Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

SECOND DIVISION

CARRIER AIR CONDITIONING PHILIPPINES, INC., Petitioner,	**CTA Case No. 8393**
	Members:
-versus-	CASTAÑEDA, JR., *Chairperson* CASANOVA, *and* COTANGCO-MANALASTAS, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	**Promulgated:** MAR 17 2015 4:30 p.m.

x---x

DECISION

CASANOVA, *J.*:

This is a Petition for Review seeking a refund or issuance of Tax Credit Certificate (TCC) in the amount of Eleven Million Three Hundred Ninety Five Thousand Five Hundred Seventy Four Pesos and Twenty Centavos (₱11,395,574.20) allegedly representing final tax withheld on the excess cash dividends paid by petitioner to Carrier HVACR Investments B.V. on November 24, 2009 and December 22, 2009, and remitted to the Bureau of Internal Revenue (BIR) on December 10, 2009 and January 8, 2010, respectively.

Petitioner is a domestic corporation registered with the Securities and Exchange Commission with SEC Reg. No. A199721536, and with principal office address at Km. 20 East Service Road, South Superhighway, Alabang, Muntinlupa City. It is duly registered with the Bureau of Internal Revenue since January 1, 1997, with Taxpayer Identification No. 005-376-435-000. Petitioner is being represented in this case by the law firm of Castillo Laman Tan Pantaleon and San Jose, with office address at the 2nd, 3rd, 4th, 5th and 9th Floors, The Valero Tower, 122 Valero St., Salcedo Village, 1227 Makati City, where summons, pleadings, notices and other processes of this Honorable Court may be served.[1]

Respondent BIR, through the Commissioner of Internal Revenue, is the agency of the government tasked with the enforcement of revenue laws and the collection of taxes and duties. Respondent is being represented in this case by the legal officers of the Legal Division, Revenue Region 8, Makati City, with office address at the 2/F Legal Division, BIR Building, No. 313 Sen. Gil Puyat Ave., Makati City, where summons, pleadings, notices and other processes of this Honorable Court may be served.[2]

Based on petitioner's Secretary's Certificate[3], during a special meeting on November 23, 2009, its Board of Directors (BOD) resolved to approve the declaration of cash dividends in favor of Carrier HVACR Investments B.V. ("Carrier BV" for brevity) in the amount of ₱871,084,418.00 out of the unrestricted Retained Earnings of the Corporation as of October 31, 2009, payable in the manner specified below:

Payable on or before	**Amount**
November 30, 2009	654,000,000.00
December 31, 2009	217,084,418.00
Total	Php 871,084,418.00

On November 2, 2011, petitioner's BOD held a special meeting whereby it unanimously adopted the following resolutions as contained in the Secretary's Certificate[4], We quote:

> "WHEREAS, on November 23, 2009, the Corporation passed a board resolution declaring the total amount of Php871,084,418.00 as cash dividends, out of the unrestricted retained earnings of the Corporation as of October 31, 2009 (the '2009 Cash Dividends');
>
> WHEREAS, based on the audited financial statements of the Corporation as of December 31, 2009,

[1] Par. 1, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. I), p. 296.
[2] Par. 2, Stipulation of Facts, JSFI, Docket (Vol. I), p. 297.
[3] Exhibit "D".
[4] Exhibit "E".

however, it was noted that the amount of retained earnings available for dividend declaration was less than the 2009 Cash Dividends, thus resulting in the overpayment of dividends in the amount of Php113,955,742.00 (the '2009 Overpayment of Dividends');

WHEREAS, Carrier HVACR Investments BV undertook to refund the Overpayment of Dividends;

WHEREAS, the Corporation's management has proposed to declare cash dividends in the amount of Php150,333,970.00, out of the unrestricted retained earnings of the Corporation as of December 31, 2010, and out of said amount, the Overpayment shall be deducted, thus resulting in net dividend payable of Php21,344,831.00;

'NOW, THEREFORE, RESOLVED, That the Board of Directors of **Carrier Air Conditioning Philippines, Inc.** (the 'Corporation') approve, as it hereby approves, the declaration of cash dividends in the amount of Php150,333,970.00, out of the unrestricted retained earnings of the Corporation as of December 31, 2010;

