REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

MCKINSEY & CO. (PHILS.),
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8805

Members:

CASTAÑEDA, JR., *Chairperson,*
CASANOVA, and
COTANGCO-MANALASTAS, *JJ.*

Promulgated:

AUG 1 1 2016
3:40 p.m.

x--x

DECISION

CASTAÑEDA, JR., *J.:*

STATEMENT OF THE CASE

This is a Petition for Review filed by McKinsey & Co. (Phils.) on April 14, 2014 to seek the refund or the issuance of tax credit certificate (TCC) in the amounts of ₱44,739,250.00 and ₱52,986,532.80, allegedly representing its excess and unutilized creditable withholding tax (CWT) for calendar years 2011 and 2012.[1]

[1] Petition for Review, Docket, vol. I, p. 24.

STATEMENT OF FACTS

Petitioner McKinsey & Co., (Phils.) is a corporation organized and existing under the laws of the State of Delaware, United States of America, with principal place of business at 1209 Orange Street, Wilmington, Delaware 19801 U.S.A. It is authorized to transact business in the Philippines as a branch office to engage primarily in management consultancy services pursuant to Securities and Exchange Commission (SEC) Registration No. A1998-675.[2] Petitioner's branch office is located at 29F Equitable Bank Tower, 8754 Paseo de Roxas, Makati City.[3] It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50 – South Makati, with Taxpayer Identification No. (TIN) 005-649-673-000.[4]

On the other hand, respondent is the duly appointed Commissioner of the BIR who has the power to decide disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties imposed in relation thereto or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended, or other laws or portions thereof administered by the BIR. She holds office at 5th Floor, BIR National Office Building, Agham Road, Diliman, Quezon City.

On April 16, 2012, petitioner manually filed its Annual Income Tax Return (ITR) for calendar year 2011 with Revenue District Office No. 50 – South Makati.[5] Petitioner indicated on the face of its Annual ITR for calendar year 2011 its choice to be refunded of its alleged excess and unutilized CWT for calendar year 2011 by marking the option "To be refunded" in the Annual ITR for 2011.[6]

On April 15, 2013, petitioner manually filed its Annual ITR for calendar year 2012 with Revenue District Office No. 50 – South Makati.[7] Similarly, petitioner indicated on the face of its Annual ITR for calendar year 2012 its choice to be refunded of its purported excess and unutilized CWT for calendar year 2012 by marking the option "To be refunded" in the Annual ITR for calendar year 2012.[8]

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[2] Exhibit "P-1", Docket, vol. II, p. 659.
[3] Par. 1, Joint Stipulation of Facts and Issues (JSFI), Docket, vol. I, p. 551.
[4] Exhibit "P-3", Docket, vol. II, p. 692; Par. 3, JSFI, Docket, vol. I, p. 551.
[5] Par. 6, JSFI, Docket, vol. I, p. 552.
[6] Par. 7, JSFI, Docket, vol. I, p. 552.
[7] Par. 9, JSFI, Docket, vol. I, p. 552.
[8] Exhibit "P-11-B", Docket, vol. II, p. 694; Par. 10, JSFI, Docket, vol. I, p. 552.

On March 14, 2014,[9] petitioner filed with Revenue District Office No. 50 – South Makati an administrative claim for refund of or issuance of tax credit certificate for its alleged excess and unutilized CWT in the amounts of ₱44,739,250.00 and ₱52,986,532.80 for calendar years 2011 and 2012, respectively.[10]

Due to respondent's inaction on petitioner's administrative claim for refund, petitioner filed the present Petition for Review[11] before this Court on April 14, 2014.

Respondent filed her Answer[12] through registered mail on June 18, 2014 and received by the Court on June 23, 2014, interposing the following Special and Affirmative Defenses:

"**<u>SPECIAL AND AFFIRMATIVE DEFENSES</u>**

3) Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;

4) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;

5) Petitioner's failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;

6) It is explicitly stated under Section 76 of the NIRC of 1007, as amended, that once a taxpayer chooses the option of carry-over, it shall be irrevocable for that taxable period and no application for a tax refund or tax credit certificate shall then be allowed (**Philam Asset Management, Inc. vs. Commissioner of Internal Revenue, G.R. Nos. 156637/162004, December 14, 2005**). Petitioner, therefore, must proved that it did not carry-over its 2011 and 2012

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9 Exhibits "P-34" and "P-35", Docket, vol. I, pp. 260-268.
10 Par. 12, JSFI, Docket, vol. I, p. 552.
11 Docket, vol. I, pp. 14-26.
12 Docket, vol. I, pp. 96-98.

alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate of its excess tax credit for taxable years 2011 and 2012.

7) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the 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) It is incumbent upon petitioner to show it has complied with the provisions of Section 76 in relation to Section 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

10) Claims for refund 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, they are looked upon with disfavor. (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

Respondent filed her Pre-Trial Brief[13] through registered mail on July 9, 2014 and received by the Court on July 17, 2014; while petitioner filed its Pre-Trial Brief[14] on August 20, 2014. The Pre-trial Conference was held on December 4, 2014.[15]

[13] Docket, vol. I, pp. 101-103.
[14] Docket, vol. II, pp. 105-115.
[15] Minutes of the hearing, Docket, vol. I, p. 550.

The parties filed their Joint Stipulation of Facts and Issues[16] on December 18, 2014. Subsequently, it was approved by the Court upon issuance of the Pre-Trial Order[17] on February 5, 2015.

On April 17, 2015, petitioner filed its Formal Offer of Evidence[18], offering Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-7-a", "P-7-b", "P-7-c", "P-8", "P-9", "P-10", "P-11", P-11-a", "P-11-b", "P-11-c", "P-12", "P-13", "P-14", "P-15", "P-15-a", "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-34-a", "P-34-b", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51", "P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96", "P-97", "P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P-106", "P-107", "P-108", "P-109", "P-110", "P-111", "P-112", "P-113", "P-114", "P-115", "P-116", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", "P-142", "P-143", and P-143-a" as its documentary exhibits.

Respondent filed her Comment (To Petitioner's Formal Offer of Evidence)[19] through registered mail on April 22, 2015 and received by the Court on May 4, 2015.

In a Resolution[20] dated July 23, 2015, the Court admitted petitioner's Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-7-a", "P-7-b", "P-7-c", "P-8", "P-9", "P-10", "P-11", "P-11-a", "P-11-b", "P-11-c", "P-12", "P-13", "P-14", "P-15"[21], "P-16", "P-17", "P-18", "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25", "P-26", "P-27", "P-28", "P-29", "P-30", "P-31", "P-32", "P-33", "P-34", "P-34-a", "P-34-b", "P-35", "P-36", "P-37", "P-38", "P-39", "P-40", "P-41", "P-42", "P-43", "P-44", "P-45", "P-46", "P-47", "P-48", "P-49", "P-50", "P-51",

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[16] Docket, vol. I, pp. 551-564.
[17] Docket, vol. I, pp. 598-613.
[18] Docket, vol. II, pp. 632-658.
[19] Docket, vol. II, pp. 859-860.
[20] Docket, vol. II, pp. 937-939.
[21] Exhibit "P-15-a" was not mentioned in the Resolution dated July 23, 2015, Docket, vol. II, p. 937.

alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming a cash refund or for issuance of tax credit certificate of its excess tax credit for taxable years 2011 and 2012.

7) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;

8) In an action for tax credit or refund, the burden is upon the taxpayer to prove that he is entitled thereto, and failure to discharge the 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) It is incumbent upon petitioner to show it has complied with the provisions of Section 76 in relation to Section 204 and 229 of the 1997 Tax Code, as amended, including Revenue Regulations No. 2-98, as amended.

10) Claims for refund 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, they are looked upon with disfavor. (**Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 121**)."

Respondent filed her Pre-Trial Brief[13] through registered mail on July 9, 2014 and received by the Court on July 17, 2014; while petitioner filed its Pre-Trial Brief[14] on August 20, 2014. The Pre-trial Conference was held on December 4, 2014.[15]

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[13] Docket, vol. I, pp. 101-103.
[14] Docket, vol. II, pp. 105-115.
[15] Minutes of the hearing, Docket, vol. I, p. 550.

