REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

RCD REALTY MARKETING CORPORATION, Petitioner,	C.T.A.CASE NO. 8271
	Members:
-versus-	UY, *Chairperson*; and FABON-VICTORINO, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 18 2013 ; 4:16 p.m.

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DECISION

Fabon-Victorino, J.:

This is a Petition for Review filed by RCD Realty Marketing Corporation praying for the refund of the amount of P3,756,164.30, allegedly representing its unutilized creditable withholding tax (CWT) for taxable year 2008.

Petitioner RCD Realty Marketing Corporation is a duly organized domestic corporation, with principal place of business at 2nd Floor, EGI Condominium, corner P. Medina Street, Pio Del Pilar, Makati City. It is engaged in real estate marketing and brokerage and/or acts as agent to any person or corporation, domestic or foreign, for and in transaction relative to the acquisition, sale, lease, exchange, mortgage, disposition or administration and management of real estate of all kinds.[1]

[1]Exhibits "A" and "A-1".

Petitioner is registered with the Bureau of Internal Revenue (BIR) as evidenced by Certificate of Registration No. OCN 9RC0000201035 dated July 19, 2006 with Tax Identification No. 006-342-258-000.[2]

Respondent Commissioner of Internal Revenue (CIR), on the other hand, is the government officer vested with legal authority to refund overpaid as well as erroneously or illegally collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2009, petitioner filed with the BIR its Annual Income Tax Return (ITR) (BIR Form No. 1702) for taxable year 2008, reporting a taxable income of P335,955.43 with tax liability of P117,584.40.[3]

On April 24, 2009, petitioner amended its Annual ITR for taxable year 2008, reflecting the same taxable income of P335,955.43 and tax liability of P117,584.40.[4]

In its amended 2008 Annual ITR, petitioner reported a total tax credit/payment for 2008 in the amount of P3,873,748.70, broken down as follows:

Creditable Tax Withheld for the First Three Quarters	P 2,905,311,53
Plus: Creditable Tax Withheld for the Fourth Quarter	P 968,437.18
Total Tax Credits/ Payments	P 3,873,748.70

After deducting its 2008 income tax liability from its creditable tax withheld at source for 2008, petitioner still had unutilized CWT of P3,756,164.30, computed as follows:

Total CWT	P3,873,748.70
Less: Income Tax Due 2008	P 117,584.40
Excess/ Unutilized CWT	P3,756,164.30

[2] Par. 3, Joint Stipulation of Facts and Issues (JSFI), docket, vol. I, p. 100.
[3] Exhibit "C".
[4] Exhibit "D".

Petitioner however did not indicate how it would utilize its 2008 excess CWT of P3,756,164.30 in its ITR for 2008.[5]

On July 27, 2009, respondent issued Letter of Authority (LOA) No. 200800034514 requesting petitioner to submit certain documents for examination.[6]

On August 6, 2009, petitioner filed an application for refund of its remaining excess CWT with RDO No. 48 of the BIR.

In compliance with the LOA No. 200800034514 issued against it, petitioner submitted the documents requested which were received by respondent as evidenced by a Transmittal Receipt dated March 7, 2011.[7]

On April 14, 2011, petitioner filed the instant Petition for Review citing inaction of respondent on its claim for refund.

In her Amended Answer[8] posted on August 1, 2011, respondent interposed the following special and affirmative defenses:

> 13. Taxes paid and collected are presumed to have been made in accordance with law, hence, not refundable.
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> 14. Petitioner's claim for refund or issuance of tax credit certificate in the amount of Php3,756,164.30 as alleged unutilized creditable tax for the year 2008, were not fully substantiated by proper documents, such sales invoices, official receipts and others pursuant to Revenue Regulations No. 7-95 in relation to

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[5]Par. 4, JSFI, docket, vol. I, p. 101.
[6] Par. 5, *Ibid.*
[7]Par. 6, *Ibid.*
[8]Docket, vol. I, pp. 70-72.

Section 113 and 237 of the 1997 Tax Code.

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

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

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

After pre-trial, the parties submitted their Joint Stipulation of Facts and Issues, which the Court approved on October 12, 2011[9].

In support of its petition, petitioner presented its Accounting Head, Maricel Relosa and its President, Arvin B. Francisco.

Witness Maricel Relosa executed a Judicial Affidavit,[10] and testified that as petitioner's Accounting Head, she

[9] Docket, vol. I., p. 122.
[10]Exhibits "N" and "N-1".

prepares its Financial Statements and reviews its ITRs and Financial Statements in coordination with its external auditors and then General Manager (GM) and Chief Operations Officer (COO), Arvin Francisco. Allegedly, petitioner is engaged in the business of real estate marketing and brokerage and/or acts as agents to any person, corporation, domestic or foreign, for and in transaction relative to the acquisition, sale, lease, exchange, mortgage, disposition of administration and management of real estate of all kinds. As broker, petitioner's creditable taxes were based on its gross commissions pursuant to Revenue Regulations No. (R.R. No.)2-98, as amended, which amounted to P38,737,487.00 for the year 2008.

On April 24, 2009,[11] petitioner filed its Annual ITR and amended it on April 24, 2009[12] reflecting its CWT for 2008 in the amount of P3,873,748.70[13] as indicated in the Schedule of Creditable Tax Withheld at Source[14] and the Certificates of Creditable Tax Withheld at Source[15] issued by its various customers for the first to the fourth quarter of 2008. The said amount consists of: 1) the creditable tax withheld at source for the first three quarters in the aggregate amount of P2,905,311.53[16]; and 2) the creditable tax withheld at source for the fourth quarter in the amount of P968,437.18.[17]

After deducting its 2008 income tax liability of P117,584.40 from its CWT for the same year in the amount of P3,873,748.70, P3,756,164.30 CWT[18] remained which was not carried-over to the succeeding year 2009 as shown in petitioner's 2009 Quarterly ITRs[19] and Annual ITR for taxable year 2009.[20]

On August 6, 2009, then petitioner's GM and COO Arvin B. Francisco wrote the BIR RDO No. 48, Makati City,

[11]Exhibits "C" and "C-1".
[12]Exhibits "D" and "D-1".
[13]Line 27G of Exhibit "D".
[14]Exhibit "K".
[15]Exhibits "K-1" to "K-120".
[16]Line 27C of Exhibit "D".
[17] Line 27D of Exhibit "D".
[18]Line 28 of Exhibit "D".
[19]Exhibits "Q", "R" and "S".
[20]Exhibit "P".

requesting for issuance of TCC on its unutilized CWT for 2008 of P3,756,164.30, attaching thereto BIR Form No. 1914.[21] In response, the BIR issued LOA No. 200800034514 dated July 27, 2009 with a formal request for submission of certain documents for examination.

On February 17, 2011, petitioner received a First Notice for Presentation of Records from BIR RDO No. 48.[22] Petitioner complied on March 7, 2011 by submitting the requested documents as evidenced by a Transmittal Receipt,[23] which was duly received by BIR RDO No. 48 on the same date.[24] There being no action taken by respondent despite compliance, petitioner filed the instant Petition for Review on April 14, 2011.

Witness Relosa clarified that the CWT subject of the claim for refund came from petitioner's sale of real estate services. Petitioner sells houses and lots from which it gets commission. She admitted that although the Certificates of Creditable Tax Withheld at Source, marked as Exhibits "K-63" to "K-69," were issued to Roland C. Delantar, they were part of the claim as they were its transactions. Rolando C. Delantar merely acted as broker who did not even get any commission from them. Rolando C. Delantar is petitioner's former president and RCD stands for his name.

Witness Arvin B. Francisco, through his Judicial Affidavit,[25] testified that he is the current President of RCD Realty Marketing Corporation. He was its General (GM) Manager from June 1, 2003 to July 31, 2011 and was in charge of the entire operation - both administrative and financial. He regularly met with the Accounting Department to review the financial condition of the company. He likewise reviewed and signed its tax returns.

Petitioner is into real estate business. It acts as broker or agent to any person, corporation, domestic or foreign, in transactions concerning the acquisition, sale, lease,

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[21]Exhibits ""E", "E-1", "E-2", "F" and "F-1".
[22]Exhibits "T" and "T-1".
[23] Exhibit "G".
[24]Exhibit "G-1".
[25]Exhibits "Y" and "Y-1".

exchange, mortgage, disposition, administration or management of real estate of all kinds.[26]

Petitioner filed a claim for refund of its excess CWT for the year 2008 in the amount of P3,756,164.30, as reflected in its 2008 ITR which indicated an income tax liability of only P117,584.42. The said income tax liability was paid by applying the CWT for the year 2008 which amounted to P3,873,748.71.[27]

He noted the letter[28] for refund signed by petitioner's Accounting supervisor, Maricel Relosa but he signed the BIR Form No. 1914.[29]

Petitioner did not offset the excess CWT with other tax liabilities in view of the information that automatic offsetting was not allowed.[30] Petitioner did not also carry over the said amount as shown in its Annual and Quarterly ITRs for the year 2009.[31]

The same witness further testified that petitioner's ITR and Financial Statement for the year ended December 31, 2008 filed with the BIR,[32] reflected a total revenue of P38,737,487.00 for sale of services. The amount of P3,873,748.70 represented the total CWT by petitioner's customers. He declared that Maricel Relosa failed to include another Certificate of Creditable Tax Withheld at Source issued by Malate Construction & Development Corporation for the amount of P103,720.46.[33]

About three (3) of petitioner's customers, namely, Earth Style Corporation, Earth Prosper Corporation and Filinvest Land, Inc., issued Certificates of Creditable Tax Withheld at Source in the name of petitioner's previous President, Rolando C. Delantar.[34] Since they were already

[26]Exhibits "A" and "A-1".
[27]Exhibits "D" and "D-1".
[28]Exhibit "E-2".
[29]Exhibit "F-2".
[30]Exhibits "U" and "V".
[31]Exhibits "P", "Q", "R" and "S".
[32]Exhibits "O", "O-1" and "O-2".
[33]Exhibit "K-121".
[34]Exhibits "K-63" to "K-68", "K-71" to "K-73".

submitted to the BIR, they could no longer be replaced by new certificates in the name of petitioner. However, both the Certificate of Registration issued by the HLURB and the Real Estate License Certificate issued by the DTI[35] show that RCD Realty Marketing Corporation acts through Rolando C. Delantar.

Finally, petitioner sought judicial intervention on April 15, 2011 since it did not receive any report from the BIR pertaining to its administrative claim for refund.

After petitioner rested its case,[36] counsel for respondent manifested that the latter would no longer present evidence in the absence of final report from the revenue examiner regarding petitioner's claim for refund.[37]

Despite the Court's directive, only petitioner filed a memorandum on November 26, 2012.[38]

STATEMENT OF ISSUES

The issues[39] per the parties' Joint Stipulations and Facts and issues are as follows:

1. Whether or not petitioner overpaid its creditable withholding taxes for the taxable year 2008 in the amount of P3,756,164.30;

2. Whether or not the income upon which the taxes were withheld for the taxable year 2008 were included in the income tax return of petitioner for the year 2008;

3. Whether or not petitioner's overpaid creditable withholding tax in the amount of

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[35]Exhibits "W" and "X".
[36]Docket, vol. II, pp. 864-865.
[37]Docket, vol. II, p. 868.
[38]Docket, vol. II, pp. 869-901.
[39]Issues to be Resolved, JSFI, docket, vol. I, p. 102.

P3,756,164.30 is substantiated by documentary evidence;

4. Whether or not petitioner is entitled to the refund of the amount of P3,756,164.30 representing its overpaid creditable withholding tax for the taxable year 2008.

5. Whether or not the amount of P3,756,164.30 being sought for refund has not been applied to any income tax liability of petitioner at the end of taxable year 2008 or subsequently thereafter.

The foregoing issues may be reduced into one - whether petitioner is entitled to a refund in the amount of P3,756,164.30, allegedly representing its unutilized creditable tax withheld for taxable year 2008.

The Ruling of the Court

In its Annual ITR for taxable year 2008 filed on April 15, 2009,[40] petitioner declared a taxable income of P335,955.43 with a corresponding tax due of P117,584.40.[41] In the same Annual ITR, petitioner indicated a total excess CWT of P541,168.13. On April 24, 2009, petitioner amended the said ITR[42] reporting the same taxable income of P335,955.43 with a corresponding tax liability of P117,584.40.[43] but increasing its excess CWT from P541,168.13 to P3,756,164.30.

Below are the computations as shown in petitioner's Original ITR and Amended ITR for the year 2008:

	Original AITR	**Amended AITR**
	Exhibit "C"	***Exhibit "D"***
Sales/Revenues/Receipts/Fees	38,737,487.02	38,737,487.02

[40]Exhibit "C-1".
[41] Exhibit "C".
[42]Exhibit "D-1".
[43] Exhibit "D".

Less: Cost of Sales/Services	31,195,098.70	31,195,098.70
Gross Income from Operation	7,542,388.32	7,542,388.32
Add: Non-Operating and Other Income	1,230,000.00	1,230,000.00
Total Gross Income	8,772,388.32	8,772,388.32
Less: Deductions	8,436,432.89	8,436,432.89
Taxable Income	335,955.43	335,955.43
Income Tax Due (35%)	117,584.40	117,584.40
Less: Tax Credits		
Prior Year's Excess Credits	-	-
Creditable Tax Withheld for the First 3 Quarters	658,752.53	2,905,311.53
Creditable Tax Withheld for the 4th Quarter	-	968,437.18
Total Tax Credits	658,752.53	3,873,748.70
Tax Payable/(Overpayment)	**(541,168.13)**	**(3,756,164.30)**

Under the foregoing set of information, petitioner as a taxable corporation had two options to wit: (a) to file for a tax refund, or (b) to avail of a tax credit expressly provided in Section 76 of the NIRC of 1997, as amended, which reads as follows:

> 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.

> 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.

These two options were explained by the Supreme Court in *Philam Asset Management, Inc. v. Commissioner of Internal Revenue,*[44] in this wise:

> The first option is relatively simple. Any tax on income that is paid in excess of the amount due the government may be refunded, provided that a taxpayer properly applies for the refund.
>
> The second option works by applying the refundable amount, as shown on the [Final Adjustment Return (FAR)] of a given taxable year, against the estimated quarterly income tax liabilities of the succeeding taxable year.
>
> These two options under Section 76 are alternative in nature. The choice of one precludes the other. Indeed, in *Philippine Bank of Communications v. Commissioner of Internal Revenue*, the Court ruled that a corporation must signify its intention — whether to request a tax refund or claim a tax credit — by marking the corresponding

[44] G.R. Nos. 156637 and 162004, December 14, 2005, 477 SCRA 761.

> option box provided in the FAR. While a taxpayer is required to mark its choice in the form provided by the BIR, this requirement is only for the purpose of facilitating tax collection.
>
> One cannot get a tax refund and a tax credit at the same time for the same excess income taxes paid.

An examination of petitioner's original and amended Annual ITRs for taxable year 2008 revealed that it did not mark any of the three (3) option boxes in line 31 thereof. However, it filed a claim for refund with the BIR clearly indicating its intention to be refunded of its excess CWT in the amount of P3,756,164.30. Inasmuch as petitioner did not indicate any amount of prior year's excess credits in its succeeding Quarterly[45] and Annual ITRs[46] for taxable year 2009, the excess CWT of P3,756,164.30 for taxable year 2008 may be a subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

As ruled in the case of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,*[47] the two options under Section 76 of the 1997 NIRC, as amended, are in the alternative, thus, the choice of one precludes the other. The controlling factor for the operation of this irrevocability doctrine is that the taxpayer chose an option; and once it had already done so, it could not veer away from such choice and make another. In the instant case, petitioner chose to refund its excess/unutilized CWT amounting to P3,756,164.30.

To be entitled to the relief, petitioner must prove compliance with following requirements of Section 2.58.3 of BIR Rev.Reg. No. 2-98, otherwise known as the Withholding Tax Regulations, *viz.,*:

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[45]Exhibits "Q", "R", and "S", line 30A.
[46]Exhibit "P", line 27A.
[47]*Supra*, at Note 53.

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, as amended;

2. That the fact of withholding is 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. That the income upon which the taxes were withheld was included in the return of the recipient.[48]

For the first requisite, Sections 204 (C) and 229 of the NIRC of 1997, as amended, relevantly provides, thus:

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

[48]Section 2.58, Revenue Regulations No. 2-98, as amended; *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.

> 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.
>
> 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.

In the case of *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,*[49] the Supreme Court held that the two-year prescriptive period for claiming a refund commences from the date of filing of the Final Adjustment Return (FAR). It is only when the FAR covering the whole year is filed that the taxpayer will know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[50] This principle was reiterated in the case of

[49] G.R. No. 96322, December 20, 1991.
[50] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

Commissioner of Internal Revenue, et al. vs. Primetime Property Group, Inc.,[51] where it was held that the two-year prescriptive period is reckoned from the filing of the FAR.

Evidence shows that petitioner filed its Annual ITR for the year 2008 on April 15, 2009.[52] Counting from the said date, petitioner had until April 15, 2011, within which to file both its administrative and judicial claims for refund/TCC. Clearly, petitioner's administrative claim for refund filed on August 6, 2009[53] and judicial claim via the instant Petition for Review filed on April 14, 2011[54]were within the two-year prescriptive limit.

To comply with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued to it by various withholding agents/payors showing CWT in the total amount of P3,875,649.05, broken down as follows:

Exhibit	Period		Payor	Income Payments	Tax Withheld
K-1	1/1/2008	3/31/2008	Acerhomes Dev't Corp.	P 15,218.80	P 1,521.88
K-2	4/1/2008	6/3/2008	Acerhomes Dev't Corp.	75,450.50	7,545.05
K-3	1/1/2008	3/31/2008	A.J. Mark Realty & Dev't Corp.	557,550.00	55,755.00
K-4	2/1/2008	2/29/2008	A.J. Mark Realty & Dev't Corp.	471,300.00	47,130.00
K-5	3/1/2008	3/31/2008	A.J. Mark Realty & Dev't Corp.	403,830.00	40,383.00
K-6	5/1/2008	5/31/2008	A.J. Mark Realty & Dev't Corp.	801,710.00	80,171.00
K-7	6/1/2008	6/30/2008	A.J. Mark Realty & Dev't Corp.	230,355.00	23,035.50
K-8	7/1/2008	7/31/2008	A.J. Mark Realty & Dev't Corp.	464,187.00	46,418.70
K-9	8/1/2008	8/31/2008	A.J. Mark Realty & Dev't Corp.	189,054.70	18,905.47
K-10	9/1/2008	9/30/2008	A.J. Mark Realty & Dev't Corp.	644,530.00	64,453.00
K-11	11/1/2008	11/30/2008	A.J. Mark Realty & Dev't Corp.	95,850.00	9,585.00
K-12	10/1/2008	10/31/2008	A.J. Mark Realty & Dev't Corp.	207,810.00	20,781.00
K-14	12/1/2008	12/31/2008	A.J. Mark Realty	120,690.10	12,069.01

[51] G.R. No. 162155, August 28, 2007.
[52]Exhibit "C-1".
[53]Exhibit "E-1".
[54]Docket, vol. I, p. 1.

			& Dev't Corp.		
K-15	1/1/2008	3/31/2008	Alsgro Industrial & Dev't Corp.	105,000.00	10,500.00
K-16	4/1/2008	6/30/2008	Alsgro Industrial & Dev't Corp.	111,400.00	11,140.00
K-17	7/1/2008	9/30/2008	Alsgro Industrial & Dev't Corp.	86,959.90	8,695.99
K-18	10/1/2008	12/31/2008	Alsgro Industrial & Dev't Corp.	102,573.30	10,257.33
K-19	1/1/2008	12/31/2008	Asiatic Dev't Corp.	53,305.00	5,330.50
K-20	1/1/2008	3/31/2008	Banco De Oro Unibank, Inc.	117,087.60	11,708.76
K-21	4/1/2008	4/30/2008	A.J. Mark Realty & Dev't Corp.	143,010.00	14,301.00
K-22	4/1/2008	6/30/2008	Banco De Oro Unibank, Inc.	162,003.60	16,200.36
K-23	7/1/2008	9/30/2008	Banco De Oro Unibank, Inc.	237,526.10	23,752.61
K-24	10/1/2008	12/31/2008	Banco De Oro Unibank, Inc.	157,400.20	15,740.02
K-25	1/1/2008	12/31/2008	Bi-Centential Dev't Inc.	118,928.29	11,892.83
K-26	1/1/2008	3/31/2008	Borland Dev't Corp.	253,511.80	25,351.18
K-27	4/1/2008	06/30/2008	Borland Dev't Corp.	469,814.30	46,981.43
K-28	7/1/2008	9/30/2008	Borland Dev't Corp.	298,158.60	29,815.86
K-29	10/1/2008	12/31/2008	Borland Dev't Corp.	628,103.60	62,810.36
K-30	1/1/2008	12/31/2008	Casimiro Dev't Corp.	203,300.61	20,330.05
K-31	1/1/2008	1/31/2008	Citihomes Builder & Dev't Inc.	207,146.80	20,714.68
K-32	2/1/2008	2/29/2008	Citihomes Builder & Dev't Inc.	368,855.60	36,885.56
K-33	3/1/2008	3/31/2008	Citihomes Builder & Dev't Inc.	1,206.80	120.68
K-34	4/1/2008	4/30/2008	Citihomes Builder & Dev't Inc.	135,430.36	13,543.04
K-35	5/1/2008	5/31/2008	Citihomes Builder & Dev't Inc.	85,977.00	8,597.70
K-36	6/1/2008	6/30/2008	Citihomes Builder & Dev't Inc.	300,818.70	30,081.87
K-37	7/1/2008	7/31/2008	Citihomes Builder & Dev't Inc.	195,774.70	19,577.47
K-38	8/1/2008	8/31/2008	Citihomes Builder & Dev't Inc.	5,636.90	563.69
K-39	9/1/2008	9/30/2008	Citihomes Builder & Dev't Inc.	2,398.40	239.84
K-40	10/1/2008	10/31/2008	Citihomes	160,698.60	16,069.86

			Builder & Dev't Inc.		
K-41	11/1/2008	11/30/2008	Citihomes Builder & Dev't Inc.	2,165.90	216.59
K-42	12/1/2008	12/31/2008	Citihomes Builder & Dev't Inc.	206,597.30	20,659.73
K-43	1/1/2008	3/31/2008	Ceres Homes Inc.	709,893.30	70,989.33
K-44	4/30/2008	6/30/2008	Ceres Homes Inc.	238,906.70	23,890.67
K-45	7/31/2008	9/30/2008	Ceres Homes Inc.	287,880.00	28,788.00
K-46	10/31/2008	12/31/2008	Ceres Homes Inc.	139,120.00	13,912.00
K-47	1/1/2008	12/31/2008	CHMI Land Inc.	72,168.31	7,216.83
K-48	5/1/2008	5/31/2008	Cityland Dev't Corp.	157,543.50	15,754.35
K-49	6/1/2008	6/30/2008	CRC Realty Dev't Corp.	126,108.00	12,610.80
K-50	7/1/2008	7/31/2008	CRC Realty Dev't Corp.	108,088.10	10,808.81
K-51	8/1/2008	8/31/2008	CRC Realty Dev't Corp.	19,950.00	1,995.00
K-52	9/1/2008	9/30/2008	CRC Realty Dev't Corp.	40,462.20	4,046.22
K-53	10/1/2008	10/31/2008	CRC Realty Dev't Corp.	5,808.00	580.80
K-54	11/1/2008	11/30/2008	CRC Realty Dev't Corp.	150,735.20	15,073.52
K-55	12/1/2008	12/31/2008	CRC Realty Dev't Corp.	12,909.60	1,290.96
K-56	1/1/2008	3/31/2008	Cumberland Dev't Corp.	231,740.24	23,174.02
K-57	4/1/2008	6/30/2008	Cumberland Dev't Corp.	140,465.16	14,046.52
K-58	7/1/2008	9/30/2008	Cumberland Dev't Corp.	675,514.79	67,551.48
K-59	1/1/2008	3/31/2008	Dolmar Property Ventures Inc.	10,920.00	1,092.00
K-60	4/1/2008	06/30/2008	Dolmar Property Ventures Inc.	25,480.65	2,548.07
K-61	7/1/2008	9/30/2008	Dolmar Property Ventures Inc.	24,714.66	2,471.47
K-62	10/1/2008	12/31/2008	Dolmar Property Ventures Inc.	33,732.05	3,373.21
K-63	1/1/2008	3/31/2008	Earth Style Corp.	96,372.10	9,637.21
K-64	4/1/2008	6/30/2008	Earth Style Corp.	20,000.00	2,000.00
K-65	1/1/2008	3/31/2008	Earth Prosper Corp.	98,076.36	9,807.64
K-66	4/1/2008	6/30/2008	Earth Prosper Corp.	48,972.20	4,897.22
K-67	7/1/2008	9/30/2008	Earth Prosper Corp.	77,190.35	7,719.04
K-68	10/1/2008	12/31/2008	Earth Prosper Corp.	61,501.20	6,150.12
K-69	1/1/2008	12/31/2008	EHPI Dev't Corp.	455,638.00	45,563.80

K-70	1/1/2008	12/31/2008	Excelsis Land Inc.	199,850.09	19,985.01
K-71	4/1/2008	6/30/2008	Filinvest Land Inc.	14,200.00	1,420.00
K-72	7/1/2008	9/30/2008	Filinvest Land Inc.	22,979.10	2,297.91
K-73	10/1/2008	12/31/2008	Filinvest Land Inc.	3,943.80	394.38
K-74	1/1/2008	12/31/2008	Grepaland Inc.	4,020,639.60	402,063.96
K-75	1/1/2008	3/31/2008	Landmark Communities Inc.	37,973.40	3,797.34
K-76	4/1/2008	6/30/2008	Landmark Communities Inc.	32,479.90	3,247.99
K-77	7/1/2008	9/30/2008	Landmark Communities Inc.	16,104.20	1,610.42
K-78	10/1/2008	12/31/2008	Landmark Communities Inc.	3,898.20	389.82
K-79	1/1/2008	12/31/2008	Landworks Asia Inc	44,544.00	4,454.40
K-80	1/1/2008	3/31/2008	Masaito Dev't Corp.	221,438.80	22,143.88
K-81	4/1/2008	6/30/2008	Masaito Dev't Corp.	223,589.13	22,358.91
K-82	7/1/2008	9/30/2008	Masaito Dev't Corp.	248,680.99	24,868.09
K-83	10/1/2008	12/31/2008	Masaito Dev't Corp.	407,489.60	40,748.96
K-84	1/1/2008	3/31/2008	Moldex Realty Marketing Corp.	222,386.00	22,238.60
K-85	4/1/2008	6/30/2008	Moldex Realty Marketing Corp.	236,271.10	23,627.11
K-86	7/1/2008	9/30/2008	Moldex Realty Marketing Corp.	274,861.60	27,486.16
K-87	10/1/2008	12/31/2008	Moldex Realty Marketing Corp.	334,954.40	33,495.44
K-88	1/1/2008	12/31/2008	Orchard Property Marketing Corp.	314,486.90	31,448.69
K-89	1/1/2008	12/31/2008	Palm Beach Realty & Dev't Corp.	55,217.50	5,521.75
K-90	1/1/2008	3/31/2008	P.A. Alvarez Properties & Dev't Corp.	105,159.59	10,515.96
K-91	4/1/2008	6/30/2008	P.A. Alvarez Properties & Dev't Corp.	75,094.09	7,509.41
K-92	7/1/2008	9/30/2008	P.A. Alvarez Properties & Dev't Corp.	40,278.75	4,027.88
K-93	10/1/2008	12/31/2008	P.A. Alvarez Properties & Dev't Corp.	66,104.84	6,610.48
K-94	1/1/2008	3/31/2008	Peak Properties Inc.	487,746.00	48,774.60
K-95	4/1/2008	6/30/2008	Peak Properties Inc.	337,702.70	33,770.27

K-96	7/1/2008	9/30/2008	Peak Properties Inc.	68,600.00	6,860.00
K-97	10/1/2008	12/31/2008	Peak Properties Inc.	100,623.40	10,062.34
K-98	4/1/2008	4/30/2008	Sibulo Construction & Dev't Corp.	76,890.60	7,689.06
K-99	5/1/2008	5/31/2008	Sibulo Construction & Dev't Corp.	60,540.00	6,054.00
K-100	6/1/2008	6/30/2008	Sibulo Construction & Dev't Corp.	86,861.70	8,686.17
K-101	7/1/2008	7/31/2008	Sibulo Construction & Dev't Corp.	296,462.70	29,646.27
K-102	8/1/2008	8/31/2008	Sibulo Construction & Dev't Corp.	210,372.00	21,037.20
K-103	9/1/2008	9/30/2008	Sibulo Construction & Dev't Corp.	197,012.70	19,701.27
K-104	10/1/2008	10/31/2008	Sibulo Construction & Dev't Corp.	145,790.00	14,579.00
K-105	11/1/2008	11/30/2008	Sibulo Construction & Dev't Corp.	185,183.60	18,518.36
K-106	12/1/2008	12/31/2008	Sibulo Construction & Dev't Corp.	191,734.20	19,173.42
K-107	01/01/08	3/31/2008	Solar Resources Inc.	1,598,447.80	159,844.78
K-108	4/1/2008	6/30/2008	Solar Resources Inc.	2,201,037.10	220,103.71
K-109	7/20/2008	9/20/2008	Solar Resources Inc.	1,889,626.12	188,962.61
K-110	10/20/2008	11/20/2008	Solar Resources Inc.	1,518,821.15	151,882.12
K-111	12/20/2008	-	Solar Resources Inc.	973,231.00	97,323.10
K-112	1/1/2008	3/31/2008	Stateland Inc.	527,820.00	52,782.00
K-113	4/1/2008	6/30/2008	Stateland Inc.	401,940.00	40,194.00
K-114	7/1/2008	9/30/2008	Stateland Inc.	592,520.00	59,252.00
K-115	10/1/2008	12/31/2008	Stateland Inc.	487,440.00	48,744.00
K-116	11/01/2008	12/31/2008	The New APEC Dev't Corp.	3,990,578.61	399,057.86
K-117	1/1/2008	3/31/2008	Verdant Point Dev't Corp.	95,361.40	9,536.14
K-118	4/1/2008	6/30/2008	Verdant Point Dev't Corp.	59,489.10	5,948.91
K-119	7/1/2008	9/30/2008	Verdant Point Dev't Corp.	259,685.00	25,968.50
K-120	10/1/2008	12/31/2008	Verdant Point Dev't Corp.	186,926.60	18,692.66
K-121	1/31/2008	12/31/2008	Malate Construction & Dev't Corp.	1,037,204.60	103,720.46
Total				**38,756,490.39**	**3,875,649.05**

From the foregoing, the certificates reflected CWT in the total amount of P3,875,649.05, which is higher than petitioner's reported amount of P3,873,748.71. The discrepancy in CWT in the amount of P1,900.34 as explained by petitioner's President, Mr. Arvin B. Francisco, in his Judicial Affidavit dated March 1, 2012,[55] was due to the difference between the amount claimed by petitioner *vis-à-vis* the actual CWT by Malate Construction and Development Corporation. However, BIR Form No. 2307[56] issued by Malate Construction and Development Corporation shows CWT of P103,720.46, which is higher by P1,900.35 when compared with the claimed CWT of P101,820.11 indicated in petitioner's summary[57] of CWT for the year 2008. Considering that the difference of P1,900.35 is not part of petitioner's claimed CWT, the same does not have a bearing on petitioner's total claim.

Petitioner's witness, Arvin Francisco also testified that some of the Certificates of Creditable Tax Withheld at Source for 2008 were issued in the name of its then President, Roland C. Delantar but were nevertheless reported as income of petitioner and subsequently included in its creditable taxes withheld. In his Judicial Affidavit[58] he stated that:

> 26. Q: Do you confirm that all these Certificates represented commission income received by the company for the year 2008?
>
> A: Yes. However, while all income was received by the company, three of our customers, Earth Style Corporation, Earth Prosper Corporation and Filinvest Land, Inc. issued the Certificates of Creditable Tax Withheld at Source in the name of our then President, Rolando C. Delantar. These Certificates were pre-marked as Exhibits 'K-63' to 'K-68', 'K-71', 'K-72' and 'K-73'.

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[55] Exhibit "Y", Q & A no. 25.
[56] Exhibit "K-121".
[57] Exhibit "K".
[58] Exhibit "Y".

However, the income was received by the Company because these were transactions of the company, we reported this as part of the company's income, and part of the creditable taxes withheld.

27. Q: Why did the company report this as its income receipt even if the creditable tax was issued to Rolando C. Delantar?

A: This transaction was the account of the Company and Mr. Delantar is only acting for the company.

In the instant case, petitioner is requesting that the CWT in the amount of P60,077.87 be included in the amount to be refunded even if the supporting BIR Forms No. 2307 were not in the name of petitioner but in the name of its President, Rolando C. Delantar, detailed as follows:

Exhibit	**Period**		**Payor**	**Income Payment**	**Tax Withheld**
K-48	5/1/2008	5/31/2008	Cityland Dev't Corp.	P157,543.50	P15,754.35
K-63	1/1/2008	3/31/2008	Earth+Style Corp.	96,372.10	9,637.21
K-64	4/1/2008	6/30/2008	Earth+Style Corp.	20,000.00	2,000.00
K-65	1/1/2008	3/31/2008	Earth Prosper Corp.	98,076.36	9,807.64
K-66	4/1/2008	6/30/2008	Earth Prosper Corp.	48,972.20	4,897.22
K-67	7/1/2008	9/30/2008	Earth Prosper Corp.	77,190.35	7,719.04
K-68	10/1/2008	12/31/2008	Earth Prosper Corp.	61,501.20	6,150.12
K-71	4/1/2008	6/30/2008	Filinvest Land Inc.	14,200.00	1,420.00
K-72	7/1/2008	9/30/2008	Filinvest Land Inc.	22,979.10	2,297.91
K-73	10/1/2008	12/31/2008	Filinvest Land Inc.	3,943.80	394.38
Total				**P600,778.61**	**P60,077.87**

The same cannot simply be allowed.

BIR Rev. Reg. No. 2-98 provides for the requirements for the filing of withholding taxes, thus:

> SECTION 2.58.*Returns and Payment of taxes withheld at source.* -
>
> xxx xxx xxx
>
> (B) *Withholding tax statement for taxes withheld* - Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form 2307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year.
>
> (C) *Annual information return for income tax withheld at source.* - The payor is required to file with the Commissioner, Revenue Regional Director, Revenue District Officer, Collection Agent in the city or municipality where the payor has his legal residence or principal place of business, where the government office is located in the case of a government agency, on or before January 31 of the following year in which payments were made, an Annual Information Return of Income Tax Withheld at Source (Form No.

> 1604), showing among others the following information:
>
> > (1)**Name, address and taxpayer's identification number (TIN);** and
> >
> > (2)**Nature of income payments, gross amount and amount of tax withheld from each payee** and such other information as may be required by the Commissioner.
>
> SECTION 2.58.1.*Income of Recipient.* - Income upon which any creditable tax is required to be withheld at source shall be included in the return of its recipient. The excess of the withheld tax over the tax due on his return shall be refunded to him subject to the authority of the Commissioner to refund taxes under Sec. 204 of the NIRC. If the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Sec. 56 of the Code.
>
> **The taxes withheld by the withholding agents shall be maintained in separate accounts and should not be commingled with any other funds of the withholding agent. They shall be considered as a trust fund held for government until they are remitted.***(Emphasis supplied)*

Applying the foregoing guidelines, BIR Forms No. 2307 issued in the name of its President, Rolando C. Delantar, representing CWT in the total amount of P60,077.87 was filed with flawed content since the payee in the said BIR Forms was an individual; while the one claiming to be the real party in interest is a corporation, the herein petitioner. The said infirmity or defect in the entry should have been rectified through amendment prior to the filing of the claim for refund. Further, under the "Doctrine of Separate Corporate Personality", a corporation has a distinct and separate legal personality from its officials.

A taxpayer, such as petitioner, must be careful if not vigilant in filing tax return as such document is considered an official and evidentiary document. Moreover, in refund cases, the burden of proof lies with the taxpayer. In the instant case, petitioner failed to overcome the burden of proof that the CWT in the amount of P60,077.87 should not be disallowed. In other words, petitioner complied with the second requirement but only to the extent of P3,813,670.84 out of the total reported CWT of P3,873,748.71.

Anent the third requisite, - whether the income upon which the taxes were withheld was included in the return of the recipient.

Clear from petitioner's Quarterly ITRs for 2008 and its original and amended Annual ITRs for 2008 that the revenues received by petitioner from which the creditable taxes were withheld were declared part of its gross income for the year 2008.

The certificates prove that the claimed CWT in the amount of P3,873,748.71 was withheld on income payments in the amount of P38,737,487.02, the very same figure indicated as "Sales/Revenues/Receipts/Fees" by petitioner in its amended Annual ITR for taxable year 2008. Thus, petitioner had properly declared the income related to the reported CWT of P3,873,748.71.

In sum, petitioner has sufficiently complied with the three requisites for the grant of a claim for refund of excess CWT albeit in the reduced amount of P3,696,086.43, computed as follows:

Amount of Claimed Excess CWT		P3,756,164.30
Less:	CWT supported by BIR Forms No. 2307 not in the name of petitioner	60,077.87
Refundable Excess CWT		**P3,696,086.43**

ml

WHEREFORE, the instant Petition for Review is **PARTIALLY GRANTED**. Consequently, respondent Commissioner of Internal Revenue is hereby **DIRECTED TO REFUND** or **ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner RCD Realty Marketing Corporation in the amount of P3,696,086.43, representing its unutilized creditable income taxes withheld for the taxable year 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

I Concur:

ERLINDA P. UY
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.

ERLINDA P. UY
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