RESOLVED, FURTHER, to authorize the Corporation to deduct from the amount of Php150,333,970.00, the 2009 Overpayment of Dividends, thus resulting to a net dividend payable of Php21,344,831.00 (the 'Net Dividend Payable');

RESOLVED, FURTHER, to authorize the Corporation to remit and pay to the stockholders of record the Net Dividend Payable on or before November 30, 2011;

RESOLVED, FINALLY, to authorize the management of the Corporation to perform such acts and execute any and all documents as may be necessary or required to implement the foregoing resolutions."

On November 29, 2011, petitioner filed an administrative claim[5] for refund or issuance of TCC in the amount of ₱11,395,574.20

[5] Exhibit "Q".

representing Final Withholding Tax (FWT) on dividends erroneously withheld and paid by petitioner to BIR.

On December 9, 2011 petitioner filed a Petition for Review[6] before the Court of Tax Appeals (CTA).

Respondent filed her Answer (with Motion to Dismiss)[7] on January 30, 2012 and interposed the following Special and Affirmative Defenses/Grounds for the Dismissal of the Petition for Review:

> "11. Petitioner's claim of its entitlement for refund or the issuance of a Tax Credit Certificate has no basis either in fact or in law, as we shall elaborate below:
>
> 12. ***First.*** Assuming **<u>but without admitting</u>** that the administrative claim for refund was made in time, still, the present action must necessarily fail. Contrary to petitioner's claim, it may not seek judicial relief before this Honorable Court, for lack of jurisdiction to hear, decide, adjudicate, and render judgment regarding the instant Petition;
>
> 13. Perusal of the attached Verification and Certification of Non-Forum Shopping to the instant Petition will reveal that it was subscribed and sworn to before a notary public on 08 December 2011. However, the Petition for Review was filed on 09 December 2011. How can a person attest to the fact that he read and understood a Petition for Review when it was only made a day later from his sworn certification? Does that person have the power to foretell as to what the Petition shall contain? How can a person attest to the fact that there is no pending case filed by his principal when he is only attesting as to a certain day, while the case filed by the principal was commenced to another time, which may include other cases also filed by the same principal? **Nothing can be said of the Certification and Verification of Non-Forum attached by the**

[6] Docket (Vol. I), pp. 6-35.
[7] Docket (Vol. I), pp. 219-228.

petitioner other than the same being patently defective and manifestly defective!;

14. What would be the effect if the verification and certification against forum shopping is defective? To that situation, the Honorable Supreme Court, in deciding the case of ***Negros Merchants Enterprises, Inc. vs. China Banking Corporation*** **(G.R. No. 150918, August 17, 2007),** only has this to say:

> 'Nevertheless, while indeed respondent erred in filing a petition for *certiorari* before the appellate court, **<u>we agree with the Court of Appeals that petitioner's Amended Complaint should have been dismissed due to its defective verification and certification against forum shopping</u>**.
>
> **<u>It is settled that the requirement to file a certificate of non-forum shopping is mandatory</u> and that <u>the failure to comply with this requirement cannot be excused</u>. The certification is a peculiar and personal responsibility of the party, an assurance given to the court or other tribunal that there are no other pending cases involving basically the same parties, issues and causes of action.** Xxx' (*Emphases and underlining all provided*)

15. Jurisprudence is consistent that liberality of the Rules cannot be applied wholesale in disregard of the Rules. As held by the Honorable Supreme Court in the case of ***Vda. Formoso, et al. vs. Philippine National Bank, et al.*** **(G.R. No. 154704, June 1, 2011)**:

"**The certification against forum shopping in CA-G.R. SP No. 72284 is fatally defective**, not having been duly signed by both petitioners **and thus warrants the dismissal of the petition for *certiorari*.** We have consistently held that the certification against forum shopping must be signed by the principal parties. With respect to a corporation, the certification against forum shopping may be signed for and on its behalf, by a specifically authorized lawyer who has personal knowledge of the facts required to be disclosed in such document.

