2", "P-3", "P-5", "P-6", "P-7", Docket – Vol. II, pp. 762 to 776, and 780 to 794.

exchange, during any taxable year, should be separately treated in the imposition of CGT on the net capital gains. However, such is not the case.

As can be gleaned from Section 52(D) of the NIRC of 1997, there are two (2) dates involved in the filing of CGT Returns relative to the sale or exchange of shares of stock not traded thru a stock exchange, *viz.*: one for each transaction during the taxable year, within thirty (30) days thereafter; and another, relative to the **final consolidation** of all such transactions in the same taxable year, before the 15^{th} day of the 4^{th} month following the close thereof.

Simply put, apart from the CGT Return for each transaction, there is still to be filed a final consolidation return to determine the CGT to be imposed on the net capital gains that arose **<u>for all transactions during the taxable year</u>**.

In fact, consistent with the said Section 52(D) of the NIRC of 1997, the BIR has come up with two (2) CGT Returns for sales or exchanges of shares of stock not traded thru a stock exchange, to wit: (1) ***Capital Gains Tax Return*** **(BIR Form No. 1707)**, which is required for each transaction during the taxable year; and (2) ***Annual Capital Gains Tax Return*** **(BIR Form No. 1707-A)**, which is for the final consolidation of all such transactions during the taxable year. Notably, the information to be furnished in **BIR Form No. 1707** relates to a specific transaction, with a determination of the corresponding CGT therefor; while that furnished in **BIR Form No. 1707-A** reflects a summary of all transactions for a specific taxable year, with a computation of CGT *"Still Payable/ (Overpayment)"*, after considering such transactions.

Correspondingly, the determination of CGT (from the sale or exchange of shares of stock not traded thru a local stock exchange) to which a domestic corporation may be held liable is on an *annual* basis. Such being the case, the CGT paid for a particular transaction should be considered as a mere installment, an advance, or a deposit, subject to the final determination of CGT for the entire taxable year in which such transaction took place, and after considering other transactions which took place within the same taxable year.

Thus, the CGT paid for a particular transaction is akin to the quarterly payments of corporate income tax and withholding taxes.

The jurisprudential pronouncements then made by the Supreme Court relative thereto, in *Citibank, N.A. vs. Court of Appeals, et al.*,[43] is instructive, to wit:

> "In *Commissioner of Internal Revenue vs. TMX Sales, Inc.*,[44] this Court ruled that the payments of quarterly income taxes (per Section 68, NIRC)[45] should be considered **mere installments** on the annual tax due. These quarterly payments, which are computed based on the cumulative figures of gross receipts and deductions in order to arrive at a net taxable income, should be treated as **advances or portions of the annual income tax due, to be adjusted at the end of the calendar or fiscal year.** The same holds true in the case of the withholding of creditable tax at source. Withholding taxes are **'deposits'** which are **subject to adjustments at the proper time when the complete tax liability is determined.**" *(Emphases added)*

Indisputably, petitioner filed its CGT Return (BIR Form No. 1707) and paid the CGT on its sale of the SLTEC common shares in the aggregate amount of ₱145,035,426.58 On January 18, 2017.[46] Moreover, petitioner likewise filed CGT Returns (BIR Form No. 1707), on January 27, 2017, for the sales of its PhilnewRiver common shares,[47] PhilnewHydro common shares,[48] Quadriver common shares,[49] and Quadriver preferred shares,[50] to SCGI, disclosing either capital losses or the lack of gain from the transactions.

Furthermore, on April 12, 2017, petitioner filed its Annual CGT Return (BIR Form No. 1707-A) covering the above-stated transactions for the year ended December 31, 2016, which reflected an overpayment of CGT amounting to ₱19,857,466.67,[51] determined as follows:

Name of Corporate Stock	Selling Price	Cost	Capital Gain/Loss
Capital Gain			
South Luzon Thermal Energy Corporation	₱2,525,311,665.78	₱1,074,907,400.00	₱ 1,450,404,265.78
Less: Capital Losses			
PhilnewRiver	21,569,058.10	25,409,000.00	₱ 3,839,941.90
PhilnewHydro	13,844,317.17	56,476,833.33	42,632,516.16
Quadriver (Common Shares)	78,717,624.73	230,819,833.33	152,102,208.60

[43] G.R. No. 107434, October 10, 1997.
[44] 205 SCRA 184, January 15, 1992
[45] Now Section 75 of the NIRC of 1997.
[46] Exhibits "P-12" and "P-12", Docket – Vol. II, pp. 843 to 846.
[47] Exhibit "P-14", Docket – Vol. II, pp. 847 to 849.
[48] Exhibit "P-15", Docket – Vol. II, pp. 850 to 852.
[49] Exhibit "P-16", Docket – Vol. II, pp. 853 to 855.
[50] Exhibit "P-17", Docket – Vol. II, pp. 856 to 858.
[51] Exhibit "P-19", Docket – Vol. II, pp. 860 to 861.

Quadriver (Preferred Shares)	235,869,000.00	235,869,000.00	0.00
Total Capital Losses			₱ 198,574,666.66
Net Capital Gains			₱ 1,251,829,599.12
Capital Gains Tax Due			₱ 125,177,959.91
Less: Total Tax Paid			145,035,426.58
Tax Still Due (Overpayment)			**(₱19,857,466.67)**

Considering that the foregoing computation is accordance with Section 27(D)(2) of the NIRC of 1997, as amended, and since petitioner complied with the provisions of Sections 52(D) and 56(A)(1) thereof, the amount of ₱19,857,466.67 represents an amount which was levied without statutory authority or plainly, an erroneously paid CGT, which is refundable under Section 229 of the same law.

With regard to the second issue raised by the parties, suffice it to state that it is not necessary to resolve the same. This must be so because this Court is not limited by the evidence presented in the administrative claim in the BIR. The claimant may present new and additional evidence to this Court to support its case for tax refund.[52] Furthermore, this Court may give credence to all evidence presented by petitioner, including those that may not have been submitted to respondent, **as the case is being essentially decided in the first instance.**[53] To be sure, the evidence presented and offered by petitioner before this Court, during trial, have sufficiently convinced Us that there is indeed an erroneously paid CGT in this case.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, OR ISSUE A TAX CREDIT CERTIFICATE** in favor of, petitioner in the amount of **₱19,857,466.67**, representing excess CGT for taxable year 2016.

SO ORDERED.

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

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[52] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, 10 April 2019.
[53] *Id.*

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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, Jr.
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