REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

SM INVESTMENTS CORPORATION, Petitioner,	**CTA CASE NO. 9322**
	Members:
- versus -	**CASTAÑEDA, JR.**, Chairperson, and **MANAHAN, *JJ.***
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: NOV 18 2019 1:40 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., *J.*:

For resolution of the Court are the following:

1. **Motion for Partial Reconsideration (Re: Decision Promulgated 4 March 2019)** filed by respondent on March 18, 2019, [1] with petitioner's **Comment/Opposition** filed on April 5, 2019; [2] and

2. **Omnibus Motion 1. For the Partial Reconsideration of the Decision Dated 04 March 2019, and 2. For Leave of Court to Recall Witness** filed by petitioner on March 20, 2019 through registered mail and received by this Court

[1] Docket, Vol. IV, pp. 1637-1642.
[2] Docket, Vol. IV, pp. 1727-1732.

on March 26, 2019[3], with respondent's **Opposition** filed on April 24, 2019.[4]

For easy reference, the dispositive portion of the assailed Decision promulgated on March 4, 2019 reads:

> "**WHEREFORE**, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the total amount of ₱179,295,580.72, representing petitioner's excess and unutilized Creditable Withholding Tax for calendar year ended December 31, 2013.
>
> **SO ORDERED.**"[5]

In his Motion for Partial Reconsideration,[6] respondent posits that petitioner is not entitled to refund in the amount of ₱179,295,580.72 allegedly representing excess and unutilized creditable withholding tax for calendar year ended 31 December 2013.

On the other hand, in its Motion for Partial Reconsideration,[7] petitioner SMIC posits that it was able to comply with all the essential basic conditions to prove its entitlement to its claim for refund or, in the alternative, for the issuance of a Tax Credit Certificate (TCC) for its excess and unutilized Creditable Withholding Tax (CWT) for the calendar year ended 31 December 2013. Further, it contends that it provided evidence to support its CWT for the taxable year 2007.

After due consideration of the issues raised by the parties, the Court resolves to deny respondent's Motion for Partial Reconsideration and to partially grant petitioner's Motion for Partial Reconsideration.

DISCUSSION

SMIC's Motion for Partial Reconsideration ℱ

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[3] Docket, Vol. IV, pp. 1685-1704.
[4] Docket, Vol. IV, pp. 1736-1742.
[5] Docket, Vol. IV, p. 1635.
[6] Docket, Vol. IV, pp. 1637-1638.
[7] Docket, Vol. IV, pp. 1686 & 1696.

SMIC contends that it was able to comply with all the essential basic conditions set forth under pertinent provisions of law and existing jurisprudential declarations and prove its entitlement to its claim for refund or, in the alternative, the issuance of a TCC for its excess and unutilized CWT for the calendar year ended 31 December 2013.[8]

In the assailed Decision, the Court considered SMIC's CWT for taxable year 2013 in the amount of ₱1,156,578,400.97 as properly supported by BIR Form No. 2307,[9] but the total refundable CWT amounted only to ₱209,071,035.06, after the Court disallowed the following amounts:

a. The claimed CWT amounting to ₱943,656,142.68 was disallowed for failure to prove that the income payments pertaining thereto were not properly reported in SMIC's books. Hence, it may not be reported as revenue in its Income Tax Return (ITR).

b. The claimed CWT amounting to ₱17,567,246.73 was disallowed. The Court noted that the income to which said CWT relates to in the amount of ₱383,246,997.60 was not properly recorded in SMIC's books. Thus, it may not be reported as revenue in its ITR. Further, the Court observed that the ₱17,567,246.73 was not fully supported by original copies of BIR Form No. 2307, as found by the ICPA.

c. The claimed CWT in the amount of ₱239,208.99 was disallowed for being supported by photocopies of BIR Form No. 2307.[10]

SMIC's compliance with the requisites to prove its entitlement to its claim for refund

SMIC avers that contrary to the observation of the Court, the income related to the disallowed CWT were duly reported as income

[8] Omnibus Motion, Docket, Vol. IV, p. 1686.
[9] Decision, p. 10, Docket, Vol. IV, p. 1620.
[10] Decision, Docket, Vol. IV, p. 1634.

in its 2013 ITR and recorded in its books. Further, it argues that it offered its explanation/reconciliation of its recording/entry in its books of accounts and ITR.[11] SMIC notes that the ICPA provided a comparative table[12] summarizing the total amount of income payments per CWT and taxable gross income per FS and per ITR, with corresponding explanation regarding the discrepancy in the amounts reflected in the report.

SMIC also asserts that the Court disregarded the categorical finding of the duly commissioned ICPA that the pertinent gross income upon which the claimed CWT relates to was reported as taxable income in its ITR. Further, petitioner avers that the Court overlooked the explanations offered by the ICPA and petitioner pertaining to the reporting of its income in its books and ITR.[13]

A second look at the ICPA report shows, among others, the following:[14]

"12. **We wish to note that the amount in the CWT Return are not broken down into specific transaction for it to be traced to the books. Moreover, the amount in the CWT are usually consolidated for the month or quarter, such that it is difficult to trace it to the books**. Nevertheless, we have provided a comparative analysis where we mapped the CWT per customer against the income per FS/ITR per customer. This procedure reveals the amount of income per customer subjected to withholding tax.

13. The results of the above procedure is shown in *Annex-I.*

14. Our review of Petitioner's ITR, particularly, Schedule 9 thereof, audited financial statements, and our interview with Petitioner's personnel, the following summarizes the total amount of gross income per CWT reported as taxable gross income:

xxx xxx xxx

[11] Omnibus Motion, Docket, Vol. IV, p. 1689.
[12] Exhibit "P-2279", Docket, Vol. II, pp. 755-756.
[13] Omnibus Motion, Docket, Vol. IV, p. 1686.
[14] Exhibit "P-2279", pp. 6-7, Docket, Vol. II, pp. 754-755.

Below are the explanation for the foregoing items:

xxx xxx xxx

(b) The amount of rent income reported in the ITR is higher by Php20,747,184. Since the income per ITR is higher, **it is reasonable to assume that all gross income covered by CWT were all reported as taxable income. However, it could be possible that some tenants did not withhold or failed to issue the related CWT in 2013.** *(Emphasis supplied)*

xxx xxx xxx"

The Court scrutinized the findings contained in the said report to verify the categorical statement made by the ICPA. Considering that this case involves a claim for refund in a substantial amount, the Court cannot just rely on the "reasonable assumption" that the gross income covered by CWT was reported as taxable income. Likewise, the unclear explanation of the "possibility" that some tenants did not withhold or failed to issue the related CWT in 2013 is unacceptable. Further, mere statements of "timing differences" and "different rules for accounting and tax purposes"[15] are inadequate to reconcile the discrepancy between the income payments per CWT certificates and petitioner's books/AFS/ITR. The same must be supported by documents and other appropriate evidence.

SMIC contends that the source of the CWT subject of refund was primarily from the disposal of properties to SM Prime Holdings, Inc.[16] In its Omnibus Motion, petitioner points out the following income payments which allegedly pertain to its disposal of properties. However, scrutiny of Annex I of the ICPA report[17] reveals that the subject transactions were recorded in its books differently:

Reference	Per SAWT/BIR Form 2307				Per ITR/FS	
Docket, Vol. II	**Registered Name**	**Tax Rate**	**Tax Base**	**Tax Withheld**	**Amount**	**Account**
p. 831	Hotel Specialist Davao Inc.	1%	₱ 82,527,459.00	₱ 825,274.59	₱ 106,526,882.28	Disposal of assets
p. 836	SM Prime Holdings Inc.	2%	1,018,663,024.50	20,373,260.49	37,960,266.12	Reimbursable charges
p. 844	SM Prime Holdings Inc.	5%	16,141,413,000.00	807,070,650.00	63,564,924.44	Rent income and Miscellaneous

[15] Q&A No. 27, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1716-1718.
[16] Omnibus Motion, Docket, Vol. IV, p. 1691.
[17] Exhibit "P-2279", Docket, Vol. II, pp. 831-849.

						Income-Parking Terminal
	TOTAL		**₱17,242,603,483.50**	**₱828,269,185.08**	**₱208,052,072.84**	

It is noted that from the foregoing, the largest amount of CWT in the amount of ₱807,070,650.00 with related income payment of ₱16,141,413,000.00 was recorded by SMIC as Rent Income and Miscellaneous Income-Parking Terminal per the ICPA report and not as disposal of assets. Moreover, in the income mapping made by the ICPA, of the ₱16,141,413,000.00 income payment, only ₱63,564,924.44 was recorded in SMIC's books. If the ₱63,564,924.44 does not pertain to the transfer of properties with SM Prime Holdings, Inc., it would be erroneous to place such amount adjacent to ₱16,141,413,000.00.

Further, the ICPA report shows gain on sale of properties in the amount of ₱17,266,997,914.00.[18] However, Annex I of the same report shows a total of ₱17,355,065,752.31 detailed as follows:[19]

Per SAWT/BIR Form 2307					
Registered Name	**Tax Rate**	**Tax Base**	**Tax Withheld**	**Per ITR/FS**	**Difference**
Consolidated Prime Development	1%	₱ 49,554.00	₱ 495.54	₱ 49,553.57	₱ 0.43
Desserts Plus Inc.	1%	2,874,120.00	28,741.20	43,283.87	2,830,836.13
Highlands Prime Inc.	1%	106,966.00	1,069.66	-	106,966.00
Hotel Specialist Davao Inc.	1%	82,527,459.00	825,274.59	106,526,882.28	(23,999,423.28)
Sanford Marketing Corp.	1%	10,072,441.00	100,724.41	13,141,931.11	(1.11)
Sanford Marketing Corp.	1%	3,069,489.00	30,694.89		
SM Arena Complex Corp.	1%	4,225,720.00	42,257.20	8,554,363.35	(847,322.35)
SM Arena Complex Corp.	1%	2,213,287.00	22,132.87		
SM Arena Complex Corp.	1%	511,674.00	5,116.74		
SM Arena Complex Corp.	1%	756,360.00	7,563.60		
SM Prime Holdings Inc.	1%	27,024.00	270.24	17,226,749,738.13	(17,226,186,441.13)
SM Prime Holdings Inc.	1%	23,673.00	236.73		
SM Prime Holdings Inc.	1%	512,600.00	5,126.00		
TOTAL		**₱106,970,367.00**	**₱1,069,703.67**	**₱17,355,065,752.31**	**₱(17,248,095,385.31)**

Thus, SMIC or the ICPA failed to reconcile the difference in gross income/income payment of ₱88,067,838.31 (₱17,355,065,752.31 per ITR/FS in Annex I less ₱17,266,997,914.00 per ICPA findings). The ICPA did not account for the discrepancy

[18] Exhibit "P-2279", p. 7, Docket, Vol. II, p. 755.
[19] Exhibit "P-2279", Annex I, Docket, Vol. II, pp. 831 & 849.

between his findings of income payments per CWT certificates of ₱17,266,997,914.00 and the total income payments per Annex I of ₱106,970,053.00. There was no explanation either as to the discrepancy of ₱17,248,095,385.31 between the gross income/income payment per SAWT/BIR Form No. 2307 and per SMIC's books/ITR.