While <u>the Rules of Court</u> may be relaxed for persuasive and weighty reasons to relieve a litigant from an injustice commensurate with his failure to comply with the prescribed procedures, nevertheless they <u>must be faithfully followed</u>. In the instant case, petitioners have not shown any reason which justifies relaxation of the Rules. <u>We have held that procedural rules are not to be belittled or dismissed simply because their non-observance may have prejudiced a party's substantive rights. Like all rules, they are required to be followed except for the most persuasive of reasons when they may be relaxed.</u> Not one of these persuasive reasons is present here.

<u>In fine, we hold that the Court of Appeals did not err in dismissing the petition for certiorari in view of the procedural lapses committed by petitioners</u>." (*Emphases and underlining all provided*)

16. Thus, for the fact alone of the Petition for Review having a defective Verification and Certification against Non-Forum Shopping, by force of the cited rules and jurisprudence, the instant case must be dismissed outright by this Honorable Court;

17. **Second**. Assuming **but without admitting** that Petitioner filed a claim for a tax credit certificate, the same is still subject to investigation by the Bureau of Internal Revenue;

18. Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

19. Under the law and jurisprudence, Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not creditable or refundable;

20. It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended;

21. In an action for tax credit, which is in the nature of refund, **the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner*, CA-GR No. SP 16432, March 30, 1990, as cited in *Aban, Law of Basic Taxation in the Philippines, 1st Edition, p. 206*)**;

22. It is well-settled rule that **he who claims exemptions should prove by convincing proofs that he is exempted (*Visayan Cebu Terminal Co., Inc. vs. Commissioner*, L-19530 & L-19444, February 27, 1965)**;

23. **Claims for refund are construed strictly against the claimant for the same partake the**

<u>nature of exemption from taxation</u> (*Commissioner of Internal Revenue vs. Ledesma,* 31 SCRA 95) and <u>as such, they are looked upon with disfavor</u> (*Western Minolco Corp. vs. Commissioner of Internal Revenue,* 124 SCRA 121);

24. **Tax exemptions must be clear and unequivocal**. A taxpayer claiming a tax exemption must point to a specific provision of law conferring on the taxpayer, in clear and plain terms, exemption from a common burden. **<u>Any doubt whether a tax exemption exists is resolved against the taxpayer</u>** (***Digital Telecommunications Philippines, Inc. vs. City Government of Batangas,* G.R. No. 156040, December 11, 2008**).

25. Thus, applying the pertinent provisions of the law, rules, and jurisprudence on the matter at hand, **it is crystal clear that the instant petition for review lacks basis and merit, and should be dismissed outright by this Honorable Court**."

On February 17, 2012, in compliance with the Resolution[8] of the Court, petitioner submitted its Reply to Answer and Opposition to Motion to Dismiss[9], in response to respondent's Answer (with Motion to Dismiss).

In a Resolution[10] promulgated on April 24, 2012, the Court denied respondent's prayer for the dismissal of the instant petition.

The case was set for pre-trial conference on June 14, 2012.[11] Pre-Trial Brief (for the Respondent)[12] and petitioner's Pre-Trial Brief[13] were both filed on June 11, 2012. An Amended Pre-Trial Brief (for the Respondent)[14] was filed thru registered mail on June 19, 2012.

[8] Docket (Vol. I), p. 231.
[9] Ibid., pp. 232-243.
[10] Id., pp. 245-250.
[11] Notice of Pre-Trial Conference issued on May 7, 2012, Id., p. 252.
[12] Id., pp. 253-258.
[13] Id., pp. 259-272.
[14] Id., pp. 278-283.

On August 17, 2012, the parties filed their Joint Stipulation of Facts and Issues.[15] Thereafter, the Court issued a Pre-Trial Order[16] dated August 31, 2012 that terminated the pre-trial and set the initial presentation of evidence for the petitioner on September 24, 2012.

