REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION
****

HONDA CARS MAKATI, INC.,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8466

Members:

DEL ROSARIO, *Chairperson,*
UY, and
MINDARO-GRULLA, *JJ.*

Promulgated:

SEP 17 2015 ; 2:05 p.m.

x - x

DECISION

UY, *J.*:

Before this Court is a Petition for Review filed on April 13, 2012, by petitioner, Honda Cars Makati, Inc., praying that judgment be rendered ordering respondent, the Commissioner of Internal Revenue, to refund or issue in favor of Honda Cars Makati, Inc. a tax credit certificate (TCC) in the amount of ₱22,063,884.00, allegedly representing excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) ended December 31, 2009.

THE FACTS

Petitioner Honda Cars Makati, Inc. is a corporation duly organized and existing under the laws of the Republic of the Philippines.[1] It is engaged in the sale, distribution, service, and repair of automobiles, and was incorporated with the following primary purpose as stated in its Amended Articles of Incorporation dated July

[1] Par. 3, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 124.

23, 2002, to wit:

> To engage in the sale and distribution, service and repair of automobiles, motor cars, motor trucks, wagons, buggies, carriages and other mechanically propelled vehicles, and vehicle engines, parts, accessories, supplies, and other articles; to operate chain stores and general merchandising pertaining to motor vehicles, to build, maintain, lease or otherwise acquire, own, hold and operate warehouses, agencies, structures, service centers and showrooms which may be used in connection with the business of the Corporation; to buy, sell and generally deal in all kinds of merchandise, fixtures, and chattels relating to motor vehicles; to acquire and own patents, improvements and franchises, and to operate under such patents, improvements and franchises, any commercial dealings pertaining to the matters and things enumerated herein.[2]

Petitioner is a registered taxpayer of the Bureau of Internal Revenue (BIR), with Tax Identification Number 000-220-239-000, with address at 1 Pres. Sergio Osmena Highway, Magallanes, Makati City.[3]

On the other hand, respondent is the duly appointed Commissioner of Internal Revenue, vested with authority, among others, to act upon and approve claims for refund or tax credit of overpaid or erroneously paid internal revenue taxes, with office address at 2nd Floor, BIR Building, No. 313 Sen. Gil Puyat Avenue, Makati City.[4]

On April 15, 2010, petitioner manually filed its Annual Income Tax Return (ITR) for CY 2009 with the BIR, Large Taxpayers Assistance Division II.[5] On the same day, petitioner also filed with the BIR, through the Electronic Filing and Payment System (EFPS), an electronic copy of its Annual ITR for CY 2009.[6]

In both its manual and electronic Annual ITRs for CY 2009, petitioner reported income tax credits in the total amount of

[2] Pars. 5 and 4, Admitted Facts, JSFI, Docket, p. 124; Exhibit "A", Docket, pp. 309 to 320.
[3] Pars. 6 and 7, Admitted Facts, JSFI, Docket, p. 124.
[4] Par. 1, Admitted Facts, JSFI, Docket, p. 123.
[5] Par. 8, Admitted Facts, JSFI, Docket, p. 125.
[6] Par. 9, Admitted Facts, JSFI, Docket, p. 125.

₱62,668,423.43,[7] broken down as follows:

Prior Year's Excess Credits other than MCIT	₱40,604,540.00
Creditable Tax Withheld for the First Three Quarters	9,015,448.00
Creditable Tax Withheld Per BIR Form No. 2307 for the Fourth Quarter	13,048,436.00
Total Tax Credits/Payments	₱62,668,423.00

Petitioner indicated in its Annual ITR for CY 2009 its option to be issued a TCC for its excess and unutilized CWT for CY 2009.[8]

On December 14, 2011, petitioner filed with the BIR, Large Taxpayers Excise Audit Division II, a letter-request for the refund of or issuance of TCC for its excess and unutilized CWT for CY 2009 in the amount of ₱22,063,884.00.[9]

Due to the inaction on the part of respondent,[10] petitioner then filed with this Court the present Petition for Review on April 13, 2012.[11]

Respondent filed her Answer[12] on July 3, 2012, interposing the following Special and Affirmative Defenses:

