REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

First Division

MCKINSEY & CO. (PHILS.), *Petitioner,*	**CTA Case No. 9807**
	Members:
-versus-	**DEL ROSARIO, *P.J.***, *Chairperson* *and* **MANAHAN**, *J.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JAN 0 8 2021 8:55 am

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D E C I S I O N

MANAHAN, *J.:*

This is a *Petition for Review* filed on April 11, 2018 by petitioner McKinsey & Co. (Phils.) against respondent Commissioner of Internal Revenue, claiming for the refund of or issuance of a tax credit certificate (TCC) in the amounts of ₱79,043,655.00 and ₱34,691,058.00, representing excess and unutilized creditable withholding taxes (CWTs) for calendar years (CYs) 2015 and 2016, respectively, pursuant to Section 76 in relation to Sections 204 and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended.[1]

THE PARTIES

Petitioner McKinsey & Co. (Phils.) is a 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 to transact business in the Philippines as a branch office primarily to engage in management consultancy services pursuant to SEC Registration No. A1998-675. The branch office is located at 7th Floor Zuellig Building

[1] Docket, CTA Case No. 9807, Vol. I, Summary of the Case, Pre-Trial Order dated October 29, 2018, p. 287.

Makati Ave. cor. Paseo de Roxas, Makati City, 1226.[2] It is a registered taxpayer at the Bureau of Internal Revenue (BIR) – Revenue District Office (RDO) No. 50 (South Makati), with Taxpayer Identification No. 005-649-673-000.[3]

Respondent Bureau of Internal Revenue, 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.[4]

THE FACTS

On April 6, 2018, petitioner filed with the BIR-RDO No. 50 an administrative claim for refund or issuance of TCC for excess and unutilized CWTs in the amounts of ₱79,043,655.00 and ₱34,691,058.00 for CYs 2015 and 2016, respectively.[5]

Petitioner filed the instant *Petition for Review* on April 11, 2018.[6] The case was initially raffled to this Court's Second Division.

Respondent filed his *Answer* on May 22, 2018,[7] interposing the following special and affirmative defenses, to wit:

> "**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**
>
> 8) Respondent reiterates and re-pleads the preceding paragraphs of this Answer as part of the Special and Affirmative Defenses.
>
> **THIS INSTANT PETITION FOR REVIEW SHOULD BE DISMISSED FOR FAILURE TO EXHAUST ADMINISTRATIVE REMEDY.**
>
> 9) This instant case of refund is still pending and under investigation by the Bureau of Internal Revenue (BIR).

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[2] Docket, Vol. I, Par. 1, Admitted Facts, *Joint Stipulation of Facts and Issues* (JSFI), p. 259.
[3] *Id.*, Vol. I, Par. 2, Admitted Facts, JSFI, p. 259.
[4] *Id.*, Vol. I, Par. 3, Admitted Facts, JSFI, pp. 259 to 260.
[5] *Id.*, Vol, I, Par. 12, *Petition for Review* vis-à-vis Par. 5, *Answer*, pp. 13 and 144, respectively; Docket, Vol. I, Exhibits "P-66", pp. 505 to 612.
[6] *Id.*, Vol. I, pp. 10 to 21.
[7] *Id.*, Vol. I, pp. 143 to 149; Docket, Vol. I, cf: *Motion to Admit Answer*, pp. 137 to 142; Docket, Vol. I, *Comment*, pp. 153 to 154; Docket, Vol. I, Resolution dated June 22, 2018, p. 159.

Thus, this instant Petition for Review is prematurely filed and should be dismissed for failure to exhaust administrative remedy.

10) In this case, Petitioner alleged and the respondent admits that petitioner filed its administrative claim for refund on April 6, 2018 with BIR-RDO No. 50. Thereafter the petitioner filed its Petition for Review on April 11, 2018. The judicial claim filed only upon the lapse of 5 days from the filing of the administrative claim. The premature filing of this case warrants its dismissal for lack of jurisdiction.

11) Moreover, the Petitioner should have allowed the Respondent to proceed with the administrative claim for refund considering that the Petitioner had already filed its Letter dated April 6, 2018 requesting that the Administrative Claim for Refund be forwarded to the Revenue Regional Office. In filing this judicial claim, the Petitioner violated the rule on exhaustion of administrative remedies.

12) How can the BIR act on the administrative claim for refund when the petitioner did not give the respondent a chance to act on the administrative claim for refund considering the BIR is only given 5 days to act on the petitioner's administrative claim for refund.