Petitioner submitted its Offer of Documentary Evidence[17] on July 8, 2013 offering Exhibits "A" to "BB". The Court issued a Resolution[18] on August 6, 2013 admitting Exhibits "A" to "B-2", "D" to ""Q-1", "W" to "Z-2" and "BB" while Exhibits "C-1" to "C-3", "R-1" to "V", "AA" and "AA-1" were denied.

On August 22, 2013, petitioner filed *via* registered mail a Motion for Partial Reconsideration[19] praying for the admission of Exhibits "C-1" to "C-3", "R-1" to "V", "AA" and "AA-1". The Court issued a Resolution[20] dated October 31, 2013 directing petitioner to comply with Sections 3 and 4 of the Judicial Affidavit Rule by submitting a compliant replacement affidavit while the resolution of the Motion for Partial Reconsideration was held in abeyance.

Meanwhile, during the hearing on November 11, 2013, counsel for respondent manifested that he has no witness to present in this case.

On November 15, 2013, petitioner submitted its Compliance with Motion,[21] which was Noted and Granted in the Court's Order[22] dated November 19, 2013. On December 3, 2013, petitioner filed its Compliance[23] by submitting the notarized and authenticated revised Judicial Affidavit of its third witness, Jean Charles Thoumire.

In a Resolution[24] dated January 20, 2014, the Court partially granted petitioner's Motion for Partial Reconsideration. The Court admitted Exhibits "C-1" to "C-3", "R-1" to "R-3", "S" to "U-4", "AA" and "AA-1", while Exhibits ""R-5", "R-6" and "V" were denied.

---

[15] Id., pp. 296-299.
[16] Id., pp. 303-308.
[17] Docket (Vol. II), pp. 828-840.
[18] Docket (Vol. III), pp. 1437-1438.
[19] Ibid, pp. 1463-1474.
[20] Id., pp. 1483-1486.
[21] Id., pp. 1490-1493.
[22] Id., p. 1510.
[23] Id., pp. 1511-1524
[24] Id., pp. 1528-1531.

After petitioner submitted its Memorandum[25] on April 4, 2014, without respondent's Memorandum, the Court submitted this case for decision on April 11, 2014.

The parties jointly stipulated the following issues[26] for this Court's resolution:

a. Whether there is an actual and proper reversal of cash dividends made by petitioner;

b. Whether petitioner has remitted the final withholding tax on the dividends to the BIR, which is currently the subject of the case for refund or issuance of a TCC;

c. Whether petitioner's claim for refund or issuance of a TCC is duly substantiated by documentary evidence;

d. Whether petitioner is entitled to refund or issuance of a TCC in the amount of ₱11,395,574.20, representing final tax withheld and remitted on the excess cash dividends paid by petitioner to Carrier BV on November 24, 2009 and December 22, 2009.

In summary, the issue is whether or not petitioner is entitled to a refund or issuance of a TCC in the amount of ₱11,395,574.20 allegedly representing final withholding tax (FWT) on the excess cash dividends paid by petitioner to Carrier BV on November 24, 2009 and December 22, 2009.

Timeliness of administrative and judicial claims

Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997 provide the taxpayer a period of two (2) years from the date of payment of the tax or penalty within which to file a suit or proceeding to recover any erroneously paid or illegally collected tax. The law provides:

---

[25] Id., pp. 1542-1571.
[26] Stipulation of Issues, JSFI, Docket (Vol. I), p. 297.

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

xxx xxx xxx

(C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, *and,* in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund.

xxx xxx xxx

SEC. 229. ***Recovery of Tax Erroneously or Illegally Collected.*** - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment: *Provided, however,* That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.

The above-cited provisions were intended to govern the prescriptive period of refund of internal revenue taxes with the BIR and the subsequent appeal to this Court. Thus, petitioner has two (2) years from the date of payment or remittance to the BIR of the alleged overpaid FWT on the excess cash dividends paid by petitioner to Carrier BV within which to file a refund.

Records show that petitioner filed, through the BIR's Electronic Filing and Payment System (eFPS), its Monthly Remittance Return of Final Income Taxes Withheld (BIR Form 1601-F) for the months of November and December 2009, and paid the corresponding FWT due in the total amount of ₱87,108,441.80 on the dividend payments, as summarized hereunder:

Return Period	**Date Filed**	**Payment Date**	**Amount Paid**
November 2009	December 10, 2009[27]	December 10, 2009[28]	₱ 65,400,000.00
December 2009	January 8, 2010[29]	January 12, 2010[30]	21,708,441.80
			₱ 87,108,441.80

Petitioner filed its administrative claim[31] on November 29, 2011 while its judicial claim[32] was filed on December 9, 2011. The last day for filing the administrative and judicial claims were as follows:

Return Period	**Date Filed**	**Payment Date**	**Last Day to file Administrative & Judicial Claim**
November 2009	December 10, 2009[33]	December 10, 2009[34]	December 10, 2011
December 2009	January 8, 2010[35]	January 12, 2010[36]	January 12, 2012

Therefore, both administrative and judicial claims were filed within the two-year prescriptive period pursuant to Sections 204 and 229 of the NIRC of 1997.

[27] Exhibit "M-1".
[28] Exhibit "M-1".
[29] Exhibit "M-2".
[30] Exhibit "M-2".
[31] Exhibit "Q".
[32] Petition for Review, Docket (Vol. I), pp. 6-35.
[33] Exhibit "M-1".
[34] Exhibit "M-1".
[35] Exhibit "M-2".
[36] Exhibit "M-2".

Reversal of Cash Dividends

In pursuance to the approved 2009 dividend declaration[37], petitioner recorded in its 2009 General Journal the gross dividends in the total amount of ₱871,084,417.99[38] from which the net amount of ₱783,975,976.20[39] was paid as per entry nos. JV-09-11-09;[40] JV-09-11-10;[41] and JV-09-12-08,[42] in relation to JV-09-11-18[43].

The net dividend of ₱783,975,976.20 was remitted to its parent company Carrier BV[44], on November 24, 2009 and December 22, 2009 as evidenced by the following:

a. Bangko Sentral Registration Document (BSRD) No. 99-00107[45] and BSRD No. 98-00644[46] with record of cash dividend remittances[47] filled up by the remitting bank;

b. Customer's Advices dated November 24, 2009, and Application for Funds Transfer with computation sheets[48] received by the bank on the same date; and

c. Customer's Advice dated December 22, 2009, Application to Purchase Foreign Exchange, and Application for Funds Transfer with computation sheet[49].

However, upon audit by an Independent Audit Firm of petitioner's books for the period ended December 31, 2009, adjustments[50] were made and it was determined that the Retained Earnings available for distribution amounted to only ₱757,128,676.00[51]. The said amount is lower than the unrestricted Retained Earnings reported in petitioner's unaudited Financial

---

[37] Exhibit "D".
[38] ₱444,444,444.44 + ₱209,555,555.55 + ₱217,084,418.00 = ₱871,084,417.99
[39] ₱400,000,000.00 + ₱188,600,000.00 + ₱195,375,976.20 = P783,975,976.20
[40] Exhibit "R-1".
[41] Exhibit "R-2".
[42] Exhibit "R-3".
[43] Docket (Vol. II), p. 1155.
[44] Exhibit "A".
[45] Exhibit "H".
[46] Exhibit "I".
[47] Exhibits "H-1" to "H-2" and "I-1" to "I-2".
[48] Exhibits "J-1" to "J-2".
[49] Exhibits "K-1" to K-2".
[50] Exhibit "S".
[51] Exhibit "N" (RE, Beg. ₱140,605 + Total Comprehensive Income 616,523 = ₱757,128)

Statements dated October 31, 2009 which was used as basis for the 2009 cash dividend declaration of ₱871,084,418.00.

Thus, there was an over declaration of dividends based on petitioner's audited Financial Statements for the year ended December 31, 2009 in the amount of ₱113,955,742.00[52] (rounded off). Since the amount of ₱871,084,418.00 was already declared as cash dividend on November 23, 2009, and remitted to Carrier BV on November 24 and December 22, 2009, dividends were reversed by petitioner to the extent of ₱113,955,742.00. The unrestricted Retained Earnings based on the Financial Statements for the year ended December 31, 2009 was not sufficient to cover the amount of ₱113,955,742.00.

The reversal of a portion of the dividends was done in compliance with accounting principles and Section 43 of the Corporation Code of the Philippines, as implemented by Securities and Exchange Commission through Section 5 of Memorandum Circular No. 11-08, which provide:

> "Sec. 43. Power to declare dividends. – The board of directors of a stock corporation may declare dividends <u>out</u> of the unrestricted retained earnings which shall be payable in cash, in property, or in stock to all stockholders on basis of outstanding stock held by them: xxx"
>
> "SECTION 5.*Retained Earnings Available for Dividends.* – Dividends, whether cash, property or stock, shall be declared out of unrestricted retained earnings of the Corporation. Accordingly, a corporation cannot declare dividends when it has zero or negative retained earnings otherwise known as Retained Earnings deficit. For such purpose, the surplus profits or income must be a bona fide income founded upon actual earnings and profits. The existence, therefore, of surplus profits arising from the operation of the corporate business is a condition precedent to the declaration of dividend.
>
> For purposes of these Guidelines, the phrase 'actual earnings or profits' as mentioned above shall be the net

[52] ₱871,084,418.00 – ₱757,128,676.00 = ₱113,955,742.00

> income for the year based on the audited financial statements, adjusted for unrealized items discussed below, which are considered not available for dividend declaration."

In consonance with the abovementioned provisions, per Secretary's Certificate,[53] petitioner's BOD included in its Approved Resolution dated November 23, 2009 that the dividend declaration is conditioned upon the 'sufficiency' of the unrestricted retained earnings in its audited Financial Statements as of December 31, 2009, to quote:

> "*Provided,* however, that the unrestricted retained earnings of the Corporation as reflected in its audited financial statements as of December 31, 2009 should be sufficient to cover said dividend declaration, otherwise, only such amount as the unrestricted retained earnings based on the said audited financial statements could cover shall be paid and deemed declared as dividends; *Provided, finally,* that Carrier HVACR Investments B.V. shall refund to the Corporation the excess of the amount received by it and the cash dividend allowed to be declared based on the audited financial statements of the Corporation as of December 31, 2009."

Since the unrestricted Retained Earnings based on the audited amount as of December 31, 2009 was insufficient to cover the dividend declaration to the extent of ₱113,955,742.00, petitioner recorded the difference as receivable from Carrier BV in its 2009 audited Financial Statements[54] and disclosed the same in Notes 6, 7[55] and 10[56] of the Notes to Separate Financial Statements as of and for the years ended December 31, 2009 and 2008.

The overpaid dividends in the amount of ₱113,955,742.00, which was reported as receivables was carried over in petitioner's 2010 audited Financial Statements as disclosed in Notes 6[57], 8[58] and

[53] Exhibit "D".
[54] Exhibit "N" and Exhibit "N-2".
[55] Exhibit "N-2".
[56] Exhibit "N-4".
[57] Exhibit "O-1".
[58] Exhibit "O-2".

11[59] on the Notes to Financial Statements as of and for the years ended December 31, 2010 and 2009.

Moreover, per Secretary's Certificate dated November 2, 2011[60], petitioner's BOD resolved to approve the declaration of dividends in the amount of ₱150,333,970.00 out of the unrestricted retained earnings as of December 31, 2010[61], deducting therefrom the 2009 overpaid dividends in the amount of ₱113,955,742.00, thus resulting to net dividend payable of ₱21,344,831.00, computed as follows[62]:

Unrestricted Retained Earnings per 2010 Audited FS	₱ 150,333,970.00
10% Final tax	15,033,397.00
Net of tax	₱ 135,300,573.00
Over declaration in 2009	113,955,742.00
Net Remittance	**₱ 21,344,831.00**

Petitioner's 2011 audited Financial Statements[63] reflected dividends of ₱150,334,000.00 (rounded to the nearest thousands) and the ₱113,955,742.00 over declared dividends in 2009 was reversed. Furthermore, as disclosed in Notes 6[64], 8[65] and 11[66] of the Notes to Financial Statements as of and for the years ended December 31, 2011 and 2010, the receivable from Carrier BV in the amount of ₱113,955,742.00 was already removed due to the above offsetting.

The net dividend of ₱21,344,831.00 was remitted to Carrier BV on November 23, 2011 as evidenced by:

a. BSRD Nos. 99-00107 and 98-00644 with record of cash dividend remittance[67] filled up by the remitting bank;

b. Customer's Advices and Application for Funds Transfer with computation sheet[68].

---

[59] Exhibit "O-3".
[60] Exhibit "E".
[61] Exhibit "O", Retained Earnings column.
[62] Exhibit "Z".
[63] Exhibit "P", Retained Earnings column.
[64] Exhibit "P-1".
[65] Exhibit "P-2".
[66] Exhibit "P-3".
[67] Exhibits "H-3" and "I-3".
[68] Exhibits "L-1" to "L-2".

Thus, petitioner was able to establish that the dividend declarations and reversals thereon were valid and duly recorded in its books and properly reflected in its audited Financial Statements.

Remittance to the BIR of the FWT on 2009 and 2011 Dividends declaration

As discussed earlier, petitioner remitted the FWT on the 2009 Dividend Declaration as follows:

Return Period	**Date Filed**	**Payment Date**	**Amount Paid**
November 2009	December 10, 2009[69]	December 10, 2009[70]	₱ 65,400,000.00
December 2009	January 8, 2010[71]	January 12, 2010[72]	21,708,441.80
			₱ 87,108,441.80

Meanwhile, the payment for the corresponding FWT on the 2011 Dividend Declaration in the amount of ₱15,033,397.00 was manually filed and remitted by petitioner on December 6, 2011 to the BIR, which was later on amended on December 15, 2011.[73]

Thus, the corresponding FWT due on the dividends for 2009 & 2011 were remitted to the BIR. Since petitioner reversed 2009 dividends in the amount of ₱113,955,742.00, which was included in the ₱871,084,418.00 dividends declared, paid and subjected to 10% FWT, there appears to be an over remittance of ₱11,395,574.20 FWT pertaining to the amount reversed, as shown below:

	A **Dividends declared**	B **FWT due** (A x 10%)	C **Amount remitted**	**Over remittance** (B-C)
2009	₱ 757,128,676.00	₱ 75,712,867.60	₱ 87,108,441.80	₱ (11,395,574.20)
2011	150,333,970.00	15,033,397.00	15,033,397.00	-
	₱ 907,462,646.00	₱ 90,746,264.60	₱ 102,141,838.80	**₱ (11,395,574.20)**

Likewise, the 2009 gross dividend of ₱871,084,417.99 was properly subjected to the preferential tax rate of 10% in accordance with Article 10(2)(a) of the Philippines-Netherlands Tax Treaty as

[69] Exhibit "M-1".
[70] Exhibit "M-1".
[71] Exhibit "M-2".
[72] Exhibit "M-2".
[73] Exhibit "M-3".

confirmed by BIR Ruling No. DA-ITAD-044-11[74] dated February 10, 2011. In applying for a tax treaty relief, petitioner substantially complied with Revenue Memorandum Order (RMO) No. 1-2000. Notably, the "application for a tax treaty relief from the BIR should merely operate to confirm the entitlement of the taxpayer to the relief"[75].

Therefore, petitioner is entitled to a refund or issuance of a TCC in the amount of ₱11,395,574.20 representing FWT remitted on the excess cash dividends paid in 2009.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is **ORDERED to REFUND or ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱11,395,574.20, representing petitioner's final withholding tax on the excess cash dividends paid in 2009 which was erroneously withheld and remitted to the BIR.

SO ORDERED.

CAESAR A. CASANOVA
Associate Justice

WE CONCUR:

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

(On Leave)
AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[74] Exhibit "G".
[75] *Deutsche Bank AG Manila Branch vs. Commissioner of Internal Revenue*, G.R. No. 188550, August 19, 2013.

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, Second Division

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