REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

BETHLEHEM HOLDINGS, INC., *Petitioner,*	**CTA CASE NO. 10831**
	Members:
- versus -	**MANAHAN,** *Chairperson,* **REYES-FAJARDO,** *and* **ANGELES,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAY 05 2025 4:00 p.m.

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DECISION

ANGELES, J.:

Before this Court is a *Petition for Review* filed by petitioner Bethlehem Holdings, Inc. on April 7, 2022, praying that a judgment be rendered ordering respondent to refund the amount of ₱8,667,847.00, representing its alleged unutilized and excess creditable withholding tax (CWT) for the calendar year (CY) 2019.[1]

THE PARTIES

Petitioner Bethlehem Holdings, Inc. is a domestic corporation duly organized and existing under the laws of the Philippines with principal office at 3F Globe Telecom Tower 1, Pioneer Highlands corner Madison Streets, Mandaluyong City.[2] It is registered with the Bureau of Internal Revenue (BIR) – Revenue District Office No. 41, under Tax Identification Number 006-731-601-000.[3]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including *inter*

[1] Prayer, Petition for Review, Docket, p. 20.
[2] Exhibit "P-1", Docket, pp. 355 to 369.
[3] Exhibit "P-2", Docket, p. 370.

alia, the power to decide, approve, and grant refund and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He can be served summons, pleadings, and other processes at BIR-Revenue Region 7B (East NCR) Legal Division, 25th Floor, the Podium-West Tower, ADB Avenue, Ortigas Center, Mandaluyong City.[4]

ANTECEDENT (ADMINISTRATIVE LEVEL)

On April 8, 2020, petitioner filed with the BIR its Annual Income Tax Return (ITR) for CY 2019.[5]

On February 23, 2022, petitioner filed with the BIR an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[6] and a letter dated February 22, 2022,[7] requesting for the refund of its alleged unutilized CWT for CY 2019 amounting to ₱8,667,847.00.

PROCEEDINGS BEFORE THIS COURT

On April 6, 2022, petitioner filed the present *Petition for Review,*[8] which was originally raffled to the First Division of this Court.

Thereafter, on May 4, 2022, the Summons[9] dated April 27, 2022 was personally served upon the respondent requiring him to file within thirty (30) days therefrom, an Answer to the *Petition for Review.*

On June 2, 2022, respondent filed a *Motion for Extension of Time to File Answer,*[10] praying for an extension of until July 3, 2022 within which to file an Answer. Such *Motion* was granted in the *Resolution*[11] dated June 20, 2022 wherein the Court granted respondent a non-extendible period of until July 4, 2022,[12] within which to file an Answer. Respondent filed an *Answer*[13] on July 4, 2022.

On July 11, 2022, a *Notice of Pre-Trial Conference*[14] dated July 8, 2022 was served upon the parties directing them or through their duly authorized representative and counsel to appear on September 1,

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[4] Admitted Facts and Stipulation of Facts, Pre-Trial Order dated January 30, 2023, Docket, pp. 239 to 240.
[5] Exhibit "P-3", Docket, pp. 371 to 378.
[6] Exhibit "P-10-1", Docket, p. 442.
[7] Exhibit "P-10", Docket, p. 441.
[8] Docket, pp. 6 to 21.
[9] Docket, p. 132.
[10] Docket, pp. 135 to 137.
[11] Docket, p. 132.
[12] July 3, 2022 fell on a Sunday. Thus, the next working day is on July 4, 2022.
[13] Docket, pp. 140 to 147.
[14] Docket, pp. 150 to 152.

2022 at 9:00 a.m. for pre-trial and to file their respective pre-trial briefs at least three (3) days prior to such date. Only the *Petitioner's Pre-Trial Brief*[15] was filed on August 25, 2022.

During the Pre-Trial Conference, only the counsels for petitioner appeared. There was no appearance and submission of pre-trial brief on the part of respondent. Considering the absence of respondent's counsel, the Court granted petitioner's motion to present evidence *ex parte* pursuant to Sections 5 and 6, Rule 18 of the Rules of Court.[16]

On September 27, 2022, respondent filed an *Omnibus Motion (Motion for Reconsideration with Motion to Admit Attached Pre-Trial Brief and Motion to Set Pre-Trial Conference)*,[17] seeking the reversal of the order granting petitioner's motion to present evidence *ex parte*. In its *Comment (Re: Omnibus Motion dated September 27, 2022)*[18] filed on October 24, 2022, petitioner prayed that respondent's *Omnibus Motion* be denied for lack of merit.

In a *Resolution*[19] dated December 28, 2022, the Court denied respondent's *Omnibus Motion* finding that the alleged inadvertence and heavy workload of his office staff are insufficient to excuse his non-appearance and failure to file his pre-trial brief. The Court then issued the *Pre-Trial Order*[20] dated January 30, 2023.

In the meantime, pursuant to Administrative Circular No. 01-2023 (Reorganizing the Divisions of the Court) dated May 23, 2023, the instant case was transferred to the Third Division.[21]

Trial ensued.

During trial, petitioner presented and offered the testimonies of the following witnesses, namely: (1) Mr. James Kenneth Venta,[22] petitioner's Comptroller and Administrative Head; and (2) Mr. Joel M.

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[15] Docket, pp. 155 to 169.
[16] Order dated September 1, 2022, Docket, pp. 278 to 280.
[17] Docket, pp. 174 to 181.
[18] Docket, pp. 211 to 219.
[19] Docket, pp. 227 to 230.
[20] Docket, pp. 235 to 247.
[21] Notice, Docket. P. 311.
[22] Sworn Statement dated April 6, 2022, Exhibit "P-11", Docket, pp. 117 to 1128; Supplemental Sworn Statement dated February 13, 2023, Exhibit "P-13", Docket, pp. 261 to 262; Minutes of Hearing held on, and Order dated February 15, 2023, Docket, pp. 264 to 266, and pp. 267 to 268.

Ganalon,[23] the Court-commissioned Independent Certified Public Accountant (ICPA).[24]

On September 6, 2023, petitioner filed its *Formal Offer of Evidence*[25] which was submitted for resolution on October 16, 2023[26] sans respondent's comment.[27] In the *Resolution*[28] dated January 9, 2024, the Court admitted petitioner's offered exhibits.

On February 12, 2024, petitioner filed its *Memorandum*.[29] On April 24, 2024, the instant case was submitted for decision[30] sans respondent's memorandum.[31]

Hence, this Decision.

ISSUE

The issue submitted for resolution of the Court is as follows:

> WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF ITS EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR CALENDAR YEAR (CY) 2019 IN THE AMOUNT OF ₱8,667,847.00.[32]

Petitioner's arguments

Petitioner anchors its entitlement to the claim for refund on the following: ***first***, the administrative and judicial claims for refund were filed within the two (2)-year prescriptive period provided under the Tax Code; ***second***, its excess and unutilized CWT for CY 2019 in the amount of ₱8,667,847.00 are duly substantiated by documentary evidence; ***third***, the income upon which the CWT being claimed for refund were withheld, and reported as part of the revenues declared in its Annual ITR; ***fourth***, it did not carry-over its excess and unutilized CWT for CY 2019 to the succeeding taxable periods; and ***fifth***, its prior year's excess credits are supported by valid and original CWT

[23] Sworn Statement dated August 2, 2023, Exhibit "P-12", Docket, pp. 316 to 326; ICPA Report dated April 26, 2023, Exhibit "P-14", Docket, pp. 288 to 307; Minutes of Hearing held on, and Order dated August 8, 2023, Docket, p. 329, and pp. 330 to 331.
[24] *Oath of Commission* dated March 30, 2023, Docket, pp. 282 to 283; Minutes of Hearing held on, and Order dated March 30, 2023, Docket, pp. 279 to 281, and pp. 284 to 285.
[25] Docket, pp. 333 to 354.
[26] Minute Resolution dated October 16, 2023, Docket, p. 445.
[27] Records Verification Report dated October 5, 2023, Docket, p. 444.
[28] Docket, pp. 447 to 448.
[29] Docket, pp. 450 to 469.
[30] Minute Resolution dated April 24, 2024, Docket, p. 472.
[31] Records Verification Report dated April 4, 2024, p. 471.
[32] Issue/s to be Tried or Resolved, Pre-trial Order dated January 30, 2023, Docket, p. 240.

certificates and are sufficient to cover it regular corporate income tax for CY 2019.