To proceed, the corresponding gain on the alleged sale of properties was mentioned by the Court-commissioned ICPA in his report and was quoted by the Court in the assailed decision.[20] An excerpt of the said report is reproduced as follows:

Type of Income	Per FS	Per ITR	Per CWT	Reference
xxx xxx xxx				
Gain on sale of properties	6,103,551	5,607,579,580	17,266,997,914	(e)
xxx xxx xxx				
Net Income	₱12,395,315,779	₱1,780,685,061	₱22,714,250,410	

xxx xxx xxx

(e) The gain on sale of properties pertain to the sale of various properties to one of Petitioner's affiliates. However, due to accounting rules, no gain was recognized in the Petitioner's books. Nevertheless, Petitioner was subjected to withholding tax based on the gross selling price of the transaction, the capital gain of which were reported as taxable income. Note that while the CWT shows the gross income, the amount reported in the ITR is only the gain on sale. This proves that the total amount of gross selling price Php17,266,997,914, which was subjected to withholding tax and covered by CWT, were fully reported as taxable income in the ITR with the return of taxable gain of Php5,607,579,580.

Proof of gross selling price and supporting deeds of sale are presented as Exhibits P-2265 to P-2272. How the gain was computed is presented as Exhibit P-2277."

However, neither the ICPA nor SMIC explained the details of such transaction so that the Court can better appreciate the

[20] Decision, Docket Vol. IV, pp. 1620-1622.

documentary evidence submitted. Further, SMIC or the ICPA failed to determine which CWT certificates support the said sale/disposal or exchange of properties.

The ICPA referred to several documents that prove the gross selling price related to the gain on sale of properties. Upon verification, the Deeds of Exchange entered into by petitioner and SM Prime Holdings, Inc. in relation to the transfer of properties amount to ₱16,141,413,000.00, to wit:

Exhibit	Date	Property/Development	Transfer Value
P-2265	5/31/2013	Raddison Cebu Hotel	₱2,375,000,000.00
P-2266	5/31/2013	Pico Sands Hotel	704,098,000.00
P-2267	5/31/2013	SMX Convention Center	1,608,000,000.00
		MOA Arena	3,369,320,000.00
		MOA Arena Annex	1,673,000,000.00
		Corporate Office	895,000,000.00
P-2268	5/31/2013	Taal Vista Hotel	2,014,324,000.00
P-2269	5/31/2013	Tagaytay	1,839,000,000.00
P-2270	5/31/2013	Casino & Waste Water Treatment Plant	861,000,000.00
P-2271	5/31/2013	EDSA West	209,000,000.00
P-2272	5/31/2013	Park Inn Davao	593,671,000.00
		TOTAL	**₱16,141,413,000.00**

When the transactions refer to disposal or transfer of properties, the Court evaluated the corresponding schedule of Disposal of Assets as reported by the ICPA (Annex I) to check whether they have been properly recorded in the books and consequently reported in the ITR. It is noteworthy that the total amount of ₱16,141,413,000.00 or any of the amounts in the foregoing list does not tally with any of the amounts in the ICPA's list of income payments received from disposal of assets as shown in Annex I.[21]

Moreover, the computation of the gain on disposal of properties shows essentially the following:[22]

	COST		
Asset Description	**Other Property**	**Project Century**	**Total**
Land & Land Impvt	xxx	743,628,157	xxx
Building & Building Impvt		11,385,957,228	
Building Equipment, Furniture & Others		758,341,216	

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[21] Exhibit "P-2279", Annex I, Docket, Vol. II, pp. 831 & 849.
[22] Exhibit "P-2277".

Construction in progress		-	
		12,887,926,601	
		ACCUMULATED DEPRECIATION	
Land & Land Impvt	xxx	41,294	xxx
Building & Building Impvt		2,097,562,794	
Building Equipment, Furniture & Others		250,385,542	
Construction in progress		-	
		2,347,989,630	
		NET BOOK VALUE	
Land & Land Impvt	xxx	743,586,863	xxx
Building & Building Impvt		9,288,394,434	
Building Equipment, Furniture & Others		507,955,674	
Construction in progress		-	
Net book value before impairment loss	xxx	10,539,936,971	xxx

xxx xxx xxx

Selling price of properties (DOAS)	**16,141,413,000**
Less Net Book Value of properties	**10,539,936,971**
Gain on sale of properties to SM Prime	**5,601,476,029**

Except for the Deeds of Exchange, SMIC did not mention the documents supporting this computation or even the exhibit pertaining to the CWT certificate substantiating the CWT that arose from this transaction.

In its attempt to prove that the foregoing gain of ₱5,601,476,029.00 was reported in its 2013 ITR, SMIC stated in its Memorandum that while the gross income on sale of properties per CWT amounted to ₱17,266,997,914.00, the ITR only showed gross income of ₱5,607,579,580.00. The discrepancy was not shown in the ITR because the amount presented as gross income in the ITR constitutes only the **gain on sale** pursuant to Section 32(A)(3) of the NIRC, as amended, while the amounts in the CWT certificates represent the **gross selling price** upon which the withholding tax was based.[23]

The difference between the gross selling price and gain on sale mentioned above should equal to the net book value of the properties sold, as found in the computation of gain previously shown. However, the Court notes the following discrepancies:

Reference	Gross Income/ Selling Price	Gain on Sale	Net Book Value
ICPA / ITR	₱17,266,997,914.00	₱5,607,579,580.00	₱11,659,418,334.00

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[23] Paragraphs 42-44, Memorandum for the Petitioner, Docket, Vol. IV, pp. 1577-1578.

Exh. P-2277	16,141,413,000.00	5,601,476,029.00	10,539,936,971.00
Difference	**₱1,125,584,914.00**	**₱6,103,551.00**	**₱1,119,481,363.00**

Again, no explanation was offered by SMIC or the ICPA concerning these discrepancies.

It may be said that the Court disregarded the categorical statement of the ICPA that the pertinent gross income upon which the claimed CWT relates to was reported as taxable income in its ITR, simply because his actual findings do not support his statement. Section 3 of Rule 13 of the Revised Rules of the Court of Tax Appeals, as amended, provides:

> "SEC. 3. *Findings of independent CPA.* – The submission by the independent CPA of pre-marked documentary exhibits shall be subject to verification and comparison with the original documents, the availability of which shall be primary responsibility of the party possessing such documents and, secondarily, by the independent CPA. **The findings and conclusions of the independent CPA** may be challenged by the parties and **shall not be conclusive upon the Court, which may, in whole or in part, adopt such findings and conclusions subject to verification.**" *(Emphasis supplied)*

In relation thereto, the Court did not overlook the explanations offered by the ICPA and petitioner pertaining to the reporting of the income payments in its books and ITR. The explanation, if any was given, was insufficient to convince the Court of SMIC's assertions.