> "7. Petitioner's alleged claim for refund/issuance of tax credit certificate is still subject to administrative routinary investigation/examination by the respondent's Bureau;
>
> 8. It is incumbent upon the petitioner to show that it has complied with the provisions under Section 204 (c) in relation to Section 229 of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund.
>
> 9. Claims for refund are construed strictly against herein petitioner since the same partakes the nature of exemption from taxation *(Commissioner of Internal Revenue vs. Ledesma, 31 SCRA 95)* and as such, they are looked upon with disfavor *(Western Minolco Corp. vs. Commissioner of Internal Revenue , 124 SCRA 1211).*

[7] Exhibits "O" and "P", Docket, pp. 369 to 373.
[8] Exhibits "O-1" and "P", Docket, pp. 370 and 371.
[9] Pars. 10 and 11, Admitted Facts, JSFI, Docket, p. 125; Exhibit "V", Docket, pp. 386 to 389.
[10] Par. 12, Admitted Facts, JSFI, Docket, p. 125.
[11] Docket, pp. 6 to 13.
[12] Docket, pp. 98 to 101.

> 10. Over and above all, petitioner should be reminded that taxes are important because it is the lifeblood of the government and so should be calculated without unnecessary hindrance (Commissioner vs. Algue, Inc. L-28896, 17 February 1988). Taxes are enforced proportional contribution from persons and property levied by the state, thus no one is considered entitled to recover that which he must give up to another. – Non videtur quisquam id capere quod ei necesse est alii restitutere."

The case was set for Pre-Trial Conference on July 27, 2012 at 9:00 a.m.[13] Thereafter, the parties filed their Joint Stipulation of Facts and Issues on August 22, 2012,[14] which the Court approved in the Resolution dated August 29, 2012.[15]

During trial, petitioner presented two witnesses: (1) Francis Dennis C. Lardizabal, its Finance Manager;[16] and Ma. Milagros F. Padernal of Uy, Singson, Abella & Co., the Court-commissioned Independent Certified Public Accountant (ICPA).[17]

On the other hand, respondent's counsel manifested that he will not present evidence on the ground that no Final Report was submitted by the Investigating Revenue Officer during the hearing held on July 22, 2014.[18] Thus, the Court directed the parties to file their respective Memorandum in the Resolution dated July 22, 2014.[19]

Petitioner filed its Memorandum on September 10, 2014;[20] while respondent filed her Memorandum on October 29, 2014.[21] In the Resolution dated November 7, 2014, the case was submitted for decision.[22]

Hence, this Decision.

[13] Docket, p. 103.
[14] Docket, pp. 123 to 127.
[15] Docket, p. 131.
[16] Minutes of the Hearing held on September 27, 2012, Docket, p. 153.
[17] Minutes of the Hearing held on November 15, 2012, January 24, 2013 and May 7, 2013, Docket, pp. 180, 214 to 216, and 266 to 270.
[18] Minutes of the Hearing held on July 22, 2014, Docket, pp. 461 and 463.
[19] *Ibid.*
[20] Docket, pp. 472 to 491.
[21] Docket, pp. 499 to 503.
[22] Docket, p. 506.

THE ISSUES

As stipulated by the parties, the main issue for this Court's resolution, is as follows:

> "Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for excess and unutilized CWT for CY 2009 in the amount of Php22,063,884.00."[23]

Petitioner's arguments:

Petitioner argues that its excess and unutilized CWT for CY 2009 in the amount of ₱22,063,884.00 is duly substantiated by documentary evidence.

According to petitioner, the income upon which the CWT being claimed for refund were withheld was reported as part of the revenues declared in its Annual ITR.

Moreover, petitioner asserts that it did not carry over its excess and unutilized CWT for CY 2009 to the succeeding taxable periods.

Lastly, petitioner contends that its administrative and judicial claims for refund of excess and unutilized CWT for CY 2009 were filed within the two-year prescriptive period provided in Section 204(C) and 229, Tax Code.

Respondent's counter-arguments:

Respondent avers that there is no showing on petitioner's returns for taxable years 2009 and 2010 that the income payments subjected to withholding tax were declared as part of its gross income. She invokes the ruling of this Court sitting *En Banc* in CTA EB No. 597 entitled *"Raytheon-Ebasco Overseas Ltd. – Philippine Branch vs. Commissioner of Internal Revenue"*, and points out that since there is no entry whatsoever in the *"Creditable Tax Withheld"* column, located in page 2 of the petitioner's Annual ITRs for 2009 and 2010[24], the same is fatal to its claim for refund.