13) The rule on exhaustion of administrative remedies before resorting to the courts means that there should be an orderly procedure which favors a preliminary administrative sifting process, particularly with respect to matters peculiar within the competence of the administrative agency, avoidance of interference of functions of such administrative agency by withholding judicial action until the administrative process has run its course, and prevention of attempts to swamp the courts by the resort to them in the first instance.[8]

14) In the case of Philex Mining Corp. vs. Commissioner of Internal Revenue, CTA EB No. 787, this Honorable Court ruled:

> In the case of Castro vs. Gloria, GR No. 132174, 20 August 2001, the Supreme Court, citing the case of Vidad vs. RTC of Negros Oriental, Branch 42 declared that-
>
>> Non-exhaustion of administrative remedies implies absence of cause of action. Where a remedy is available within the administrative machinery, this should be resorted

[8] *Abe-Abe vs. Manta*, L-4827, 31 May 1979.

> to before recourse can be made to the courts. The doctrine of primary jurisdiction does not warrant a court to arrogate unto itself the authority to resolve a controversy the jurisdiction over which is initially lodged with an administrative body of special competence. (Underscoring supplied.)

Therefore, the failure to exhaust available administrative remedies will not rob the courts of its jurisdiction over a case as the same is tantamount only to a judicial petition lacking or failing to state a cause of action.

15) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable.

16) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 58 (D) and 76, 204, and 229 of the Tax Code, as amended in relation to Revenue Regulations No. 2-98.

17) Petitioner's claims for refund or issuance of tax credit certificate in the amount of Php 79,043,655.00 and Php 34,691,058.00 representing petitioner's excess and unutilized creditable withholding taxes for calendar years 2015 and 2016 were not fully substantiated by proper documents.

18) In a claim for tax refund or tax credit, taxpayer must prove not only entitlement to the grant of the claim under substantive law, it must also show satisfaction of all the documentary and evidentiary requirements for an administrative claim for a refund or tax credit (*Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue*, 518 SCRA 425).

19) Claims for refund are construed strictly against the claimant, the same partake of the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95) and as such, they are looked upon with disfavour (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121).*"

The pre-trial conference was initially set on August 2, 2018.[9] However, upon filing on July 19, 2018 of petitioner's

[9] Docket, Vol. I, *Notice of Pre-Trial Conference* dated June 27, 2018, pp. 160 to 161.

Motion to Reset Pre-Trial Conference,[10] the pre-trial conference was reset to, and held on, August 30, 2018.[11]

Respondent's Pre-Trial Brief was filed on July 27, 2018;[12] while petitioner's *Pre-Trial Brief* was submitted on August 24, 2018.[13]

On September 19, 2018, the parties filed their *Joint Stipulation of Facts and Issues* (JSFI).[14]

Meanwhile, the instant case was transferred to the Court's First Division on September 24, 2018.[15]

In the Resolution dated October 8, 2018,[16] the Court approved the parties' JSFI, deeming the termination of the pre-trial. Thereafter, the Court issued the Pre-Trial Order dated October 29, 2018.[17]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimony of Ms. Elena D. Cabahug,[18] its Accountant.

Petitioner filed its *Formal Offer of Evidence* on January 7, 2019.[19] Respondent then submitted his *Comment (To Petitioner's Formal Offer of Evidence)* on January 15, 2019.[20] Subsequently, petitioner filed a *Motion for Leave to File Reply and Reply (To Respondent's Comment to Formal Offer of Evidence).*[21]

Respondent transmitted the *BIR Records* of the instant case on February 22, 2019.[22]

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[10] Docket – Vol. I, pp. 162 to 164.
[11] *Id.*, Vol. I, Order dated July 24, 2018, p. 167; Docket – Vol. I, Minutes of the hearing held on, and Order dated, August 30, 2018, pp. 243 and 245, respectively.
[12] *Id.*, Vol. I, pp. 169 to 175.
[13] *Id.*, Vol. I, pp. 177 to 188.
[14] *Id.*, Vol. I, pp. 259 to 281.
[15] *Id.*, Vol. I, Order dated September 24, 2018, p. 282.
[16] *Id.*, Vol. I, p. 285.
[17] *Id.*, Vol. I, pp. 287 to 298.
[18] *Id.*, Vol. I, Exhibit "P-143", pp. 194 to 242; Docket – Vol. I, Order dated November 20, 2018, pp. 317 to 319.
[19] *Id.*, Vol. I, pp. 339 to 361.
[20] *Id.*, Vol. II, pp. 716 to 718.
[21] *Id.*, Vol. II, pp. 734 to 738.
[22] Docket, Vol. II, Undated letter, p. 748.

In the Resolution dated March 14, 2019,[23] the Court admitted petitioner's Exhibits, *except* for Exhibit "P-7-c", for not being found in the records of the case, and Exhibit "P-56", for failure to lay the predicate for the admission of secondary evidence.

Thereafter, petitioner filed on April 2, 2019 a *Motion to Expunge Judicial Affidavits of Respondent's Witnesses,*[24] praying that the judicial affidavits of respondent's witnesses, Ms. Marife Mactal and Mr. Joey Piansay, be expunged from the records of this case. Respondent then filed on April 26, 2019 his *Comment/Opposition to Petitioner's Motion to Expunge Judicial Affidavit of Respondent's Witness.*[25] Petitioner filed a *Reply (To Respondent's Comment/Opposition)* on May 14, 2019.[26] In the Resolution dated June 3, 2019,[27] the Court denied petitioner's *Motion to Expunge.*

Respondent likewise presented documentary and testimonial evidence. His witnesses are Mr. Joel I. Piansay[28] and Ms. Marife P. Mactal,[29] both Revenue Officers of the BIR.

On September 17, 2019, the *Respondent's Formal Offer of Evidence* was filed.[30] Petitioner then filed its *Comment to Respondent's Formal Offer of Evidence* on September 26, 2019.[31] In the Resolution dated December 6, 2019,[32] the Court admitted respondent's Exhibits.

The *Memorandum for Respondent* was filed on January 14, 2020;[33] while petitioner submitted its *Memorandum* on February 3, 2020.[34]

On February 11, 2020, the case was submitted for decision.[35]

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[23] *Id.*, Vol. II, pp. 766 to 772.
[24] *Id.*, Vol. II, pp. 788 to 793.
[25] *Id.*, Vol. II, pp. 797 to 801.
[26] *Id.*, Vol. II, pp. 804 to 808.
[27] *Id.*, Vol. II, pp. 817 to 821.
[28] *Id.*, Vol. II, Exhibit "R-6", pp. 775 to 783; Docket – Vol. II, Order dated July 9, 2019, pp. 827 to 828.
[29] *Id.*, Vol. II, Exhibit "R-7", pp. 753 to 760; Docket, Vol. II, Order dated August 6, 2019, pp. 830 to 831.
[30] *Id.*, Vol. II, pp. 834 to 838.
[31] *Id.*, Vol. II, pp. 840 to 841.
[32] *Id.*, Vol. II, pp. 846 to 847.
[33] *Id.*, Vol. II, pp. 848 to 853.
[34] Docket, Vol. II, pp. 860 to 880.

ISSUE

> ""Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for excess and unutilized CWT in the amount P79,046,655.00 and P34,691,058.00 for CYs 2015 and 2016, respectively.
>
> The foregoing issue has been subdivided, as follows:
>
> 1. Whether petitioner's excess and unutilized CWT in the amounts of P79,043,655.00 and P34,691,058.00 for CYs 2015 and 2016, are duly substantiated by documentary evidence;
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> 2. Whether the income from which the CWTs being claimed for refund were withheld was reported as part of the revenue declared in petitioner's Annual Income Tax Return (ITR);
>
> 3. Whether Petitioner carried over its excess and unutilized CWT for CY 2015 to the succeeding taxable periods;
>
> 4. Whether Petitioner carried over its excess and unutilized CWT for CY 2016 to the succeeding taxable periods; and
>
> 5. Whether Petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CYs 2015 and 2016 within the two-year prescriptive period provided under Sections 204(C) and 229, Tax Code."[36]

Petitioner's Arguments

Petitioner maintains that: it has excess CWTs in the amounts of ₱79,043,655.00 and ₱34,691,058.00 for CYs 2015 and 2016, respectively, which are properly substantiated by documentary evidence; its excess CWTs for CYs 2015 and 2016 were not applied as tax credit and not carried over to the succeeding taxable quarter/year(s); the income from which

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[35] *Id.*, Vol. II, Resolution dated February 11, 2020, p. 883.
[36] *Id.*, Vol. I, Issues, JSFI, p. 260.

taxes were withheld were included by petitioner as part of its gross income in its 2015 and 2016 ITRs; and it filed both the administrative and judicial claims for refund of excess and unutilized CWTs for CYs 2015 and 2016 with the BIR and this Court within the two-year period prescribed by law.

Respondent's Arguments

Respondent contends that petitioner's failure to submit the required documents for the administrative tax refund for taxable year 2016 is fatal to its administrative and judicial tax refunds, and that in a claim for tax refund or tax credit, the taxpayer must prove not only entitlement to the grant of the claim under substantive law, but also satisfaction of all the documentary and evidentiary requirements for a valid administrative claim for refund or tax credit.

RULING OF THE COURT

The instant *Petition for Review* is meritorious.

In order to be entitled to a refund or issuance of a TCC representing any excess or unutilized creditable withholding tax, it must be shown that petitioner has complied with the essential basic conditions set forth under pertinent provisions of law, its implementing rules and regulations as well as applicable jurisprudence.[37]

Petitioner complied with Section 76 of the NIRC of 1997.

Section 76 of NIRC of 1997 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:
>
> (A) Pay the balance of tax still due; or

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

> (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."

The above provision states the two (2) options of a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either: (1) carry-over the excess amount to the succeeding taxable quarters/years until it is fully utilized; or (2) file a claim for refund in the form of cash or tax credit certificate. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[38] The phrase *"for that taxable period"* refers to the taxable year when the excess income tax, subject of the option, was paid by the taxpayer.[39]

In exercising its option, the concerned corporation must signify in its annual corporate adjustment return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To ease the administration of tax collection, these remedies are in the alternative and the choice of one precludes the other.[40]

A perusal of petitioner's Annual Income Tax Returns (ITRs) for CYs 2015[41] and 2016[42] shows that petitioner had Minimum Corporate Income Tax (MCIT) due in the amount of

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[38] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue,* G.R. Nos. 156637 & 162004, December 14, 2005; *Systra Philippines, Inc vs. Commissioner of Internal Revenue* G.R. No. 176290, September 21, 2007.

[39] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.

[40] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

[41] Exhibit "P-7", Folder – Sworn Statement of Ms. Elena D. Cabahug.

[42] Exhibit "P-11", Folder – Sworn Statement of Ms. Elena D. Cabahug.

₱4,051,258.00 and ₱0.00, respectively. Petitioner alleges that the MCIT liability for CY 2015 was paid using a portion of its reported prior year's excess credits of ₱79,177,577.00, thus, its creditable taxes withheld incurred in 2015 and 2016 in the respective amounts of ₱79,043,655.00 and ₱34,691,058.00 were still unutilized as of December 31, 2016, as shown below:

	CY 2015 (Exhibit "P-7")	**CY 2016 (Exhibit "P-11")**
Sales/Revenue/Receipts	₱ 822,267,453.00	₱ 785,116,255.00
Les: Cost of Sales/Services	627,093,745.00	825,323,749.00
Gross Income from Operations	₱ 195,173,708.00	₱ (40,207,494.00)
Add: Other Taxable Income not subjected to Final Tax	7,389,175.00	9,838,286.00
Total Gross Income	₱ 202,562,883.00	₱ (30,369,208.00)
Less: Allowable Deductions		
Ordinary Allowable Itemized Deductions	₱ 155,156,182.00	₱ 192,093,966.00
NOLCO	47,406,701.00	
Total Deductions	₱ 202,562,883.00	₱ 192,093,966.00
Net Taxable Income	₱ -	₱ (222,463,174.00)
Income Tax Due other than MCIT	₱ -	₱ -
Minimum Corporate Income Tax (MCIT)	₱ 4,051,258.00	₱ -
Income Tax Due (MCIT)	₱ 4,051,258.00	₱ -
Less: Prior Year's Excess Credits	79,177,577.00	75,126,319.00
Balance of Prior Year's Excess Credits	₱ 75,126,319.00	₱ 75,126,319.00
Add: CWTs for the Year		
Creditable Tax Withheld from Previous Quarters	₱ 40,161,000.00	₱ 25,241,058.00
Creditable Tax Withheld per BIR Form No. 2307 for the Fourth Quarter	38,882,655.00	9,450,000.00
Total CWTs for the year	**₱79,043,655.00**	**₱ 34,691,058.00**
Total Excess Tax Credits as of December 31	₱ 154,169,974.00	₱ 109,817,377.00

In the *Philam* case, the Supreme Court explained that "money is a fungible property" and the amount to be applied against the income tax due in the final adjustment return of petitioner may be taken from its excess credits in a prior year from those withheld in the current year or from both.[43]

Thus, a *Tax Overpayment* is composed of the taxpayer's prior year's credits, current year's tax payments, creditable taxes withheld for the current year, and even foreign tax credits (if applicable). In the instant case, since petitioner has opted to claim a refund of its excess CWTs for CYs 2015 and 2016, it becomes incumbent upon petitioner to prove that it

[43] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005.

has sufficient prior year's excess CWTs to cover its MCIT liability for CY 2015.

To prove the existence of its prior year's excess credits of ₱79,177,577.00, petitioner presented *Certificates of Creditable Withholding Tax at Source* (BIR Forms No. 2307) for CYs 2004, 2005 and 2006. The sum, however, of the CWTs reflected in the certificates amounted only to ₱39,142,231.28, broken down as follows:

Exhibit	Payor's Name	Covered Period		CWT
For Calendar Year 2004				
"P-47"	Jollibee Food Corporation	4/1/2004	6/30/2004	₱ 6,615,384.75
"P-48"	Ayala Corporation	7/1/2004	9/30/2004	2,433,912.00
"P-49"	Jollibee Food Corporation	7/1/2004	9/30/2004	5,734,234.13
"P-50"	Ayala Corporation	10/1/2004	12/31/2004	870,947.40
Subtotal				**₱ 15,654,478.28**
For Calendar Year 2005				
"P-51"	Bank of the Philippine Islands	12/1/2005	12/31/2005	₱ 5,625,637.50
Subtotal				**₱ 5,625,637.50**
For Calendar Year 2006				
"P-52"	Philippine Long Distance Telephone Company	4/1/2006	6/30/2006	₱ 3,207,493.50
"P-53"	Globe Telecom Inc.	10/1/2006	12/31/2006	1,449,870.00
"P-54"	Smart Communications Inc.	10/1/2006	12/31/2006	6,602,376.00
"P-55"	Smart Communications Inc.	10/1/2006	12/31/2006	6,602,376.00
Subtotal				**₱ 17,862,115.50**
TOTAL				**₱ 39,142,231.28**

Moreover, the Court cannot give credence to petitioner's CWTs for CY 2004 since it cannot be ascertained whether the same remained unutilized as of the end of CY 2004 and whether petitioner, indeed, had excess tax credits as of the end of CY 2004, since it failed to submit its Annual ITR for the said CY 2004.

Consequently, petitioner's prior years' tax credits amounted to ₱10,594,772.53 only, as computed below:

Substantiated CWT for CY 2005		₱ 5,625,637.50
Substantiated CWT for CY 2006		17,862,115.50
Total		**₱ 23,487,753.00**
Less: Income Taxes Due		
CY 2005[44]	₱ 1,614,475.00	

[44] Exhibit "P-57", Folder – Sworn Statement of Ms. Elena D. Cabahug.

CY 2006[45]	82,634.00	
CY 2007[46]	2,721,265.00	
CY 2008[47]	2,388,293.00	
CY 2009[48]	926,359.00	
CY 2010[49]	1,952,092.00	
CY 2011[50]	614,393.14	
CY 2012[51]	1,108,850.33	
CY 2013[52]	1,164,387.00	
CY 2014[53]	320,232.00	12,892,980.47
Excess tax credits as of December 31, 2014		**₱ 10,594,772.53**

Nevertheless, the substantiated prior year's excess tax credit of ₱10,594,772.53 is sufficient to cover petitioner's tax liability for CY 2015 in the amount of ₱4,051,258.00.[54]

Petitioner marked the circle beside the words **"To be refunded"**[55] which signified its intention to claim for refund the creditable taxes withheld for the CYs 2015 and 2016 in the total amount of ₱113,734,713.00.[56] Furthermore, a perusal of petitioner's Annual ITRs for CYs 2016[57] and 2017[58] shows that for both years, the amount of prior year's excess credits is only ₱75,126,319.00 instead of the respective amounts of ₱154,169,974.00[59] and ₱109,817,377.00.[60]

Evidently, the claimed CWTs for CY 2015 and 2016 of ₱79,043,655.00 and ₱34,691,058.00, respectively, or in the total amount of ₱113,734,713.00 were not included therein. Consequently, the CWTs being claimed by petitioner may be allowed for refund under Section 76 of the NIRC of 1997, since it is clearly shown that petitioner opted to refund the same, and *not* to carry-over the excess amount to the succeeding taxable quarters/years.

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45 Exhibit "P-58", Folder – Sworn Statement of Ms. Elena D. Cabahug.
46 Exhibit "P-59", Folder – Sworn Statement of Ms. Elena D. Cabahug.
47 Exhibit "P-60", Folder – Sworn Statement of Ms. Elena D. Cabahug.
48 Exhibit "P-61", Folder – Sworn Statement of Ms. Elena D. Cabahug.
49 Exhibit "P-62", Folder – Sworn Statement of Ms. Elena D. Cabahug.
50 Exhibit "P-63", Folder – Sworn Statement of Ms. Elena D. Cabahug.
51 Exhibit "P-64", Folder – Sworn Statement of Ms. Elena D. Cabahug.
52 Exhibit "P-65", Folder – Sworn Statement of Ms. Elena D. Cabahug.
53 Exhibit "P-17", Folder – Sworn Statement of Ms. Elena D. Cabahug.
54 Exhibit "P-7", Folder – Sworn Statement of Ms. Elena D. Cabahug.
55 Exhibits "P-7-a" and "P-11-a", Folder – Sworn Statement of Ms. Elena D. Cabahug.
56 ₱79,043,655.00+₱ 34,691,058.00
57 Exhibit "P-11", Line 1 of Schedule 7, Folder – Sworn Statement of Ms. Elena D. Cabahug.
58 Exhibit "P-15", Line 1 of Schedule 7, Folder – Sworn Statement of Ms. Elena D. Cabahug.
59 Exhibit "P-7", Line 20, Folder – Sworn Statement of Ms. Elena D. Cabahug.
60 Exhibit "P-11", Line 20, Folder – Sworn Statement of Ms. Elena D. Cabahug. an

Petitioner fulfilled all the requisites to claim a refund or credit for unutilized excess CWTs.

Moreover, aside from the condition provided under Section 76 of the NIRC of 1997, jurisprudence and pertinent BIR Revenue Regulations provide that the following requisites must be further complied with in order that the subject claim may be granted, to wit:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204 (C) and 229 of NIRC of 1997;

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.[61]

The *first* requisite is pursuant to Sections 204(C) and 229 of the NIRC of 1997, which read as follows:

> "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 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 refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall

[61] *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; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; Section 2.58, Revenue Regulations No. 2-98, as amended.

> be considered as a written claim for credit or refund." *(Emphasis added)*
>
> "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 therefore, 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." *(Emphasis added)*

Indeed, the two-year period in filing a claim for tax refund is crucial. While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest on the date of the filing of the adjusted final return[62] because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.[63] Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[64]

The present claim pertains to CYs 2015 and 2016 for which petitioner filed its Annual ITRs on April 13, 2016[65] and

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[62] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,* G.R. No. 231581, April 10, 2019 citing *ACCRA Investments Corp. v. Court of Appeals,* 281 Phil. 1060, 1068-1069 (1991).
[63] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,* G.R. No. 231581, April 10, 2019 *Commissioner of Internal Revenue v. TMX Sales, Inc.,* 282 Phil. 199, 207 (1992).
[64] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.,* G.R. No. 231581, April 10, 2019 *Commissioner of Internal Revenue v. TMX Sales, Inc.,* 282 Phil. 199, 207 (1992).
[65] Exhibit "P-7", Folder – Sworn Statement of Ms. Elena D. Cabahug.

April 13, 2017,[66] respectively. Counting from these dates, petitioner had until April 13, 2018 and April 13, 2019, respectively, within which to file a claim for refund of its excess CWTs both in the administrative and judicial levels. Thus, petitioner seasonably filed with the BIR its administrative claim for refund on April 6, 2018[67] and its judicial claim for refund through the present *Petition for Review* on April 11, 2018.[68]

Contrary to respondent's assertion, there was no violation of the doctrine of exhaustion of administrative remedies. In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.* ("*Univation Motor* case"),[69] the Supreme Court ruled:

> "...Under the circumstances, if respondent awaited for the commissioner to act on its administrative claim (before resort to the Court), chances are, the two-year prescribed period will lapse effectively resulting to the loss of respondent's right to seek judicial recourse and worse, its right to recover the taxes it erroneously paid to the government. Hence, respondent's immediate resort to the Court is justified.
>
> **Contrary to petitioner's assertion, there was no violation of the doctrine of exhaustion of administrative remedies.** The Court ruled:
>
>> x x x the Court agrees with the ratiocination of the CTA *En Banc* in debunking the alleged failure to exhaust administrative remedies. **Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, <u>it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage</u>.** (Citation omitted)
>
> **The law <u>only requires</u> that an administrative claim be priorly filed.** That is, to give the BIR at the administrative level an opportunity to act on said claim. In other words, **for as long as the administrative claim and the judicial claim were filed within the two-year**

[66] Exhibit "P-11", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[67] Docket, Vol, I, Par. 12, *Petition for Review* vis-à-vis Par. 5, *Answer*, pp. 13 and 144, respectively; Docket – Vol. I, Exhibits "P-66", pp. 505 to 512.
[68] *Id.*, Vol. I, pp. 10 to 21.
[69] G.R. No. 231581, April 10, 2019.

> **prescriptive period, <u>then there was exhaustion of the administrative remedies</u>.**" *(Emphases and underscoring added)*

Considering that, as already shown, petitioner seasonably filed its administrative and judicial claims, *i.e.*, within the two-year prescriptive period, petitioner is deemed to have exhausted the administrative remedies.

Moreover, as for the *second* and *third* requisites, the same are imposed by Section 2.58.3(B) of Revenue Regulations No. 2-98, as amended, which states:

> "Sec. 2.58.3. *Claim for tax credit or refund.* —
>
> xxx xxx xxx
>
> (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**. *(Emphasis supplied)*

To prove the fact of withholding of the subject claim, petitioner submitted various *Certificates of Creditable Tax Withheld at Source* (BIR Form No. 2307) duly issued by its various withholding agents covering CYs 2015 and 2016, reflecting CWTs in the amounts of ₱79,043,655.24 and ₱34,691,057.88, respectively, or in the aggregate amount of ₱113,734,713.12, detailed as follows:

Exhibit No.	Payor	Amount of Income Payment	Amount of Tax Withheld
For Calendar Year 2015			
"P-18"	NXP Semiconductors Cabuyao Inc	₱ 46,738,467.06	₱ 7,010,770.06
"P-19"	Metropolitan Bank & Trust Company	30,400,000.00	4,560,000.00
"P-20"	Metropolitan Bank & Trust Company	30,400,000.00	4,560,000.00
"P-21"	Metropolitan Bank & Trust Company	30,400,000.00	4,560,000.00
"P-22"	S.C. Johnson Philippines ROHQ	13,280,000.00	1,992,000.00
"P-23"	S.C. Johnson Philippines ROHQ	13,280,000.00	1,992,000.00
"P-24"	S.C. Johnson Philippines ROHQ	13,280,000.00	1,992,000.00
"P-25"	Globe Telecom Inc	31,000,000.00	4,650,000.00
"P-26"	Smart Communications Incorporated	17,500,000.00	2,625,000.00
"P-27"	Smart Communications Incorporated	17,500,000.00	2,625,000.00
"P-28"	Metropolitan Bank & Trust Company	108,000,000.00	16,200,000.00
"P-29"	Globe Telecom Inc	11,000,000.00	1,650,000.00
"P-30"	Globe Telecom Inc	12,500,000.00	1,875,000.00

"P-31"	International Container Terminal Servs, Inc	9,000,000.00	1,350,000.00
"P-32"	International Container Terminal Servs, Inc	18,600,000.00	2,790,000.00
"P-33"	International Container Terminal Servs, Inc	15,000,000.00	2,250,000.00
"P-34"	NXP Semiconductors Cabuyao Inc	94,079,234.53	14,111,885.18
"P-35"	International Container Terminal Servs, Inc	15,000,000.00	2,250,000.00
	Subtotal	**₱ 526,957,701.59**	**₱ 79,043,655.24**
For Calendar Year 2016			
"P-36"	Bank of the Philippine Islands	₱ 33,000,000.00	₱ 4,950,000.00
"P-37"	Globe Telecom Inc	500,000.00	75,000.00
"P-38"	International Container Terminal Servs, Inc	30,000,000.00	4,500,000.00
"P-39"	International Container Terminal Servs, Inc	5,000,000.00	750,000.00
"P-40"	NXP Semiconductors Cabuyao Inc	33,373,719.18	5,006,057.88
"P-41"	Philippine Clearing House Corporation	15,000,000.00	2,250,000.00
"P-42"	Phil Long Distance Telephone Company	24,000,000.00	3,600,000.00
"P-43"	Phil Long Distance Telephone Company	24,000,000.00	3,600,000.00
"P-44"	International Container Terminal Servs, Inc	20,400,000.00	3,060,000.00
"P-45"	International Container Terminal Servs, Inc	16,000,000.00	2,400,000.00
"P-46"	International Container Terminal Servs, Inc	30,000,000.00	4,500,000.00
	Subtotal	**₱ 231,273,719.18**	**₱ 34,691,057.88**
GRAND TOTAL		**₱ 758,231,420.77**	**₱113,734,713.12**

The Court finds the foregoing in order. Parenthetically, the probative value of BIR Form 2307, which is basically a statement showing the amount paid for the subject transaction and the amount of tax withheld therefrom, is to establish only the fact of withholding of the claimed creditable withholding tax.[70]

Thus, petitioner was able to satisfy the *second* requisite.

With regard to the *third requisite*, the certificates show that the claimed CWTs for CYs 2015 and 2016 were withheld on income payments of ₱526,957,701.59 and ₱231,273,719.18, respectively, as shown in the previous table. These amounts were declared in petitioner's Annual ITRs for the same years which disclosed higher gross *"Sales/Revenues/Receipts/ Fees"* in the amounts of ₱822,267,453.00[71] and ₱785,116,255.00,[72] respectively.

The Revenue section in the Statements of Comprehensive Income of petitioner's Audited Financial Statements (AFS) for the years 2015[73] and 2016[74] shows the breakdown of *"Sales/Revenues/Receipts/Fees"* reflected in petitioner's Annual ITRs, to wit:

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[70] *Philippine National Bank vs. Commissioner of Internal Revenue*, G.R. No. 206019, March 18, 2015.
[71] Exhibit "P-7", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[72] Exhibit "P-11", Line 30, Folder – Sworn Statement of Ms. Elena D. Cabahug.
[73] Docket, Vol. I, Exhibit "P-67", pp. 613 to 663.
[74] *Id.*, Vol. I, Exhibit "P-68", pp. 664 to 714.

	CY 2015	CY 2016
Billing Revenue:		
Consultancy Services	₱ 476,397,770.00	₱ 301,573,014.00
Shared Services Center	193,018,631.00	228,910,478.00
Loaned Services	152,851,052.00	254,632,763.00
TOTAL	**₱ 822,267,453.00**	**₱ 785,116,255.00**

Petitioner's Accountant Ms. Elena D. Cabahug[75] explained that the total amounts of sales/revenues which petitioner reported in its Annual ITRs for both CYs 2015 and 2016 are not equal to the amounts of income from which the CWTs were withheld for the following reasons:

1. The total sales/revenues reported in petitioner's income tax returns included not only the revenues from local customers which are subject to CWT, but also revenues from foreign affiliates which are non-residents and which are not required under the law to withhold CWT. The revenues derived from foreign affiliates are those which pertain to Shared Services Center and Loaned Services;

2. The discrepancy in the amount of revenue reflected in the Audited Financial Statements and the amount of income payments supported by certificates of tax withheld is that petitioner accrued income in previous year, the payment of which, together with the corresponding certificate of tax withheld, were received in the following year; and

3. Considering that petitioner billed its customers in U.S. Dollars, there is foreign currency translation difference arising from the use by petitioner of a Peso-U.S. Dollar exchange rate (in recording income in its books) that is different from the Peso-U.S. Dollar exchange rate used by customers (when they issued the certificates of tax withheld).

She further stated that petitioner's revenues from local customers which are subject to withholding tax were reflected in the AFS as Consultancy Services.

[75] *Id.*, Vol. I, Exhibit "P-143", pp. 194 to 241; Docket, Vol. I, Order dated November 20, 2018, pp. 317 to 319.

The foregoing statements of Ms. Cabahug were corroborated by petitioner's documentary evidence, such as its General Ledgers Transaction Detail (GLTD) for 2014,[76] 2015[77] and 2016,[78] which show that the income payments from which the creditable taxes were withheld are sourced from the same amount of revenues from Consultancy Services reflected in its AFS; and the Reconciliation Schedules of Revenues, which show the reconciliation of the revenue per General Ledger and revenue per CWT certificates both for the years 2015[79] and 2016.[80] Hence, petitioner duly established that it declared in its Annual ITRs for the CYs 2015 and 2016 from which the total amount of ₱113,734,713.00 CWTs were deducted.

Verily, petitioner is considered to have complied with the *third requisite*.

As to respondent's argument that petitioner's failure to submit the required documents for the administrative tax refund for taxable year 2016 is fatal to its administrative and judicial tax refunds, the Supreme Court ruling in the *Univation Motor* case is instructive, *viz.*:

> "Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim. Consequently, **the CTA may give credence to all evidence presented by respondent, <u>including those that may not have been submitted to the CIR</u> as the case is being essentially decided in the first instance.**" *(Emphasis and underscoring added)*

In sum, petitioner has sufficiently proven its entitlement to the refund or issuance of a tax credit certificate.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**. Accordingly, respondent is **ORDERED TO REFUND, or TO ISSUE A TCC** in favor of petitioner in the amounts of **₱79,043,655.00** and **₱34,691,058.00**, representing its excess and unutilized CWTs for CYs 2015 and 2016, respectively.

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[76] Exhibit "P-69", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[77] Exhibit "P-70", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[78] Exhibit "P-71", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[79] Exhibit "P-72", Folder – Sworn Statement of Ms. Elena D. Cabahug.
[80] Exhibit "P-73", Folder – Sworn Statement of Ms. Elena D. Cabahug.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice