REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

MCKINSEY & CO., (PHILS.),
Petitioner,

CTA CASE NO. 8472

-versus-

Members:

BAUTISTA, Chairperson;
FABON-VICTORINO, and
RINGPIS-LIBAN, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:

APR 17 2015
9:45 a.m.

x---x

DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

This resolves the Petition for Review filed by McKinsey & Co., (Phils.) praying for the refund of excess creditable withholding tax (CWT) for calendar years 2009 and 2010 in the respective amounts of ₱24,104,576.00 and ₱38,372,134.65, or an aggregate amount of ₱62,476,710.65.

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. Petitioner's branch office is located at 29F Equitable Bank Tower, 8754 Paseo de Roxas, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) Revenue District Office (RDO) No. 50-South Makati, with Taxpayer Identification No. 005-649-673-000.[2]

Respondent is sued in her official capacity as the Commissioner of the Bureau of Internal Revenue, having been duly appointed to exercise the powers and perform the duties of her office including, *inter alia*, the power to decide disputed assessments, refunds of internal revenue taxes, fees and other charges, penalties imposed in relation thereto, or other matters arising under the National Internal Revenue Code (NIRC) of 1997, as amended. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return[3] (ITR) for calendar year (CY) 2009 on April 15, 2010, reporting an annual income tax due in the amount of ₱926,359.00 representing its Minimum Corporate Income Tax (MCIT).[4] Petitioner's MCIT liabilities were then paid using a portion of its Prior Year's Excess Credits other than MCIT, which at the beginning of the year was in the amount of ₱85,263,890.00.[5] At the end of 2009, petitioner had total tax credits/payments in the amount of ₱84,337,531.00 and unutilized creditable withholding taxes in the amount of ₱24,104,577.00.[6] Petitioner chose to refund tbe CWT in 2009 by ticking the box "To be refunded" in its Annual ITR for CY 2009.[7]

Petitioner also filed its Annual Income Tax Return[8] for taxable year 2010 on April 14 2011, reporting an annual income tax due in the amount of ₱1,952,092.00 representing its MCIT for CY 2010.[9] Petitioner's MCIT liabilities were then paid using its Prior Year's Excess Credits other than MCIT, which at the beginning of the year was in the amount of ₱84,337,531.00.[10] At the end of 2010, petitioner had total tax credits/payments in the amount of ₱82,385,439.00 and unutilized creditable withholding taxes in the amount of ₱38,382,260.00.[11] Petitioner likewise opted to refund the unutilized CWT for 2010 by ticking the box "To be refunded" in its Annual ITR for CY 2010.[12]

[1] Par. 1, Supplemental Joint Stipulation of Facts and Issues (JSFI), docket, p. 1222.
[2] Par. 2, Supplemental JSFI, docket, p. 1222.
[3] Exhibit "D", docket, p. 807.
[4] Exhibit "D-5", docket, p. 807.
[5] Exhibits "C", "C-1", "C-2", "C-3", and "D-6", docket, pp. 800 and 807.
[6] Exhibits "D", "D-3", "D-5", and "D-6", docket, p. 807.
[7] Exhibit "D-7", docket, p. 807.
[8] Exhibit "E", docket, p. 810.
[9] Exhibit "E-6", docket, p. 810.
[10] Exhibit "E-7", docket, p. 810.
[11] Exhibits "E", "E-3", "E-4", "E-6", and "E-7", docket, p. 810.
[12] Exhibit "E-8", docket, p. 810.

In sum, petitioner's Annual ITRs show unutilized CWT for CY 2009 and 2010 in the amounts of ₱24,104,577.00 and ₱38,382,260.00, respectively, or the total amount of ₱62,486,837.00. The Court however notes that petitioner is claiming the refund of the lower amount of ₱62,476,710.65.

On March 29, 2012, petitioner filed with the BIR Revenue District Office No. 50-South Makati an administrative claim for refund of its purported excess CWT for CY 2009 and 2010, in the amount of ₱24,104,576.00 and ₱38,372,134.65, respectively, or the aggregate amount of ₱62,476,710.65.[13]

On April 13, 2012, alleging inaction on the part of respondent, petitioner filed the present Petition for Review[14] and Motion for Time (To submit the Original Copy of Petitioner's Secretary's Certificate of Board Resolution)[15].

On April 16, 2012, petitioner filed a Manifestation and Motion[16], submitting the original copy of the Secretary's Certificate.