Furthermore, respondent submits that since the claim for

[23] JSFI, Issues, Docket, p. 125.
[24] Exhibits "P" and "R".

refund/tax credit of petitioner is by nature a tax exemption, and is construed *strictissimi juris* against petitioner, who is claiming the exemption without the clearest grant of the law, the fact that petitioner failed to present proof of the actual remittance to the BIR of the taxes withheld as well as testimonial evidence of the payors/withholding agent to establish the fact of withholding and remittances made, its judicial claim must necessarily fail.

THE COURT'S RULING

After weighing the evidence presented by petitioner, the arguments and counter-arguments raised by both parties and the relevant law and jurisprudence, We partially grant petitioner's refund claim.

Taxpayer's options under Section 76 of the NIRC of 1997, in case of excess income taxes paid.

Pertinent to the resolution of the case is Section 76 of the National Internal Revenue Code (NIRC) of 1997, to wit:

> "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**

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> **quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

Based on the above-quoted provision, in case of overpayment of income taxes, a taxable corporation has two options: it may file a claim for refund (either in the form of cash or TCC) or it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry-over option is taken actually or constructively it becomes irrevocable for that taxable period.[25] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[26]

The two options are alternative and not cumulative in nature, that is, the choice of one precludes the other. The logic behind the rule is to ease tax, particularly the self-assessment and collection aspects.[27]

In the instant case, petitioner opted to be issued a TCC, not to carry over its alleged excess CWT for 2009 to the following taxable year. This is clearly shown in the Annual ITR for 2009 of petitioner, wherein it marked the box corresponding to the option "To be issued a Tax Credit Certificate".[28]

Petitioner's compliance with conditions for the grant of its claim for refund of CWT.

In addition to exercising its option under Section 76 of the NIRC of 1997 and in accordance with the jurisprudential pronouncements of the Supreme Court, in a number of cases,[29] a taxpayer must satisfy

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

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

[27] *Republic of the Philippines vs. Team (Phils.) Energy Corporation*, G.R. No. 188016, January 14, 2015.

[28] Exhibits "O-1" (Line 33) and "P", Docket, pp. 370 and 371.

[29] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, and *Commissioner of Internal Revenue vs.*

the following conditions in order that its claim for refund of creditable withholding income tax may be granted, to wit:

1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[30]

2) the fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld therefrom;[31] and

3) it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[32]

The first condition is anchored on Sections 204(C) and 229 of the NIRC of 1997, which read:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty:** *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.*- No suit or proceeding shall be maintained in

Far East Bank & Trust Co. (Now Bank of the Philippine Islands), G.R. No. 173854, March 15, 2010.

[30] Sections 204(C) and 229, NIRC of 1997; Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

[31] Section 2.58.3(B) of Revenue Regulations No. 2-98.

[32] Id.; *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

> any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without a written claim therefore, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

It is well settled in our jurisprudence that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, on the date of the filing of the adjusted final return.[33] This must be so because it is only on such date when it can be finally ascertained if the taxpayer has still to pay additional income tax or if he is entitled to a refund of overpaid income tax.[34]

In the instant case, petitioner filed its Annual ITR for CY 2009 on April 15, 2010.[35] Counting from this date, petitioner had until April 15, 2012 within which to file its claim for the issuance of TCC, both in the administrative and judicial levels. Therefore, petitioner's administrative claim for refund filed on December 14, 2011[36] is well within the two-year prescriptive period provided by law. Parenthetically, petitioner's judicial claim is likewise within the same period, through the instant Petition for Review filed on April 13, 2012.

As for the second and third conditions for the grant of a claim for refund of CWTs, the basis therefor is Section 2.58.3(B) of

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[33] *ACCRA Investments Corporation vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

[34] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

[35] Exhibits "O" and "P", Docket, pp. 369 to 373.

[36] Pars. 10 and 11, Admitted Facts, JSFI, Docket, p. 125; Exhibit "V", Docket, pp. 386 to 389.

Revenue Regulations (RR) No. 2-98[37], as amended, which states:

> "Sec. 2.58.3. *Claim for tax credit or refund.* —
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**.
>
> **Proof of remittance is the responsibility of the withholding agent.**" *(Emphases supplied)*

At this juncture, it must be emphasized that contrary to the assertion of respondent, the certificates of creditable taxes withheld accomplished by petitioner's withholding agents showing the amount deducted and withheld from its income in support of the claim for tax refund, constitute competent and conclusive evidence of payment and remittance to the BIR of the withheld taxes on petitioner's income.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[38] the Supreme Court said:

> **"The certificate of creditable tax withheld at source[39] is the competent proof to establish the fact that taxes are withheld.[40] It is not necessary for the**

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[37] SUBJECT: Implementing Republic Act No. 8424, "An Act Amending the National Internal Revenue Code, as amended" relative to the Withholding on Income subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding of Income Tax on Compensation, Withholding of Creditable Value-Added Tax and Other Percentage Taxes.

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

[39] Now BIR Form No. 2307.

[40] Citing Sec. 10 of Revenue Regulation No. 6-85, as amended by Revenue Regulations No. 12-94, which provides as follows: *Sec. 10. Claim for Tax Credit or Refund.*— (a) Claims for Tax Credit or Refund of income tax deducted and withheld on income payments shall be given due course only when it is shown on the return that the income payment received has been declared as party of the gross income and ***the fact of withholding is established by a copy of the Withholding Tax Statement duly issued by***

person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates.[41]

In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*,[42] this court declared that **a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes**:

xxx xxx xxx

Moreover, as correctly held by the Court of Tax Appeals En Banc, **the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury**, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, which reads:

> SEC. 267. Declaration under Penalties of Perjury. — Any declaration, return and other statements required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who willfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties of prescribed for perjury under the Revised Penal Code.

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

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the payor to the payee showing the amount paid and the amount of tax withheld therefrom. (Emphasis supplied) *Far East Bank and Trust Company vs. Court of Appeals*, 513 Phil. 680. 689 (1996) [Per J. Regalado, Second Division].

[41] Citing *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 179260, April 2, 2014 [Per J. Perez, Second Division]; *Commissioner of Internal Revenue vs. TeaM (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013 [Per J. Villarama, Jr., First Division]; and *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011 [Per J. Mendoza, Second Division].

[42] 548 Phil. 32 (2007) [Per J. Austria-Martinez, Third Division].

> **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.**
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> xxx xxx xxx
>
> > xx xxx **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.**"

Thus, petitioner's compliance with the second condition may be shown merely by presenting the pertinent certificates of creditable tax withheld at source, which are complete in their relevant details and with a written statement that they were made under the penalties of perjury.

Hence, to prove the fact of withholding of the subject claim, petitioner submitted various Certificates of Creditable Tax Withheld at Source[43] and Schedule of Creditable Taxes Withheld for CY 2009[44] which were examined by the Court-commissioned ICPA, Ma. Milagros F. Padernal. Based on the Amended Report of the ICPA dated April 10, 2013,[45] the breakdown of petitioner's claim amounting to ₱22,063,884.00[46] is as follows:

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[43] Exhibits "BB1" to "BB5076" and "CC1" to "CC15".
[44] Exhibit "AA".
[45] Amended ICPA Report, Part 1 of 9, p. 7, Exhibits "SSS-1" to "SSS-9".
[46] Discrepancy of ₱0.60 (₱22,063,884.00 less ₱22,063,883.40) due to the rounding off.

Exhibit No.	Summary of Certificate of Creditable Taxes Withheld at Source	Amount
BB	Supported by original certificate of creditable tax withheld at source (BIR Form No. 2307) in petitioner's name	**₱21,808,662.73**
CC	Supported by original certificate of creditable tax withheld at source (BIR Form No. 2307) NOT in petitioner's name	22,137.00
	Erroneous issuance of BIR Form No. 2307 by the payor	233,083.67
		255,220.67
		₱22,063,883.40

According to the ICPA, Ma. Milagros F. Padernal, the erroneous issuance of BIR Form No. 2307 refers to the CWT certificate amounting to ₱233,083.67 issued by Ayala Corporation to petitioner pertaining to rental income. Based on her verification, petitioner did not receive any rental payment from Ayala Corporation in 2009, as confirmed by the Lease Contract between the parties; which shows that petitioner is the lessee of the property held by Ayala Corporation. Hence, petitioner was the income payor under the Lease Contract.[47] Consequently, the CWT of ₱233,083.67 shall be disallowed.

On the other hand, the CWT of ₱22,137.00 is supported by original Certificates of Creditable Tax Withheld at Source[48] which were issued not in the name of petitioner; thus, the same shall likewise be disallowed.

Upon further verification of the documents submitted by petitioner in support of the CWT amounting to ₱21,808,662.73, the Court finds that the CWT amounting to ₱181,106.17 shall further be disallowed from petitioner's claimed TCC, computed as follows and for the specified reasons stated below, to wit:

Exhibit No.	Exhibit No.	Income Payments	Taxes Withheld
Supported by original certificate of creditable tax withheld at source (BIR Form No. 2307) in petitioner's name but with different TIN from the list of petitioner's TINs as verified by the ICPA			
Mapfre Insular Insurance Corp.	BB4802	₱ 130,009.00	₱ 19,501.35
Mapfre Insular Insurance Corp.	BB4805	132,759.00	19,913.85
Mapfre Insular Insurance Corp.	BB4806	184,446.68	27,667.00

[47] Amended ICPA Report, Part 1 of 9, p. 7, Exhibits "SSS-1" to "SSS-9".
[48] Exhibits "CC1" to "CC15".

Mapfre Insular Insurance Corp.	BB4808	232,758.65	34,913.80
Mapfre Insular Insurance Corp.	BB4814	161,714.91	24,257.24
Mapfre Insular Insurance Corp.	BB4815	175,737.14	26,360.57
sub-total		**₱1,017,425.38**	**₱152,613.81**
Supported by original certificate of creditable tax withheld at source (BIR Form No. 2307) in petitioner's name but dated September 2008			
People's General Insurance Corp.	BB4850	189,949.08	28,492.36
TOTAL		**₱1,207,374.46**	**₱181,106.17**

As regards petitioner's compliance with the third condition requiring that it be shown on the return of the recipient that the income payment received was declared as part of the gross income, respondent maintains that petitioner failed to declare the amount of tax withheld under the *"Creditable Tax Withheld"* column, located on page 2 of petitioner's Annual ITRs for 2009 and 2010[49], specifically *"Schedule of Sales/Revenues/ Receipts/Fees"*. Thus, according to respondent, it can be taken to mean that no part of the gross income reported therein was ever subjected to creditable withholding tax.

Respondent further invokes the Decision rendered by the CTA *En Banc* in the case of *Raytheon-Ebasco Overseas Ltd. – Philippine Branch vs. Commissioner of Internal Revenue*,[50] and asserts that failure of petitioner to indicate the amounts of tax withheld under the said *"Creditable Tax Withheld"* column is fatal to the claim for issuance of tax credit certificate.

We disagree.

In *Commissioner of Internal Revenue vs. San Roque Power Corporation*,[51] the Supreme Court has declared, in no uncertain terms, that CTA decisions do not constitute as binding precedents, to wit:

> "xxx. **Suffice it to state that CTA decisions do not constitute precedents, and do not bind this Court or the public.** That is why CTA decisions are appealable to

[49] Exhibits "P" and "R".
[50] CTA EB No. 597 (CTA Case No. 7204), March 17, 2011.
[51] G.R. Nos. 187485, 196113, and 197156, February 12, 2013.

> this Court, which may affirm, reverse or modify the CTA decisions as the facts and the law may warrant. Only decisions of this Court constitute binding precedents, forming part of the Philippine legal system. (Emphasis supplied)."[52]

Nevertheless, there is neither law nor jurisprudence which states that the taxpayer's failure to fill up the entry in the *"Creditable Tax Withheld"* column of Schedule 1 of the Annual ITR would be fatal to a claim for refund. What is required under Section 2.58.3[53] of Revenue Regulations No. 2-98 and applicable jurisprudence thereon, is that the taxpayer is able to declare as part of its gross income in the Annual ITR the income payment from which the withholding was made.

An entry into the *"Creditable Tax Withheld"* column found on page 2 of the Annual ITR (BIR Form 1702), specifically, Schedule 1 or the *"Schedule of Sales/Revenues/Receipts/Fees"* may expedite the determination of petitioner's compliance with the requirement that the income payments from which the withholding of taxes form part of its gross income declared in its Annual Income Tax Return. It does not however necessarily follow that failure to do so, shall immediately cause the denial of a claim for refund.

In the instant case, petitioner's failure to make an entry in the *"Creditable Tax Withheld"* column under Schedule 1 of its Annual Income Tax Returns for CY 2009 does not conclusively mean that it failed to comply with the requirement that *"the income upon which the taxes were withheld were included in the return of the recipient"* considering petitioner's presentation of other evidence, and the Court's admission of the same, for the purpose of establishing its compliance with this requirement.

[52] *Commissioner of Internal Revenue vs. San Roque Power Corporation, etseq.,* G.R. Nos. 187485, 196113 & 197156, February 12, 2013.

