

REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SECOND DIVISION

MAUNSELL PHILIPPINES, INC.,
Petitioner,

CTA CASE NO. 7860
For: Issuance of a Tax Credit
Certificate

Members:

-versus-

CASTAÑEDA, JR., Chairperson
CASANOVA, and
MINDARO-GRULLA, J.J.

**COMMISSIONER OF INTERNAL
REVENUE,**
Respondent.

Promulgated:

OCT 21 2011 *CH 4:05 P.M.*

X-----X

DECISION

MINDARO-GRULLA, J.,

This is a Petition for Review filed on January 15, 2009 by Maunsell Philippines, Inc. against the Commissioner of Internal Revenue (CIR) as respondent, before the Court in Division, pursuant to 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).

Petitioner prays therein that this Court render judgment ordering respondent to issue a tax credit certificate in its favor in the total **₱**

amount of P3,839,671.31, allegedly representing excess/unutilized creditable withholding taxes for the fiscal year (FY) 2006.

Petitioner Maunsell Philippines, Inc. is a corporation duly organized and registered under the laws of the Philippines, which is primarily engaged in the general business of providing engineering consultancy, technical, advisory, construction project management, and environmental impact analysis services as well as implementation and execution of plans, and doing any and all other businesses incidental thereto.¹ Its principal office is located at 11/F Ayala Life-FGU Center, 6811 Ayala Avenue, Makati City.

Petitioner is registered with the Securities and Exchange Commission (SEC) on July 16, 1996 under SEC Registration No. A1996-02509.² It is also registered with the Bureau of Internal Revenue (BIR) Revenue District Office No. 50-South Makati as a value-added tax (VAT) entity with Tax Identification No. 004-868-770-000 on July 26, 1996.³

Respondent Commissioner of Internal Revenue is the officer vested by law with authority to decide, approve and grant refunds of erroneously paid or excessively collected taxes. She holds office at the BIR National Office Building, Diliman, Quezon City. 

¹ Exhibit "A-2".

² Exhibit "A".

³ Exhibit "B".

During the first three (3) taxable quarters of its fiscal year ending September 30, 2006, petitioner accumulated creditable withholding taxes amounting to P2,773,482.54. Petitioner reported the aforesaid withholding tax credits in its income tax returns filed for the first three taxable quarters of FY 2006.⁴

Petitioner was not able to utilize its withholding tax credits except for the portion applied to settle its minimum corporate income tax (MCIT) liability amounting to P497,494.28, when it filed its FY 2006 Annual Income Tax Return on January 25, 2007⁵; as its operation during FY 2006 resulted in net loss.

In its amended Annual Income Tax Return for FY 2006, petitioner indicated that its chosen option is "To be issued a Tax Credit Certificate" for its overpaid taxes of P3,839,671.30.⁶

On July 13, 2007, petitioner filed an administrative claim for the issuance of a tax credit certificate for its purported overpaid income tax for FY 2006 with the Bureau of Internal Revenue.⁷

Respondent failed to act on petitioner's administrative claim for the issuance of a tax credit certificate, prompting petitioner to file the instant Petition for Review before this Court on January 15, 2009.☞

⁴ Exhibits "E", "G" and "I".

⁵ Exhibit "K".

⁶ Exhibit "K-5".

⁷ Exhibit "C".

On March 9, 2009, respondent filed her Answer through registered mail, interposing the following Special and Affirmative Defenses⁸:

- "4) Assuming without admitting that Petitioner filed a claim for refund, the same is subject to investigation by the Bureau of Internal Revenue;
- 5) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
- 6) Taxes paid and collected are presumed to have been made in accordance with the laws and regulations, hence, not refundable;
- 7) It is incumbent upon the Petitioner to show that it has complied with the provisions of Section 204(C) in relation to Section 229 of the Tax Code, as amended, upon which its claimed for refund is premised;
- 8) In an action for tax refund the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge said burden is fatal to the claim (*Emmanuel & Zenaida Aguilar v. Commissioner*, CA-GR No. Sp. 16432, March 30, 1990 cited in *Aban, Law of Basic Taxation in the Philippines*, 1st edition, p. 206);
- 9) Claims for refunds are construed strictly against the claimant, the same partake the nature of exemption from taxation (*Commissioner of Internal Revenue vs. Ledesma*, 31 SCRA 95) and as such, these are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue*, 124 SCRA 121)."

On April 20, 2009, petitioner filed its Pre-Trial Brief.

On April 24, 2009, respondent filed a Pre-Trial Brief.

On May 11, 2009, petitioner and respondent filed their Joint Stipulation of Facts and Issues.☞

⁸ Docket, pp. 62-63.

On May 22, 2009, this Court approved the Joint Stipulation of Facts and Issues, and pre-trial was considered terminated.

During trial, petitioner presented testimonial and documentary evidence in support of its claim. Petitioner's three (3) witnesses were Arnulfo O. Reyes, Jane Tiamson and Rodelio S. Acosta. Thereafter, petitioner filed its Formal Offer of Evidence to which respondent did not file her comment, and with their admission, petitioner is deemed to have formally rested its case.

The documentary evidence formally offered are as follows:

<u>Exhibits</u>	<u>Description</u>
A	SEC Certificate of Incorporation
A-1	Articles of Incorporation of Maunsell Philippines, Inc.
A-2	Primary Purpose of Maunsell Philippines, Inc.
A-3	Secondary Purpose of Maunsell Philippines, Inc.
B	BIR Certificate of Registration No. 9RC0000208032
C	Application for refund or issuance of a Tax Credit Certificate (TCC) on creditable withholding tax dated July 13, 2007
C-1	Date filed by the Taxpayer (July 13, 2007)
C-2	BIR Stamp Received (July 13, 2007)
E	Quarterly Income Tax Return for the First Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
E-1	Line 9 of the Quarterly Income Tax Return for the First Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
E-2	Line 29D of the Quarterly Income Tax Return for the First Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
E-3	Line 30 of the Quarterly Income Tax Return for the First Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
E-4	Reference Number, Date/Time Filed, and Batch Number on the upper right hand corner of the Quarterly Income Tax Return for the First Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
F	eFPS Proof of Filing BIR Form 1702Q for the first quarter of Fiscal Year 2006

- G** Quarterly Income Tax Return for the Second Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- G-1** Line 9 of the Quarterly Income Tax Return for the Second Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- G-2** Line 29D of the Quarterly Income Tax Return for the Second Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- G-3** Line 30 of the Quarterly Income Tax Return for the Second Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- G-4** Reference Number, Date/Time Filed, and Batch Number on the upper right hand corner of the Quarterly Income Tax Return for the Second Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)

- H** eFPS Proof of Filing BIR Form 1702Q for the second quarter of Fiscal Year 2006

- I** Quarterly Income Tax Return for the Third Quarter of Fiscal year 2006 (BIR Form No. 1702Q)
- I-1** Line 9 of the Quarterly Income Tax Return for the Third Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- I-2** Line 29D of the Quarterly Income Tax Return for the Third Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- I-3** Line 30 of the Quarterly Income Tax Return for the Third Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)
- I-4** Reference Number, Date/Time Filed, and Batch Number on the upper right hand corner of the Quarterly Income Tax Return for the Third Quarter of Fiscal Year 2006 (BIR Form No. 1702Q)

- J** eFPS Proof of Filing BIR Form 1702Q for the third quarter of Fiscal Year 2006

- K** Annual Income Tax Return for the Fiscal year 2006 (BIR Form No. 1702)
- K-1** Line 10 of the Annual Income Tax Return for Fiscal Year 2006 (BIR Form No. 1702)
- K-2** Line 30D of the Annual Income Tax Return for the Fiscal Year 2006 (BIR Form No. 1702)
- K-3** Line 30 of the Annual Income Tax Return for the Fiscal Year 2006 (BIR Form No. 1702)
- K-4** Reference Number, Date/Time Filed, and Batch Number on the upper right hand corner of the Annual Income Tax Return for the Fiscal Year 2006 (BIR Form No. 1702)
- K-5** The ticked mark of the option "To be issued a Tax Credit Certificate"

- L** Audited financial statement for fiscal year 2006
- L-1** Date filed by the Taxpayer (January 12, 2007)
- L-2** BIR Stamp Received (January 12, 2007)
- L-3** Signature of Mr. Rodelio C. Acosta

M	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Sagittarius Mines, Inc. for Oct. to Dec. 2005
M-1	Amount of tax withheld for Oct. to Dec. 2005
M-2	Signature of the authorized representative
N	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Hanjin Heavy Industries & Construction Co. Ltd. for Oct. to Dec. 2005
N-1	Amount of tax withheld for Oct. to Dec. 2005
N-2	Signature of the authorized representative
O	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Philip Morris Philippines Manufacturing Inc. for Oct. to Dec. 2005
O-1	Amount of tax withheld for Oct. to Dec. 2005
O-2	Signature of the authorized representative
P	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Fort Bonifacio Development Corporation for Oct. to Dec. 2005
P-1	Amount of tax withheld for Oct. to Dec. 2005
P-2	Signature of the authorized representative
Q	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Leighton Contractors (Asia) Limited for Oct. to Dec. 2005
Q-1	Amount of tax withheld for Oct. to Dec. 2005
Q-2	Signature of the authorized representative
R	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by PNOC Exploration Corporation for Oct. to Dec. 2005
R-1	Amount of tax withheld for Oct. to Dec. 2005
R-2	Signature of the authorized representative
S	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Pagbilao Corporation for Oct. to Dec. 2005
S-1	Amount of tax withheld for Oct. to Dec. 2005
S-2	Signature of the authorized representative
T	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Sual Corporation for Oct. to Dec. 2005
T-1	Amount of tax withheld for Oct. to Dec. 2005
T-2	Signature of the authorized representative
U	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Iligan Cement Corporation for Oct. to Dec. 2005

U-1	Amount of tax withheld for Oct. to Dec. 2005
U-2	Signature of the authorized representative
V	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Asian Terminals, Incorporated for Oct. to Dec. 2005
V-1	Amount of tax withheld for Oct. to Dec. 2005
V-2	Signature of the authorized representative
W	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Davao Light & Power Co., Inc. for Oct. to Dec. 2005
W-1	Amount of tax withheld for Oct. to Dec. 2005
W-2	Signature of the authorized representative
X	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by EEI Corporation for Oct. to Dec. 2005
X-1	Amount of tax withheld for Oct. to Dec. 2005
X-2	Signature of the authorized representative
Y	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Intel Tech. Phils., Inc. for Oct. to Dec. 2005
Y-1	Amount of tax withheld for Oct. to Dec. 2005
Y-2	Signature of the authorized representative
Z	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Davao Light & Power Co., Inc. for Jan. to March 2006
Z-1	Amount of tax withheld for Jan. to March 2006
Z-2	Signature of the authorized representative
AA	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Intel Tech. Phils., Inc. for Jan. to March 2006
AA-1	Amount of tax withheld for Jan. to March 2006
AA-2	Signature of the authorized representative
BB	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by CalEnergy International Services, Inc.-Regional Operating Headquarters for Jan. to March 2006
BB-1	Amount of tax withheld for Jan. to March 2006
BB-2	Signature of the authorized representative
CC	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Manila Water Company, Inc. for Jan. to March 2006
CC-1	Amount of tax withheld for Jan. to March 2006
CC-2	Signature of the authorized representative
DD	Certificate of Creditable Tax Withheld at Source (BIR Form

DD-1	No. 2307) issued by Hedcor, Inc. for Jan. to March 2006
DD-2	Amount of tax withheld for Jan. to March 2006 Signature of the authorized representative
EE	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Leighton Contractors (Asia) Limited for Jan. to March 2006
EE-1	Amount of tax withheld for Jan. to March 2006
EE-2	Signature of the authorized representative
FF	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Fort Bonifacio Development Corporation for Jan. to March 2006
FF-1	Amount of tax withheld for Jan. to March 2006
FF-2	Signature of the authorized representative
GG	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Sual Corporation for Jan. to March 2006
GG-1	Amount of tax withheld for Jan. to March 2006
GG-2	Signature of the authorized representative
HH	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Pagbilao Corporation for Jan. to March 2006
HH-1	Amount of tax withheld for Jan. to March 2006
HH-2	Signature of the authorized representative
II	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Davao Light & Power Co., Inc. for April to June 2006
II-1	Amount of tax withheld for April to June 2006
II-2	Signature of the authorized representative
JJ	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by HEDCOR, Inc. for April to June 2006
JJ-1	Amount of tax withheld for April to June 2006
JJ-2	Signature of the authorized representative
KK	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Fort Bonifacio Development Corporation for April to June 2006
KK-1	Amount of tax withheld for April to June 2006
KK-2	Signature of the authorized representative
LL	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Sual Corporation for April to June 2006
LL-1	Amount of tax withheld for April to June 2006
LL-2	Signature of the authorized representative

MM	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Hanjin Heavy Industries & Construction Co. Ltd. for April to June 2006
MM-1	Amount of tax withheld for April to June 2006
MM-2	Signature of the authorized representative
NN	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Manila Southcoast Development Corporation for April to June 2006
NN-1	Amount of tax withheld for April to June 2006
NN-2	Signature of the authorized representative
OO	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Sagittarius Mines, Inc. for April to June 2006
OO-1	Amount of tax withheld for April to June 2006
OO-2	Signature of the authorized representative
PP	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Toledo Power Company for April to June 2006
PP-1	Amount of tax withheld for April to June 2006
PP-2	Signature of the authorized representative
QQ	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Intel Tech. Phils., Inc. for April to June 2006
QQ-1	Amount of tax withheld for April to June 2006
QQ-2	Signature of the authorized representative
RR	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Essensa East Forbes Condominium Corporation for July to September 2006
RR-1	Amount of tax withheld for July to September 2006
RR-2	Signature of the authorized representative
SS	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Iligan Cement Corporation for July to September 2006
SS-1	Amount of tax withheld for July to September 2006
SS-2	Signature of the authorized representative
TT	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Berong Nickel Corporation for July to September 2006
TT-1	Amount of tax withheld for July to September 2006
TT-2	Signature of the authorized representative
UU	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Sual Corporation for July to September 2006

UU-1	Amount of tax withheld for July to September 2006
UU-2	Signature of the authorized representative
VV	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mirant Pagbilao Corporation for July to September 2006
VV-1	Amount of tax withheld for July to September 2006
VV-2	Signature of the authorized representative
WW	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Manila Southcoast Development Corporation for July to September 2006
WW-1	Amount of tax withheld for July to September 2006
WW-2	Signature of the authorized representative
XX	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Sagittarius Mines, Inc. for July to September 2006
XX-1	Amount of tax withheld for July to September 2006
XX-2	Signature of the authorized representative
YY	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by ENSR International Phils., Inc. for July to September 2006
YY-1	Amount of tax withheld for July to September 2006
YY-2	Signature of the authorized representative
ZZ	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Leighton Contractors (Asia) Limited for July to September 2006
ZZ-1	Amount of tax withheld for July to September 2006
ZZ-2	Signature of the authorized representative
AAA	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Intel Tech. Phils. Inc. for July to September 2006
AAA-1	Amount of tax withheld for July to September 2006
AAA-2	Signature of the authorized representative
BBB	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Filipinas Investments Ltd. for July to September 2006
BBB-1	Amount of tax withheld for July to September 2006
BBB-2	Signature of the authorized representative
CCC	Letter dated July 13, 2007 to the Chief of Revenue Accounting Division of the BIR
CCC-1	BIR Stamp Received (July 16, 2007)
CCC-2	Signature of Mr. Arnulfo O. Reyes 

DDD	Judicial Affidavit of Mr. Arnulfo O. Reyes executed on June 17, 2009
DDD-1	Signature appearing above the name "ARNULFO O. REYES"
EEE	List of Certificates of Creditable Taxes Withheld, FY Ending September 30, 2006
EEE-1	Signature of Mr. Arnulfo O. Reyes
EEE-2	Signature of Ms. Jane G. Tiamson
EEE-3	Amount of Php 4,337,165.58
FFF	Annual Income Tax Return of Fiscal Year Ending September 30, 2007
FFF-1	Line 28 – Prior Year's Excess Credits FY 2002 & 2003 in the amount of Php 11,205,777.00
GGG	Judicial Affidavit of MS. JANE TIAMSON executed on July 15, 2009
GGG-1	Signature appearing above the name "JANE TIAMSON"
HHH	First Quarterly Income Tax Return for Fiscal Year Ending September 2007
HHH-1	Line 29A – Prior Year's Excess Credits – Php 0.00
III	Second Quarterly Income Tax Return for Fiscal year Ending September 2007
III-1	Line 29A – Prior Year's Excess Credits – Php 0.00
JJJ	Third Quarterly Income Tax Return for Fiscal year Ending September 2007
JJJ-1	Line 29A – Prior Year's Excess Credits – Php 0.00
KKK	Judicial Affidavit of MS. JANE TIAMSON executed on October 21, 2009
KKK-1	Signature appearing above the name "JANE TIAMSON"
LLL	Maunsell Philippines, Inc.'s General Ledger for the period from October 1, 2005 to September 30, 2006
MMM	Summary of Creditable Withholding Taxes Withheld by Client Fiscal year 2006
MMM-1	Signature of Ms. Jane Tiamson
MMM-2	Signature of Mr. Arnulfo O. Reyes
MMM-3	Maunsell's Official Receipt No. 2804 dated November 11, 2005
MMM-4	Maunsell's Official Receipt No. 2835 dated December 16, 2005
MMM-5	Maunsell's Official Receipt No. 3056 dated August 7, 2006
MMM-6	Maunsell's Official Receipt No. 3125 dated September 25, 2006
MMM-7	Maunsell's Official Receipt No. 3124 dated September 25, 2006

MMM-8	Maunsell's Official Receipt No. 2903 dated February 23, 2006
MMM-9	Maunsell's Official Receipt No. 2769 dated October 10, 2005
MMM-10	Maunsell's Official Receipt No. 2925 dated March 17, 2006
MMM-11	Maunsell's Official Receipt No. 2984 dated May 24, 2006
MMM-12	Maunsell's Official Receipt No. 2772 dated October 12, 2005
MMM-13	Maunsell's Official Receipt No. 3088 dated August 29, 2006
MMM-14	Maunsell's Official Receipt No. 3033 dated July 17, 2006
MMM-15	Maunsell's Official Receipt No. 3070 dated August 11, 2006
MMM-16	Maunsell's Official Receipt No. 2767 dated October 7, 2005
MMM-17	Maunsell's Official Receipt No. 2897 dated February 17, 2006
MMM-18	Maunsell's Official Receipt No. 2981 dated May 19, 2006
MMM-19	Maunsell's Official Receipt No. 2806 dated November 11, 2005
MMM-20	Maunsell's Official Receipt No. 2947 dated April 12, 2006
MMM-21	Maunsell's Official Receipt No. 2888 dated October 12, 2006
MMM-22	Maunsell's Official Receipt No. 2999 dated June 7, 2006
MMM-23	Maunsell's Official Receipt No. 2814 dated November 25, 2005
MMM-24	Maunsell's Official Receipt No. 3091 dated August 31, 2006
MMM-25	Maunsell's Official Receipt No. 2768 dated October 7, 2005
MMM-26	Maunsell's Official Receipt No. 2786 dated October 20, 2005
MMM-27	Maunsell's Official Receipt No. 2793 dated October 27, 2005
MMM-28	Maunsell's Official Receipt No. 2827 dated December 7, 2005
MMM-29	Maunsell's Official Receipt No. 2851 dated January 5, 2006
MMM-30	Maunsell's Official Receipt No. 2873 dated January 23, 2006
MMM-31	Maunsell's Official Receipt No. 2898 dated February 17, 2006
MMM-32	Maunsell's Official Receipt No. 2921 dated March 8, 2006
MMM-33	Maunsell's Official Receipt No. 2937 dated March 29, 2006
MMM-34	Maunsell's Official Receipt No. 2963 dated May 4, 2006
MMM-35	Maunsell's Official Receipt No. 2973 dated May 15, 2006
MMM-36	Maunsell's Official Receipt No. 3009 dated June 21, 2006
MMM-37	Maunsell's Official Receipt No. 3034 dated July 19, 2006
MMM-38	Maunsell's Official Receipt No. 3069 dated August 11, 2006
MMM-39	Maunsell's Official Receipt No. 3086 dated August 23, 2006
MMM-40	Maunsell's Official Receipt No. 2978 dated May 17, 2006
MMM-41	Maunsell's Official Receipt No. 3000 dated June 7, 2006
MMM-42	Maunsell's Official Receipt No. 3092 dated August 31, 2006
MMM-43	Maunsell's Official Receipt No. 3098 dated September 7, 2006
MMM-44	Maunsell's Official Receipt No. 3109 dated September 14, 2006
MMM-45	Maunsell's Official Receipt No. 2766 dated October 7, 2005
MMM-46	Maunsell's Official Receipt No. 2811 dated November 18, 2005
MMM-47	Maunsell's Official Receipt No. 2870 dated January 20, 2006
MMM-48	Maunsell's Official Receipt No. 2871 dated January 20, 2006
MMM-49	Maunsell's Official Receipt No. 3080 dated August 18, 2006

MMM-50	Maunsell's Official Receipt No. 3110 dated September 15, 2006
MMM-51	Maunsell's Official Receipt No. 2966 dated May 8, 2006
MMM-52	Maunsell's Official Receipt No. 3106 dated August 3, 2006
MMM-53	Maunsell's Official Receipt No. 2988 dated May 26, 2006
MMM-54	Maunsell's Official Receipt No. 2867 dated January 20, 2006
MMM-55	Maunsell's Official Receipt No. 2800 dated November 9, 2005
MMM-56	Maunsell's Official Receipt No. 2896 dated February 17, 2006
MMM-57	Maunsell's Official Receipt No. 3061 dated August 9, 2006
MMM-58	Maunsell's Official Receipt No. 2785 dated October 19, 2005
MMM-59	Maunsell's Official Receipt No. 2790 dated October 26, 2005
MMM-60	Maunsell's Official Receipt No. 2822 dated December 1, 2005
MMM-61	Maunsell's Official Receipt No. 2843 dated December 23, 2005
MMM-62	Maunsell's Official Receipt No. 2844 dated December 23, 2005
MMM-63	Maunsell's Official Receipt No. 2854 dated January 11, 2006
MMM-64	Maunsell's Official Receipt No. 2868 dated January 20, 2006
MMM-65	Maunsell's Official Receipt No. 2923 dated March 29, 2006
MMM-66	Maunsell's Official Receipt No. 2944 dated April 11, 2006
MMM-67	Maunsell's Official Receipt No. 3001 dated June 7, 2006
MMM-68	Maunsell's Official Receipt No. 3085 dated August 23, 2006
MMM-69	Maunsell's Official Receipt No. 3105 dated August 13, 2006
MMM-70	Maunsell's Official Receipt No. 3121 dated September 22, 2006
MMM-71	Maunsell's Official Receipt No. 3122 dated September 22, 2006
MMM-72	Maunsell's Official Receipt No. 2782 dated October 18, 2005
MMM-73	Maunsell's Official Receipt No. 2883 dated February 1, 2006
MMM-74	Maunsell's Official Receipt No. 2801 dated September 11, 2005
MMM-75	Maunsell's Official Receipt No. 2773 dated October 12, 2005
MMM-76	Maunsell's Official Receipt No. 2821 dated November 30, 2005
MMM-77	Maunsell's Official Receipt No. 2964 dated August 5, 2006
MMM-78	Maunsell's Official Receipt No. 3026 dated July 7, 2006
MMM-79	Maunsell's Official Receipt No. 3027 dated July 7, 2006
MMM-80	Maunsell's Official Receipt No. 2965 dated May 5, 2006
NNN	Maunsell's List of Certificates of Creditable Taxes Withheld for Fiscal Year Ending September 30, 2005
NNN-1	Signature of Ms. Jane Tiamson
NNN-2	Signature of Mr. Arnulfo O. Reyes
OOO	Annual Income Tax Return for Fiscal Year Ending September 30, 2005
OOO-1	Signature of Amelia F. Ward

PPP	Judicial Affidavit of Mr. RODELIO S. ACOSTA executed on March 1, 2010
PPP-1	Signature appearing above the name "RODELIO S. ACOSTA"
QQQ	Maunsell's List of Certificate of Creditable Taxes Withheld for FY ending September 30, 2006 prepared by Audit
RRR	Maunsell's Inventory of CWT (Oct 05-Sept 06), as of Sept 2006
TTT	Judicial Affidavit of MS. JANE TIAMSON executed on March 26, 2010
TTT-1	Signature appearing above the name "JANE TIAMSON"

Petitioner and respondent stipulated on the latter's documentary exhibits so that the presentation of respondent's witness was dispensed with. Respondent filed her Formal Offer of Evidence to which petitioner did not file its comment, and with their admission, respondent is deemed to have formally rested her case.

The documentary evidence formally offered are as follows:

<u>Exhibits</u>	<u>Description</u>
1	2004 Income Tax Return of Maunsell Philippines Inc, filed through EFPS
2	Amended 2004 Income Tax Return of Maunsell Philippines Inc. filed through the EFPS
3	2005 Income Tax Return of Maunsell Philippines Inc. filed through the EFPS

Thereafter, the parties were ordered to submit their respective memorandum within thirty (30) days from receipt of the Resolution⁹ dated November 12, 2010.☞

⁹ Docket, pp. 445-446.

On January 19, 2011, the case was deemed submitted for decision, considering petitioner's Memorandum filed on January 17, 2011 and the report of the Court's Records Division that respondent failed to file her Memorandum.¹⁰

The issues¹¹, as jointly stipulated by the parties, are as follows:

- "a. Whether or not the Petitioner has excess/creditable withholding taxes for FY 2006;
- b. Whether or not Petitioner's right to claim for issuance of tax credit certificate of the overpaid income taxes for FY 2006 is substantiated with supporting documents."

Petitioner claims that it is entitled to the issuance of a tax credit certificate in the amount of P3,839,671.31, representing its purported excess/unutilized creditable withholding tax for the FY 2006.

Petitioner maintains that it is entitled to the issuance of a tax credit certificate since it was able to comply with the three (3) basic requirements prescribed under Section 2.58.3 of Revenue Regulations No. 2-98 and as laid down in the case of *Filinvest Development Corporation vs. Commissioner of Internal Revenue and Court of Tax Appeals*¹².

Petitioner contends that it filed its administrative claim before respondent and this Court within the prescriptive period pursuant to Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) 

¹⁰ Docket, p. 465.

¹¹ Docket, p. 93.

¹² G.R. No. 146941, August 9, 2007.

of 1997; that it declared as part of gross income in the Annual Income Tax Return the income upon which the taxes were withheld; and that the fact of withholding was duly established.

Petitioner likewise submitted the following documents:

1. Letter-claim for the issuance of a tax credit certificate on creditable withholding taxes (CWT) dated July 13, 2007;¹³
2. Amended Annual Income Tax Return for the FY 2006;¹⁴
3. Audited Financial Statement for the FY 2006;¹⁵
4. Certificates of Creditable Tax Withheld at Source;¹⁶
5. Annual Income Tax Return for the FY 2007;¹⁷ and
6. Quarterly Income Tax Returns for the FY 2007.¹⁸

Petitioner asserts that it clearly indicated its intention to be issued a tax credit certificate for its FY 2006 income tax overpayment when it did not carry-over the said overpayment in the succeeding FY 2007.

Under Section 2.58.3 of Revenue Regulations No. 2-98, otherwise known as the Withholding Tax Regulations, in order to be entitled to a claim for refund or issuance of a tax credit certificate for excess/unused creditable withholding tax, the following requisites must be satisfied:

1. That the claim for refund was filed within the two-year reglementary period, prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended;
2. That the fact of withholding is established by a copy of the statement duly issued by the payor.

¹³ Exhibit "C".

¹⁴ Exhibit "K".

¹⁵ Exhibit "L".

¹⁶ Exhibits "M" to "BBB".

¹⁷ Exhibit "FFF".

¹⁸ Exhibits "HHH", "III", and "JJJ".

(withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income declared in the income tax return of the recipient.¹⁹

Anent the first requisite, petitioner maintains that it filed its claim for issuance of a tax credit certificate before respondent and this Court within the prescriptive period pursuant to Sections 204(C) and 229 of the NIRC of 1997, as amended. Sections 204(C) and 229 are quoted hereunder for ready reference, to wit:

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

xxx

xxx

xxx

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

"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;"

¹⁹ *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997.

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."*

Furthermore, in *ACCRA Investments Corporation vs. Court of Appeals, et al.*²⁰, the Supreme Court declared that the tax payer has two (2) years from the filing of the Final Adjustment Return within which to file a claim for refund of excess creditable income taxes withheld, both in the administrative and judicial levels.

Petitioner argues that the filing of its administrative claim for refund on July 13, 2007 as well as its Petition for Review on January 15, 2009 were both made within the two-year prescriptive period, counting from January 25, 2007, the date when it filed its Amended Annual Income Tax Return for FY 2006.

This Court does not agree.

In the case of *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*²¹, this Court held:

"It is true that the reckoning of the two-year prescriptive period is at the time of filing of the final adjustment return. However, the counting should be made from the date of filing of the *original* final adjustment return and not from the date of filing of the *amended* return. This was emphasized by this Court in the case of *Benguet*."

²⁰ G.R. No. 96322, December 20, 1991.

²¹ CTA Case No. 6327, August 28, 2003.

Management Corporation vs. Commissioner of Internal Revenue, CTA Case No. 5492, January 27, 1999, wherein in disposing of the said issue, the court ruled in this wise:

'An analysis of the evidence submitted by petitioner reveals that it failed to show that the claim for refund was timely filed within two years from the date of payment of tax. Petitioner failed to present the original Corporate Annual Income Tax Returns for the calendar years 1994 and 1995 to enable Us to verify if the claim for refund was made within the two-year reglementary period. Both documents are needed for the purpose of determining whether petitioner filed the claim for refund with the respondent and the petition for review with this Court within the two-year prescriptive period, reckoned from the actual date of filing of the original final adjustment returns (*Commissioner of Internal Revenue v. Philippine American Life Insurance Co.*, 244 SCRA 446). The mere allegations by the Counsel of petitioner that the 1994 and 1995 income tax returns were filed in April, 1995 and April, 1996, respectively, and that the claim for refund was filed within the two-year period have to be verified. We could not see the reason why such important documents were not presented by the petitioner during the trial of the case. In the absence of these material documents, the Court is constrained to deny petitioner's prayer.'

Our pronouncement in the above case was significantly affirmed by the Court of Appeals in the case entitled *Benguet Management Corporation vs. Commissioner of Internal Revenue*, CA-GR SP No. 52737, promulgated on October 29, 1999, with entry of Judgment dated November 27, 1999, the pertinent portion of which reads as follows:'

'Clearly, the time or date of actual filing by the Petitioner of its 1994 and 1995 Annual Income Tax Returns with the BIR, can well be verified from its duplicate copies since all income tax returns filed with the BIR are stamped 'Received' on the date they are filed which also shows the date of its actual filing. Thus, there is no gainsaying why the Public Respondent deemed it necessary for the Petitioner to present copies of its original 1994 and 1995 Annual Income Tax Returns for them to verify if, indeed, the claim for refund with the BIR and the 'Petition for Review'

with them, were made within the two-year reglementary period. xxx"

As borne out by the records, petitioner only submitted its FY 2006 **amended** Annual Income Tax Return, which was filed on January 25, 2007 but failed to offer as evidence its FY 2006 **original** Annual Income Tax Return.

Applying the above-cited jurisprudence, the original return is important in order for this Court to ascertain whether the filing of the administrative and judicial claims for refund or issuance of a tax credit certificate were made within the two-year reglementary period. Absent such document, this Court has no way of determining whether the claim was timely filed.

Moreover, the said original return is necessary for this Court to verify if petitioner's original option was to be issued a tax credit certificate for the unapplied creditable taxes withheld since as provided under Section 76 of the NIRC of 1997, 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. Thus, if petitioner has originally chosen the option "to be carried-over as tax credit next year/quarter", it will be precluded from claiming the issuance of a tax credit certificate for the said excess payment.❏

Section 76 of the NIRC of 1997 states:

"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 a tax credit certificate shall be allowed therefor."

This Court has ruled in a long line of cases²² that once the carry-over option has been made, the same becomes irrevocable for that taxable period and the taxpayer can no longer claim for a cash refund or issuance of a tax credit certificate for overpaid income tax payment for the said year. 

²² *Sithe Philippines Holdings, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6274, April 4, 2003; *Banco Filipino Savings & Mortgage Bank vs. Commissioner of Internal Revenue*, CTA Case No. 6374, April 3, 2003; *Philippine Airlines, Inc. vs. Commissioner of Internal Revenue*, CTA Case No. 6134, May 16, 2003.

The Supreme Court's ruling in the case of *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*²³ corroborates the foregoing in this wise:

"Hence, the controlling factor for the operation of the *irrevocability rule* is that the taxpayer chose an option; and once it had already done so, it could no longer make another one. Consequently, after the taxpayer opts to carry-over its excess tax credit to the following taxable period, the question of whether or not it actually gets to apply said tax credit is irrelevant. Section 76 of the NIRC of 1997 is explicit in stating that once the option to carry over has been made, 'no application for tax refund or issuance of a tax credit certificate shall be allowed therefor'."

Thus, the failure of petitioner to present its original Annual Income Tax Return for the FY 2006 is fatal to its claim for the issuance of a tax credit certificate for its alleged excess/unutilized creditable withholding tax in the amount of P3,839,671.31 for the FY 2006.

WHEREFORE, premises considered, the Petition for Review is hereby **DISMISSED** for lack of merit.

SO ORDERED.


CIELITO N. MINDARO-GRULLA
Associate Justice

WE CONCUR:


JUANITO C. CASTAÑEDA, JR.
Associate Justice


CAESAR A. CASANOVA
Associate Justice

²³ G.R. No. 178490, July 7, 2009.

ATTESTATION

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


JUANITO C. CASTANEDA, JR.
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.


ERNESTO D. ACOSTA
Presiding Justice