After submitting documentary evidence, albeit with inadequate explanation, the Court cannot be expected to sufficiently evaluate the related income payments of its claimed CWT vis-à-vis the proper recording in its books and subsequent declaration in its income tax. On this score, it is worth stressing that claims for refund are considered tax exemptions which are construed strictly against the taxpayer.

SMIC's explanation of the reporting of its income in its books and ITR

a. Disallowance of claimed CWT amounting to ₱943,656,142.68

An excerpt of the disallowed CWT amounting to ₱943,656,142.68[24], which allegedly arose from the disposal of properties, is reproduced below for easy reference:

Registered Name	Tax Rate	Tax Base	CWT	Per FS/ITR	Difference
SM Prime Holdings, Inc.	5%	₱16,215,214,349.20[25]	₱810,760,717.46	₱63,564,924.44	₱16,151,649,424.76
SM Prime Holdings, Inc.	2%	1,247,452,513.40[26]	24,949,050.27	37,960,266.12	1,209,492,247.28
Hotel Specialist Davao, Inc.	1%	82,527,459.00[27]	825,274.59	106,526,882.28	(23,999,423.28)
Total		**₱17,545,194,321.60**	**₱836,535,042.32**	**₱208,052,072.84**	**₱17,337,142,248.76**

The foregoing is further broken down as follows:

Schedule 1 (from Annex I of the ICPA Report)[28]				
Exhibit	**Registered Name**	**Tax Rate**	**Tax Base**	**CWT**
P-229, P-230, P-231	SM Prime Holdings, Inc.	5%	₱ 15,260,794.20	₱ 763,039.71
P-327, P-510, P-511	SM Prime Holdings, Inc.	5%	16,900,167.60	845,008.38
P-620, P-790, P-791	SM Prime Holdings, Inc.	5%	15,418,470.80	770,923.54
P-1080, P-1082, P-1083	SM Prime Holdings, Inc.	5%	26,221,916.60	1,311,095.83
P-1081	*SM Prime Holdings, Inc.*	*5%*	*16,141,413,000.00*	*807,070,650.00*
	Total		**₱16,215,214,349.20**	**₱810,760,717.46**

Schedule 2 (from Annex I of the ICPA Report)[29]				
Exhibit	**Registered Name**	**Tax Rate**	**Tax Base**	**CWT**
P-229, P-231	SM Prime Holdings, Inc.	2%	₱ 2,383,180.50	₱ 47,663.61
P-327, P-511	SM Prime Holdings, Inc.	2%	44,139,904.50	882,798.09
P-620, P-790	SM Prime Holdings, Inc.	2%	2,516,393.50	50,327.87
P-1080, P-1082, P-1083	SM Prime Holdings, Inc.	2%	6,188,764.50	123,775.29
P-1083	*SM Prime Holdings, Inc.*	*2%*	*1,018,663,024.50*	*20,373,260.49*
No BIR Form No. 2307	SM Prime Holdings, Inc.	2%	173,561,245.90	3,471,224.92
	Total		**₱1,247,452,513.40**	**₱ 24,949,050.27**

Schedule 3 (from Annex I of the ICPA Report)[30]				
Exhibit	**Registered Name**	**Tax Rate**	**Tax Base**	**CWT**
P-703	*Hotel Specialist Davao, Inc.*	*1%*	*₱ 82,527,459.00*	*₱ 825,274.59*

[24] Decision, Docket, Vol. IV, pp. 1624-1628.
[25] Decision, Docket, Vol. IV, p. 1627.
[26] Decision, Docket, Vol. IV, p. 1625.
[27] Decision, Docket, Vol. IV, p. 1624.
[28] Exhibit "P-2279", Docket, Vol. II, p. 844.
[29] Exhibit "P-2279", Docket, Vol. II, p. 836.
[30] Exhibit "P-2279", Docket, Vol. II, p. 831.

	Total		**₱ 82,527,459.00**	**₱ 825,274.59**

Meanwhile, SMIC moved for leave of court to recall its witnesses to explain in detail the discrepancy of its reported income in its books and ITR from the income payments/gross income per SAWT/BIR Form No. 2307.

In the interest of justice, the Court allowed the testimony of its Senior Assistant Vice President for Controllership, Ms. Helen Grace D. Dela Cruz, who explained in detail the particulars of the disposal of properties transactions. Thus:[31]

> "12. Q: In the 2013 ITR, petitioner reported a gain of Php5,607,579,580. How was the gain arrived at?
>
> A: The gain reported in the 2013 ITR can be broken down as follows:

	Reference	**Amount**
Gain on exchange of properties	Schedule 3, 2013 ITR	5,601,476,029
Gain on sale of investments in shares of stock of subsidiaries and associates, investment properties, property and equipment and others	Parent Company Statements of Comprehensive Income, 2013 AFS	6,103,551
Total		**5,607,579,580**

> The gain amounting to Php5,601,476,029 relates to the transfer of properties under pooling of interest method and the transfer of construction-related costs of Conrad Hotel and the furniture and fixtures of Park Inn Davao. The gain of Php5,601,476,029 is computed as follows:

Transferee	**Property**	**Selling Price**	**Net Book Value**	**Gain**
SM Prime Holdings, Inc.	Property swap	16,141,413,000	10,539,936,971	5,601,476,029
SM Prime Holdings, Inc.	Conrad Hotel	1,018,606,310	1,018,606,310	-
Hotel Specialist Davao	Park Inn Davao	106,978,604	106,978,604	-
	Total	**17,266,997,914**	**11,665,521,885**	**5,601,476,029**

[31] Q&A No. 12, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1711-1712.

> The amount of Php17,266,997,914 above is the total gross selling price subjected to withholding tax as referred to by the ICPA in his report and quoted by the Court on pages 11-12 of the Decision."

As per said statements, it has become clear that of the ₱5,607,579,580.00 gain on sale and exchange of properties, only ₱5,601,476,029.00 pertain to the transfer of properties/property swap with SM Prime Holdings, Inc. The remaining gain on sale of investments in shares of stock of subsidiaries and associates, investment properties, property and equipment and others in the amount of ₱6,103,551.00 is explained as follows:[32]

> "14. Q: The gain of Php6,103,551 was reported both in the 2013 ITR and in the 2013 AFS. How was the gain of Php5,601,476,029 reported in the 2013 ITR and 2013 AFS?
>
> A: The transactions involve dealings in property. Under the Tax Code, in the case of gross income from dealings in property, only the gains on the exchange is reported as part of the gross income and not the gross selling price. Hence, only the gains were reported in the 2013 ITR.
>
> However, in the 2013 AFS, the accounting reporting standards, as I have mentioned, require a different treatment for transfer of assets under common control. As explained, no gain or loss is recognized under a pooling of interest method. Thus, no gain was not reported in the 2013 AFS. This is not [the] case with respect to the gain of Php6,103,551, which does not qualify under the pooling of interest method because the related transfer was not part of the corporate restructuring of SM Group.
>
> Finally, the assets acquired (cash and shares), and the consideration paid for such acquisition (properties and shares), were all reported in the 2013 AFS.

[32] Q&A No. 14 & 18, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1712-1714.

xxx xxx xxx

18. Q: Annex I of the ICPA Report stated that the total disposal of assets subjected to withholding tax and reported in the 2013 ITR/AFS amounted to Php17,355,065,752. Do these disposals include the transfer of properties under the pooling of interest as well as the transfer of Conrad Hotel and Park Inn Davao?

A: These were reported as part of the properties transferred as noted by the ICPA in Annex I of his report. The breakdown of the Php17,355,065,752 reported by the ICPA in Annex I of his report is as follows:

Transferee	**Description**	**Amount**
SM Prime Holdings Inc.	Property swap	16,141,413,000
SM Prime Holdings Inc.	Conrad Hotel	1,018,606,310
Hotel Specialist Davao	Park Inn Davao	106,978,604
Sub-total		17,266,997,914
SM Prime Holdings Inc.	MAAX and Corporate office – FFE	64,808,119
Sanford Marketing Corporation	Import Letters of Credit Charges	13,141,931
SM Arena Complex Corporation	Furniture and fixtures (FFE)	8,554,363
SM Prime Holdings Inc.	Bay Arena Project	964,645
SM Prime Holdings Inc.	MOA Arena excess materials	505,942
Consolidated Prime Development Group	MOA Arena excess materials	49,554
Desserts Plus Inc.	Import Letters of Credit Charges	43,284
Sub-total		88,067,838
Grand Total		**17,355,065,752**

The gain resulting from the other disposal of Php88,067,838 forms part of the Php6,103,551 gain reported in the 2013 AFS and 2013 ITR. The breakdown is as follows:

Property	**Selling Price**	**Net Book Value**	**Gain**
MAAX, FFE and Other Charges	88,067,838	87,934,031	133,807
Land – Susana Heights	8,136,000	3,658,940	4,477,060
Software costs – SAP Licenses	8,141,910	6,649,226	1,492,684
Total	**104,345,748**	**98,242,197**	**6,103,551**

An examination of petitioner's 2013 ITR confirms that it reported Other Taxable Income in the amount of ₱6,591,927,228.[33] Schedule 3 breaks down the amount into the following, including the

[33] Exhibit P-2263-3.

gain on sale and exchange of properties in the amount of ₱5,607,579,580.00:[34]

Interest income not subject to final tax		₱ 251,158,856.00
Realized foreign exchange gain		474,126,816.00
Others:		
Other income	₱ 43,243,574.00	
Gain on sale & exchange of properties	5,607,579,580.00	
Gain on sale & maturity of AFS	215,818,402.00	5,866,641,556.00
Total Other Taxable Income		**₱6,591,927,228.00**

As previously discussed, the total selling price of ₱16,141,413,000.00 is supported by Deeds of Exchange.[35] The corresponding CWT in the amount of ₱807,070,650.00 was found to be properly supported by BIR Form No. 2307.[36]

Although SMIC recognized a gain of ₱5,601,476,029.00 on the transfer of properties to SM Prime Holdings, Inc. for tax purposes, it recorded no gain or loss in its books. Ms. Dela Cruz, explained:[37]

> "5. Q: Why was there no gain or loss if you transferred assets in exchange for shares?
>
> A: Since the corporate restructuring involved companies under the common control of the Sy Family, and considering that the transactions involved the transfer of assets (i.e., properties and shares) in exchange for shares, petitioner adopted the pooling of interest method to record the transaction in its books. Using this method, petitioner recorded the value of the shares received at the carrying value of the assets given up to acquire the same. Since the amount of asset given up has the same value as the asset received, no gain or loss was recognized.
>
> xxx xxx xxx
>
> 8. Q: If no gain or loss was recognized in the books, what was reported in your books? gr

[34] Exhibit P-2263-30.
[35] Exhibits P-2265 to P-2272.
[36] Exhibit P-1081.
[37] Q&A Nos. 5, 8 & 9, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1707-1710.

A: We have reported the acquisition of the additional investment in shares in SM Prime and the reduction of assets transferred to acquire the same. The transaction was disclosed in the 2013 AFS.

9. Q: Can you point to the relevant portion of the 2013 AFS and notes the proof your statement?

A: You can refer to Notes 3, 5, 11, and 13 of the AFS. Note 3, page 9 of the AFS, disclosed the petitioner's accounting policy with respect to common control transactions. Note 5, pages 27-28, disclosed the various transactions involved, and Note 11, pages 33-34, showed the movement of the assets, reflecting the disposal and acquisition."

The foregoing accounting treatment of the subject transactions is based on Q&A No. 2011-02 on *PFRS 3.2 – Common Control Business Combinations* issued by the Philippine Interpretations Committee (PIC), which provides that the most relevant and reliable accounting policies for common control business combination would either be a) the pooling of interests method, or b) the acquisition method in accordance with PFRS 3, and states that when there is an absence of specific guidance in PFRS, the management shall use its judgment in developing and applying an accounting policy that is relevant and reliable.

Further examination of the 2013 ITR and supporting schedules reveals that the subject gain of ₱5,601,476,029.00 appears as a reconciling item in Schedule 9 Reconciliation of Net Income per Books Against Taxable Income.[38]

Analysis of 2013 AFS Note 11 – Investments in Shares of Stock of Subsidiaries[39] shows petitioner's investments in subsidiaries and associates, which includes the following:

Note 11			
	2013	**2012**	**Increase(Decrease)**
SM Prime	₱21,221,947,649.00	₱5,354,517,804.00	₱15,867,429,845.00

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[38] Exhibit P-2263-32 to 33.
[39] Exhibit P-2255-44.

Ms. Dela Cruz explained that the ₱15,867,429,845.00 increase in investment in SM Prime was paid through the transfer of properties amounting to ₱9,939,936,971.00 and the remaining amount of ₱5,927,492,873.00 was paid through the transfer of shares in real estate subsidiaries of SMIC.[40] Details are shown hereafter:

	Amount	**Total**
Tender Offer		
SM Development Corp.	₱ 36,801,633.00	
Highlands Prime, Inc.	969,383,603.00	₱ 1,006,185,236.00
Merger		
SM Land, Inc.	1,343,093,336.00	1,343,093,336.00
Share Swap		
Tagaytay Resort Development Corp.	25,028,560.00	
SM Hotels and Conventions Corp.	1,099,999,500.00	
SM Arena Complex Corp.	399,999,500.00	
Prime Metroestate, Inc.	707,673,709.00	
Rappel Holdings, Inc.	1,345,513,032.00	3,578,214,301.00
Total Value of Shares Transferred		**₱ 5,927,492,873.00**
Property Swap		
Radisson Cebu Hotel	₱2,012,389,799.00	
Pico Sands Hotel	392,515,679.00	
SMX Convention Center	1,026,036,361.00	
Taal Vista Hotel	673,666,273.00	
MOA Arena	2,967,384,549.00	
MOA Arena Annex	1,371,139,638.00	
Tagaytay Lot	679,267,113.00	
Corporate Office	23,013,571.00	
Casino and WWTP	177,137,316.00	
EDSA West	11,913,329.00	
Park Inn Davao	605,473,344.00	
Total Value of Property Transferred		**₱ 9,939,936,971.00**[41]
Grand Total		**₱15,867,429,845.00**

On the other hand, Note 13 – Investment Properties[42] disclosed the changes in investment and property account, including the net book value of the disposals/retirements of assets as follows:

Note 13:	
	Total
Cost Disposals/Retirements	₱13,848,052,887.00
Less: Accumulated Depreciation & Impairment Loss Disposals/Retirements	₱2,993,642,013.00
Net Book Value	**₱10,854,410,874.00**

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[40] Q&A No. 10, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, p. 1710.
[41] Should be ₱9,939,936,972.00.
[42] Exhibit P-2255-46.

As can be gleaned from the tables above, there is a difference between the total value of property transferred of ₱9,939,936,971.00 as explained by Ms. Dela Cruz and the Net Book Value of transferred properties of ₱10,854,410,874.00 per Note 13 of the AFS.

Ms. Dela Cruz explained that Note 13 of AFS includes all asset disposals, including the ₱9,939,936,971.00 related to the transfer of assets to SM Prime reported under pooling of interest method, while the difference of ₱914,473,903.00 (₱10,854,410,874.00 less ₱9,939,936,971.00) pertains to other properties not reported under the pooling of interest method.[43]

Further, regarding the difference between the Net Book Value used in the computation of gain on transfer of properties amounting to ₱10,539,936,971.00[44] and the Net book Value as shown in the table above amounting to ₱9,939,936,971.00, Ms. Dela Cruz explained that the difference of ₱600,000,000.00 (₱10,539,936,971.00 less ₱9,939,936,971.00) pertains to the impairment loss recognized for the year.[45]

Thus, petitioner has completely explained and proven that the corresponding income payment/gain of the CWT amounting to ₱807,070,650.00 was reported in its Annual ITR for 2013.

With regard to the transfer of Conrad Hotel amounting to ₱1,018,606,310.00 and Park Inn Davao amounting to ₱106,978,604.00, petitioner treated the transfer of properties similar to reimbursement at cost by transferring the carrying value of the construction-related costs of Conrad Hotel to SM Prime and the carrying value of the furniture and fixtures of Park Inn Davao to Hotel Specialist Davao, Inc. in exchange for cash reimbursements. Thus, no gain or loss was recognized.[46]

Ms. Dela Cruz further explained:[47]

> 19. Q:How much taxes were withheld on the transfer of Conrad Hotel? *ja*

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[43] Q&A No. 11, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, p. 1711.
[44] Exhibit P-2277.
[45] Q&A No. 13, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, p. 1712 and Exhibit P-2255-47.
[46] Q&A No. 26, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1715-1716.
[47] Q&A Nos. 19, 21 to 23 & 25, Judicial Affidavit of Helen Grace D. Dela Cruz, Docket, Vol. IV, pp. 1714-1715.

A: SM Prime withheld Php20,372,126.20 from the transfer value of Php1,018,606,310.15 for Conrad Hotel.

xxx xxx xxx

21. Q:Can you explain why there is a difference between the amount shown in the certificate and the value of the transfer of Conrad Hotel you previously mentioned?

A: Exhibit P-1083, the creditable withholding tax certificate issued by SM Prime Holdings, Inc. included the transfer of Conrad Hotel as well as other charges to SM Prime Holdings, Inc. as follows:

	Amount	**2% EWT**
Conrad Hotel	1,018,606,310.15	20,372,126.20
Gasoline charges	39,371.84	787.43
Office supplies	14,451.96	289.04
Payroll processing	2,891.07	57.82
Total	**1,018,663,025.02**	**20,373,260.49**

These other charges were centralized with Petitioner and then charged to SM Prime Holdings, Inc. Petitioner treated the reimbursement as reduction in the related expense and not as income.

22. Q:Exhibit P-1083 shows that a 2% withholding tax rate was used. Can you tell us if you know why the withholding agent used 2% withholding tax rate rather than 5%?

A: The 2% rate was used because the transfer did not involve a real property but only the total value of the construction costs of the hotel. At the time of transfer, Conrad Hotel was still under construction. It also included other charges that fall under the category of services.

23. Q:How much taxes were withheld on the transfer of Park Inn Davao?

A: Hotel Specialist Davao Inc. withheld 1% tax of Php825,274.59 from the transfer value of Php82,527,459.

xxx xxx xxx

25. Q: Can you explain why only the amount of Php82,527,459 was subjected to withholding tax?

A: We did not receive the certificate for the remaining amount. Hence, we did not claim any tax credit corresponding to the balance.

While SMIC presented the corresponding Certificates of Taxes Withheld (BIR Form No. 2307) in relation to the transfer of properties of Conrad Hotel[48] and Park Inn Davao,[49] it failed to fully explain and substantiate the said transaction as it did with the property swap transaction with SM Prime Holdings, Inc. From the documents submitted, the Court cannot ascertain whether it was proper not to recognize any gain or loss on the transactions resulting to the absence of the corresponding gain on disposal from SMIC's ITR. Thus, for these transactions, the third requisite set forth in Section 2.58.3 of Revenue Regulations No. 2-98, as amended, is not sufficiently complied.

Clearly from the foregoing, SMIC established compliance with the requisite that the income upon which the taxes were withheld should be included in the return of the recipient, but only up to the extent of ₱807,070,650.00[50] with related gross income of ₱16,141,413,000.00, representing the property swap with SM Prime Holdings, Inc. which was accounted for using the pooling of interest method.

b. Disallowance of claimed CWT amounting to ₱17,567,246.73[51], ₱239,208.99[52], and ₱114,592,822.07[53]

The CWT amounting to ₱17,567,246.73 was disallowed due to improper recording of the corresponding income of ₱383,246,997.60 in the petitioner's books and for failure to substantiate the same with original copies of BIR Form No. 2307.

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[48] Exhibit P-1083.
[49] Exhibit P-703.
[50] Exhibit P-1081.
[51] Decision, Docket, Vol. IV, pp. 1628-1630.
[52] Decision, Docket, Vol. IV, p. 1634.
[53] Decision, Docket, Vol. IV, p. 1633.

Similarly, the CWT amounting to ₱239,208.99, with the corresponding gross income amounting to ₱4,142,473.82, were disallowed due to failure to submit original Certificates of Taxes Withheld (BIR Form No. 2307).

Perusal of SMIC's motion shows that the arguments raised were already discussed in the assailed Decision.[54]

With regard to the disallowed CWT for the taxable year 2007 in the amount of ₱114,592,822.07, the same pertains to the CWT carried over from the taxable year 2007, together with the CWT for the year 2012 of ₱296,840,444.23, which were offset against SMIC's income tax due for taxable year 2013.[55] The Court ruled that for failure to offer supporting evidence, the same is not considered in offsetting SMIC's income tax due for the year 2013.[56]

SMIC argues that the Annual ITR for the year 2007 with the copy of the SAWT for the 1st to 4th quarters of 2007, are enough to establish that the excess credits reflected in the 2013 ITR and used to pay the tax due in 2013 are valid, existing and duly supported by necessary documents.[57] Moreover, SMIC contends that pursuant to Section 235, in relation to Section 203 of the NIRC, it is mandated to keep its record for only three (3) years.[58]

SMIC cites Section 2.58.3(C) of Revenue Regulations No. 2-98, which states:

> "SECTION 2.58.3. Claim for Tax Credit or Refund.
>
> —
>
> xxx xxx xxx
>
> (C) *Excess Credits* — An individual or corporate taxpayer's **excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for**

[54] Decision, Docket, Vol. IV, pp. 1624-1634.
[55] Decision, Docket, Vol. IV, p. 1634.
[56] Decision, Docket, Vol. IV, p. 1634.
[57] Q&A Nos. 50 to 51, Amended Judicial Affidavit of Helen Grace Dela Cruz, Exhibit "P-2278", Docket, Vol. II, p. 577.
[58] Omnibus Motion, Docket, Vol. IV, p. 1699.

> **the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose**, provided he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits, and on which return he has not opted for a cash refund or tax credit certificate." *(Emphasis supplied)*

It should be noted that the foregoing applies to the automatic crediting of excess CWT against the income tax due for the taxable quarters/year <u>immediately succeeding</u> the taxable quarters/year in which the excess credit arose. In this case, SMIC seeks to be allowed to automatically credit its 2007 excess CWT to its 2013 income tax liability so that its refundable CWT will not be reduced.

Further, this case involves a claim for refund of excess CWT. The well-settled rule is that tax refunds are in the nature of tax exemptions and as such, are regarded as in derogation of sovereign authority and to be construed in *strictissimi juris* against the person or entity claiming it.[59]

To reiterate, case law dictates that in a claim for tax refund or tax credit, the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor.[60] The Supreme Court ruled on the importance of submitting supporting documents in a claim for refund, thus:[61]

> "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**

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[59] *Commissioner of Internal Revenue v. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999, 309 SCRA 87; *Commissioner of Internal Revenue v. Tokyo Shipping Co., Ltd.*, G.R. No. L-68252, May 26, 1995, 244 SCRA 332; *Commissioner of Customs v. Court of Tax Appeals*, 328 SCRA 822.

[60] *JRA Philippines, Inc. v. Commissioner of Internal Revenue*, G.R. No. 171307, August 28, 2013 citing the case of *Western Mindanao Power Corporation v. Commissioner of Internal Revenue*, G.R. No. 181136, June 13, 2012.

[61] *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 145526, March 16, 2007.

> **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 **petitioner 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 whatever is required for the successful prosecution of an administrative claim." *(Emphasis supplied.)*

Thus, the Court aptly ruled that the CWT in the amount of ₱17,567,246.73, ₱239,208.99, and ₱114,592,822.07 should be disallowed for failure to properly substantiate the same.

Respondent's Motion for Partial Reconsideration

Respondent avers that it is incumbent upon the claimant to prove actual remittance of the alleged withheld taxes to the BIR. Also, respondent points out that the fact of withholding of taxes is one thing, while the fact of remittance is another. Thus, petitioner should have presented evidence to prove actual remittance of the alleged taxes to the BIR. Finally, respondent posits that he is not obliged to prove before the Court the non-remittance of the alleged withheld taxes. It is the duty of petitioner to prove otherwise.[62]

Citing Revenue Regulations (RR) No. 2-98 and Section 2 of Revenue Regulations (RR) No. 2-2006, respondent asserts that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs. Considering that SMIC failed to prove that the alleged withheld taxes came to the hands of the BIR, it is unquestionably not entitled to any refund.[63]

SMIC counters that proof of withholding is not its responsibility and that the CIR cannot invoke RR No. 2-2006 and RR No. 2-98 to

[62] Docket, Vol. IV, p. 1638.
[63] Docket, Vol. IV, p. 1639.

justify the imposition of additional requirement on the refund claimant beyond what is being asked for under the law and established in relevant jurisprudence to unduly burden it.[64]

The Court finds CIR's motion bereft of merit.

Section 58(B) of NIRC, as amended, provides that:

> "(B) *Statement of Income Payments Made and Taxes Withheld.* - Every withholding agent required to deduct and withhold taxes under Section 57 shall furnish each recipient, in respect to his or its receipts during the calendar quarter or year, a written statement showing the income or other payments made by the withholding agent during such quarter or year, and the amount of the tax deducted and withheld therefrom, simultaneously upon payment at the request of the payee, but not late than the twentieth (20th) day following the close of the quarter in the case of corporate payee, or not later than March 1 of the following year in the case of individual payee for creditable withholding taxes. For final withholding taxes, the statement should be given to the payee on or before January 31 of the succeeding year."

Pursuant to Section 58(B) of NIRC, as amended, and as implemented by Section 2.58(B) of Revenue Regulations No. 2-98, every **payor/withholding agent** is required to furnish each payee/income recipient with a written statement showing the amount of income payments made by payor/withholding agent and the corresponding tax deducted and withheld therefrom. Said statement refers to BIR Form No. 2307 (Certificate of Creditable Tax Withheld at Source) which is a proof of the fact of withholding.

Subsequently, Section 2.58.3(B) of RR No. 2-98, as amended, clearly provides:

> "SECTION 2.58.3. Claim for Tax Credit or Refund. —
>
> xxx xxx xxx

[64] Docket, Vol. IV, p. 1728.

> (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.
>
> **Proof of remittance is the responsibility of the withholding agent."** *(Emphasis supplied.)*

Thus, SMIC is correct in holding that it is not responsible for the proof of remittance of the creditable taxes withheld.

Further, the Supreme Court consistently held that the certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld, to wit:[65]

> "Thus, **upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly.**
>
> Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with the responsibility of withholding and remitting income taxes.**" *(Emphasis supplied)*

As extensively discussed in *Commissioner of Internal Revenue v. Asian Transmission Corporation,*[66] the Supreme Court, citing the

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[65] *Commissioner of Internal Revenue v. Philippine National Bank,* G. R. No. 180290, September 29, 2014.

[66] G. R. No. 179617, January 19, 2011.

ruling of the Court of Tax Appeals (CTA) En Banc, held that proof of actual remittance of the taxes withheld is not necessary:

> "xxx **proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner. Section 2.58.3 (B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant.** It should be borne in mind by the petitioner that **payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government.** In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, **respondent, xxx has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR.**" *(Emphasis supplied)*

Thus, based on the foregoing, the denial of respondent's motion is in order.

To conclude, SMIC was able to convince the Court that it is partially entitled to its claim. However, respondent failed to discharge his burden to warrant the partial reconsideration of the assailed Decision in his favor.

WHEREFORE, respondent's Motion for Partial Reconsideration (Re: Decision Promulgated 4 March 2019) is **DENIED**, for lack of merit.

On the other hand, petitioner's Motion for Partial Reconsideration is **PARTIALLY GRANTED**. Accordingly, the Decision promulgated on March 4, 2019 is **MODIFIED** as follows:

> "**WHEREFORE**, instant Petition for Review is **PARTIALLY GRANTED.** Accordingly, let a tax refund or a tax credit certificate be issued in favor of petitioner in the total amount of ₱986,366,230.72, representing petitioner's excess and unutilized Creditable Withholding Tax for the calendar year ended December 31, 2013, computed as follows:

Claimed CWT		₱1,170,533,633.46
Less: Disallowed CWT		
Not properly reported in FS (₱943,656,142.68 less ₱807,070,650.00)	₱136,585,492.68	
Not properly reported in FS and not fully substantiated	17,567,246.73	
Reported in FS but supported by photocopy	239,208.99	154,391,948.40
Refundable CWT		**₱1,016,141,685.06**
Less: Balance of 2013 Income Tax Due		29,775,454.34
Net Refundable CWT		**₱ 986,366,230.72**

> **SO ORDERED.**"

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CATHERINE T. MANAHAN
Associate Justice

ATTESTATION

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

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

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 Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice