Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

PHILIPPINE NATIONAL BANK, Petitioner,	**CTA Case No. 8636** For: Refund
-versus-	Members: **DEL ROSARIO, P.J., *Chairperson*** **UY, and** **MINDARO-GRULLA, JJ.**
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: OCT 03 2016 ; 3:12 p.m.

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 12, 2013 by the Philippine National Bank as petitioner, against Commissioner of Internal Revenue as respondent, before the Court in Division, pursuant to Section 7(a)(2) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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[1] Sec. 7. *Jurisdiction*. – The CTA shall exercise:

(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:

x x x x x x

(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of 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 for action, in which case the inaction shall be deemed a denial;

x x x x x x

[2] Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

Petitioner seeks the refund of the amount of ₱289,085,378.91, allegedly representing its excess creditable withholding tax (CWT) for taxable year 2010.

Petitioner Philippine National Bank is a domestic corporation duly organized and existing under and by virtue of the laws of the Republic of the Philippines, with principal business address at the PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (BIR), empowered to perform the duties of the said office,

> (a) Exclusive original over or appellate jurisdiction to review by appeal the following:
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> x x x x x x
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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 or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
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> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
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including, among others, the power to decide, approve, and grant refunds or tax credits of erroneously or excessively paid taxes as provided by law. He holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 15, 2011, petitioner filed with the BIR, through the Electronic Filing and Payment System (EFPS), its tentative Annual Income Tax Return (ITR) for taxable year 2010.[3]

Petitioner then filed its First Amended ITR[4] and its Final Amended ITR[5] for taxable year 2010 on May 23, 2011 and on December 26, 2012, respectively.

On January 10, 2013, petitioner filed with respondent an administrative claim for issuance of tax credit certificate dated January 8, 2010 in the amount of ₱289,085,378.91.[6]

Due to respondent's inaction on the administrative claim, petitioner filed the instant Petition for Review before this Court on April 12, 2013, which was later docketed as CTA Case No. 8636.[7]

Respondent filed an Answer[8] on July 16, 2013, containing the following Special and Affirmative Defenses:

> "**SPECIAL AND AFFIRMATIVE DEFENSES**
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> 4. Respondent repleads the foregoing allegations, and incorporates the same by reference in this section of her *Answer*, insofar as they are material and applicable.

[3] Par. 3, Summary of Admitted Facts, JSFI, Docket, p. 1332.
[4] Par. 4, Summary of Admitted Facts, JSFI, Docket, p. 1332.
[5] Par. 5, Summary of Admitted Facts, JSFI, Docket, p. 1332.
[6] Par. 8, Summary of Admitted Facts, JSFI, Docket, p. 1332-1333.
[7] Petition for Review, Docket, pp. 6-13.
[8] Docket, pp. 224-235.

A. This Honorable Court does not have jurisdiction over petitioner's claim for refund.

1. Petitioner committed a fatal error when it failed to submit the supporting documents necessary to substantiate its administrative claim for tax refund;

2. Such failure rendered Petitioner as to have not thoroughly applied the administrative remedy which was available to it;

3. Petitioner's failure to exhaust its administrative remedies renders this Honorable Court without jurisdiction over this particular claim.

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5. Respondent respectfully maintains that this Honorable Court does not have jurisdiction over Petitioner's claim for refund. To be more precise, Respondent contends that Petitioner's failure to thoroughly apply the administrative remedy available to it, led to the premature filing of the instant *Petition,* and ultimately prevented this Honorable Court from acquiring jurisdiction over the same.

6. Respondent also respectfully adds that before this Honorable Court assumes jurisdiction over the substantive issue of whether or not Petitioner is entitled to its claim for tax refund, Petitioner must first establish that it preliminarily complied with all the administrative requirements leading up to the filing of this action. This Honorable Court must first be convinced that Petitioner indeed thoroughly pursued an administrative claim for tax refund, before it proceeds to determine Petitioner's entitlement to the same under substantive law. *c*

7. With respect to this pursuit of an administrative claim for refund, while Respondent concedes that Petitioner initiated the same before her office, Respondent nonetheless submits that her office could not have properly acted upon it, and it had no recourse but to treat it as *pro forma,* considering Petitioner's failure to submit the documentary evidence appurtenant thereto.

8. The essential documentary evidence being referred to here pertains to those enumerated in the checklist of documents prescribed under Revenue Memorandum Order No. 53-98 (hereinafter, 'RMO 53-98') [which] (sic) identifies the following documents as necessary for the taxpayer to submit so that Respondent's office may properly evaluate his or her application for refund:

> 8.1. Certified Financial Statements, including comparative Profit and Loss Statement with Statement of Cost of Goods Manufactured and Sold, if applicable;
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> 8.2. Proof of claimed tax credit if applicable;
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> 8.3. Proof of the claimed interest expense, if applicable;
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> 8.4. Proof of claimed bad debts, or worthlessness of credits, if applicable;
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> 8.5. Reconciliation of 'Book Income' and 'Taxable Income;'
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> 8.6. Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration, if applicable;
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> 8.7. Proof of exemption under special laws, if applicable;

8.8. Certification of the appropriate regulatory agency as to taxpayer's entitlement to tax incentives, if applicable;

8.9. Xerox copy of used Tax Credit Certificate with annotation of issued TDM at the back, if applicable;

8.10. Proof of payment of deficiency tax, if any/applicable, for the current year or period and for previous years or periods;

8.11. Reports submitted to applicable regulatory agency which reflect the financial condition and result of operation of the taxpayer e.g. Annual Statement prepared by insurance companies submitted to the Insurance Commission etc., if applicable.

9. Furthermore, Revenue Regulation No. 2-2006 (hereinafter, 'RR 2-2006') provides for the mandatory submission of an alpha list of withholding agents, to wit:

'xxx xxx xxx

Section 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT INCOME PAYOR AS ATTACHMENT TO THEIR FILED RETURNS.

A. xxx xxx xxx

B. Persons required to submit Summary Alphalist of Withholding Agents of

Income Payments Subject to Withholding-Taxes (SAWT)

1. All persons claiming refund or applying their creditable tax withheld at source against the tax due with not more than ten (10) withholding agents-payor of income payment per return period are strictly required to submit SAWT in hard copy (in triplicate) as attachment to the required tax return;

2. All persons claiming for refund or applying their creditable tax withheld at source against the tax due with more than ten (10) withholding agents-payor of income payment per return period are strictly required to submit SAWT electronically in 3.5 inch floppy diskette following the format to be prescribed by the BIR;

xxx xxx xxx'

10. Petitioner did not submit the complete documents required to substantiate its claim for refund. Respondent likewise points out that the *Petition* filed by Petitioner is incomplete as well. A cursory examination of the *Petition* reveals that nowhere in it is an allegation that Petitioner duly submitted the requisite supporting documents. After all, if Petitioner did not actually submit the documents necessary to substantiate its claim, then it could not have declared otherwise in its *Petition*.

11. In view of Petitioner's actual failure to submit the necessary documents supporting its claim, and its subsequent failure to allege such submission in its *Petition,* the intendment of the law, in prescribing that the taxpayer comply with all the administrative requirements continuing up to judicial review, was not served. Simply put, Petitioner did not exhaust its administrative remedies.

12. Respondent respectfully submits that the requirement to exhaust administrative remedies is not satisfied with the mere filing of an administrative claim. Rather, Respondent contends that an administrative remedy shall only be deemed to have been exhausted if the same had been thoroughly applied, which was not what happened in this case. In support of her position, Respondent respectfully invites the attention of this Honorable Court to the case of *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue,* wherein the Supreme Court ruled that:

'xxx xxx xxx

First, a judicial claim for refund or tax credit in the CTA is by no means an original action but rather an appeal by way of petition for review of a previous, unsuccessful administrative claim. Therefore, as in every appeal or petition for review, a petitioner has to convince the appellate court that the quasi-judicial agency a quo did not have any reason to deny its claims. **In this case, it was necessary for petitioner to show the CTA not only that it was entitled under substantive law to the grant of its claims but also that it satisfied all the documentary and evidentiary requirements for an administrative claim for refund or tax credit.** Second, cases filed in the CTA are litigated de novo. Thus, a respondent should prove every minute aspect of its case by presenting, formally offering and submitting its evidence to the CTA. **Since it is crucial for a petitioner in a judicial claim for refund or tax credit to show that its administrative claim should have been granted in the first place, part of the evidence to be submitted to the CTA must necessarily include**

> **<u>whatever is required for the successful prosecution of an administrative claim.</u>**
>
> xxx xxx xxx' (emphases and underscoring supplied)

13. The aforecited doctrine clearly requires a tax refund claimant to submit all documents which may be relevant or important in substantiating its administrative claim. Absent compliance with this requisite, the recourse to judicial action merely becomes an attempt by the taxpayer to circumvent the administrative claim and bypass Respondent's office.

14. Equally relevant and noteworthy is the following pronouncement made by the Honorable Supreme Court in *Jesus A. Jariol v. Commission on Elections*:

> 'xxx xxx xxx
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> A party aggrieved thereby must not merely initiate the prescribed administrative procedure to obtain relief, but also must pursue it to its appropriate conclusion before seeking judicial intervention in order to give that administrative agency an opportunity to decide the matter by itself correctly and prevent unnecessary and premature resort to the court.
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> xxx xxx xxx'

15. Had Petitioner submitted the complete documents, Respondent would have had the opportunity to determine the merits of Petitioner's claim. The failure of Petitioner to submit its documents essentially deprived Respondent of the opportunity to properly exercise her function. Moreover, as it stands, Petitioner filed its administrative and judicial claims, too closely to each other, at a point when the two-

year period is about to prescribe. Petitioner effectively reduced the filing of the administrative claim to a perfunctory step it had to undertake prior to its filing of a judicial claim for refund before this Honorable Court.

16. Petitioner bypassed its administrative remedy, and it is only now at the judicial stage, before this Honorable Court, that Petitioner submits and proposes to present documentary evidence allegedly establishing its entitlement to a tax refund. Respondent respectfully submits that this should not be allowed as this pernicious practice contravenes the well-established principle that matters not preliminarily raised in the administrative level cannot be raised for the first time upon appeal.

17. The concept and consequences of the non-exhaustion of administrative remedies need not be discussed in detail. Suffice it to say that the Honorable Supreme Court has long and consistently held that if a remedy within the administrative machinery can still be resorted to by giving the administrative officer every opportunity to decide upon a matter that comes within his or her jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought.

18. Applying the foregoing jurisprudential guidelines to the case at hand, Respondent respectfully maintains that Petitioner's non-exhaustion of its administrative remedies should bar it from seeking judicial recourse. Its failure to exhaust all administrative remedies is fatal to its claim considering that such non-exhaustion is not merely for the purposes of practicality and formality, but is also jurisdictional in nature. Hence, Petitioner's failures, first, in not submitting the complete documents necessary to substantiate its claim, and second, in excluding from its *Petition* any proof of its compliance with the preceding requirement, warrant a summary dismissal of the instant *Petition for Review*.

B. The burden of proof to establish entitlement to a tax refund rests upon

Petitioner, and its failure to discharge such burden is fatal to its claim.

19. In an action for refund, the burden of proof is upon the taxpayer to establish his or her right to a refund, and his or her failure to sustain this burden is fatal to the claim.

20. In this particular case, it is upon Petitioner to prove the substantive merits of its claim, as well as its compliance with and satisfaction of all the statutory and administrative requirements pertinent to the issuance of a tax refund. Failure at proving both or either calls for a denial of the claim. The existence of surplus creditable withholding taxes *per se* does not entitle Petitioner to a refund. In order to be entitled to the refund it seeks, Petitioner must satisfactorily prove that:

19.1. its claim for refund was filed within the two (2)-year prescriptive period set forth in Sections 204 and 229 of the National Internal Revenue Code of 1997 (hereinafter NIRC');

19.2. the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of taxes withheld; and

19.3. That the income upon which the taxes were withheld was included in the return of the recipient.

21. Furthermore, Petitioner must prove that the alleged refundable taxes were neither automatically applied as tax credit against its tax liability for the succeeding quarters of the succeeding year nor included as creditable taxes declared or applied to the succeeding taxable years. Under Section 76 of the NIRC, Petitioner's excess creditable tax withheld for the year 2010 may either be refunded, claimed as tax credit or carried over to the succeeding taxable years. However, once an option has been made, the same becomes irrevocable for that taxable period and no

application for cash refund and/or tax credit certificate shall be allowed henceforth.

22. Petitioner failed to submit complete documents to support its application for refund. It cannot be emphasized enough that mere filing of an administrative claim for refund without submitting the complete documents in support of the application hereof is not conclusive to sustain its contention that it has the right to claim for refund.

23. Even here, with its *Petition* before this Honorable Court, Petitioner still failed to substantiate its claim for refund and failed to submit the required documents to prove its entitlement thereto. Hence, the petition must fail.

C. Claims for tax exemption must be justified by the clearest grant of law.

24. It is said that taxes are essential to government's very existence hence, the dictum that 'taxes are the lifeblood of the government.'

25. And because taxes are the lifeblood of the nation, the court has always applied the doctrine of strict interpretation in construing tax exemptions. The right of taxation cannot easily be surrendered, statutes granting tax exemptions are considered as a derogation of the sovereign authority. A claim for exemption from tax payments must be clearly shown and be based upon the language in the law too plain to be mistaken. Otherwise stated, taxation is the rule, exemption therefrom is the exception.

26. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation. Since tax refunds are regarded as tax exemptions, therefore, these are to be construed *stictissimi juris* against the person or entity claiming the exemption. This means that in an action for refund, the burden of proof is upon the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the

Constitutional or statutory law and cannot be permitted by vague implications.

27. The Honorable Supreme Court has confirmed this construction even as early as in 1926, when it decided the case of *Asiatic Petroleum Co. vs. Llanes* in the following manner:

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>
> Exemptions from taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications.
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> xxx xxx xxx'

28. Finally, In the case of *The City of Iloilo v. Smart Communications, Inc.*, the Honorable Supreme Court held that:

> 'xxx xxx xxx
>
> The right of taxation is inherent in the State. It is a prerogative essential to the perpetuity of the government; and he who claims an exemption from the common burden, must justify his claim by the clearest grant of organic or statute law...
>
> xxx xxx xxx
>
> When exemption is claimed, it must be shown indubitably to exist. At the outset, every presumption is against it. A well-founded doubt is fatal to the claim; it is only when the terms of the concession are too explicit to admit fairly of any other

> construction that the proposition can be supported.
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> xxx xxx xxx"

The Pre-Trial Conference was set on August 23, 2013.[9]

Petitioner filed its Pre-Trial Brief[10] on August 16, 2013. Respondent, on the other hand, filed a Pre-Trial Brief[11] on August 23, 2013.

The parties filed their Joint Stipulation of Facts and Issues[12] on September 26, 2013. The Court likewise issued a Pre-Trial Order on January 16, 2014.[13]

During trial, petitioner presented Heherson U. Butuc and Fredieric B. Landicho as its witnesses.

On May 16, 2014, petitioner filed its Formal Offer of Evidence[14]. In a Resolution[15] promulgated on August 7, 2014, the Court admitted as petitioner's evidence Exhibits "P-1", "P-1-1", "P-2", "P-2-1", "P-3", "P-3-1", "P-4", "P-5", "P-6", "P-7", "P-9", "P-11", "P-12", "P-13", "P-15", "P-16", "P-16-1", "P-17", "P-25.1" to "P-25.8", "P-26", "P-32" and "P-32-1"; denied the admission of Exhibits "P-8", "P-10", "P-14", "P-18.1" to "P-18.1587", "P-18.1589" to "P-18.4544", "P-18.4551" to "P-18.6259", "P-18.6280" to "P-18.8120", "P-18.8123" to "P-18.10354", "P-19.1" to "P-19.719", "P-20.1" to "P-20.2185", "P-21.1" to "P-21.28", "P-22.1" to "P-22.8", "P-23.1" to "P-23.2", "P-24.1" to "P-24.59280", "P-27.1" to "P-27.480", "P-27.482" to "P-27.598", "P-28.1" to "P-28.8", "P-29.1" to "P-29.32", "P-30.1" to "P-30.499", "P-18.1588", "P-18.4545" to "P-18.4550", "P-18.6260" to "P-18.6279", "P-18.8121" to "P-18.8122", "P-27.481", "P-18.4174", "P-23.3" to "P-23.4", "P-31" and "P-31-1"; and

[9] Notice of Pre-Trial Conference, Docket, p. 237.
[10] Docket, pp. 769-775.
[11] Docket, pp. 776-779.
[12] Docket, pp. 1331-1341.
[13] Docket, pp. 1393-1399.
[14] Docket, pp. 1454-1473.
[15] Docket, pp. 1478-1481.

noted that Exhibit "P-18.317" described as "Certificate of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deed of Sale Dated 2010 with Income Reported in 2010" is actually a "Certificate of Creditable Withholding Tax Withheld at Source (BIR Form No. 2307) with a period of 4/1/20 to 6/1/10", and that Exhibits "P-18.4250", "P-18.4896", "P-18.7025", "P-18.7097", and "P-18.7331" were marked on two different documents.

On August 26, 2014, petitioner filed a Motion for Partial Reconsideration (Of the Resolution dated 7 August 2014)[16]. In a Resolution[17] dated November 5, 2016, the Court partially reconsidered its August 7, 2014 Resolution, admitting as petitioner's evidence Exhibits "P-8", "P-10", "P-14", "P-18.4174", "P-23.3" to "P-23.4", "P-31", and "P-31-1"; and again denying "P-18.1" to "P-18.1587", "P-18.1589" to "P-18.4544", "P-18.4551" to "P-18.6259", "P-18.6280" to "P-18.8120", "P-18.8123" to "P-18.10354", "P-19.1" to "P-19.719", "P-20.1" to "P-20.2185", "P-21.1" to "P-21.28", "P-22.1" to "P-22.8", "P-23.1" to "P-23.2", "P-24.1" to "P-24.59280", "P-27.1" to "P-27.480", "P-27.482" to "P-27.598", "P-28.1" to "P-28.8", "P-29.1" to "P-29.32", and "P-30.1" to "P-30.499."

On November 21, 2014, petitioner filed an Urgent Motion to Re-Open Proceedings[18], which the Court granted in a Resolution[19] dated March 10, 2015. Pursuant to the said Resolution, the Court ordered the recall of Fredieric B. Landicho and Heherson U. Butuc for the identification of Exhibits "P-18.1" to "P-18.1587", "P-18.1589" to "P-18.4544", "P-18.4551" to "P-18.6259", "P-18.6280" to "P-18.8120", "P-18.8123" to "P-18.10534", "P-19.1" to "P-19.719", "P-20.1" to "P-20.2185", "P-21.1" to "P-21.28", "P-22.1" to "P-22.8", "P-23.1" to "P-23.2", "P-24.1" to "P-24.59280", "P-27.1" to "P-27.480", "P-27.482" to "P-27.598", "P-28.1" to "P-28.8", "P-29.1" to "P-29.32", and "P-30.1" to "P-30.499."

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[16] Docket, pp. 1482-1496.
[17] Docket, pp. 1509-1512.
[18] Docket, pp. 1513-1520.
[19] Docket, pp. 1544-1546.

In the hearing dated April 28, 2015, Fredieric B. Landicho was again presented as witness for petitioner. The Court granted the manifestation made by petitioner's counsel that the testimony of Heherson U. Butuc be dispensed with.[20]

On May 8, 2015, petitioner filed its Supplemental Formal Offer of Evidence[21]. In a Resolution dated June 22, 2015, the Court admitted Exhibits "P-18.1" to "P-18.1587", "P-18.1589" to "P-18.4544", "P-18.4551" to "P-18.6259", "P-18.6280" to "P-18.8120", "P-18.8123" to "P-18.10354", "P-19.1" to "P-19.19713", "P-20.1" to "P-20.2185", "P-21.1" to "P-21.28", "P-27.1" to "P-27.480", "P-27.482" to "P-27.559, "P-28.1" to "P-28.8", "P-33", and "P-33-1" as evidence for petitioner; and denied Exhibits "P-19.714" to "P-19.719", "P-21.1" to "P-21.28", "P-22.1" to "P-22.8", "P-23.1" to "P-23.2", "P-24.1" to "P-24.59280", "P-27.560" to "P-27.598", "P-29.1" to "P-29.32", "P-30.1" to "P-30.499", and "P-24.59281" to "P-24.59820".

On July 13, 2015, petitioner filed a Motion for Partial Reconsideration (Of the Resolution dated 22 June 2015)[22], which the Court granted in a Resolution[23] promulgated on September 22, 2015. Accordingly, the Court admitted, as petitioner's evidence, Exhibits "P-19.714" to "P-19.719", "P-21.1" to "P-21.28", "P-23.1" to "P-23.2", "P-24.1" to "P-24.59280", "P-27.560" to "P-27.598", "P-29.1" to "P-29.32", and "P-30.1" to "P-30.499".

Petitioner's documentary exhibits are as follows:

Exhibits:	Description:
P-1	PNB's Original Annual Corporate Income Tax Return (BIR Form No. 1702) for taxable year 2010, electronically filed on 15 April 2011, with Reference No. 121100004685916
P-1-1	PNB's Original Annual Income Tax Return (BIR Form No. 1702) for taxable

[20] Minutes of Hearing dated April 28, 2015, Docket, pp. 1564-1567.
[21] Docket, pp. 1573-1583.
[22] Docket, pp. 1598-1612.
[23] Docket, pp. 1616-1617.

	year 2010, filed on 15 April 2011, with Reference No. 121100004685916: Below Line 33, Option *"To be issued a tax credit certificate"*
P-2	PNB's Amended Annual Corporate Income Tax for taxable year 2010 filed on 23 May 2011, with Reference No. 121100004792931
P-2-1	PNB's Amended Annual Corporate Income Tax Return (BIR Form No. 1702) for taxable year 2010 filed on 23 May 2011, with Reference No. 121100004792931: Below Line 33, Option *"To be issued a tax credit certificate"*
P-3	PNB's Final Annual Corporate Income Tax Return (BIR Form No. 1702) for taxable year 2010 filed on 26 December 2012, with Reference No. 121200006713558
P-3-1	PNB's Final Annual Corporate Income Tax Return (BIR Form No. 1702) for taxable year 2010 filed on 26 December 2012, with Reference No. 121200006713558: Below Line 33, Option *"To be issued a tax credit certificate"*
P-4	PNB's Schedule of Creditable Withholding Taxes for the taxable year 2010
P-5	PNB's Original Annual Corporate Income Tax Return (BIR Form No. 1702) for taxable year 2011, electronically filed on 14 August 2012 which was previously filed manually on 26 March 2012, with Reference No. 121200006249275
P-6	PNB's Amended Annual Corporate Income Tax Return (BIR Form No. 1702), for taxable year 2011, filed on 14 August 2012 with Reference No. 121200006249375
P-7	PNB's Final Annual Corporate Income Tax Return (BIR Form No. 1702) for the taxable year 2011 filed on 26 December 2012, with Reference No. 121200006713626
P-8	Independent Auditor's Report to Accompany Income Tax Return for taxable year 2011, filed on 26 March 2012

P-9	Letter Claim for Issuance of a Tax Credit Certificate dated 08 January 2013
P-10	PNB's Audited Financial Statement for the year 2010, with BIR stamp "Received" on 15 April 2011
P-11	PNB's Original Annual Corporate Income Tax Returns (BIR Form No. 1702) for taxable year 2009, filed on 15 April 2010, with Reference No. 121000003722681
P-12	PNB's Amended Annual Corporate Income Tax Returns (BIR Form No. 1702) for taxable year 2009, filed on 19 April 2010, with Reference No. 121000003729393
P-13	PNB's Final Amended Annual Corporate Income Tax Returns (BIR Form No. 1702) for taxable year 2009, filed on 23 May 2011 with Reference No. 121100004792660
P-14	PNB's Audited Financial Statement for the year 2009, with BIR stamp "Received" on 15 April 2010
P-15	Judicial Affidavit of Atty. Fredieric B. Landicho, dated 14 October 2013 for Commissioning and Appointment as Independent Certified Public Accountant
P-16	Judicial Affidavit of Mr. Heherson U. Butac, dated 16 September 2013
P-16-1	Signature of Mr. Heherson Butac as duly identified and encircled
P-17	Independent Certified Public Accountant report of Atty. Fredieric B. Landicho for CTA Case No. 8636 Philippine National Bank vs. Commissioner of Internal Revenue, submitted and dated 23 December 2013 on the results of the audit procedures with respect to the application for issuance of a tax credit certificate or refund of Philippine National Bank
P-18.1 to P-18.10534	Certificates of Creditable Withholding Taxes Supported with Original CWT's Transaction Tickets/Input Sheets and Deed of Sale Dated 2010 With Income Reported in 2010
P-19.1 to P-19.719	Certificates of Creditable Withholding Taxes Supported with Original CWT's Transaction Tickets/Input Sheets and Deed of Sale Dated 2010 With Loss or

	No Income Recognized in 2010
P-20.1 to P-20.2185	Certificates of Creditable Withholding Taxes Supported with Original CWT and Deed of Sale Dated 2010 and Transaction Ticket/Input Sheets Dated Outside 2010 With Income Reported Outside 2010
P-21.1 to P-21.1793	Certificates of Creditable Withholding Taxes Supported with Original CWT Dated 2010 and Deed of Sale and Transaction Ticket/Input Sheets Dated Outside 2010 With Income Reported Outside 2010
P-22.1 to P-22.8	PNB's Final Amended Annual Income Tax Return (BIR Form No. 1702) for the taxable year 2012, filed on 29 August 2013, with Reference No. 121300007736695
P-23.1 to P-23.4	PNB's Quarterly Income Tax Returns (BIR Form No. 1702Q) for the taxable year 2013, filed on 29 May 2013, with Reference No. 131300007347439 and on 29 August 2013 with Reference No. 131300007736686
P-24.1 to P-24.59280	General Ledger for the year 2010
P-25.1 to P-25.8	Petition for Review with the Court of Tax Appeals, CTA Case No. 8636 *Philippine National Bank vs. Commissioner of Internal Revenue*
P-26	Independent Certified Public Accountant report of Atty. Fredieric B. Landicho for CTA Case No. 8636 Philippine National Bank vs. Commissioner of Internal Revenue submitted and dated 26 February 2014 on the results of the audit procedures with respect to the application for issuance of a tax credit certificate or refund of Petitioner PNB
P-27.1 to P-27.598	Certificates of Creditable Withholding Taxes Supported with Original CWTs dated 2010 with Income not traced to General Ledger and Original CWTs dated 2010 with Partly Supported and Partly Unsupported Transaction Tickets/Input Sheets
P-28.1 to P-28.8	Certificates of Creditable Withholding Taxes Supported with Original CWT dated outside 2010, Undated CWT and with Unsupported CWT

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P-29.1 to P-29.32	Trial Balance for year 2010
P-30.1 to P-30.499	Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 to 2013
P-31	Judicial Affidavit of Atty. Fredieric B. Landicho dated 23 December 2013 in lieu of his direct testimony on his report submitted on 23 December 2013
P-31-1	Signature of Atty. Fredieric B. Landicho as duly identified and encircled
P-32	Judicial Affidavit of Atty. Fredieric B. Landicho dated 26 February 2014 in lieu of his direct testimony on his report submitted on 26 February 2014
P-32-1	Signature of Atty. Fredieric B. Landicho as duly identified and encircled.
P-33	Judicial Affidavit of Atty. Fredieric B. Landicho dated 17 April 2015 in lieu of his direct testimony on his report submitted on 26 February 2014
P-33-1	Signature of Atty. Fredieric B. Landicho as duly identified

In the hearing dated July 7, 2015, the counsel for respondent manifested that respondent would not be presenting evidence.[24]

The Court declared the case submitted for decision on November 26, 2015,[25] taking into consideration the filing of respondent's Memorandum[26] on October 21, 2015 and petitioner's Memorandum[27] on November 17, 2015.

The parties submitted the following issue[28] for this Court's disposition:

> **Whether petitioner is entitled to a refund, by way of issuance of a tax credit certificate, in the amount of ₱289,085,378.91, allegedly representing petitioner's excess payment of**

[24] Minutes of Hearing dated July 7, 2015, Docket, pp. 1593-1594.
[25] Docket, p. 1656.
[26] Docket, pp. 1618-1623.
[27] Docket, pp. 1630-1653.
[28] Issue to be Resolved, JSFI, Docket, p. 1333.

creditable withholding taxes for taxable year 2010.

Based on relevant jurisprudence and BIR Revenue Regulations, in order for a taxpayer to be entitled to a refund of or an issuance of tax credit certificate for its unutilized creditable withholding tax, the following requisites must be sufficiently established:

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

2. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient; and

3. 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.[29]

Anent the first requisite, Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, provide as follows:

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

xxx xxx xxx

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

(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." *(Emphasis supplied)*

"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." *(Emphasis supplied)*

The second and third requisites are anchored on Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, as amended, which states:

> "SECTION 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."

The prevailing rule in this jurisdiction is that the reckoning of the two-year prescriptive period for the filing of a claim for refund or issuance of tax credit certificate for excess income tax paid/withheld, both in the administrative and judicial levels, starts from the date of filing of the Final Adjustment Return.[30]

Applying the foregoing principle, records show that petitioner filed its Annual Income Tax Return for taxable year 2010 on April 15, 2011.[31] Counting two (2) years therefrom, petitioner had until April 15, 2013, within which to file its claim for refund or issuance of tax credit certificate, both in the administrative and judicial levels. Here, petitioner's administrative claim dated January 8,

[30] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et. al.* G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals,* G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et. al.,* G.R. No. 105208, May 29, 1995.
[31] Exhibit "P-1".

2013 was received by respondent on January 10, 2013,[32] thus, well within the prescriptive period provided by law. Likewise, the instant petition was filed before the Court on April 12, 2013. Clearly, petitioner's judicial claim was also timely filed. It is in this light that petitioner has sufficiently complied with the first requisite.

Anent the second requisite, petitioner adduced in evidence its Trial Balance for 2010[33], Audited Financial Statements[34], General Ledgers[35], various Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) with Transaction Tickets/Input Sheets and Deeds of Sale[36], and the Independent Certified Public Accountant (CPA) Report[37].

On the basis of the procedure performed by the Independent CPA, as shown in his Report, the Court finds petitioner's income upon which the taxes were withheld was properly reported as forming part of its gross income declared in the Annual ITR for taxable year 2010.

The income payments appearing in each of the CWT certificates (BIR Form No. 2307) were verified against the relevant documents such as the Transaction Tickets/Input Sheets and Deeds of Sale. Said income payments appearing in the said documents were individually traced to the specific General Ledger of the relevant income account to ascertain whether the same were properly posted. The ending balances of the General Ledger of income accounts from which the taxes were withheld correspond with the amounts reported in the Trial Balance.

Thereafter, the income accounts in the Adjusted Trial Balance were compared against the amounts reported in the 2010 Audited Financial Statements. Upon comparison, minimal discrepancies appeared due to rounding off, to wit:

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[32] Exhibit "P-9"; Par. 8, Summary of Admitted, Facts, JSFI, Docket, pp. 1332-1333.
[33] Exhibits "P-29.1" to "P-29.32".
[34] Exhibit "P-10".
[35] Exhibits "P-24.1" to "P-24.59280".
[36] Exhibits "P-18.1" to "P-18.10534", "P-19.1" to "P-19.719", "P-20.1" to "P-20.2185", "P-21.1" to "P-21.28", "P-27.1" to "P-27.598", and "P-28.1" to "P-28.8".
[37] Exhibits "P-17" and "P-26".

Revenue	Amount per General Ledger / Trial Balance	Amount per Audited Financial Statements	Difference
Interest Income on:			
Loans and Receivables	₱ 6,927,564,943.16	₱ 6,927,565,000.00	₱ 56.84
Investment Securities	4,347,708,784.19	4,347,709,000.00	215.81
Interbank Loans Receivable	31,013,475.35	31,013,000.00	(475.35)
Deposit with Banks and others	870,438,638.72	870,439,000.00	361.28
Subtotal	**₱12,176,725,841.42**	**₱12,176,726,000.00**	**₱ 158.58**
Non-Interest Income:			
Service Charges, Fees and Commissions	₱ 1,754,461,143.88	1,754,461,000.00	(143.88)
Foreign Exchange	587,461,042.03	587,461,000.00	(42.03)
Trading and Investment Securities Gains	2,933,711,357.43	2,933,711,000.00	(357.43)
Net Gain on Sale or Exchange of Assets	2,109,643,655.53	2,109,644,000.00	344.47
Miscellaneous Income	610,377,522.79	610,377,000.00	(522.79)
Subtotal	**₱ 7,995,654,721.66**	**₱ 7,995,654,000.00**	**₱(721.66)**
Total	**₱20,172,380,563.08**	**₱20,172,380,000.00**	**₱ 563.08**

Moreover, a comparison of the gross income reported in the 2010 Audited Financial Statements against the gross income reported in the Final Amended ITR[38] shows a difference of ₱9,222,129,881.00, to wit:

Revenue	Amount per Audited Financial Statements	Amount per Income Tax Return	Difference
Interest Income on:			
Loans and Receivables	₱ 6,927,565,000.00		
Investment Securities	4,347,709,000.00		
Interbank Loans Receivable	31,013,000.00		
Deposit with Banks and others	870,439,000.00		
Sub-total	**₱12,176,726,000.00**	**₱ 6,776,996,382.00**	**₱5,399,729,618.00**
Non-Interest Income			
Service Charges, Fees and Commissions	₱ 1,754,461,000.00	₱ 1,776,645,534.00	(₱ 22,184,534.00)
Foreign Exchange	587,461,000.00	965,288,083.00	(377,827,083.00)
Trading and Investment Securities Gains	2,933,711,000.00	-	2,933,711,000.00
Net Gain on Sale or Exchange of Assets	2,109,644,000.00	-	2,109,644,000.00
Miscellaneous Income/Other Income	610,377,000.00	1,431,320,120.00	(820,943,120.00)
Sub-total	**₱ 7,995,654,000.00**	**₱ 4,173,253,737.00**	**₱3,822,400,263.00**
Total	**₱20,172,380,000.00**	**₱10,950,250,119.00**	**₱9,222,129,881.00**

In his Report, the Independent CPA ascertained that the said difference of ₱9,222,129,881.00 represents valid reconciling items due to the differences in the rules of

[38] Exhibit "P-3".

reporting of income between the Final Amended ITR, which complies with the NIRC of 1997, as amended, and Audited Financial Statements, which complies with the Philippine Financial Reporting Standards (PFRS). The reconciling items are accounted as follows:

Interest Income	Interest Income	Service Charges, Fees and Commissions	Foreign Exchange	Trading & Investment Securities Gains	Net Gain on Sale or Exchange of Assets	Miscellaneous Income	Total
Income per AFS Add (deduct) reconciling items:	**₱12,176,726,000.00**	**₱1,754,461,000.00**	**₱587,461,000.00**	**₱2,933,711,000.00**	**₱2,109,644,000.00**	**₱ 610,377,000.00**	**₱ 20,172,380,000.00**
FCDU Income	(2,171,526,869.44)	(24,785,709.25)	(406,483,759.09)	(1,108,263,799.49)	-	(408,352.57)	(3,711,468,489.84)
Collection from OPAL Investments for 2010 recorded in 2011	28,578,700.00						28,578,700.00
Interest Income from tax exempt investments	(392,857,259.00)						(392,857,259.00)
Interest Income subject to 20% final tax	(2,658,779,216.00)						(2,658,779,216.00)
Accretion Interest Income from impaired loans	(3,974,779.24)						(3,974,779.24)
Interest component of loan amortization reported under "Interest Income" per AFS, while "Other Income" per ITR	(201,170,352.90)					201,170,352.90	-
Fees collected reported as "Miscellaneous Income" per AFS, while "Service Charges, Fees and Commissions" per ITR		46,970,387.13				(46,970,387.13)	-
Revaluation Adjustments			(366,043,370.00)				(366,043,370.00)
Trading gains classified as "Trading & Investment Securities Gains" per AFS, while "Foreign Exchange" per ITR			880,423,364.08	(880,423,364.08)			-
Gains on currency swaps classified under "Foreign Exchange" per ITR, while "Miscellaneous Income" per AFS.			269,930,890.04			(269,930,890.04)	-
Mark to Market of Investments				(400,487,809.00)			(400,487,809.00)
Gain from Investment with maturity date of more than 5 years				(544,535,670.00)			(544,535,670.00)
Gains on Sale classified under "Net Gain on Sale or Exchange of Assets" per AFS, while "Other Income" per ITR					(2,109,644,314.97)	2,109,644,314.97	
Loan Commitment fee recognized as deferred income per GAAP						46,970,100.00	46,970,100.00
Increase in Fair Value of Investment						(461,464,812.00)	(461,464,812.00)

Properties							
Advance Rentals on Bank Premises and Safety Deposit boxes						(542,339.00)	(542,339.00)
Recovery of Charged off Assets						(86,786,651.00)	(86,786,651.00)
Dividends/Share in net income of subsidiary and associates						(202,515,257.00)	(202,515,257.00)
Accounting Income on Installments sale of Real Property						(468,223,591.00)	(468,223,591.00)
Rounding off difference	158.58	(143.88)	(42.03)	(357.43)	314.97	631.87	562.08
Total	₱ (5,399,729,618.00)	₱ 22,184,534.00	₱ 377,827,083.00	₱ (2,933,711,000.00)	₱ (2,109,644,000.00)	₱ 820,943,120.00	**₱(9,222,129,881.00)**
Income per ITR	**₱ 6,776,996,382.00**	**₱1,776,645,534.00**	**₱965,288,083.00**	-	-	**₱1,431,320,120.00**	**₱ 10,950,250,119.00**

Clearly, petitioner was able to establish that the income payments upon which the taxes were withheld were properly reported and formed part of the gross income declared in its Final Amended ITR for taxable year 2010.

However, as found by the Independent CPA, not all the income payments per CWT certificates were traced to the General Ledger. Also, there are CWTs supported by certificates which are undated or dated outside the period of claim, and CWTs which are totally not supported by certificates. The findings of the Independent CPA are summarized as follows:

Findings	**CWT**	**Exhibit**	**Reference to ICPA Report**
a) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deeds of Sale Dated 2010 with Income Reported in 2010	₱ 234,433,190.06	P-18.1 to P-18.10534	Annex B
b) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deeds of Sale Dated 2010 with Loss or No Income Recognized in 2010	20,352,717.22	P-19.1 to P-19.719	Annex C
c) Summary of Creditable Withholding Taxes Supported with Original CWT and Deeds of Sale Dated 2010 and Transaction Tickets/Input Sheets Dated Outside 2010 With Income Reported Outside 2010	27,863,769.31	P-20.1 to P-20.2185	Annex D
d) Summary of Creditable Withholding Taxes Supported with Original CWT Dated 2010 and Deeds of Sale and Transaction Tickets/ Input Sheets Dated Outside 2010 With Income Reported Outside 2010	2,724,000.00	P-21.1 to P-21.28	Annex E
e) Summary of Creditable Withholding Taxes	3,574,592.38	P-27.1 to	Annex F

Supported with Original CWTs and Deeds of Sale Dated 2010 with Income not traced To General Ledger and Original CWTs and Deeds of Sale Dated 2010 with Partly Supported and Partly Unsupported Transaction Tickets/Input Sheets		P-27.598	
f) Summary of Creditable Withholding Taxes Supported with Original CWT Dated Outside 2010, Undated CWT and with Unsupported CWT	137,109.94	P-28.1 to P-28.8	Annex G
Total	**₱289,085,378.91**		

Considering the above findings together with the submitted documents, schedules and reconciliation, the Court finds the Independent CPA Report to be in order. Consequently, only the CWTs in the amount of ₱285,373,676.59 which are duly supported by certificates and of which the related income payments were traced to the General Ledger and thereafter reported in the Audited Financial Statements and Final Amended Annual ITR for taxable year 2010 may be refunded, to wit:

Findings	CWT	Exhibit	Reference to ICPA Report
a) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deeds of Sale Dated 2010 with Income Reported in 2010	₱ 234,433,190.06	P-18.1 to P-18.10534	Annex B
b) Summary of Creditable Withholding Taxes Supported with Original CWTs, Transaction Tickets/Input Sheets and Deeds of Sale Dated 2010 with Loss or No Income Recognized in 2010	20,352,717.22	P-19.1 to P-19.719	Annex C
c) Summary of Creditable Withholding Taxes Supported with Original CWT and Deeds of Sale Dated 2010 and Transaction Tickets/Input Sheets Dated Outside 2010 With Income Reported Outside 2010	27,863,769.31	P-20.1 to P-20.2185	Annex D
d) Summary of Creditable Withholding Taxes Supported with Original CWT Dated 2010 and Deeds of Sale and Transaction Tickets/ Input Sheets Dated Outside 2010 With Income Reported Outside 2010	2,724,000.00	P-21.1 to P-21.28	Annex E
Total	**₱285,373,676.59**		

Notwithstanding compliance with the said requisites, there is a need to determine whether or not petitioner made an option to carry over its excess CWTs to the succeeding quarters. In this regard, Section 76 of the NIRC of 1997, as amended, reads:

> "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
> (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 tax credit certificate shall be allowed therefor."

Pursuant to the afore-quoted provision, a corporation entitled to a tax credit or refund of the excess income taxes paid in a given taxable year has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.[39] The phrase "for that 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.[40]

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, whether to carry over the excess credit or to claim a refund. The two options are alternative and not cumulative in nature, that is, the choice of one precludes the other.[41]

A thorough perusal of petitioner's Annual ITR for taxable year 2010 filed with the BIR on April 15, 2011 shows that petitioner had a Minimum Corporate Income Tax (MCIT) due of ₱75,036,131.92. The said amount was applied against its total tax credits of ₱439,260,400.49, which consisted of prior year's excess credits other than MCIT and CWTs for the four quarters of taxable year 2010 in the respective amounts of ₱150,175,021.58 and ₱289,085,378.91,[42] leaving the CWTs in the aggregate amount of ₱364,224,268.57 unutilized as of December 31, 2010, as shown below:

Tax Due (MCIT)	₱ 75,036,131.92
Less: Tax Credits/Payments	
Prior Year's Excess Credits other than MCIT	₱ 150,175,021.58
CWT for the First Three Quarters	**12,258,168.58**
CWT for the Fourth Quarter	**276,827,210.33**
Total Tax Credits	*₱ 439,260,400.49*
Total Amount Payable/(Overpayment)	**(₱364,224,268.57)**

Furthermore, petitioner chose the issuance of a tax credit certificate for its CWTs for taxable year 2010 by marking the box corresponding to the option "To be issued a

[39] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue,* G.R. No. 176290, September 21, 2007.
[40] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands,* G.R. No. 178490, July 7, 2009.
[41] *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.
[42] Sum of ₱12,258,168.58 and ₱276,827,210.33.

Tax Credit Certificate"[43]; and as evidenced by petitioner's Annual ITR for taxable year 2011[44], only the prior year's excess credits in the amount of ₱75,138,889.66[45] were carried over. Clearly, the claimed CWTs for the year 2010 amounting to ₱289,085,378.91 were not carried over to the succeeding quarters or taxable year. Thus, the substantiated CWTs for taxable year 2010 in the amount of ₱285,373,676.59 may be refunded pursuant to Section 76 of NIRC of 1997, as amended.

However, petitioner failed to substantiate its Prior Year's Excess Credits of ₱150,175,021.58 with the corresponding CWT certificates.

The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment to the government through the agents.[46] In *Commissioner of Internal Revenue vs. Philippine National Bank*[47], the Supreme Court stressed the importance of presenting the pertinent CWT certificates in this wise:

> "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 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:

[43] Exhibits "P-1-1", "P-2-1", and "P-3-1".
[44] Exhibit "P-5-1".
[45] ₱150,175,021.58 less ₱75,036,131.92.
[46] *Commissioner of Internal Revenue vs. Asian Transmission Corporation,* G.R. No. 179617, January 19, 2011.
[47] G.R. No. 180290, September 29, 2014.

> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. **It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes**. (Emphasis supplied, citations omitted)"

Here, the subject claim pertains to *excess* tax credits, *i.e., undiminished* by any income tax liability. Petitioner only proffered as evidence its Schedule of Creditable Withholding Taxes for the years 2000 to 2009 and 2011 to 2013. The said Schedule, standing alone, does not constitute proof that petitioner had prior year's excess credits. Without the corresponding CWT certificates to support petitioner's claim, the said amount cannot be applied against the reported income tax liability of petitioner for taxable year 2010 amounting to ₱75,036,131.92. Hence, a portion of the substantiated CWT in the amount

₱285,373,676.59 shall be applied against the said income tax liability. Consequently, petitioner's refundable excess CWTs for taxable year 2010 amount only to ₱210,337,544.67, computed as follows:

Substantiated Creditable Withholding Taxes	₱ 285,373,676.59
Less: MCIT Due	75,036,131.92
Refundable Excess CWTs	**₱210,337,544.67**

The general rule is that claimants of tax refunds bear the burden of proving the factual basis of their claims. This is because tax refunds are in the nature of tax exemptions, the statutes of which are construed *strictissimi juris* against the taxpayer and liberally in favor of the taxing authority.[48] So, when exemption is claimed, it must be shown indubitably to exist, for every presumption is against it, and a well-founded doubt is fatal to the claim.[49]

WHEREFORE, premises considered, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of ₱210,337,544.67 in favor of petitioner, representing petitioner's excess creditable withholding taxes for taxable year 2010.

SO ORDERED.

Cielito N. Mindaro-Grulla
CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:

(with Dissenting Opinion)
ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

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[48] *Philippine Phosphate Fertlizer Corporation vs. Commissioner of Internal Revenue*, G.R. No. 141973, June 28, 2005.

[49] *Manila Electric Company vs. Vera*, G.R. No. L-29987, October 22, 1975 and *Manila Electric Company vs. Tabios*, G.R. No. L-23847, October 22, 1975.

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
Chairperson, 1st Division

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8636

Members:

Del Rosario, *Chairperson,*
Uy, and
Mindaro-Grulla, *JJ.*

Promulgated:
OCT 03 2016 3:12 pm

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DISSENTING OPINION

DEL ROSARIO, P.J.:

With due respect, I dissent in the *ponencia* in holding that petitioner's total refundable excess creditable withholding tax (CWT) amounts only to Php210,337,544.67 after deducting petitioner's income tax liability for the year 2010 in the amount of Php75,036,131.92. I am of the humble opinion that petitioner is entitled to the issuance of a tax credit certificate in the amount of Php285,373,676.59, representing its duly substantiated excess and unutilized CWT for the year 2010 which is undiminished by its 2010 income tax liability.

It is settled that in order to be entitled to a refund or issuance of a tax credit certificate representing any excess or unutilized CWT, a claimant must prove that it has complied with the following essential requirements set forth under pertinent provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, its implementing revenue regulations, and existing jurisprudence, *viz.*:

(1) The claim is filed with the Commissioner of Internal Revenue (CIR) within the two-year period from the date of payment of the tax;

(2) It is shown on the return of the claimant that the income payment received was declared as part of its gross income; and,

(3) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee (claimant) showing the amount paid and the amount of the tax withheld therefrom.

As stated in the *ponencia*, petitioner has **complied with the foregoing requirements in so far as the excess CWT for the year 2010 - - the subject of the claim - - is concerned**, albeit in the reduced amount of Php285,373,676.59. The *ponencia*, however, ruled that in view of **petitioner's failure to substantiate its excess credits prior to 2010 with CWT certificates**, a portion of petitioner's substantiated CWT for the year 2010 in the amount of Php285,373,676.59 should be applied against petitioner's 2010 income tax liability amounting to Php75,036,131.92. Thus, petitioner is entitled only to the refundable excess CWT for the year 2010 in the amount of Php210,337,544.67.

In requiring petitioner to substantiate its prior year's excess credits with CWT certificates, the *ponencia* cites as basis *Commissioner of Internal Revenue vs. Philippine National Bank*[1] where the Supreme Court stressed the importance of presenting the pertinent CWT certificates to substantiate a claim for refund. A plain reading of *PNB case* reveals that it did not, however, declare that the claimant's **prior year's excess credits** against which the income tax liability during the year of the claim may be applied must be substantiated with CWT certificates. Truth to tell, in the *PNB case*, the issue on the substantiation of prior year's excess credits was not raised at all. Thus, since said issue was not submitted for resolution, the pronouncement in said case as to the importance or absolute necessity of presenting CWT certificates in substantiating **prior year's excess credits** cannot be relied upon.

To my mind, the **presentation of CWT certificates is not indispensable in proving the existence of prior year's excess credits** since aforesaid credits are not the actual subject of the claim for refund. In the present case, I submit that the 2009 Annual Income Tax Return[2] (ITR) and the Schedule of Creditable Withholding Taxes

[1] G.R. No. 180290, September 29, 2014.
[2] Exhibits P-11, P-12, P-13.

(CWT) for the years 2000 to 2009 and 2011 and 2013[3] specifically offered by petitioner to prove the existence of its prior year's excess credits against which its income tax liability for the year 2010 may be applied are sufficient. Notably, respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits in the amount of Php150,175,021.58.[4] Instead, respondent chose not to question or disprove the same. **In fact, respondent failed to make any objection to petitioner's offer of 2009 Annual ITR and the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 to prove the existence of petitioner's prior year's excess credits despite the opportunity given him.** Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.[5]

It may not be amiss to state that while petitioner's 2009 Annual ITR was prepared under penalties of perjury, the figures indicated therein (which necessarily include the amount of its prior year's excess credits of Php150,175,021.58) should be presumed true and correct in the absence of any evidence to the contrary. The pronouncement of the Supreme Court in *Citibank N.A. vs. Court of Appeals*[6] is most enlightening:

> "A refund claimant is required to prove the inclusion of the income payments which were the basis of the withholding taxes and the fact of withholding. However, **detailed proof of the truthfulness of each and every item in the income tax return is not required. That function is lodged in the Commissioner of Internal Revenue by the NIRC which requires the Commissioner to assess internal revenue taxes within three years after the last day prescribed by law for the filing of the return**. In *San Carlos Milling Co., Inc. vs. Commissioner of Internal Revenue*, the Court held that the internal revenue branch of government must investigate and confirm the claims for tax refund or credit before taxpayers may avail themselves of this option. **The grant of a refund is founded on the assumption that the tax return is valid; that is, the facts stated therein are true and correct**. In fact, even without petitioner's tax claim, the Commissioner can proceed to examine the books, records of the petitioner-bank, or any data which may be relevant or material in

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[3] Exhibits P-30.1 to P-30.499.
[4] Commissioner of Internal Revenue vs. Ironcon Builders and Development Corporation, G.R. No. 180042, February 8, 2010.
[5] Asian Construction and Development Corporation vs. COMFAC Corporation, G.R. No. 163915, October 12, 2006
[6] G.R. No. 107434, October 10, 1997.

accordance with Section 16 of the present NIRC." (Emphasis supplied)

Since petitioner's prior year's excess credits are duly reported in its 2010 Annual ITR and further supported by figures indicated in its 2009 Annual ITR, as corroborated by the Schedule of Creditable Withholding Taxes (CWT) for the years 2000 to 2009 and 2011 and 2013, the said prior year's excess credits in the amount of Php150,175,021.58 may be utilized and applied against petitioner's 2010 income tax liability in the amount of Php75,036,131.92.

Finally, Section 235 of the NIRC of 1997, as amended, requires the preservation of the books of account and records of taxpayers only "for a period beginning from the last entry in each book until the last day prescribed by Section 203." Section 203 of the NIRC of 1997, as amended, provides that internal revenue taxes shall be assessed within three years after the last day prescribed by law for the filing of the return, and no proceeding in Court without an assessment for the collection of such taxes shall begin after the expiration of such period. **To require a taxpayer to produce all CWT certificates in support of its prior year's excess credit (which may include all CWT certificates from the start of its commercial operations) will be excessively burdensome, unreasonable and violative of Section 235 in relation to Section 203 of the NIRC of 1997, as amended.**

All told, I VOTE to PARTIALLY GRANT the Petition for Review. Respondent must be ordered to issue a tax credit certificate in the amount of Php285,373,676.59 in favor of petitioner, representing petitioner's excess and unutilized CWT for the taxable year 2010.

ROMAN G. DEL ROSARIO
Presiding Justice