"P-52", "P-53", "P-54", "P-55", "P-56", "P-57", "P-58", "P-59", "P-60", "P-61", "P-62", "P-63", "P-64", "P-65", "P-66", "P-67", "P-68", "P-69", "P-70", "P-71", "P-72", "P-73", "P-74", "P-75", "P-76", "P-77", "P-78", "P-79", "P-80", "P-81", "P-82", "P-83", "P-84", "P-85", "P-86", "P-87", "P-88", "P-89", "P-90", "P-91", "P-92", "P-93", "P-94", "P-95", "P-96", "P-97", "P-98", "P-99", "P-100", "P-101", "P-102", "P-103", "P-104", "P-105", "P-106", "P-107", "P-108", "P-109", "P-110", "P-111", "P-112", "P-113", "P-114", "P-115", "P-116", "P-117", "P-118", "P-119", "P-120", "P-121", "P-122", "P-123", "P-124", "P-125", "P-126", "P-127", "P-128", "P-129", "P-130", "P-131", "P-132", "P-133", "P-134", "P-135", "P-136", "P-137", "P-138", "P-139", "P-140", "P-141", and "P-142". Exhibits "P-143" and "P-143-a" were replaced by Exhibits "P-144" and "P-144-a", which were admitted by the Court during the hearing on June 22, 2015.[22]

On the other hand, respondent, through counsel, manifested in open court[23] that she will no longer present any evidence. As a consequence, the parties were given a period of thirty (30) days from receipt of the Court's Resolution on petitioner's Formal Offer of Evidence within which to file their Memoranda.

The case was declared submitted for decision on October 14, 2015,[24] after petitioner filed its Memorandum[25] on October 5, 2015 and respondent filed her Memorandum[26] through registered mail on September 23, 2015 and received by the Court on October 8, 2015.

STATEMENT OF ISSUES

The parties submitted the following issues[27] for this Court's resolution:

> "Whether or not petitioner is entitled to its claim for refund of or issuance of TCC for excess and unutilized CWT in the amounts of Php44,739,250.00 and Php52,986,532.80 for CYs 2011 and 2012, respectively.

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[22] Resolution dated July 23, 2015, Docket, vol. II, p. 938.
[23] Minutes of the Hearing dated March 9, 2015, Docket, vol. I, p. 619.
[24] Resolution dated October 14, 2015, Docket, vol. I, p. 986.
[25] Docket, vol. II, pp. 954-977.
[26] Docket, vol. II, pp. 978-984.
[27] JSFI, Docket, vol. I, p. 553.

This issue may be broken down into the following sub-issues:

1. Whether petitioner's excess and unutilized CWT in the amounts of Php44,739,250.00 and Php52,986,532.80 for CYs 2011 and 2012 are duly substantiated by documentary evidence.

2. Whether the income from which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in petitioner's Annual ITR.

3. Whether Petitioner carried over its excess and unutilized CWTs for CY 2011 to the succeeding taxable periods.

4. Whether Petitioner carried over its excess and unutilized CWT for CY 2012 to the succeeding taxable periods.

5. Whether Petitioner filed its administrative and judicial claims for refund of excess and unutilized CWT for CY 2010[28] within the two-year prescriptive period provided under Sections 204(C) and 229, Tax Code."

THE COURT'S RULING

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

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

[28] Calendar years 2011 and 2012.

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be declared as part of the gross income of the recipient.[29]

With respect to the first requisite, Sections 204(C) and 229 of the NIRC of 1997, as amended, provide as follows:

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

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[29] *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; Section 2.58, Revenue Regulations No. 2-98, as amended.

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

The above provisions require that the administrative and judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax. For actions for refund of excess corporate income tax, the Supreme Court ruled that the two-year prescriptive period should be counted from the filing of the Final Adjustment Return, because it is only during that time that the exact tax liability or refundability of the tax can be determined.[30]

The present claim pertains to calendar years 2011 and 2012 for which petitioner filed its Annual ITRs on April 16, 2012 and on April 15, 2013, respectively. Counting from these dates, petitioner had until April 16, 2014 and April 15, 2015 within which to file a claim for refund of its excess CWTs both in the administrative and judicial levels. Thus, petitioner seasonably filed with the BIR its administrative claim for refund on March 14, 2014 and its judicial claim for refund through the present Petition for Review on April 14, 2014. *Jr*

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

As regards the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by its various clients showing CWTs in the amounts of ₱44,739,249.46 and ₱52,986,532.80 for calendar years 2011 and 2012, respectively, or in the aggregate amount of ₱97,725,782.26, broken down as follows:

Exh.	Payor's Name	Covered Period		Income Payments	Amount of CWT
For Calendar Year 2011					
"P-17"	Globe Telecom Inc.	1/1/2011	3/31/2011	₱ 47,298,280.00	₱ 7,094,742.00
"P-18"	Viscal Development Corp.	1/1/2011	3/31/2011	41,832,750.00	6,274,912.50
"P-19"	Viscal Development Corp.	4/1/2011	6/30/2011	9,652,500.00	1,447,875.00
"P-20"	Globe Telecom Inc.	4/1/2011	6/30/2011	15,100,000.00	2,265,000.00
"P-21"	Viscal Development Corp.	7/1/2011	10/31/2011	47,318,378.07	7,097,756.71
"P-22"	Globe Telecom Inc.	7/1/2011	9/30/2011	75,594,755.00	11,339,213.25
"P-23"	Globe Telecom Inc.	10/1/2011	12/31/2011	61,465,000.00	9,219,750.00
Subtotal				**₱298,261,663.07**	**₱ 44,739,249.46**
For Calendar Year 2012					
"P-24"	Valueshop Market Market Inc.	1/1/2012	6/30/2012	₱ 50,786,260.53	₱ 7,617,939.08
"P-25"	Globe Telecom Inc.	1/1/2012	3/31/2012	25,980,000.00	3,897,000.00
"P-26"	Viscal Development Corp.	1/1/2012	6/30/2012	38,258,305.50	5,738,745.83
"P-27"	Viscal Development Corp.	1/1/2012	6/30/2012	24,688,004.13	3,703,200.62
"P-28"	Globe Telecom Inc.	4/1/2012	6/30/2012	16,475,000.00	2,471,250.00
"P-29"	Security Bank Corp.	4/1/2012	6/30/2012	41,218,350.10	6,182,752.52
"P-30"	Ayala Corp.	4/1/2012	6/30/2012	9,000,000.00	1,350,000.00
"P-31"	Globe Telecom Inc.	4/1/2012	6/30/2012	26,000,000.00	3,900,000.00
"P-32"	Globe Telecom Inc.	7/1/2012	9/30/2012	73,000,000.00	10,950,000.00
"P-33"	Valueshop Market Market Inc.	7/1/2012	9/30/2012	47,837,631.73	7,175,644.76
Subtotal				**₱353,243,551.99**	**₱ 52,986,532.80**
		TOTAL			**₱97,725,782.26**[31]

A scrutiny of the said certificates reveals that the amount of ₱39,056,074.49, as detailed below, should be deducted from petitioner's claim since the supporting certificates were issued to McKinsey Phils., Inc., which is not the registered name of petitioner (the registered name of petitioner is McKinsey & Co. (Phils.), as per Exhibits "P-1", "P-2", and "P-3"):

Exhibit	Payor's Name	Covered Period		Income Payments	CWT
For Calendar Year 2011					
"P-18"	Viscal Development Corp.	1/1/2011	3/31/2011	₱ 41,832,750.00	₱ 6,274,912.50
"P-19"	Viscal Development Corp.	4/1/2011	6/30/2011	9,652,500.00	1,447,875.00

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[31] With ₱0.54 difference as compared to the total claimed CWT of ₱97,725,782.80, due to rounding off.

"P-21"	Viscal Development Corp.	7/1/2011	10/31/2011	47,318,378.07	7,097,756.71
Subtotal				***98,803,628.07***	***14,820,544.21***
For Calendar Year 2012					
"P-24"	Valueshop Market Market Inc.	1/1/2012	6/30/2012	₱ 50,786,260.53	₱ 7,617,939.08
"P-26"	Viscal Development Corp.	1/1/2012	6/30/2012	38,258,305.50	5,738,745.83
"P-27"	Viscal Development Corp.	1/1/2012	6/30/2012	24,688,004.13	3,703,200.62
"P-33"	Valueshop Market Market Inc.	7/1/2012	9/30/2012	47,837,631.73	7,175,644.76
Subtotal				***₱161,570,201.89***	***₱24,235,530.28***
TOTAL					**₱39,056,074.49**

Moreover, the certificate marked as Exhibit "P-27" bears TIN 0006-528-699 which is not the registered TIN of petitioner (the registered TIN of petitioner is 005-649-673-000, as per Exhibit "P-3").

Therefore, petitioner complied with the second requisite, but only to the extent of ₱58,669,708.31, out of the total claimed CWT of ₱97,725,782.80 for calendar years 2011 and 2012, computed as follows:

	CY 2011	CY 2012	Total
Claimed CWT	₱ 44,739,250.00	₱ 52,986,532.80	₱ 97,725,782.80
Less: Disallowances	14,820,544.21	24,235,530.28	39,056,074.49
Total CWT with Proper Certificates	**₱29,918,705.79**	**₱28,751,002.52**	**₱58,669,708.31**

Regarding the third requisite, the certificates show that the claimed CWTs for the years 2011 and 2012 were withheld on income payments of ₱298,261,663.07 and ₱353,243,551.99, respectively. On the other hand, petitioner's Annual ITRs for the same years disclosed higher gross "Sales/Revenues/Receipts/Fees" in the amounts of ₱560,681,020.34[32] and ₱750,257,727.60[33], respectively.

The Revenue Section in the Statements of Comprehensive Income of petitioner's Audited Financial Statements (AFS) for calendar years 2011 and 2012 showed the breakdown of "Sales/Revenues/Receipts/Fees" reflected in petitioner's Annual ITRs, to wit:

[32] Line 16 of Exhibit "P-7".
[33] Line 16 of Exhibit "P-11".

	2011	2012
Revenue	(Exhibit "P-42")	(Exhibit "P-43")
Billing Revenue		
Consultancy Services	₱ 342,814,073.00	₱ 486,597,601.00
Shared Services Center	147,691,044.00	202,333,119.00
Loaned Services	70,175,903.00	61,327,007.00
Total Revenue	**₱560,681,020.00**	**₱750,257,727.00**

Petitioner's Accounting Officer, Ms. Elena Cabahug, in her Judicial Affidavit[34] dated June 16, 2015, explained why the total amounts of sales/revenues, which petitioner reported in its Annual ITRs for both calendar years 2011 and 2012, are not equal to the amounts of income from which the CWTs were withheld.

First, the total sales/revenues reported in petitioner's income tax returns included not only the revenues from local customers which are subject to CWT, but also revenues from foreign affiliates which are non-residents and which are not required under the law to withhold CWT. The revenues derived from foreign affiliates are those which pertain to Shared Services Center and Loaned Services.

Second, the discrepancy in the amount of revenue reflected in the Audited Financial Statements and the amount of income payments supported by certificates of tax withheld is petitioner's accrued income in previous year, the payment of which, together with the corresponding certificate of tax withheld, was received in the following year.

Third, petitioner billed its customers in U.S. Dollars, where there is a foreign currency translation difference arising from the use by petitioner of a Peso-U.S. Dollar exchange rate (in recording income in its books) that is different from the Peso-U.S. Dollar exchange rate used by customers (when they issued the certificates of tax withheld).

Ms. Elena Cabahug also manifested that petitioner's revenues from local customer, which are subject to CWT, were reflected in the AFS as Consultancy Services.

The above-mentioned statements of Ms. Elena Cabahug were corroborated by petitioner's documentary evidence, such as its

[34] Exhibit "P-144", Docket, vol. II, pp. 874-934.

General Ledgers Transaction Detail (GLTD) for 2011[35] and 2012[36], which show that the income payments from which the creditable taxes were withheld are with the same amount of revenue from Consultancy Services reflected in its AFS; and the Reconciliation Schedules of Revenues, which show the reconciliation of the revenue per General Ledger and revenue per CWT certificates both for the years 2011[37] and 2012[38]. Hence, petitioner duly established that it declared in its Annual ITRs for calendar years 2011 and 2012 the gross income related to the properly supported CWTs in the total amount of ₱58,669,708.31, in compliance with the third requisite.

The Court now proceeds to determine whether the aforesaid CWT in the amount of ₱58,669,708.31 is unutilized and may be the proper subject of a claim for refund or issuance of TCC pursuant to Section 76 of the NIRC of 1997, as amended, which provides:

> "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

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[35] Exhibit "P-37".
[36] Exhibit "P-38".
[37] Exhibit "P-39".
[38] Exhibit "P-40".

against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor."

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 tax credit certificate) 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.[39] 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.[40]

A perusal of petitioner's Annual ITRs for calendar years 2011 and 2012 disclosed that petitioner reported losses in the respective amounts of ₱25,457,525.88 and ₱15,286,146.42. However, it had a Minimum Corporate Income Tax (MCIT) due in the amounts of ₱614,393.14 and ₱1,108,850.33, totaling ₱1,723,243.47.

Petitioner alleges that these MCIT liabilities were paid using a portion of its reported prior year's excess credits of ₱82,385,439.00; thus, its creditable taxes withheld incurred in 2011 and 2012 in the respective amounts of ₱44,739,250.00 and ₱52,986,532.80 or in the total amount of ₱97,725,782.80, were still unutilized as of December 31, 2012, as shown below:

	2011	**2012**	**Total**
	(Exhibit "P-7")	**(Exhibit "P-11")**	
Sales/Revenue/Receipts	₱ 560,681,020.34	₱ 750,257,727.60	₱1,310,938,747.94
Les: Cost of Sales/Services	532,984,649.49	698,211,524.60	1,231,196,174.09
Gross Income from Operations	27,696,370.85	52,046,203.00	79,742,573.85
Add: Non-Operating & Taxable Other Income	3,023,286.20	3,396,313.59	6,419,599.79
Total Gross Income	30,719,657.05	55,442,516.59	86,162,173.64
Less: Deductions	56,177,182.93	70,728,663.01	126,905,845.94
Taxable Income	(25,457,525.88)	(15,286,146.42)	(40,743,672.30)
Income Tax Payable	NIL	NIL	NIL
Minimum Corporate Income Tax (MCIT)	614,393.14	1,108,850.33	1,723,243.47

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

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

Income Tax Due (MCIT)	614,393.14	1,108,850.33	1,723,243.47
Less: Prior Year's Excess Credits	82,385,439.00	81,771,045.86	82,385,439.00
Balance of Prior Year's Excess Credits	81,771,045.86	80,662,195.53	80,662,195.53
Add: CWTs for the Year			
CTWs for the First Three Quarters	35,519,500.00	49,514,089.00	85,033,589.00
CTWs for the Fourth Quarter	9,219,750.00	3,472,443.80	12,692,193.80
Total CWTs for the year	***₱44,739,250.00***	***₱52,986,532.80***	***₱ 97,725,782.80***
Total Excess Tax Credits as of December 31	₱ 126,510,295.86	₱ 133,648,728.33	₱ 178,387,978.33

Petitioner marked the circle beside the phrase "To be refunded"[41], which signifies its intention to claim for a refund of the creditable taxes withheld for the years 2011 and 2012 in the total amount of ₱97,725,782.80. Further, a perusal of petitioner's Quarterly[42] and Annual ITRs[43] for the years 2012 and 2013 shows that the amounts of prior year's excess credits are only ₱81,771,046.00 and ₱80,662,196.00, respectively, instead of the respective amounts of ₱126,510,295.86[44] and ₱133,648,728.33.[45] Evidently, the claimed CWTs for calendar years 2011 and 2012 of ₱44,739,250.00 and ₱52,986,532.80, respectively, or in the total amount of ₱97,725,782.80, were not included therein. As a result, the CWTs being claimed by petitioner may be refunded pursuant to Section 76 of the NIRC of 1997, as amended.

To prove the existence of its prior year's excess credits of ₱82,385,439.00, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for calendar years 1999 to 2002 and 2004 to 2006. The sum, however, of the CWTs reflected in the certificates amounts only to ₱77,475,382.25, broken down as follows:

Exhibit	Period Covered	Withholding Agent	CWT
"P-45"	10/01/99 to 12/31/99	Equitable PCI Bank	₱ 503,125.00
		Subtotal	***₱ 503,125.00***
"P-46"	01/01/00 to 03/31/00	Bayan Telecommunications, Inc.	₱ 747,955.00
"P-47"	10/01/00 to 12/31/00	Bayan Telecommunications, Inc.	519,896.25
"P-48"	10/01/00 to 12/31/00	Southern Energy Asia-Pacific Operations (Phils.), Inc.	143,272.75
		Subtotal	***₱ 1,411,124.00***

[41] Exhibits "P-7-a" and "P-11-a".
[42] Line 31A of Exhibits "P-8", "P-9", "P-10", "P-12", "P-13", and "P-14".
[43] Line 1, Schedule 7 of Exhibit "P-15".
[44] Line 37 of Exhibit "P-7".
[45] Line 37 of Exhibit "P-11".

"P-49"	01/01/01 to 03/31/01	Ayala Corporation	₱ 2,380,800.00
"P-50"	04/01/01 to 06/30/01	Ayala Corporation	683,264.78
"P-51"	04/01/01 to 06/30/01	Mirant (Phils) Operations Corp.	470,763.00
"P-52"	08/01/01 to 09/30/01	Equitable PCI Bank	4,813,612.50
"P-53"	10/01/01 to 12/31/01	Equitable PCI Bank	3,862,800.00
"P-54"	10/01/01 to 12/31/01	Mirant (Phils) Operations Corp.	2,622,261.00
"P-55"	12/01/01 to 12/31/01	Benpres Holdings Corporation	3,286,627.89
		Subtotal	***₱18,120,129.17***
"P-56"	01/01/02 to 03/31/02	Equitable PCI Bank	₱ 7,625,700.00
"P-57"	01/01/02 to 03/31/02	Ayala Corporation	366,652.00
"P-58"	01/01/02 to 12/31/02	Manila Electric Company	3,530,560.00
"P-59"	04/01/02 to 06/30/02	Equitable PCI Bank	5,603,650.00
"P-60"	04/01/02 to 06/30/02	Globe Telecom, Inc.	346,050.80
"P-61"	04/01/02 to 06/30/02	PAGCOR	759,000.00
"P-62"	07/01/02 to 09/30/02	Department of Tourism	58,600.00
"P-63"	10/01/02 to 12/31/02	Department of Tourism	8,560.00
		Subtotal	***₱18,298,772.80***
"P-64"	04/01/04 to 06/30/04	Jollibee Foods Corporation	₱ 6,615,384.75
"P-65"	07/01/04 to 09/30/04	Ayala Corporation	2,433,912.00
"P-66"	07/01/04 to 09/30/04	Jollibee Foods Corporation	5,734,234.13
"P-67"	10/01/04 to 12/31/04	Ayala Corporation	870,947.40
		Subtotal	***₱15,654,478.28***
"P-68"	12/01/05 to 12/31/05	Bank of the Philippine Islands	₱ 5,625,637.50
		Subtotal	***₱ 5,625,637.50***
"P-69"	04/01/06 to 06/30/06	PLDT	₱ 3,207,493.50
"P-70"	10/01/06 to 12/31/06	Globe Telecom, Inc.	1,449,870.00
"P-71"	10/01/06 to 12/31/06	Smart Communications, Inc.	6,602,376.00
"P-72"	10/01/06 to 12/31/06	Smart Communications, Inc.	6,602,376.00
		Subtotal	***₱17,862,115.50***
		TOTAL	**₱77,475,382.25**

Unfortunately, the Court cannot ascertain whether the above-enumerated CWTs actually pertain to the excess of petitioner's total tax credits over its income tax liabilities for the years 1999 to 2006, since petitioner failed to submit its Annual ITRs for the said years. Hence, considering that petitioner failed to substantiate it prior year's excess tax credits of ₱82,385,439.00, its MCIT liabilities for calendar years 2011 and 2012 in the respective amounts of ₱614,393.14 and ₱1,108,850.33 shall be offset against the properly supported CWT of ₱58,669,708.31. *Jr*

Consequently, petitioner has excess and unutilized CWTs for calendar years 2011 and 2012 in the total amount of ₱56,946,464.84, computed as follows:

Total CWTs with Proper Certificates	₱ 29,918,705.79	₱ 28,751,002.52	₱ 58,669,708.31
Less: Income Tax Due (MCIT)	614,393.14	1,108,850.33	1,723,243.47
CWTs for Refund/TCC	**₱29,304,312.65**	**₱27,642,152.19**	**₱56,946,464.84**

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the reduced amount of **₱56,946,464.84**, representing its excess and unutilized creditable withholding taxes for calendar years 2011 and 2012.

SO ORDERED.

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

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

ATTESTATION

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

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 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