[53] "SECTION 2.58.3. *Claim for Tax Credit or Refund.*—

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(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 payer to the payee showing the amount paid and the amount of tax withheld therefrom.

xxx xxx xxx." *(Emphasis supplied)*

We therefore summarize our findings regarding petitioner's compliance with the third condition amounting to ₱17,036,923.13 as follows:

Particulars	Income Payments	Tax Withheld supported by BIR Form 2307	Traced to GL and/or Invoices/ Journal/ Vouchers/ Official Receipts/ Production Reports			
			CY 2008	CY 2009	Total	Equivalent Tax Withheld
Sale of goods and services	₱ 1,413,233,897.85	₱ 15,375,888.50	₱ 8,283,724.13	₱ 1,240,965,771.57	₱ 1,249,249,495.70	₱ 13,424,350.03
Other Income:						
Rental Income	1,366,013.90	68,300.70	94,100.68	1,262,429.86	1,356,530.54	67,826.53
Management Fees	5,354,045.86	738,511.50		4,953,036.75	4,953,036.75	687,112.40
Income received as insurance agent	28,097,048.11	4,207,972.20		18,925,881.62	18,925,881.62	2,835,305.89
Income Paid by credit card companies to any business entity	274,383,036.44	1,395,661.55			-	
Refund with active contractor	89,313.36	22,328.28		89,313.36	89,313.36	22,328.28
sub-total	309,289,457.67	6,432,774.23	94,100.68	25,230,661.59	25,324,762.27	3,612,573.10
	₱1,722,523,355.52	**₱21,808,662.73**	**₱8,377,824.81**	**₱1,266,196,433.16**	**₱1,274,574,257.97**	**₱17,036,923.13**
Cannot be traced from the General Ledger					447,949,097.55	4,771,739.60
TOTAL					**₱1,722,523,355.52**	**₱21,808,662.73**

Based on the ICPA's verification, the total income payment corresponding to the claimed CWT of ₱21,808,662.73 for CY 2009 amounts to ₱1,722,523,355.52, wherein the amount of ₱1,413,233,897.85 arose from sale of goods and services, while the remaining amount of ₱309,289,457.67 arose from other income, namely, rental income, management fees, income received as insurance agent, income paid by credit card companies to any business entity and refund with active contractor.[54]

As ascertained by the ICPA, only the total income payments of ₱1,274,574,257.97 from which the CWT of ₱17,036,923.13 were withheld were traced to the general ledger and/or invoices/journal vouchers/official receipts/production reports of petitioner. Nonetheless, of the said total income payments of ₱1,274,574,257.97, the amount of ₱8,377,824.81 was reported in petitioner's books for CY 2008 but the related CWT was not claimed in petitioner's Annual ITR for CY 2008.

Furthermore, it appears that the remaining income payments of ₱447,949,097.55 cannot be traced to the general ledgers and corresponding invoices due to the unavailability of documents and

[54] Amended ICPA Report, Part 1 of 9, p. 13, Exhibits "SSS-1" to "SSS-9".

references. The equivalent tax withheld therefor in the amount of ₱4,771,739.60 should be disallowed in the computation of the refundable amount.

In recapitulation, petitioner has sufficiently proven its entitlement to the issuance of a TCC, representing unutilized excess CWT for CY 2009 in the reduced amount of ₱16,855,816.56, computed as follows:

Claimed CWT		₱ 22,063,883.00
Less: Disallowances per ICPA		
Supported by original BIR Form No. 2307 not in petitioner's name	₱ 22,137.00	
Erroneous issuance of BIR Form No. 2307 by the payor	233,083.67	
CWTs the income payments of which cannot be traced from the General Ledger	4,771,739.60	5,026,960.27
Total		₱ 17,036,922.73
Less: Additional Disallowances per this Court's Findings		181,106.17
Valid Excess Creditable Taxes Withheld		**₱16,855,816.56**

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **SIXTEEN MILLION EIGHT HUNDRED FIFTY FIVE THOUSAND EIGHT HUNDRED SIXTEEN PESOS AND FIFTY SIX CENTAVOS (₱16,855,816.56)**, representing its unutilized excess CWT for CY 2009.

SO ORDERED.

ERLINDA P. UY
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

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

CERTIFICATION

I hereby certify that this Decision was reached after due consultation among the members of this Division in accordance with the provisions of Section 13, Article VIII of the Constitution.

ROMAN G. DEL ROSARIO
Chairperson
Presiding Justice