Respondent's counter-arguments

In his *Answer*, respondent contends that petitioner's claim for refund should be denied due to failure of the petitioner to comply with the provisions of the law and revenue issuances. According to the respondent, petitioner has not submitted the documents required under Revenue Memorandum Order (RMO) No. 19-2015 which allegedly mandates a taxpayer requesting for refund to be subjected to audit. Respondent also argues that he was not given the opportunity to make an assessment and/or audit investigation on petitioner's claim since it filed its judicial claim for refund before respondent can render a decision on its administrative claim for refund. It is respondent's position that petitioner should have awaited his conclusion on its administrative claim, hence, the *Petition* with the Court was prematurely filed by the petitioner.

RULING OF THE COURT

The *Petition for Review* is granted.

Before We discuss the merits of the instant case, the Court shall first address respondent's contentions.

CIR's action on the administrative claim is not a pre-requisite to the filing of a judicial claim with the Court.

Respondent posits that the filing of the *Petition for Review* with the Court was premature since it was filed before he can render his decision on petitioner's administrative claim for refund.

Respondent's contention is untenable.

In *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*,[33] the Supreme Court ruled that the law only requires that an administrative claim be priorly filed within the two (2)-year prescriptive period and that the taxpayer need not wait for the latter to act upon its claim before it can file a judicial claim, thus:

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[33] G.R. No. 231581, April 10, 2019.

> xxx 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 prescriptive 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**.
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> Contrary to petitioner CIR's assertion, there was no violation of the doctrine of exhaustion of administrative remedies. xxx
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> **The law only requires 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 prescriptive period, then there was exhaustion of the administrative remedies.
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> At any rate, Section 7 of Republic Act No. 9282, amending Republic Act No. 1125, provides that the **CTA has exclusive appellate jurisdiction over tax refund claims in case the Commissioner fails to act on them**:
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>> Sec. 7. Jurisdiction. – The CTA shall exercise:
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>> xxx
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>> (2) **Inaction by the Commissioner of Internal Revenue in cases involving** disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, in which case the inaction shall be deemed a denial;
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>> xxx
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> This means that **while the Commissioner has the right to hear a refund claim first, if he or she fails to act on it, it will be treated as a denial of the refund, and the CTA is the only entity that may review this ruling. Respondent need not wait for the Commissioner to act on its administrative claim for refund**. Thus, in the old case of *P.J. Kiener Co., Ltd. v. David*, the Court held:
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>> x x x Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. Having filed his claim and the Collector of Internal Revenue having had ample time to study it, the **claimant may, indeed should, within the statutory period of two years proceed with his suit without waiting for the Collector's decision**. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice or warning that unless the tax or penalty alleged to have been collected erroneously or

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> illegally is refunded, court action will follow. x x x (Emphasis Supplied)

In *Commissioner of Internal Revenue v. Philippine Bank of Communications*,[34] the Supreme Court also rejected the BIR's arguments regarding prematurity of judicial claims for refund and emphasized that there is nothing in the law which requires that an action on the administrative claim must first be had before a judicial claim may be resorted to, thus:

> In any event, the independence of the judicial claim for a tax credit/refund [of] CWT from its administrative counterpart is implied in the National Internal Revenue Code (NIRC), which allows the filing of both claims contemporaneously within the two-year prescriptive period. Sections 204(C) and 229 of the NIRC provide: xxx
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> The above provisions require both administrative and judicial claims to be filed within the same two-year prescriptive period. With reference to Section 229 of the NIRC, **the only requirement for a judicial claim of tax credit/refund to be maintained is that a claim of refund or credit has been filed before the CIR; there is no mention in the law that the claim before the CIR should be acted upon first before a judicial claim may be filed**.
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> Clearly, the legislative intent is to treat the judicial claim as independent and separate action from the administrative claim; provided that the latter must be filed in order for the former to be maintained. While the CIR should be given opportunity to act on PBCOM's claim, PBCOM should not be faulted for lawfully filing a judicial claim before the expiration of the two-year prescriptive period, notwithstanding the alleged defects in its administrative claim. This is considering that, unlike administrative claims for Input Tax refund/credit before the CIR, which have a required specific period of action (the expiration of which shall be deemed as a denial), there is no such period of action required in administrative claims for CWT refund/credit before the CIR.
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> Indeed, the **CIR's arguments regarding the prematurity of the judicial claims are untenable**. (Emphasis Supplied)

Notably, in the case of *Philippine National Bank v. Commissioner of Internal Revenue*,[35] it was held that a taxpayer need not await the BIR's action on an administrative claim before going to the CTA to institute its judicial claim, to wit:

> **Nothing in our laws and jurisprudence supports the CIR's position that the exhaustion of an administrative claim for**

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[34] G.R. No. 211348. February 23, 2022.
[35] G.R. Nos. 242647 & 243814 & 242842-43, March 15, 2022.

> **tax refund is a condition precedent that must be completely acted upon by the BIR before a judicial claim for refund may be filed by the taxpayer concerned.** xxx
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> Indeed, jurisprudence dictates that a **taxpayer need not await the BIR's action on an administrative claim before going to the CTA.**
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> xxx
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> In fine, **the filing of an administrative claim for refund does not toll the running of the prescriptive period within which to file the corresponding judicial claim.** The law requires that the administrative and judicial claims for refund should be brought within the same two-year prescriptive period. Had PNB waited for the BIR's action on its administrative claim beyond the two-year prescriptive period, it would forever be barred from pursuing its judicial claim. (Emphasis Supplied)

As gleaned from the foregoing, it can be inferred that the CIR's failure to act upon the administrative claim for refund does not preclude the taxpayer from filing its judicial claim with the Court. More importantly, the filing of a judicial claim is not conditioned upon the CIR's action on the administrative claim considering that the Tax Code only requires the taxpayer to file the administrative and judicial claims for refund within the two (2)-year prescriptive period.

As applied in this case, petitioner filed its 2019 Annual ITR on April 8, 2020. Within two (2) years therefrom, petitioner filed its administrative claim on February 23, 2022. Considering that the two (2)-year prescriptive period was about to expire, without any action from the respondent, petitioner filed its judicial claim through the instant *Petition for Review* on April 7, 2022. Therefore, petitioner has duly exhausted its administrative remedies for its claim and was justified in filing its judicial claim with the Court.

To emphasize, the filing of an administrative claim for tax refund does not toll the running of the prescriptive period within which to file the corresponding judicial claim. The law requires that the administrative and judicial claims for refund should be brought within the same two (2)-year prescriptive period.[36] Had petitioner waited for the respondent's action on its administrative claim beyond the two (2)-year prescriptive period, it would then be barred from pursuing its judicial claim.

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[36] *Id.*

Failure to submit the alleged documentary requirements at the administrative level.

Respondent argues that petitioner is not entitled to its claim for refund for failure to submit the documents required under RMO No. 19-2015. He also insists that petitioner did not comply with the documentary requirements laid down under the respective law/s and/or revenue issuance/s.

We are not convinced.

In the case of *Philippine National Bank*,[37] it was held that the CIR cannot argue for the dismissal of the judicial claim since he failed to apprise the taxpayer regarding the alleged incompleteness of documents, *viz.*:

> xxx The Court rejects the CIR's contention that PNB cannot be deemed to have filed its administrative claim because the latter failed to submit all of the documents mentioned in RMO No. 53-98 and RR No. 2-2006.
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> In the first place, PNB was never apprised by the CIR of the alleged incompleteness of the documents in support of its claim for refund. **By failing to inform PNB of the need to submit any additional document, the CIR cannot now argue that the judicial claim should be dismissed because it failed to submit complete documents**. And at any rate, a cursory reading of RMO No. 53-98 and RR No. 2-2006 reveals that neither issuance explicitly states that the failure to submit the required documents is tantamount to a non-filed claim. In fact, Section 5 of RR No. 2-2006 merely provides a penalty of fine for non-submission of these documents. (Emphasis Supplied)

It can be gathered from the above-cited case that the taxpayer must be informed by the BIR as regards any documentary requirement not submitted which is relevant for the resolution of its administrative claim.

As applied in this case, it is worth noting that the respondent made no allegation that petitioner was given any notice as regards the documents which it failed to submit. It should be recalled that respondent was not allowed to present his evidence for failure to appear during the Pre-Trial Conference and failure to file his pre-trial brief despite due notice. Consequently, respondent failed to present evidence to support his contentions. In view of the basic rule that mere

[37] *Supra* note 35.

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allegations are not evidence and not equivalent to proof,[38] respondent's allegation is essentially self-serving and devoid of any evidentiary weight.

Respondent also alleged in his *Answer* that petitioner failed to submit certain documentary requirements including those required under RMO No. 19-2015,[39] RMO No. 29-2014,[40] and RMO No. 7-2016.[41] An examination of such issuances readily reveals that they are directed to the BIR officers for the purpose of implementing the prescribed procedures for audit/investigation of tax returns, and for the issuance of certifications on the existence of tax liabilities, status of cases pending legal or judicial resolution, and internal revenue payments.

Since it is the BIR who has the responsibility to implement the said RMOs, it has the duty to inform the petitioner of the documents necessary for the implementation of such RMOs and for the resolution of its administrative claim. Such duty on the part of the BIR to notify the petitioner is also reinforced in the afore-cited case of *Philippine National Bank*.[42] To reiterate, there is nothing in the records which would show that the respondent informed petitioner of the documentary requirements which it failed to submit.

Significantly, neither did the RMOs include a checklist of documentary requirements for tax refund applications nor explicitly state that non-submission thereof would result in the denial of the administrative claim for refund.

Accordingly, We hold that respondent's argument for the denial of petitioner's claim for refund due to non-compliance with the alleged documentary requirements, lacks merit.

Considering that respondent's contentions have been addressed, the Court shall now proceed to discuss the merits of petitioner's judicial claim.

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[38] *Lauro Cardinez v. Spouse Prudencio*, G.R. No. 213001, August 04, 2021, citing *Government Service Insurance System vs. Prudential Guarantee and Assurance, Inc.*, G.R. No. 165585, November 20, 2013.
[39] "BIR Audit Program," September 15, 2015.
[40] "Prescribing the Uniform Format and Procedures for the Issuance of Certifications on the Existence of Outstanding Tax Liabilities of Taxpayers," July 25, 2014.
[41] "Prescribing the Policies and Procedures in the Decentralization of Processing and Issuance of Certifications on Internal Revenue Tax Payments to All Concerned Revenue Offices," February 9, 2016.
[42] *Id.*

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Petitioner complied with Section 76 of the Tax Code, and has not carried over the excess CWT being claimed for refund.

Pertinent to the resolution of the present case is Section 76 of the Tax Code, which provides for the options that a corporate taxpayer may exercise if its total income tax payments in a given taxable year exceeds its total income tax due, thus:

> SEC. 76. *Final Adjustment Return*. — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. **If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year**, the corporation shall either:
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> (A) Pay the balance of tax still due; or
> (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**. (Emphasis Supplied)

Based on the cited provision, there are two (2) options available to the corporation whenever it overpays its income tax for the taxable year, to wit: *(1)* to carry-over and apply the overpayment as tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (also known as automatic tax credit) until fully utilized (meaning, there is no prescriptive period); and *(2)* to apply for a cash refund or issuance of a TCC within the prescribed period.[43] However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[44] The phrase *"for that*

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[43] *University Physicians Services Inc. – Management, Inc. v. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.

[44] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018, citing the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation*, G.R. No. 188016, January 14, 2015; *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.

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taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[45]

In exercising its option, the 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 facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.[46]

A perusal of petitioner's *Annual Income Tax Return* (Annual ITR) for CY 2019[47] shows that petitioner had income tax credits in the total amount of ₱81,844,291.00,[48] consisting of the ₱73,176,444.00 prior year's excess credits other than Minimum Corporate Income Tax (MCIT), and ₱8,667,847.00 creditable taxes withheld during the CY 2019, to wit:

Prior Year's Excess Credits other than MCIT		₱ 73,176,444.00
Add: Creditable Taxes Withheld – CY 2019		
Creditable tax withheld for the first three quarters	₱5,480,749.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	3,187,098.00	8,667,847.00
Total tax credits		**₱ 81,844,291.00**

Petitioner claims that its income tax due for CY 2019 in the amount of ₱9,299,973.00[49] was paid using a portion of its prior year's excess credits of ₱73,176,444.00. This leaves the prior year's excess credits in the amount of ₱63,876,471.00, and creditable taxes withheld during the CY 2019 in the amount of ₱8,667,847.00, totaling ₱72,544,318.00, as unutilized as of December 31, 2019, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 73,176,444.00
Less: Income tax due	9,299,973.00
Balance of Prior Year's Excess Credits	₱ 63,876,471.00
Add: Creditable Taxes Withheld – CY 2019	8,667,847.00
Excess Creditable Withholding Taxes as of December 31, 2019	**₱ 72,544,318.00**

[45] *Republic of the Philippines v. Team (Phils.) Energy Corporation*, G.R. No. 188016, January 14, 2015, citing *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[46] *Systra Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007; *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[47] Exhibit "P-3", Docket, p. 371 to 378.
[48] Line 12, Schedule 7, Exhibit "P-3", Docket, p. 376.
[49] Line 44, Exhibit "P-3", Docket, p. 372.

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Verily, in line with Section 2.58.3(C) of Revenue Regulations (RR) No. 2-98, as quoted below, the submission of petitioner's Annual ITR for CY 2018 is sufficient to prove its "Prior Year's Excess Credits other than MCIT" in the amount of ₱73,176,444.00:

> SEC. 2.58.3. *Claim for tax credit or refund.—*
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> xxx xxx xxx
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> (C) Excess Credits.—An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall **automatically be allowed as a credit** against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, **provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return he has not opted for a cash refund or tax credit certificate. *(Emphasis added)*

Here, petitioner presented its Annual ITR for CY 2018,[50] showing that it had excess tax credits amounting to ₱81,863,069.00 as of December 31, 2018, consisting of the following:

Prior Year's Excess Credits other than MCIT		₱ 75,403,295.00[51]
Add: Excess MCIT Applied this Current Taxable Year		3,008,712.00[52]
Total		₱ 78,412,007.00
Less: Income tax due		5,235,563.00[53]
Balance of Prior Year's Excess Credits		**₱73,176,444.00**
Add: Creditable Taxes Withheld – CY 2018		
Creditable tax withheld for the first three quarters	₱5,493,231.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	3,193,394.00	8,686,625.00
Excess Creditable Withholding Taxes as of December 31, 2018		₱ 81,863,069.00

Considering that petitioner carried over the balance of prior year's excess credits amounting to ₱73,176,444.00 to the following CY 2019, the same may automatically be applied as tax credits against its income tax due of ₱9,299,973.00 for that year (CY 2019). Thus, the CWTs for CY 2019 in the amount of ₱8,667,847.00 remained unutilized as of the end of the period.

Since petitioner marked the box corresponding to the option "To be Refunded" in its Annual ITR for CY 2019[54] and carried over only

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[50] Exhibit "P-42", USB (Exhibit "P-14-2").
[51] Line 1, Schedule 7, Exhibit "P-42, USB (Exhibit "P-14-2").
[52] Line 4, Schedule 7, Exhibit "P-42, USB (Exhibit "P-14-2").
[53] Line 44, Exhibit "P-42, USB (Exhibit "P-14-2").
[54] Line 21, Exhibit "P-3", Docket, p. 371.

the amount of ₱63,876,471.00 as prior year's excess tax credits in its Quarterly[55] and Annual[56] ITRs for CY 2020, the CWTs for CY 2019 in the amount of ₱8,667,847.00 may be a proper subject of a claim for cash refund pursuant to Section 76 of the NIRC of 1997.

Petitioner's compliance with the requisites to claim a refund or credit for unutilized excess CWT.

In addition to the requisites provided under Section 76 of the Tax Code, jurisprudence and pertinent revenue regulations provide that in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for unutilized excess CWT, the following three (3) requisites must be further complied with, to wit:

1. The claim for refund must be filed within the two (2)-year prescriptive period as provided under Sections 204(C) and 229 of the Tax Code;

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.[57]

Thus, it is incumbent upon the petitioner to establish the foregoing requisites.

Anent the *first* requisite and as alluded to earlier, the pertinent provisions on the period for filing of the administrative claim for refund with the BIR as well as the judicial claim for refund with the Court of Tax Appeals (CTA) are provided in Sections 204(C) and 229 of the Tax Code, to wit:

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[55] Line 31A, Exhibits "P-8-1" to "P-8-3", Docket, pp. 422, 424 and 426.
[56] Line 44, Exhibit "P-8-4", Docket, p. 429.
[57] *Commissioner of Internal Revenue v. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022; *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *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; Section 2.58, Revenue Regulations No. 2-98, as amended.

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused 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
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> 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 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. (Emphasis Supplied)

The above-cited provisions require that *both* administrative and judicial claims for refund must be filed within two (2) years from the date of payment of the tax.

The Supreme Court, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run from the date of filing of the final adjustment return,[58] thus:

> 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 tax return** because this is where

[58] *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc. (Formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.

> the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. 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. (Emphasis Supplied)

In the instant case, petitioner filed its 2019 Annual ITR on April 8, 2020. Consequently, petitioner had two (2) years from April 8, 2020 or until April 8, 2022 within which to file its administrative and judicial claims. Hence, when petitioner filed the administrative claim on February 23, 2022 and the judicial claim on April 7, 2022, petitioner satisfied the *first* requisite as both claims were timely filed within the two (2)-year prescriptive period from April 8, 2020.

With regard to the *second* and *third* requisites, Section 2.58.3(B) of RR No. 2-98, as amended, states:

> Sec. 2.58.3. *Claim for tax credit or refund.* —
>
> 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 <u>income payment has been declared as part of the gross income</u> and the <u>fact of withholding is established by a copy of the withholding tax statement</u> duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. (Emphasis added)

The *second* requisite mandates petitioner to prove the fact of withholding of the claimed CWT through a copy of the statement duly issued by the payor (withholding agent) to the payee showing the names of the payor and payee, the income payment and the amount of tax withheld therefrom.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[59] the Supreme Court held that the *Certificate of Creditable Tax Withheld at Source* (BIR Form No. 2307), complete in relevant details, is the competent proof to establish the fact that taxes are withheld, to wit:

> **The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at**

[59] G.R. No. 180290, September 29, 2014.

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> **source to be presented and to testify personally to prove the authenticity of the certificates.**
>
> In Banco Filipino Savings and Mortgage Bank v. Court of Appeals, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
>
> xxx xxx xxx
>
> Moreover, as correctly held by the Court of Tax Appeals En Banc, 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, xxx
>
> xxx xxx xxx
>
> 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 prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly. *(Emphasis added)*

Based on the foregoing, it is undeniable that the fact of withholding may be established by presenting the pertinent BIR Forms No. 2307 complete in relevant details.

Thus, to prove the fact of withholding of the subject claim, petitioner submitted the *Certificates of Creditable Tax Withheld at Source* (BIR Form 2307)[60] duly issued by its clients, Altimax Broadcasting Co., Inc. and Broadcast Enterprises & Affiliated Media (BEAM), Inc., reflecting total CWTs of ₱8,667,847.71 on income payments, representing management fees received by petitioner for the said year, in the amount of ₱57,785,651.32, detailed as follows:

Exhibit No.	Period Covered	Petitioner's Client	Income Payment	CWT
"P-9-1"	Oct. 1, 2019 to Dec. 31, 2019	Altimax Broadcasting Co., Inc.	₱ 14,655,965.29	₱ 2,198,394.79
"P-9-2"	Oct. 1, 2019 to Dec. 31, 2019	Broadcast Enterprises & Affiliated Media (BEAM), Inc.	6,591,357.15	988,703.57
"P-9-3"	July 1, 2019 to Sept. 30, 2019	Altimax Broadcasting Co., Inc.	8,104,116.57	1,215,617.49
"P-9-4"	July 1, 2019 to Sept. 30, 2019	Broadcast Enterprises & Affiliated Media (BEAM), Inc.	4,075,326.39	611,298.96
"P-9-5"	Apr. 1, 2019 to June 30, 2019	Altimax Broadcasting Co., Inc.	8,104,116.57	1,215,617.49

[60] Exhibits "P-9-1" to "P-9-8", Docket, pp. 433 to 440.

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"P-9-6"	Apr. 1, 2019 to June 30, 2019	Broadcast Enterprises & Affiliated Media (BEAM), Inc.	4,075,326.39	611,298.96
"P-9-7"	Jan. 1, 2019 to Mar. 31, 2019	Altimax Broadcasting Co., Inc.	8,104,116.57	1,215,617.49
"P-9-8"	Jan. 1, 2019 to Mar. 31, 2019	Broadcast Enterprises & Affiliated Media (BEAM), Inc.	4,075,326.39	611,298.96
		TOTAL	**₱57,785,651.32**	**₱8,667,847.71**

The Court finds the aforesaid CWT certificates valid and complete in their relevant details. Thus, petitioner has shown compliance with the *second* requisite, *i.e.*, the establishment of the fact of withholding of the amount of ₱8,667,847.71.

Anent the *third requisite*, petitioner must prove that the income payments of ₱57,785,651.32 from which the claimed CWTs of ₱8,667,847.00 were withheld were declared as part of its gross income in its Annual ITR.

Thus, to prove that the income payments related to the claimed CWTs formed part of petitioner's declared income per AITR, petitioner presented its Audited Financial Statements (AFS),[61] and General Ledgers (GLs)[62] for CY 2019. Upon verification of the said documents, We find that petitioner has sufficiently shown that the income payments upon which the claimed CWTs were withheld were reported as part of the gross income in its Annual ITR for the subject period of claim, as demonstrated below:

Sales/Revenues/Receipts/Fees per Annual ITR[63]		₱ 57,785,651.00
Income Payments per GL/AFS		
Management Fee - Altimax[64]	₱38,968,315.00	
Management Fees - BEAM[65]	18,817,336.32	57,785,651.32
Difference due to rounding off		**₱ (0.32)**

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

In sum, petitioner has sufficiently proven its entitlement to a refund in the amount of ₱8,667,847.00, representing its excess and unutilized CWTs for the CY 2019.

[61] Exhibit "P-7", Docket, pp. 385 to 421.
[62] Exhibits "P-18-1" and "P-18-2", USB (Exhibit "P-14-2").
[63] Line 30, Exhibit "P-3", Docket, p. 372.
[64] Exhibit "P-18-1", USB (Exhibit "P-14-2") and Note 17 of AFS (Exhibit "P-7"), Docket, p. 417.
[65] Exhibit "P-18-2", USB (Exhibit "P-14-2") and Note 17 of AFS (Exhibit "P-7"), Docket, p. 417.

WHEREFORE, in light of the foregoing considerations, the instant *Petition for Review* is **GRANTED**.

Accordingly, respondent is **ORDERED** to issue a tax credit certificate in favor of petitioner in the total amount of **₱8,667,847.00**, representing petitioner's unutilized CWT for the CY 2019.

SO ORDERED.

HENRY S. ANGELES
Associate Justice

WE CONCUR:

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice

Marian Ivy F. Reyes-Fajardo

MARIAN IVY F. REYES-FAJARDO
Associate Justice

ATTESTATION

I attest that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

Catherine T. Manahan

CATHERINE T. MANAHAN
Associate Justice
Chairperson

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice