REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

EN BANC

MCKINSEY & CO. (PHILS.),
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA EB NO. 1588
(CTA CASE No. 8805)

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COMMISSIONER OF INTERNAL REVENUE,
Petitioner,

- versus -

MCKINSEY & CO. (PHILS.),
Respondent.

CTA EB NO. 1592
(CTA CASE No. 8805)

Present:

DEL ROSARIO, *PJ*
CASTAÑEDA, JR.
UY,
FABON-VICTORINO,
MINDARO-GRULLA,
RINGPIS-LIBAN,
MANAHAN, *JJ.*

Promulgated:

OCT 02 2018 2:31 p.m.

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DECISION

Fabon-Victorino, J.:

Both aggrieved, McKinsey & Co. (Phils.) (McKinsey) and the Commissioner of Internal Revenue (CIR) filed before the Court *En Banc* their separate Petitions for Review respectively dated February 23, 2017 and January 25, 2017, assailing the Decision dated August 11, 2016 and the Resolution dated January 13, 2017, rendered by the Court in Division partially granting McKinsey's claim for refund of its excess and unutilized creditable withholding taxes (CWT) for the years 2011 and 2012 in the total amount of ₱56,946,464.84.

The following facts established during trial of the case are undisputed:

McKinsey is a foreign corporation organized and existing under the laws of the State of Delaware, United States of America, with principal place of business at 1209 Orange Street, Wilmington, Delaware 19801 U.S.A. It is authorized as a branch office to primarily engage in management consultancy services per Securities and Exchange Commission (SEC) Registration No. A1998-675. The said branch office is located at 29F Equitable Bank Tower, 8754 Paseo de Roxas, Makati City. It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50-South Makati, with Taxpayer Identification No. (TIN) 005-649-673-000.

On the other hand, the CIR is the Commissioner of the BIR with authority to act on disputed assessments, and refunds of internal revenue taxes, fees or other charges, imposed under the National Internal Revenue Code (NIRC) of 1997, as amended. He holds office at the 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 16, 2012, McKinsey manually filed with Revenue District Office No. 50-South Makati its Annual Income Tax Return (AITR) for the year 2011 indicating therein its choice to be refunded of its excess and unutilized CWT by marking the option "To be refunded."

On April 15, 2013, McKinsey manually filed with the same Revenue District Office its AITR for the year 2012. In the same manner, it indicated therein its choice to be refunded its excess and unutilized CWT.

On March 14, 2014, McKinsey filed with the same Revenue District Office an administrative claim for refund of its excess and unutilized CWT in the amounts of ₱44,739,250.00 and ₱52,986,532.80 for the years 2011 and 2012, respectively.

On April 14, 2014, petitioner filed a Petition for Review with the Court in Division claiming inaction of the CIR on its administrative claim for refund.

On August 11, 2016, the Court in Division rendered the assailed Decision disposing the case as follows:

> WHEREFORE, premises considered, the instant Petition for Review is hereby PARTIALLY GRANTED. Accordingly, respondent (CIR) is hereby ORDERED TO REFUND or TO ISSUE A TAX CREDIT CERTIFICATE in favor of petitioner (McKinsey) in the reduced amount of ₱56,946,464.84, representing its excess and unutilized creditable withholding taxes for calendar years 2011 and 2012.
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> SO ORDERED.

The foregoing Decision was effectively affirmed when the Court in Division denied for lack of merit the respective Motions for Reconsideration filed by McKinsey and the CIR in the equally assailed Resolution of January 13, 2017.

Hence, the separate Petitions for Review filed by McKinsey and the CIR on February 23, 2017 and January 30, 2017, respectively.

McKinsey claims the Court in Division erred when it disallowed the CWT on the ground that the corresponding CWT Certificates[1] were issued in the name of McKinsey Phils., Inc. and not in its name, viz., Mckinsey & Co. (Phils.). The said mistake was merely typographical. The Court in Division should have considered the said CWT Certificates as having been issued in its favor given that they bear its TIN. Besides, there is no entity or corporation registered in the Philippines with the name McKinsey Phils., Inc., as evidenced by the SEC Certificate of Non-Registration of Company dated August 25, 2016.

The CWT Certificates bearing a totally different TIN must also be considered in its favor as there is no entity or corporation in the Philippines named McKinsey Phils., Inc.,

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[1] Exhibits P-18, P-19, P-21, P-24, P-26, and P-33.

as earlier stated. And as testified to by its witness, the amounts in these CWT Certificates are traceable in its AITR and General Ledger for the years 2011 and 2012.

Thus, Mckinsey should not be penalized for the lapses committed by the withholding agents which issued these CWT Certificates.

The Court in Division also erred when it ruled that McKinsey failed to substantiate its prior years excess tax credits from the years 1999 to 2006 as it was unable to submit its Annual ITRs for the said years, consequently, its excess tax credits for said years could not be ascertained. For McKinsey, submission of its AITRs to prove its prior year's excess credits is not warranted citing the Decision[2] dated April 17, 2015, promulgated by the Third Division in its favor wherein it applied its prior year's excess credits to its current Minimum Corporate Income Tax (MCIT) liabilities without requiring the presentation of the AITRs for those prior years. Mckinsey sees no reason for the Court to rule differently in this case. Should the Court rule in same fashion, McKinsey believes that it will have sufficient prior year's excess credits to offset or settle its MCIT liabilities for the years 2011 and 2012, leaving its CWT for these two years unutilized and fully refundable.

The CIR failed to file comment or memorandum in CTA EB No. 1588, despite directive. [3]

In his own Petition for Review, the CIR asserts that McKinsey failed to prove the fact of withholding through Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), duly issued by the payor to the payee, showing the amount paid and the amount of tax withheld therefrom.

Allegedly, the CWT Certificates presented by McKinsey were not authenticated by the withholding agent or the person who issued them, hence, they have no probative value and should be deemed as hearsay evidence pursuant

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[2] CTA Case No. 8472.
[3] Records Verification dated July 5, 2017, CTA EB No. 1588 docket p. 76; Records Verification dated October 6, 2017, CTA EB No. 1588 docket p. 105.

to Section 36, Rule 130 of the Rules of Court. The said provision states that a witness can testify only on the facts he personally knows or from his own perception.

Further, tax refunds are construed against the claimant, who has the burden to prove every minute aspect of its claim. Thus, McKinsey's failure to properly authenticate the CWT Certificates, renders the said documents hearsay justifying the denial of the claim in its entirety.

McKinsey counters[4] that presentation of the withholding agents to authenticate the Withholding Tax Certificates is not necessary as already ruled by the Court. The payor, McKinsey in this case, is only required to establish the fact of withholding through the Withholding Tax Certificates duly issued by withholding agents. The CWT Certificates issued by the withholding agents of the government are prima facie proof of actual payment of the payor to the government through the said agents. Proof of remittance is the responsibility of the withholding agent and not of the taxpayer concerned.

THE RULING OF THE COURT

There are three essential conditions for the grant of a claim for refund of creditable withholding income tax, to wit: (1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax; (2) it is shown on the return of the recipient that the income payment received was declared as part of the claimant's gross income; and (3) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom.[5]

The provisions on the timeliness of filing of the claim for refund of erroneously or illegally collected taxes are found in Sections 204 of the NIRC, as amended, for administrative claim for refund, and 229 of the same Code

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[4] Comment/Opposition (To Petition For Review dated 19 August 2016) dated March 27, 2017, CTA EB No. 1588 docket pp. 54-62.

[5] Commissioner of Internal Revenue v. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation, G.R. No. 179260, April 2, 2014.

for judicial claims for refund. In both instances, the claim for refund must be filed within two (2) years from the date of payment of the tax or penalty. It must be noted however, that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner, per Section 229 of the NIRC, as amended.[6]

Thus, within two years from the date of payment of tax, the claimant must first file an **administrative claim** with the CIR before elevating it to the Court of Tax Appeals. Both claims must be filed within a two-year reglementary period.[7]

The two-year prescriptive period is reckoned from the filing of the final adjusted return,[8] for it is only at that time that it will be possible to determine whether the corporate taxpayer had paid an amount exceeding its annual income tax liability.[9]

The present claim for refund pertains to Mckinsey's alleged excess and unutilized CWT for the years 2011 and 2012. The record shows that McKinsey filed its Annual ITRs for the said years on April 16, 2012 and on April 15, 2013, respectively. Counting from the filing of the Annual ITRs for the years 2011 and 2012 on April 16, 2012 and on April 15, 2013, respectively, McKinsey had until April 16, 2014, and April 15, 2015 to file both its administrative and judicial claims for refund. Clearly, Mckinsey seasonably filed its administrative claim for refund on March 14, 2014, and its Petition for Review before the Court in Division on April 14, 2014.

The *second* and *third* conditions are based on Section 2.58.3(B) of Revenue Regulations No. 2-98, which states:

<u>*Sec. 2.58.3. Claim for Tax Credit or Refund*</u>

[6] CBK Power Company Limited vs. Commissioner of Internal Revenue, G.R. Nos. 193383-84, January 14, 2015 and Commissioner of Internal Revenue, vs. CBK Power Company Limited, G.R. Nos. 193407-08.
[7] Commissioner of Internal Revenue vs. United Cadiz Sugar Farmers Association Multi-Purpose Cooperative, G.R. No. 209776, December 7, 2016.
[8] Commissioner of Internal Revenue vs. Primetown Property, G.R. No. 162155, August 28, 2007.
[9] Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue, G.R. No. 182582, April 17, 2017.

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> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.**[10]

The CWT Certificates presented by Mckinsey show that the claimed CWT for the years 2011 and 2012 were withheld on income payments of ₱298,261,663.07 and ₱353,243,551.99, respectively. However, McKinsey's AITRs for the same years show higher gross "Sales/Revenues/Receipts/Fees" in the amounts of ₱560,681,020.34 for 2011, and ₱750,257,727.60 for 2012.

The "Sales/Revenues/Receipts/Fees" figures in the AITRs for the years 2011 and 2012 are confirmed in McKinsey's Audited Financial Statements (AFS) for the same years 2011 and 2012. The said figures are broken down in detail in the Revenue Section in the Statements of Comprehensive Income of said AFS for the years 2011 and 2012.

McKinsey's Accounting Officer Elena Cabahug explained[11] that the discrepancy between the amounts as reported in the Annual ITRs for the years 2011 and 2012 and the amounts of income from which the CWTs were withheld based on the CWT Certificates was partly due to the fact that the total sales/revenues reported as income in the tax returns included not only the revenues from local customers which were subjected to CWT, but also the revenues from foreign affiliates which, owing to their being non-residents, were not subject to CWT under the law. The

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[10] Commissioner of Internal Revenue v. Team [Philippines] Operations Corporation [formerly Mirant (Phils.) Operations Corporation, G.R. No. 179260, April 2, 2014.

[11] Exhibit P-144, Judicial Affidavit dated June 16, 2015, Division docket vol. II pp. 874-934.

entry under the term "Consultancy Services" in McKinsey's AFS were its revenues from local customers subjected to CWT.

She further stated that the amount of revenue reflected in Mckinsey's AFS would not match the amount of income payments as reflected in the certificates of tax withheld, since the accrued income of the previous year stated in the AFS, were paid, and the corresponding certificate of tax withheld were issued, only the following year.

She also opined that certain discrepancies in the amounts would always arise between Mckinsey's books of accounts and the certificates of tax withheld issued by its customers since McKinsey billed its customers in U.S. dollars but recorded the transaction in its books of accounts in Philippine peso. Since payments were normally done on a date different from the date of the recording of the transaction, discrepancies would always arise due to the changes in exchange rate.

The foregoing testimony was backed-up by documentary evidence on record, namely: McKinsey's General Ledgers Transaction Detail (GLTD) for the years 2011 [12] and 2012 [13] which shows that the total income payments from which the creditable taxes were withheld is equal to the revenue under the entry "Consultancy Services" as stated in the AFS. On the other hand, the Reconciliation Schedules of Revenues show that the figures for revenue as indicated in the General Ledger, and the total revenue stated in the CWT Certificates for both the years 2011[14] and 2012, [15] are consistent, despite the discrepancies in the actual figures.

All the foregoing evidence clearly show that McKinsey declared in its AITRs for the years 2011 and 2012 the gross income from which taxes had been withheld by the withholding agency as indicated in the CWT Certificates submitted to the Court.

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[12] Exhibit P-37.
[13] Exhibit P-38.
[14] Exhibit P-39.
[15] Exhibit P-40.

The Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued to Mckinsey by its clients show the amount paid to it as well as the corresponding tax withheld from the said payment. The CWT for the year 2011 is in the amount of ₱44,739,249.46, while the CWT for the year 2012 is in the amount of ₱52,986,532.80, for a total of ₱97,725,782.26.

However, the amount of ₱97,725,782.26 cannot entirely be refunded in favor of McKinsey as some of the CWT Certificates (BIR Form No. 2307) were issued to McKinsey Phils., Inc. and not to herein taxpayer-claimant McKinsey & Co. (Phils.). Per its Securities and Exchange Commission (SEC) Registration,[16] Certificate of Amendment of Certificate of Incorporation, [17] and BIR Certificate of Registration,[18] the registered name of taxpayer-claimant in this case is McKinsey & Co. (Phils.). In other words, the CWT Certificates issued to McKinsey Phils., Inc., is deemed issued to another entity and must be disallowed. The CWT Certificate[19] bearing a different TIN[20], not that of McKinsey & Co. (Phils.) should be deemed not belonging to the latter, thus, must as well be disallowed.

For these reasons, the total CWT disallowance for the year 2011 is in the amount of ₱14,820,544.21,[21] and in the amount of ₱24,235,530.28 for the year 2012,[22] or a total disallowance of ₱39,056,074.49.

Evidently, McKinsey was able to prove the fact of withholding through the valid 2011 and 2012 CWT Certificates to the extent of ₱58,669,708.31 out of the total amount of ₱97,725,782.26 (CWT of ₱97,725,782.26 less disallowances of ₱39,056,074.49 = ₱58,669,708.31[23]).

McKinsey insists that the CWT Certificates issued in favor of McKinsey Phils., Inc. should be considered as issued in its favor for they bear its TIN. But that cannot be allowed

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[16] Exhibit P-1, Division docket vol. 2, p.659.
[17] Exhibit P-2, Division docket vol. 2, p. 678.
[18] Exhibit P-3, Division docket vol. 2, p. 692.
[19] Exhibit P-27.
[20] TIN 0006-528-699.
[21] Exhibits P-18, P-19, and P-21.
[22] Exhibits P-24, P-26, P-27, and P-33.
[23] With ₱0.54 difference due to rounding off.

for the Court would then be ruling on the basis of assumption or conjecture *sans* any concrete basis in support thereof. The face of the said CWT Certificates alone show that they were issued to McKinsey Phils., Inc. and not to McKinsey & Co. (Phils.). The Court simply cannot go beyond what is indicated on the documents, which the taxpayer-claimant itself presented, lest it shall violate the elementary rule that judgments must be based on the evidence presented before the court.[24] Verily, the sufficiency of a claimant's evidence and the determination of the amount of refund, as called for in this case, are questions of fact, which are for the judicious determination by the CTA of the evidence on record.[25] In fine, the determination by the CTA must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[26]

Besides, the taxpayer claiming the tax credit or refund like Mckinsey has the burden of proving that it is entitled to the refund or credit, x x by submitting evidence that it has complied with the requirements laid down in the tax code and the BIR's revenue regulations under which such privilege of credit or refund is accorded.[27]

For the mere fact that x x the tax was admittedly illegally, erroneously or excessively collected from [a taxpayer], does not entitle taxpayer-claimant as a matter of right to a tax refund or credit. Strict compliance with the mandatory and jurisdictional conditions prescribed by law to claim such tax refund or credit is essential and necessary for such claim to prosper. Well-settled is the rule that tax refunds or credits, just like tax exemptions, are strictly construed against the taxpayer. The burden is on the taxpayer to show that he has strictly complied with the conditions for the grant of the tax refund or credit.[28]

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[24] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015.
[25] Fortune Tobacco Corporation vs. Commissioner of Internal Revenue, G.R. No. 192024, July 1, 2015.
[26] Commissioner of Internal Revenue vs. Hantex Trading, G.R. No. 136975. March 31, 2005.
[27] Microsoft Philippines, Inc. vs. Commissioner of Internal Revenue, G.R. No. 180173, April 06, 2011.
[28] Mindanao II Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 193301, and Mindanao I Geothermal Partnership vs. Commissioner of Internal Revenue, G.R. No. 194637, March 11, 2013.

Even the SEC Certification of Non-Registration dated August 25, 2016[29] is insufficient to justify a modification much more a change in the finding of the Court in Division. Firstly, it was not formally offered in evidence by McKinsey before the Court in Division. Jurisprudence has it that courts shall consider no evidence which has not been formally offered.[30]

More importantly, the SEC Certification of Non-Registration only tends to prove that there is no corporation registered in the Philippines under the name McKinsey Phils., Inc. It cannot at all be deemed as an indubitable proof that the CWT Certificates issued to McKinsey Phils., Inc. were actually issued in favor of herein taxpayer-claimant McKinsey & Co. (Phils.). With more reason insofar as the CWT Certificate bearing a TIN different from that of McKinsey & Co. (Phils.).

Still on the validity of the same CWT Certificates, the CIR reiterates that all of them should not be considered for purposes of the prayed for refund on the ground that they were not authenticated by the issuer, hence, they are hearsay in nature. But this argument has already been rejected by the Court in Division on the strength of existing jurisprudence.

The CWT Certificates, contrary to the CIR's contention, are competent proofs of the fact that taxes were withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates. x x the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, x x x. Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to

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[29] Division docket vol. II, p. 1017.

[30] Robert F. Mallilin vs. Luz G. Jamesolamin and the Republic of the Philippines, G.R. No. 192718, February 18, 2015.

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prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.[31]

Anent the *irrevocability rule*, Section 76 of the NIRC of 1997, as amended, provides that a taxable corporation with excess quarterly income tax payments may apply for either a tax *refund* or a tax *credit,* but not both. The choice of one precludes the other. [32] The provision is clear and unequivocal in providing that the carry-over option, once actually or constructively chosen by a corporate taxpayer, becomes *irrevocable*.[33] The irrevocability rule is provided in the last sentence of Section 76.

Based on Section 76 of the NIRC, as amended, since the choice of carrying over is irrevocable, to be entitled to refund, the CWT for the years 2011 and 2012 must not have been carried over to the succeeding quarters or years, and the option "To be carried over as tax credit" must not have been selected in the AITRs for said years.

On this regard, McKinsey marked the circle beside the phrase "To be refunded,"[34] which signified its intention to claim for the refund of its creditable taxes withheld for the years 2011 and 2012. Further, McKinsey's Quarterly[35] and AITS[36] for the years 2012 and 2013 show that the amounts of prior year's excess credits are only ₱81,771,046.00 and ₱80,662,196.00, respectively, indicating that the CWT for the years 2011 and 2012 being refunded have not been carried over to the succeeding years.

Finally, while McKinsey was able to prove an amount of ₱58,669,708.31[37] as valid CWT for the years 2011 and 2012, such may only be refunded if these remained unutilized to pay for any income tax liability for the years 2011 and 2012.

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[31] Commissioner of Internal Revenue vs. Philippine National Bank, G.R. No. 180290, September 29, 2014.
[32] Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005.
[33] Commissioner of Internal Revenue vs. PL Management International, G.R. No. 160949, April 04, 2011.
[34] Exhibits P-7-a and P-11-a.
[35] Line 31A of Exhibits P-8, P-9, P-10, P-12, P-13, and P.14.
[36] Exhibit P-11 and P-15.
[37] With P0.54 difference due to rounding off.

An examination of its AITRs for the years 2011 and 2012 shows that its MCIT due amounts to ₱614,393.14 and ₱1,108,850.33, respectively, or a total of ₱1,723,243.47.

The said MCIT of ₱1,723,243.47 were allegedly paid using a portion of McKinsey's prior year's excess credits amounting to ₱82,385,439.00. Thus, for the valid CWT for the years 2011 and 2012 to remain unutilized, McKinsey must be able to prove its prior year's excess credits of ₱82,385,439.00.

To prove the existence of its prior year's excess credits of ₱82,385,439.00, McKinsey presented Certificates of Creditable Tax Withheld at Source[38] (BIR Form No. 2307) for the years 1999 to 2002, and 2004 to 2006. However, the total CWT in these Certificates amounts to only ₱77,475,382.25.

The substantial discrepancy of ₱4,910,056.75 (₱82,385,439.00 - ₱77,475,382.25) prevented the Court from ascertaining whether the said CWTs actually pertain to the excess of the total tax credits over McKinsey's income tax liabilities for the years 1999 to 2006, since the AITRs for said years were not submitted in evidence.

Hence, if the Court cannot determine the exact figure, and considering that tax refunds, like tax exemptions, are construed strictly against the taxpayer, [39] it is deemed that McKinsey failed to substantiate its prior year's excess tax credits in the amount of ₱82,385,439.00. The MCIT liabilities for the years 2011 and 2012 of ₱614,393.14 and ₱1,108,850.33, respectively, totaling ₱1,723,243.47, shall then be offset against, or paid from, the substantiated CWT of ₱58,669,708.31.

Consequently, the excess and unutilized CWT of McKinsey for the years 2011 and 2012 will amount to ₱56,946,464.84 (₱58,669,708.31 - ₱1,723,243.47), the details of which are as follows:

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[38] Exhibits P-45 to P-72.
[39] Accenture, Inc. vs. Commissioner of Internal Revenue, G.R. No. 190102, July 11, 2012 citing Paseo Realty & Development Corporation v. Court of Tax Appeals, et al., 483 Phil. 254 (2004).

Total CWTs with Proper Certificates	₱ 29,918,705.79	₱ 28,751,002.52	₱ 58,669,708.31
Less: Income Tax Due (MCIT)	614,393.14	1,108,850.33	1,723,243.47
CWTs for Refund/TCC	**₱29,304,312.65**	**₱27,642,152.19**	**₱56,946,464.84**

There is no merit to Mckinsey's argument that the Court in Division should have recognized its prior year's excess credits without the ITRs for said prior years, since the Court in Division rendered a Decision to that effect.

As a general rule, courts are not authorized to take judicial notice of the contents of the records of other cases, even when such cases have been tried or are pending in the same court, and notwithstanding the fact that both cases may have been tried or are actually pending before the same judge.[40] While there are exceptions to the rule, such are not attendant in this case.

Further, even if the cited Decision of the Court in Division involves McKinsey itself, the determining factors such as the factual milieu and the evidence presented are simply unique to the said case justifying the conclusion and ruling by the Court. Again, the determination by the Court must rest on all the evidence introduced and its ultimate determination must find support in credible evidence.[41]

The Court *En Banc* is one with the Court in Division in ruling that the presentation of the ITRs for the prior years, contrary to Mckinsey's belief is not the crux of the matter. Rather, it is McKinsey's failure to convincingly prove the existence of its prior year's excess credits of ₱82,385,439.00.

The AITRs for the prior years of 1999 to 2006 is relevant only for the purpose of reconciling the discrepancy

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[40] Pilipinas Shell Petroleum Corporation vs. Commissioner of Customs, G.R. No. 195876, December 5, 2016.
[41] Commissioner of Internal Revenue vs. Hantex Trading, G.R. No. 136975, March 31, 2005.

noted by the Court. While the ITRs are the easiest and most reliable evidence, they are not the only evidence available.

It has also been ruled that the taxpayer needs to establish not only that the refund is justified under the law, but also the correct amount that should be refunded**. If the latter requisite cannot be ascertained with particularity, there is cause to deny the refund, or allow it only to the extent of the sum that is actually proven as due**.[42]

Further, revenue laws are not intended to be liberally construed. Taxes are the lifeblood of the government and in Holmes' memorable metaphor, the price we pay for civilization; hence, laws relative thereto must be faithfully and strictly implemented.[43]

WHEREFORE, the Petition for Review dated February 23, 2017 filed by McKinsey & Co. (Phils.), and the Petition for Review dated January 25, 2017 filed by the Commissioner of Internal Revenue are hereby **DENIED**, for lack of merit.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

ROMAN G. DEL ROSARIO
Presiding Justice

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[42] Far East Bank and Trust Company As Trustee of Various Retirement: Funds vs. Commissioner of Internal Revenue and The Court of Appeals, G.R. NO. 138919, May 02, 2006; Boldfacing ours.
[43] Pilmico-Mauri Foods Corp., vs. Commissioner of Internal Revenue, G.R. No. 175651, September 14, 2016.

JUANITO C. CASTANEDA, JR.
Associate Justice

ERLINDA P. UY
Associate Justice

CIELITO N. MINDARO-GRULLA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CATHERINE T. MANAHAN
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.

ROMAN G. DEL ROSARIO
Presiding Justice