Respondent filed a Motion for an Extension of Time to File Answer[17] through registered mail on May 21, 2012, which was received by this Court on May 25, 2012. The said motion was granted by the Court in its Order[18] dated May 28, 2012.

On June 6, 2012, respondent filed her Answer with (1) Motion to Dismiss and (2) Comment/Opposition to Petitioner's Motion for Time[19], interposing as its Special and Affirmative Defenses that petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue; that petitioner's claim of its entitlement for refund or the issuance of a refund or a tax credit certificate has no basis either in fact or in law, for its failure to show or demonstrate any evidence to the effect that the tax, which is the subject of this case, was erroneously or illegally collected; and that petitioner's alleged claim for refund or issuance of a tax credit certificate in the aggregate amount of ₱62,476,710.65 as alleged unutilized creditable withholding taxes for taxable years 2009 and 2010 were not fully substantiated by proper documents, such as sales invoices, official receipts and others.

Respondent also pointed out that the verification and certification against forum shopping was defective because the attached Secretary's Certificate is a mere photocopy and that Mr. Wilfredo Agustin is not

[13] Exhibits "A" and "A-1", docket, pp. 768-776.
[14] Docket, pp. 6-21.
[15] Docket, pp. 145-148.
[16] Docket, pp. 149-158.
[17] Docket, pp. 160-163.
[18] Docket, p. 165.
[19] Docket, pp. 166-176.

authorized to sign the same, thus, the Petition for Review should be dismissed.[20]

Petitioner filed its Opposition/Comment (To Respondent's Motion to Dismiss)[21] on June 21, 2012, maintaining that Mr. Wilfredo Agustin was authorized to sign any and all documents, and to take such actions and execute and deliver such documents as may be necessary or appropriate; that the jurisprudence cited by respondent does not squarely apply to the instant petition; that Mr. Wilfredo Agustin as petitioner's accounting officer has the authority to sign the verification and certification against forum shopping, even without presenting proof of such authority; and that the Supreme Court has relaxed the rule on submission of verification and certification against forum shopping, under special circumstances and for compelling reasons, and where there is substantial compliance with the rule.

On August 2, 2012, the Court issued a Resolution[22] denying respondent's Motion to Dismiss, ruling that Mr. Wilfredo Agustin, the Accounting Assistant of petitioner's Corporate branch in the Philippines, has been authorized to sign the verification and certification against forum shopping.

The case was set for pre-trial conference on October 4, 2012.[23] Accordingly, petitioner's Pre-Trial Brief[24] was filed on September 28, 2012; while respondent's Pre-trial Brief[25] was filed on October 1, 2012.

Thereafter, the parties filed their Joint Stipulation of Facts and Issues[26] on October 31, 2012, which the Court approved in the Pre-trial Order[27] dated November 13, 2012. In the same Order, the pre-trial was deemed terminated and the parties were ordered to proceed with the trial.

During the trial, petitioner presented its Accounting Officer, Ms. Maria Cristina O. Alon, as its sole witness.[28] On November 11, 2013, petitioner filed its Formal Offer of Evidence.[29] In the Resolution[30] dated February 11, 2014, this Court admitted as petitioner's evidence Exhibits "A" to "UUU", "WWW" to "AAAAA", and "CCCCC", inclusive of submarkings but denied Exhibits "VVV", "VVV-1", "VVV-2", "BBBBB", and "CCC".

[20] Docket, pp. 169-175.
[21] Docket, pp. 178-192.
[22] Docket, pp. 195-198.
[23] Docket, p. 199.
[24] Docket, pp. 200-209.
[25] Docket, pp. 210-214.
[26] Docket, pp. 222-226.
[27] Docket, pp. 240-245.
[28] Minutes of the Hearing, docket, p. 655.
[29] Formal Offer of Evidence, docket, pp. 691-767.
[30] Docket, pp. 1135-1136.

Petitioner then filed an Omnibus Motion (I) For Reconsideration of the Resolution dated 11 February 2014, and (II) For Correction of the Description of Exhibits "PPP-1" and "GGGG-1" in the Formal Offer of Evidence[31] on March 6, 2014.

In the Resolution[32] dated June 2, 2014, the Court admitted Exhibit "BBBBB", noted the correction of the description of Exhibits "PPP-1" and "GGGG-1", and still denied Exhibit "CCC".

On the part of respondent, she filed a Manifestation praying for the submission of the case for resolution based on available records and requesting for a period of thirty (30) days to file her Memorandum.[33] In the Resolution[34] dated July 2, 2014, the Court noted respondent's Manifestation and cancelled the presentation of evidence previously scheduled. The Court also ordered both parties to submit their respective Memoranda within thirty (30) days from notice.

Petitioner filed a Motion for Additional Time to File Memorandum[35], which was granted by Court.[36] Petitioner submitted its Memorandum[37] on August 15, 2014, while respondent submitted her Memorandum[38] on August 12, 2014.

Petitioner and respondent then submitted a Joint Motion to Admit (Supplemental Joint Stipulation of Facts)[39] on August 18, 2014, which was noted and admitted by the Court.[40]

In the Resolution[41] dated September 8, 2014, the case was considered submitted for decision by the Court.

STATEMENT OF ISSUES

As jointly stipulated by the parties, the issues[42] to be resolved by this Court are:

[31] Docket, pp. 1139-1145.
[32] Docket, pp. 1164-1166.
[33] Docket, pp. 1169-1170.
[34] Docket, p. 1172.
[35] Docket, pp. 1173-1177.
[36] Docket, p. 1179.
[37] Docket, pp. 1190-1217.
[38] Docket, pp 1180-1188.
[39] Docket, pp. 1219-1223.
[40] Docket, pp. 1227-1228.
[41] Docket, p. 1230.
[42] Statement of the Issues, JSFI, docket, p. 224.

(a) Whether or not Petitioner is entitled to the tax refund or credit of excess CWT for taxable years 2009 and 2010.

(b) Whether or not Petitioner has excess CWT in the amount of ₱62,476,710.65 for taxable years 2009 and 2010.

(c) Whether or not the excess CWT for taxable years 2009 and 2010 were carried over and applied as tax credit certificate to the succeeding taxable quarters/year(s).

(d) Whether or not the income from which the taxes withheld and included by Petitioner as part of gross income in its 2009 and 2010 income tax returns.

(e) Whether or not Petitioner's claim for refund representing excess CWT for taxable years 2009 and 2010 in the aggregate amount of ₱62,476,710.65 is substantiated by documentary evidence.

RULING OF THE COURT

Petitioner anchors its claim on 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 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." *(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 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.[43] 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.[44]

A perusal of petitioner's Annual ITRs for CY 2009 and 2010 disclosed that petitioner had MCIT due in the respective amounts of ₱926,359.00 and ₱1,952,092.00 totaling ₱2,878,451.00. Petitioner alleges that these MCIT liabilities were paid using a portion of its reported prior year's excess credits of ₱85,263,890.00, thus, leaving the balance of the prior year's excess credits of ₱82,385,439.00 and creditable taxes withheld in 2009 and 2010 in the respective amounts of ₱24,104,577.00 and ₱38,382,260.00 or in the total amount of ₱62,486,837.00 unutilized as of December 31, 2010, as shown below:

	2009	**2010**	**Total**
	(Exhibit "D")	*(Exhibit "E")*	
Gross Income	₱ 46,317,931.00	₱ 97,604,600.00	₱143,922,531.00
Less: Deductions	76,089,815.00	97,604,600.00	173,694,415.00
Taxable Income	(29,771,884.00)	-	(29,771,884.00)
Minimum Corporate Income Tax	926,359.00	1,952,092.00	2,878,451.00
Less: Prior Year's Excess Credits	85,263,890.00	84,337,531.00	85,263,890.00
Balance of Prior Year's Excess Credits	84,337,531.00	82,385,439.00	82,385,439.00
Add: Creditable Taxes Withheld During the Year	**24,104,577.00**	**38,382,260.00**	**62,486,837.00**
Total Excess Credits as of December 31	₱108,442,108.00	₱120,767,699.00	₱144,872,276.00

To prove the existence of its prior year's excess credits of ₱85,263,890.00, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) for the years 1999 to 2002 and 2004 to 2006 that reflected creditable withholding taxes in the amount of ₱86,460,040.28, detailed as follows:

[43] *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.

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

Exhibit	Period Covered	Withholding Agent	Income Tax Withheld
"HHH"	10/01/99 to 12/31/99	Equitable PCI Bank	₱ 503,125.00
		Subtotal	**₱ 503,125.00**
"III"	01/01/00 to 03/31/00	Bayan Telecommunications, Inc.	₱ 747,955.00
"JJJ"	10/01/00 to 12/31/00	Bayan Telecommunications, Inc.	519,896.25
"KKK"	10/01/00 to 12/31/00	Southern Energy Asia-Pacific Operations (Phils.), Inc.	143,272.75
		Subtotal	**₱ 1,411,124.00**
"EEEE"	03/01/01 TO 03/31/01	Integrated MicroElectronics, Inc.	₱ 101,333.28
"QQQ"	01/01/01 to 03/31/01	Ayala Corporation	2,380,800.00
"RRR"	04/01/01 to 06/30/01	Ayala Corporation	683,264.78
"MMM"	04/01/01 to 06/30/01	Mirant (Phils) Operations Corp.	470,763.00
"LLL"	08/01/01 to 09/30/01	Equitable PCI Bank	4,813,612.50
"NNN"	10/01/01 to 12/31/01	Mirant (Phils) Operations Corp.	2,622,261.00
"OOO"	10/01/01 to 12/31/01	Equitable PCI Bank	3,862,800.00
"PPP"	12/01/01 to 12/31/01	Benpres Holdings Corporation	3,286,627.89
		Subtotal	**₱18,221,462.45**
"AAAA"	01/01/02 to 03/31/02	Ayala Corporation	₱ 366,652.00
"BBBB"	01/01/02 to 03/31/02	Equitable PCI Bank	7,625,700.00
"SSS"	04/01/02 to 06/30/02	Equitable PCI Bank	5,603,650.00
"UUU"	04/01/02 to 06/30/02	Globe Telecom, Inc.	346,050.80
"WWW"	04/01/02 to 06/30/02	PAGCOR	759,000.00
"YYY"	04/01/02 to 06/30/02	Department of Tourism	56,100.00
"TTT"	07/01/02 to 09/30/02	Equitable PCI Bank	5,742,400.00
"ZZZ"	07/01/02 to 09/30/02	Department of Tourism	58,600.00
"XXX"	10/01/02 to 12/31/02	Department of Tourism	8,560.00
		Subtotal	**₱20,566,712.80**
"HHHH"	04/01/04 to 06/30/04	Jollibee Foods Corporation	₱ 6,615,384.75
"IIII"	04/01/04 to 06/30/04	Jollibee Foods Corporation	6,615,384.75
"GGGG"	07/01/04 to 09/30/04	Jollibee Foods Corporation	5,734,234.13
"DDDD"	07/01/04 to 09/30/04	Ayala Corporation	2,433,912.00
"CCCC"	10/01/04 to 12/31/04	Ayala Corporation	870,947.40
		Subtotal	**₱22,269,863.03**
"FFFF"	12/01/05 to 12/31/05	Bank of the Philippine Islands	₱ 5,625,637.50
		Subtotal	**₱ 5,625,637.50**
"DDD"	10/01/06 to 12/31/06	Globe Telecom, Inc.	₱ 1,449,870.00
"EEE"	10/01/06 to 12/31/06	Smart Communications, Inc.	6,602,376.00
"FFF"	04/01/06 to 06/30/06	Philippine Long Distance Telephone Company	3,207,493.50
"GGG"	10/01/06 to 12/31/06	Smart Communications, Inc.	6,602,376.00
		Subtotal	**₱17,862,115.50**
		Total	**₱86,460,040.28**

In an earlier case[45] involving the same parties and issues but covering petitioner's claimed CWT for taxable years 2007 and 2008, this Court's Second Division, in partially granting the claim, found that petitioner had excess tax credits for taxable year 2006 in the amount of ₱2,220,487.60 that can be utilized to partially pay for petitioner's MCIT liabilities for taxable years 2007 and 2008 totaling ₱5,109,558.00. The 2006 excess tax credits in the amount of ₱2,220,487.60 was arrived at by deducting petitioner's MCIT liability for 2006 in the amount of ₱82,634.00 from the creditable income taxes withheld by Holcim Philippines, Inc. for 2006 in the amount of ₱2,303,121.60 (Exhibit "O"). Hence, only the remaining MCIT due for taxable years 2007 and 2008 in the amount ₱2,889,070.40 was deducted from petitioner's substantiated CWT for taxable years 2007 and 2008. Below is the relevant portion of the Amended Decision:

> While the certificate marked as Exhibit "O" pertains to petitioner's 2006 CWT, the same does not represent petitioner's *excess* credits for taxable year 2006. In its 2006 Annual ITR, petitioner reflected an MCIT due of P82,634.00 which shall be deducted from the 2006 CWT of P2,303,121.60. Thus, only the amount of P2,220,487.60 (P2,303,121.60 less P82,634.00) represents petitioner's *excess* credits for taxable year 2006, which shall be applied against petitioner's MCIT liabilities for taxable years 2007 and 2008 in the total amount of P5,109,558.00. Consequently, only the remaining MCIT due for taxable years 2007 and 2008 in the amount of P2,889,070.40 shall be offset against petitioner's substantiated claim for 2007 and 2008 in the amount of P117,011,064.40 leaving a refundable amount of P114,121,994.00, representing petitioner's excess CWT for taxable years 2007 and 2008.

Clearly, from the foregoing, petitioner's MCIT liabilities for 2006, 2007, and 2008 were paid utilizing the creditable taxes withheld by Holcim Philippines, Inc. and a portion of petitioner's creditable taxes withheld in 2007 and 2008. Therefore, it can be safely concluded that all of the Certificates of Creditable Taxes Withheld at Source[46] submitted by petitioner in the present case pertaining to creditable taxes withheld in 2006 by Globe Telecom, Inc., Smart Communications, Inc. and Philippine Long Distance Telephone Company in the amount of ₱17,862,115.50 represent petitioner's **excess** tax credits for CY 2006 which remained **unutilized** as of December 31, 2008.

As regards the Certificates of Creditable Tax Withheld at Source pertaining to CY 1999, 2000, 2001, 2002, 2004, and 2005, it cannot be ascertained whether the creditable withholding taxes indicated therein pertain to the excess of petitioner's total tax credits over its income tax liabilities for

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[45] *McKinsey & Co. (Phils.) vs. Commissioner of Internal Revenue*, CTA Case No. 8078, Amended Decision dated October 22, 2012.
[46] Exhibits "DDD" to "GGG", docket, pp. 944-947.

the years 1999 to 2005 because petitioner failed to submit its Annual ITRs for the said years.

Nevertheless, the verified prior year's (2006) excess tax credits of ₱17,862,115.50 are more than sufficient to cover petitioner's MCIT liabilities for taxable years 2009 and 2010 in the respective amounts of ₱926,359.00 and ₱1,952,092.00 totalling ₱2,878,451.00. Consequently, the reported creditable taxes withheld in 2009 and 2010 in the respective amounts of ₱24,104,577.00 and ₱38,382,260.00 or in the aggregate sum of ₱62,486,837.00 which petitioner marked as "To be refunded"[47] in its Annual ITRs for the said years remained unutilized as of December 31, 2010. Since only the excess tax credits from taxable year 2006 and prior years were carried over in petitioner's Quarterly Income Tax Returns and Annual ITRs for CY 2010[48] and 2011[49], the reported CWT for CY 2009 and 2010 in the total amount of ₱62,486,837.00 may be the proper subject of a claim for refund pursuant to Section 76 of the NIRC of 1997, as amended. It is to be noted though that petitioner is claiming a lower amount of ₱62,476,710.65.

It is well-settled that a taxpayer claiming for a tax credit or refund of creditable withholding tax must comply with the following requisites:[50]

1. The claim must be filed with the BIR Commissioner within the two-year period from the date of payment of the tax;
2. It must be shown on the return that the income received was declared as part of the gross income; and
3. The fact of withholding must be 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.

Anent 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

[47] Exhibits "D-7" and "E-8", docket, pp. 807 and 810, respectively.
[48] Exhibits "X-2", "Y-2", "Z-2", and "E-7", docket, pp. 835, 837, 839, and 810, respectively.
[49] Exhibits "AA-2", "BB-2", "CC-2", and "F-2", docket, pp. 841, 843, 845, and 817, respectively.
[50] *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."

"SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; 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."

The above provisions mandate that the administrative and the judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two 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 date that the exact tax liability or refundability of the tax can be determined.[51]

The present claim pertains to CY 2009 and 2010 for which petitioner filed its Annual ITRs on April 15, 2010[52] and April 14, 2011[53], respectively. Counting from these dates, petitioner had until April 15, 2012 and April 14, 2013 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim for refund on March 29, 2012[54] and its judicial claim for refund through the instant Petition for Review on April 13, 2012[55].

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[51] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals,* G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991.
[52] Exhibit "D-1", docket, p. 807.
[53] Exhibit "E-1", docket, p. 810.
[54] Exhibit "A-1", docket, p. 768.
[55] Exhibit "B-1", docket, p. 777.

With regard to the third requisite, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by its various clients showing CWT in the amounts of ₱24,104,576.00 and ₱38,372,134.64 for CY 2009 and 2010, respectively, or in the aggregate sum of ₱62,476,710.65, broken down as follows:

Exh.	Period Covered	Withholding Agent	Income Payment	Income Tax Withheld
For Taxable Year 2009				
"G"	04/01/09 to 06/30/09	PLDT	73,333,333.33	11,000,000.00
"H"	04/01/09 to 06/30/09	Smart Communications, Inc.	68,320,200.00	10,248,030.00
"I"	07/01/09 to 09/30/09	San Miguel Corporation	19,043,640.00	2,856,546.00
Subtotal			**₱160,697,173.33**	**₱24,104,576.00**
For Taxable Year 2010				
"J"	01/01/10 to 03/31/10	ABS-CBN Broadcasting Corp.	46,071,000.00	6,910,650.00
"K"	03/01/10 to 03/31/10	Manila Electric Company	15,000,000.00	2,250,000.00
"L"	04/01/10 to 06/30/10	Ayala Corporation	16,894,800.00	2,534,220.00
"M"	07/01/10 to 09/30/10	Ayala Corporation	26,314,600.00	3,947,190.00
"N"	10/01/10 to 10/31/10	Vicsal Development Corporation	20,287,950.00	3,043,192.50
"O"	12/01/10 to 12/31/10	Globe Telecom, Inc.	37,815,981.00	5,672,397.15
"P"	10/12/10 to 10/12/10	Bank of the Philippine Islands	27,320,580.00	4,098,087.00
"Q"	12/01/10 to 12/31/10	Petron Corporation	20,824,320.00	3,123,648.00
"R"	12/01/10 to 12/31/10	Petron Corporation	480,000.00	72,000.00
"S"	11/01/10 to 11/30/10	Valueshop Market Market, Inc.	20,010,000.00	3,001,500.00
"T"	10/01/10 to 11/30/10	Valueshop Market Market, Inc.	10,005,000.00	1,500,750.00
"U"	10/01/10 to 11/30/10	Vicsal Development Corporation	5,002,500.00	750,375.00
"V"	11/01/10 to 11/30/10	Metro Legazpi Devt. Corp.	5,002,500.00	750,375.00
"W"	11/01/10 to 11/30/10	Vicsal Development Corporation	4,785,000.00	717,750.00
Subtotal			**₱255,814,231.00**	**₱38,372,134.65**
Total				**₱62,476,710.65**

Therefore, petitioner complied with the third requisite.

This brings us to the second requisite, *i.e.*, whether or not the income upon which the subject taxes were withheld were included and reported by petitioner in its Annual ITRs for CY 2009 and 2010.

The certificates show that the claimed CWT for the year 2009 in the amount of ₱24,104,576.00 and for the year 2010 in the amount of ₱38,372,134.64 were withheld on income payments of ₱160,697,173.33 and ₱255,814,231.00, respectively. On the other hand, petitioner's Annual ITRs for the years 2009 and 2010 showed higher gross "Sales/Revenues/Receipts/Fees" in the amounts of ₱284,202,227.00[56] and ₱508,239,819.00[57], respectively. *rr*

[56] Exhibit "D-8", docket, p. 807.
[57] Exhibit "E-9", docket, p. 810.

The Revenue section in petitioner's Statements of Comprehensive Income for 2009 and 2010 indicated the breakdown of "Sales/Revenues/Receipts/Fees" reflected in petitioner's Annual ITRs, to wit:

	2009	2010
Revenue	*(Exhs. "DD" to "DD-2")*	*(Exhs. "EE" to "EE-2")*
Billing Revenue		
Consultancy Services	₱ 58,190,753.00	₱ 308,060,311.00
Shared Services	132,513,939.00	121,394,226.00
Loaned Services	93,497,535.00	78,785,282.00
Total	**₱284,202,227.00**	**₱508,239,819.00**

In her Judicial Affidavit[58] dated February 15, 2013, petitioner's Accounting Officer, Ms. Maria Cristina O. Alon, explained why there is a discrepancy between the gross income reported in petitioner's Annual ITRs for CY 2009 and 2010 and the gross income related to the claimed CWT, to wit:

> **141. Q: Please explain if you can, why the total amount of sales/revenues, which Petitioner reported in the 2009 annual income tax return is not equal to the amount of income from which CWT were withheld?**
>
> A: First reason is that the total sales/revenues reported in the 2009 annual income tax return 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 therefore not required to withhold under the law.
>
> The revenues derived from foreign affiliates are those which pertain to the Shared services center and Loaned services. The revenues from Shared services center and Loaned services are reflected in the 2009 audited financial statements in the amounts of ₱132,513,939.00 and ₱93,497,535.00, respectively.
>
> Second reason for 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 that Petitioner accrued income in 2008, the payment of which, together with the corresponding certificate of tax withheld, were received in 2009.
>
> Third reason is that Petitioner recorded or accrued income in its books in 2009, but for which the corresponding payments and the certificates of tax withheld were received in 2010.

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[58] Exhibit "CCCCC", pp. 58-83, docket, pp. 1016-1126.

Last reason is that because Petitioner billed its customers in U.S. Dollars, there is 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).

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149. Q: What other evidence, if any, does Petitioner have to prove the fact that income payments to Petitioner from which CWT were withheld, were reported in the 2009 annual income tax return?

A: The income payments of the customers, from which the CWT were withheld, are recorded in Petitioner's General Ledger – Transaction Detail for 2009 ("**2009 GLTD**"), which is the revenue/sales ledger account of Petitioner. Petitioner recorded the revenues earned from customers in this ledger account. The revenue recorded in the ledger account became the basis of the revenue reported in the 2009 annual income tax return, and audited financial statements. It should be noted that the amounts of income payments of the customers recorded in the ledger account are supported by customer billing invoices, official receipts and corresponding certificates of tax withheld (BIR Form No. 2307).

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152. Q: You said that the amounts of revenue recorded in the GLTD support the amounts of revenue reflected in the 2009 audited financial statements, specifically, the revenues from Consultancy Services, which were subjected to CWT. Is this correct?

A: Yes. The total revenue recorded in the 2009 GLTD of ₱58,190,753.00 is actually the same as the amount of revenue from Consultancy Services reflected in the 2009 audited financial statements.

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155. Q: If the total amount of revenue reflected in both the 2009 audited financial statements and GLTD is ₱58,190,753.00, would you explain why the total amount of

income payments supported by certificates of tax withheld (from which the CWTs sought to be refunded were withheld) is ₱160,697,173.33?

A: As I earlier stated (in **Q&A No. 141**), the reason for 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 that Petitioner accrued income in 2008, the payments for which, together with the corresponding certificates of tax withheld, were received in 2009. Moreover, Petitioner recorded or accrued income in its books in 2009, but for which the corresponding payments and the certificates of tax withheld were received in 2010. Furthermore, there is foreign currency translation difference on account of the use by Petitioner of a Peso-U.S. Dollar exchange rate in recording income in its books that is different from the Peso-US Dollar exchange rate used by customers in issuing the certificates of tax withheld.

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159. Q: Will you further illustrate how the adjustments in the amount of revenue per GLTD and audited financial statements of ₱58,190,753.00 were made, in order to arrive at the amount of total income payments per certificates of tax withheld of ₱160,697,173.33?

A: Yes. From the amount of revenue per GLTD and audited financial statements of ₱58,190,753.00, we deducted the amount of income accrued in 2009, the payments of which and the corresponding certificates of tax withheld were arrived in 2010, which is ₱27,850,950.00.

Then, we deduct the foreign currency translation difference of ₱753,775.00.

Lastly, we add the amount of income accrued in 2008, the payment of which and the corresponding certificate of tax withheld were received in 2009, which is <u>₱131,111,145.33</u>.

This is illustrated below:

Revenue per 2009 GLTD/Audited Financial Statements			**₱ 58,190,753.00**
Less:	2009 Revenue - CWT Collected in 2010	**"ZZZZ"**	(27,850,950.00)

	Foreign currency translation difference		(753,775.00)
Add:	2008 Revenue - CWT Collected in 2009		131,111,145.33
Revenue per Certificates of Tax Withheld			**₱160,697,173.33**

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203. Q: Will you explain why the total amount of sales/revenues, which Petitioner reported in the 2010 annual income tax return is not equal to the amount of income from which the CWT were withheld?

A: First reason is that the total sales/revenues reported in the 2010 annual income tax return 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 therefore not required to withhold under the law.

The revenues derived from foreign affiliates are those which pertain to the Shared services center and Loaned services. The revenues from Shared services center and Loaned services are reflected in the 2010 audited financial statements in the amounts of ₱121,394,226.00 and ₱78,785,282.00, respectively.

Second reason for 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 that Petitioner accrued income in 2009, the payment of which, together with the corresponding certificate of tax withheld, were received in 2010.

Third reason is that Petitioner recorded or accrued income in its books in 2010, but for which the corresponding payments and the certificates of tax withheld were received in 2011.

Last reason is that because Petitioner billed its customers in U.S. Dollars, there is 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).

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210. Q: What other evidence, if any, does Petitioner have to prove that the income payments, from which the

CWT were withheld, are reported in the 2010 annual income tax return?

A: The income payments of the customers, from which the CWT were withheld, are recorded in the 2010 GLTD, which is the revenue/sales ledger account of Petitioner. Petitioner recorded the revenue earned from customers in this ledger account. The revenue recorded in the ledger account became the basis of the revenue reported in the 2010 annual income tax return, and audited financial statements. It should be noted that the amounts of income payments of the customers recorded in the ledger account are supported by customer billing invoices, official receipts and corresponding certificates of tax withheld (BIR Form No. 2307).

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213. Q: You said that the amounts of revenue recorded in the 2010 GLTD support the amounts of revenue reflected in the 2010 audited financial statements (specifically, the revenues from Consultancy Services, which are subject to CWT). Is this correct?

A: Yes. The total revenue recorded in the 2010 GLTD of ₱308,060,311.00 is actually the same as the amount of revenues from Consultancy Services reflected in the 2010 audited financial statements.

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216. Q: If the total amount of revenue reflected in both the 2010 audited financial statements and GLTD is ₱308,060,311.00, would you explain why the total amount of income payments supported by certificates of tax withheld (and from which CWTs sought to be refunded were withheld) is only ₱255,814,231.00.

A: As I've explained earlier (in **Q&A No. 203**), the reason for 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 that Petitioner accrued income in 2009, the payments for which, together with the corresponding certificates of tax withheld, were received in 2010. Moreover, there is foreign currency translation difference on account of the use by Petitioner of a Peso-U.S. Dollar exchange rate in recording income in its books that is different from the Peso-US Dollar exchange rate used by customers in issuing the certificates of tax withheld.

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220. Q: Will you further illustrate how the adjustments in the amount of revenue per GLTD and audited financial statements of ₱308,060,311.00 will be made in order to arrive at the amount of income payments per certificates of tax withheld of ₱255,814,231.00?

A: Yes. From the amount of revenue per GLTD and audited financial statements of ₱308,060,311.00, we add the amount of income accrued in 2009, the payments of which and the corresponding certificates of tax withheld were received in 2010 of ₱27,850,950.00.

Then, we deduct the amount of income accrued in 2010, the payments of which and the corresponding certificates of tax withheld were received in 2011 of ₱79,307,600.00 and the foreign currency translation difference of ₱789,430.00.

This is illustrated below:

Revenue per 2010 GLTD/Audited Financial Statements			₱ 308,060,311.00
Add:	2009 Revenue - CWT Collected in 2010	**"AAAAA"**	27,850,950.00
Less:	2010 Revenue - CWT Collected in 2010		(79,307,600.00)
	Foreign currency translation difference		(789,430.00)
Revenue per Certificates of Tax Withheld			**₱255,814,231.00**

From the above testimony and the Statements of Comprehensive Income for the years ended December 31, 2009[59] and 2010[60], General Ledger Transaction Detail (GLTD) for 2008[61], 2009[62] and 2010[63], CWT Reconciliations[64] and Reconciliation Schedules of Revenues per GLTD and Revenues per Certificates of Tax Withheld for 2009[65] and 2010[66], petitioner duly established that it declared in its Annual ITRs for the years 2009 and 2010 the gross income related to the substantiated CWT for the years 2009 and 2010 in the respective amounts of ₱24,104,576.00 and ₱38,372,134.65 or in the sum of ₱62,476,710.65.

[59] Exhibit "DD", docket, p. 851.
[60] Exhibit "EE", docket, p. 886.
[61] Exhibit "BBBBB", docket, p. 1014.
[62] Exhibit "WWWW", docket, p. 1008.
[63] Exhibit "XXXX", docket, p. 1009.
[64] Exhibit "YYYY", docket, p. 1010.
[65] Exhibit "ZZZZ", docket, p. 1011.
[66] Exhibit "AAAAA", docket, p. 1012.

Tax refunds partake the nature of tax exemptions and are thus construed *strictissimi juris* against the person or entity claiming the exemption.[67] The burden in claiming tax refund rests upon the taxpayer. In this case, petitioner was able to prove its entitlement to the claim for refund.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** in favor of petitioner the amount of ₱62,476,710.65 representing its unutilized excess tax credits for calendar years 2009 and 2010.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

ESPERANZA R. FABON-VICTORINO
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.

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Division Chairperson's Attestation, is it 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

[67] *Far East Bank and Trust Company as Trustee of Various Retirement Present: Funds, vs. Commissioner of Internal Revenue and the Court of Tax Appeals, G.R. No.138919, May 2, 2006, citing Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc., 368 Phil. 388, 411 (1999).*