Republic of the Philippines
COURT OF TAX APPEALS
Quezon City

FIRST DIVISION

SONOMA SERVICES, INC.,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8458
For: Refund

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

Promulgated:
NOV 2 7 2013 ; 10:26 Am

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DECISION

MINDARO-GRULLA, J.:

This is a Petition for Review filed on April 11, 2012 by Sonoma Services, Inc. as petitioner, against Commissioner of Internal Revenue as respondent for the Court in Division, pursuant to Section 7(a)(1) of Republic Act (RA) No. 1125, An Act Creating the Court of Tax Appeals, as amended[1], as well as Rule 4, Section 3(a)(2), in relation to Rule 8, Section 4(a) of the Revised Rules of the Court of Tax Appeals (RRCTA)[2], as amended.

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1 Sec. 7. *Jurisdiction*. – The CTA shall exercise:
(a) Exclusive appellate jurisdiction to review by appeal, as herein provided:
x x x x x x
(2) Decisions of the Commissioner of Internal Revenue in cases involving disputed assessments, refunds or internal revenue taxes, fees of other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue;
x x x x x x

2 Rule 4, Sec. 3. *Cases within the jurisdiction of the Court in Division.* – The Court in Division shall exercise:

(a) Exclusive original over or appellate jurisdiction to review by appeal the following:
x x x x x x

Petitioner seeks the refund or issuance of a tax credit certificate (TCC) in the amount of ₱4,045,410.00, allegedly representing its excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2009.

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal place of business at the 35th Floor, Tower One and Exchange Plaza, Ayala Triangle, Ayala Avenue, Makati City. It is a registered taxpayer of Revenue District Office (RDO) No. 50 of the Bureau of Internal Revenue (BIR) Revenue Region No. 8, with Taxpayer Identification No. 220-868-954-000.[3] Petitioner was incorporated with the primary purpose of carrying on and conducting a general services business

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> (2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: *Provided,* that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; *Provided, further,* that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules;
> x x x x x x

Rule 8. Sec. 4. *Where to appeal; mode of appeal.-*

> (a) An appeal from a decision or ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claim for refund of internal revenue taxes erroneously or illegally collected, the decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade & Industry, the Secretary of Agriculture, and the Regional Trial Court in the exercise of their original jurisdiction, shall be taken to the Court by filing before it a petition for review as provided in Rule 42 of the Rules of Court. The Court in Division shall act on the appeal.
> x x x x x x

[3] Pars. 1 and 2, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket, p. 84.

with any party, including rendering of management and allied services within the limits allowed by law, including office and clerical support services, maintenance services of any kind, or otherwise to engage in any preservation, maintenance or rapid work upon any and every kind of property, to enter into and execute contracts therefore or relating thereto.

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia*, the power to decide, approve, and grant refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

On April 15, 2010, petitioner filed its Annual Income Tax Return (ITR) for CY 2009 through the Electronic Filing and Payment System (EFPS) with EFPS Reference No. 121000003720677.[4] In the said ITR, petitioner reported gross revenues in the amount of ₱44,641,000.00, taxable income of ₱3,319,677.00, income tax liability of ₱995,903.10, and income tax credits in the total amount of ₱6,307,844.60. After deducting petitioner's income tax liability for CY 2009 from its income tax credits for CY 2009, petitioner had a tax overpayment of ₱5,311,941.50. Petitioner opted to claim a refund by shading the appropriate box in the ITR.

On June 24, 2010, petitioner filed its administrative claim for refund of excess and unutilized CWT for CY 2009 amounting to ₱4,045,410.00 with RDO No. 50.[5]

Respondent failed to act on petitioner's administrative claim, prompting petitioner to file the instant claim before this Court on April 11, 2012.

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[4] Exhibit "B".
[5] Exhibit "A".

In her Answer[6] filed on May 31, 2012, respondent alleged the following Special and Affirmative Defenses:

> "4) Respondent reiterates and repleads the preceding paragraphs of the answer as part of her Special and Affirmative Defenses;
>
> 5) Petitioner's claim for refund is still subject to investigation by the Bureau of Internal Revenue;
>
> 6) Petitioner failed to demonstrate that the tax, which is the subject of this case, was erroneously or illegally collected;
>
> 7) It is explicitly stated under Section 76 of the NIRC of (1997), 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 prove that it did not carry-over its 2009 alleged unutilized creditable withholding taxes to the succeeding taxable quarters/years, otherwise, petitioner is precluded from claiming (from claiming) a cash refund or for issuance of tax credit certificate its excess tax credit for taxable year 2009.
>
> 8) Taxes paid and collected are presumed to be made in accordance with the laws and regulations, hence, not refundable;
>
> 9) 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)**;

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6 Docket, pp. 56-58.

10) It is incumbent upon petitioner to show that 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.

11) 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)**."

Petitioner filed its Pre-trial Brief[7] on July 2, 2012; while respondent filed her Pre-trial Brief[8] on June 21, 2012. The pre-trial conference was terminated upon the Court's approval of the Joint Stipulation of Facts and Issues[9] in a Resolution[10] dated July 26, 2012.

On September 13, 2012, upon motion[11] of petitioner, this Court appointed Ms. Katherine O. Constantino as Independent Certified Public Accountant (CPA).

During trial, petitioner presented two (2) witnesses, namely: Ms. Vanessa Maturana-Besas and Ms. Katherine O. Constantino.

Petitioner's documentary evidence which were formally offered and admitted are as follows:

EXHIBIT	**DESCRIPTION**
"A"	Petitioner's letter dated June 23, 2010 addressed to the Bureau of Internal Revenue ("BIR"), Revenue District Office ("RDO") No. 50, requesting the refund of petitioner's excess and

[7] Docket, pp. 65-74.
[8] Docket, pp. 60-62.
[9] Docket pp. 84-87.
[10] Docket, p. 89.
[11] Docket, p. 111-114.

EXHIBIT	**DESCRIPTION**
	unutilized creditable withholding taxes ("CWT") for calendar year ("CY") ending December 31, 2009 in the amount of ₱4,045,410.00, stamped received by the BIR on June 24, 2010.
"B"	Petitioner's Annual Income Tax Return ("ITR") for the CY ending December 31, 2009, electronically filed with the BIR through the Electronic Filing and Payment System ("EFPS") on April 15, 2010 with Filing Reference No. 121000003720677
"B-1"	Line 15 of petitioner's Annual ITR for CY 2009 showing the amount ₱44,641,000.00, representing petitioner's gross sales/revenues/receipts for CY 2009
"B-2"	Line 29 of petitioner's Annual ITR for CY 2009 showing the amount (₱5,311,941.50), representing petitioner's tax overpayment for CY 2009
"B-3"	Tick mark ("•") appearing on the box next to the words "To be refunded" below Line 31 of petitioner's Annual ITR for CY 2009
"B-4"	Petitioner's Audited Financial Statements for CY 2009 attached to the petitioner's Annual ITR for CY 2009
"C"	Petitioner's Quarterly ITR for the 1st quarter of CY 2009, electronically filed with the BIR through the EFPS on May 29, 2009 with Filing Reference No. 130900002995998
"D"	Petitioner's Quarterly ITR for the 2nd quarter of CY 2009, electronically filed with the BIR through the EFPS on August 24, 2009 with Filing Reference No. 130900003174691
"E"	Petitioner's Quarterly ITR for the 3rd quarter of CY 2009, electronically filed with the BIR through the EFPS on November 27, 2009 with Filing Reference No. 130900003372478
"F"	Petitioner's Annual ITR for the CY ending December 31, 2010, electronically filed with the BIR through EFPS on April 15, 2011 with Filing Reference No. 121100004688855
"F-1"	Line 30A of petitioner's Annual ITR for CY 2010 showing the amount ₱1,266,531.50, representing petitioner's "prior year's excess credits" for CY 2010
"G"	Petitioner's Quarterly ITR for the 1st quarter of CY 2010, electronically filed with the BIR through EFPS on May 28, 2010 with Filing Reference No. 131000003822542
"G-1"	Line 30A of petitioner's Quarterly ITR for the 1st quarter of CY 2010 showing the amount ₱1,266,531.50, representing petitioner's "prior year's excess credits" for CY 2010
"H"	Petitioner's Quarterly ITR for the 2nd quarter of CY 2010, electronically filed with the BIR through

EXHIBIT	**DESCRIPTION**
	EFPS on August 24, 2010 with Filing Reference No. 131000004032924
"H-1"	Line 30A of petitioner's Quarterly ITR for the 2nd quarter of CY 2009 showing the amount ₱1,266,531.50, representing petitioner's "prior year's excess credits" for CY 2010
"I"	Petitioner's Quarterly ITR for the 3rd quarter of CY 2010, electronically filed with the BIR through EFPS on November 23, 2010 with Filing Reference No. 131000004252932
"I-1"	Line 30A of petitioner's Quarterly ITR for the 3rd quarter of CY 2010 showing the amount ₱1,266,531.50, representing petitioner's "prior year's excess credits" for CY 2010
"J"	Petitioner's Annual ITR for CY ending December 31, 2003, stamped received by the BIR on April 15, 2004
"K"	Petitioner's Annual ITR for CY ending December 31, 2004, stamped received by the BIR on April 14, 2005
"L"	Petitioner's Annual ITR for CY ending December 31, 2005, stamped received by the BIR on April 17, 2006
"L-1"	Petitioner's Amended ITR for CY ending December 31, 2005, stamped received by the BIR on June 1, 2006
"M"	Petitioner's Annual ITR for CY ending December 31, 2006, stamped received by the BIR on April 16, 2007
"N"	Petitioner's Annual ITR for CY ending December 31, 2007, stamped received by the BIR on April 15, 2008
"O"	Petitioner's Annual ITR for CY ending December 31, 2008, stamped received by the BIR on April 15, 2009
"P"	Petitioner's Breakdown of Revenues for CY 2009
"P-1"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Corullon Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-2"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Elija Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-3"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by FBC Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-4"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Fercat Holdings,

EXHIBIT	**DESCRIPTION**
	Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-5"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Gilmon Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-6"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mermac, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱255,915.00
"P-7"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Reinosa Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-8"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Puente Holdings, Inc. to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-9"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Francisco R. Elizalde (Steps Dance Studio) to petitioner for the 1st quarter of CY CY 2009, covering withholding tax credits in the amount of ₱15,000.00
"P-10"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Padilla, Alejandro, Zobel to petitioner for the 1st quarter of CY 2009, covering withholding tax credits in the amount of ₱120,000.00
"P-11"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Francisco R. Elizalde (Steps Dance Studio) to petitioner for the 2nd quarter of CY 2009, covering withholding tax credits in the amount of ₱15,000.00
"P-12"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Corullon Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-13"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Elija Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-14"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by FBC Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00

EXHIBIT	**DESCRIPTION**
"P-15"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Fercat Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-16"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Gilmon Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-17"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Mermac, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱255,915.00
"P-18"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Reinosa Holdings, Inc. to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱231,000.00
"P-19"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by San Puente Holdings, Inc. to petitioner for the 3rd quarter of CY 2008, covering withholding tax credits in the amount of ₱231,000.00
"P-20"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Padilla, Alejandro, Zobel to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱119,580.00
"P-21"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Francisco R. Elizalde (Steps Dance Studio) to petitioner for the 3rd quarter of CY 2009, covering withholding tax credits in the amount of ₱15,000.00
"P-22"	Certificate of Creditable Tax Withheld at Source (BIR Form No. 2307) issued by Francisco R. Elizalde (Steps Dance Studio) to SSI for December 2009, covering withholding tax credits in the amount of ₱15,000.00
"Q"	Petitioner's Summary of Creditable Withholding Taxes (per BIR Form 2307) for CY 2009
"R"	Sworn Statement of Ms. Vanessa Maturana-Besas to Questions Propounded by Atty. Timothy John G. Rocamora dated July 31, 2012
"R-1"	Signature of Ms. Vanessa Maturana-Besas appearing on page 14 of the Sworn Statement dated July 31, 2012
"R-2"	Petitioner's Submission dated July 31, 2012, duly filed with the Court of Tax Appeals, Third Division on even date
"S"	Sworn Statement of Ms. Katherine O. Constantino to Questions Propounded by Atty. Timothy John

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EXHIBIT	DESCRIPTION
	G. Rocamora dated October 19, 2012
"S-1"	Signature of Ms. Katherine O. Constantino appearing on page 18 of the October 19, 2012 Sworn Statement
"S-2"	Submission dated October 19, 2012 covering the Sworn Statement of Ms. Constantino
"AA"	Independent Certified Public Accountant's ("ICPA") Report dated October 12, 2012, filed with the Court of Tax Appeals on the same date
"AA-1"	Signature of Ms. Katherine O. Constantino appearing on page 39 of the ICPA Report
"BB-1" to "BB-11"	Petitioner's General Ledgers for CY 2009, for administration fees, recovery on costs, rental expense, insurance expenses, supplies, advertising and promotions, representation, transportation, bank charges, Christmas gifts and miscellaneous expense
"CC"	Summary of Official Receipts on administration fees received by petitioner in CY 2009
"CC-1-A" to "CC-25"	Official receipts covering the administration fees received by petitioner in CY 2009
"DD-1" to "DD-10"	Management Services Agreements between petitioner and its clients/withholding agents for CY 2009
"EE-1" to "EE-3"	Cost Recovery Agreements between petitioner and its clients/withholding agents for CY 2009
"FF" (including "FF-1" to "FF-12-B"), "GG" (including "GG-1" to "GG-12"), "HH" (including "HH-1" to "HH-12-B"), "II" (including "II-1" to "II-12-B"), "JJ" (including "JJ-1" to "JJ-12"), "KK" (including "KK-1" to "KK-12-B"), "LL" (including "LL-1" to "LL-12-B"), "MM"	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form 1604-E), Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E), and Monthly Alphalist of Payees (MAP) covering the withholding taxes remitted by petitioner's withholding agents-clients for CY 2009

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EXHIBIT	**DESCRIPTION**
(including "MM-1" to "MM-12"), "NN" (including "NN-1" to "NN-4-B"), and "OO" (including "OO-1" to "OO-12"), inclusive of sub-markings	
"PP"	Independent CPA's Report for CTA Case No. 7613 dated January 19, 2009
"QQ"	ICPA's Report for CTA Case No. 7757 dated January 19, 2009
"RR"	ICPA's Report in CTA Case No. 7911 dated October 15, 2009, filed with the Court of Tax Appeals on the same date
"SS"	ICPA's Report in CTA Case No. 8266 dated October 12, 2011, filed with the Court of Tax Appeals on the same date
"TT"	Summary of petitioner's Creditable Withholding Taxes (per BIR Form 2307) for CY 2007
"TT-1" to "TT-23"	CWT Certificates (BIR Form 2307) covering petitioner's CWTs for CY 2007 in the total amount of ₱3,643,050.00
"UU"	Petitoner's audited financial statements for CY 2007
"VV"	Breakdown of petitioner's revenues for CY 2007
"WW-1" to "WW-11"	Petitioner's General Ledgers for CY 2007, for administration fees, recovery on costs, rental expense, insurance expenses, supplies, advertising and promotions, representation, transportation, bank charges, miscellaneous expense and realized loss on foreign exchange loss
"XX"	Reclassifying entry on Recovery on Costs for CY 2007
"YY"	Summary of Official Receipts on administration fees received by petitioner in CY 2007
"YY-1-A" to "YY-25" inclusive of sub-markings	Official Receipts covering the administration fees received by petitioner in CY 2007
"ZZ" (including "ZZ-1" to "ZZ-12"),	Annual Information Return of Creditable Income Taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form 1604-E), Monthly Remittance Return of Creditable Income

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EXHIBIT	DESCRIPTION
"AAA" (including "AAA-1" to "AAA-12-B"), "BBB" (including "BBB-1" to "BBB-12-B"), "CCC" (including "CCC-1" to "CCC-12"), "DDD" (including "DDD-1" to "DDD-12-B"), "EEE" (including "EEE-1" to "EEE-12-B"), "FFF" (including "FFF-1" to "FFF-12"), "GGG" (including "GGG-1" to "GGG-12"), "HHH" (including "HHH-1" to "HHH-12-B"), "III" (including "III-1" to "III-8-B") and "JJJ" (including "JJJ-1" to "JJJ-12-B"), inclusive of sub-markings	Taxes Withheld (Expanded) (BIR Form 1601-E), and Monthly Alphalist of Payees (MAP) covering the withholding taxes remitted by petitioner's withholding agents-clients for CY 2007
"KKK"	Summary of petitioner's Creditable Withholding Taxes (per BIR Form 2307) for CY 2003
"KKK-1" to "KKK-45"	CWT certificates (per BIR Form 2307) covering petitioner's CWTs for CY 2003 in the total amount of ₱2,506,600.00
"LLL"	Petitoner's audited financial statements for CY 2003
"MMM"	Breakdown of petitioner's revenues for CY 2003
"NNN-1" to "NNN-21"	Management Services Agreements between petitioner and its clients/withholding agents for CY

c

EXHIBIT	DESCRIPTION
	2003
"OOO-1" to "OOO-4"	Cost Recovery Agreements between petitioner and its clients/withholding agents for CY 2003
"PPP-1" to "PPP-10"	Petitioner's General Ledgers for CY 2003, for administration fees, miscellaneous income, sale of equipment and supplies, insurance expense, supplies, advertising and promotions, representation expenses, transportation, miscellaneous expense and bank charges
"QQQ-1-A" to "QQQ-28-B"	Official Receipts covering the administration fees received by petitioner in CY 2003
"RRR-1" to "RRR-6"	Petitioner's Cash Receipts Vouchers for CY 2003
"SSS" (including "SSS-1" to "SSS-12-A"), "TTT" (including "TTT-1" to "TTT-12-A"), "UUU" (including "UUU-1" to "UUU-12-A"), "VVV" (including "VVV-1" to "VVV-12-A"), "WWW" (including "WWW-1" to "WWW-12-A"), "XXX" (including "XXX-1" to "XXX-12-A"), "YYY" (including "YYY-1" to "YYY-12-A"), "ZZZ" (including "ZZZ-1" to "ZZZ-12-A"), "AAAA" (including "AAAA-1" to "AAAA-12"), "BBBB" (including "BBBB-1" to	Annual Information Return of Creditable Income taxes Withheld (Expanded)/Income Payments Exempt from Withholding Tax (BIR Form 1604-E), Monthly Remittance Return of Creditable Income Taxes Withheld (Expanded) (BIR Form 1601-E), and BTR-BIR Deposit Slips/Official Receipts covering the withholding taxes remitted by petitioner's withholding agents-clients for CY 2003

EXHIBIT	DESCRIPTION
"BBBB-12"), "CCCC" (including "CCCC-1" to "CCCC-12"), "DDDD" (including "DDDD-1" to "DDDD-11"), "EEEE" (including "EEEE-1" to "EEEE-12-A"), "FFFF" (including "FFFF-1" to "FFFF-12-A"), "GGGG" (including "GGGG-1" to "GGGG-12-A"), "HHHH" (including "HHHH-1" to "HHHH-12-A"), "IIII" (including "IIII-1" to "IIII-12-A"), "JJJJ" (including "JJJJ-1" to "JJJJ-11"), "KKKK" (including "KKKK-1" to "KKKK-12-A"), "LLLL" (including "LLLL-1" to "LLLL-4-A"), and "MMMM" (including "MMMM-1" to "MMMM-3-A"), inclusive of sub-markings	
"NNNN"	Sworn Statement of Ms. Marivic F. Lao to Questions Propounded by Atty. Mardomeo N. Raymundo dated October 18, 2007 in CTA Case No. 7613

On the other hand, respondent, through counsel, manifested that she would no longer present any witness and that she would be submitting the case for decision. Counsels for both parties were given thirty (30) days from February 18, 2013 to file their respective Memoranda.[12]

On April 26, 2013, the case was deemed submitted for decision after petitioner filed its Memorandum on April 10, 2013 and respondent filed her Memorandum on April 15, 2013.[13]

The main issue[14] as stated in the Joint Stipulation of Facts and Issues is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR ITS EXCESS AND UNUTILIZED CWT FOR CY 2009 IN THE AMOUNT OF PHP4,045,410.00."

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, 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.

[12] Docket, p. 826.
[13] Docket, p. 864.
[14] Docket, p. 86.

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."

Pursuant to the above-quoted provision, the corporate taxpayer's excess tax credits or overpaid income tax in a given taxable year may either be refunded (either in the form of cash or tax credit certificate) or carried over/applied to the succeeding taxable years. The carry-over option, however, once taken is irrevocable for that taxable period and no application for a tax refund or issuance of a tax credit certificate shall then be allowed.[15]

In exercising its option, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR Form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, the remedies are in the alternative and the choice of one precludes the other.[16]

A review of petitioner's Annual Income Tax Return[17] for the year 2009 shows that petitioner had total tax credits in the amount of ₱6,307,844.60, which consisted of the prior year's excess credits in the amount of ₱2,262,434.60 and creditable taxes withheld during the year in the amount of ₱4,045,410.00, to wit:

	Prior Year's Excess Credits		₱ 2,262,434.60
Add:	Creditable Taxes Withheld during the		

[15] *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. Nos. 176290, September 21, 2007.
[16] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et. al.,* G.R. No. 112024, January 28, 1999.
[17] Exhibit "B".

	year		
	For the First Three Quarters	₱4,030,410.00	
	For the Fourth Quarter	15,000.00	4,045,410.00
Total Tax Credits			**₱6,307,844.60**

Records reveal that the prior year's excess credits of ₱2,262,434.60 originated from the creditable taxes withheld for the year 2007 in the amount of ₱3,089,843.00[18] duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307), after deducting therefrom the income tax due for the taxable years 2007 and 2008 in the respective amounts of ₱756,740.00 and ₱827,408.00, as shown hereunder:

AITR For theTaxable Year 2007			Exhibit "N"
	Prior Year's Excess Credits	203,533.00	Exhibit "N" Line 28A
	Creditable Tax Withheld for the Year	3,643,050.00	Exhibit "N" Line 28C and 28D
	Total Tax Credits	3,846,583.00	
	Less: Tax Due	756,740.00	Exhibit "N" Line 26C
	Excess Tax Credits as of December 31, 2007	**3,089,843.00**	
AITR For theTaxable Year 2008			Exhibit "O"
	Prior Year's Excess Credits	3,089,843.00	Exhibit "O" Line 30A
	Less: Tax Due	827,408.00	Exhibit "O" Line 29
	Balance of Prior Year's Excess Tax Credits	**2,262,435.00**	
	Add: Creditable Taxes Withheld During the Year	3,683,100.00	
	Total Excess Tax Credits as of December 31, 2008	5,945,535.00	

The prior year's (2007) excess credits in the amount of ₱2,262,434.60 was applied against petitioner's income tax due for the year 2009 in the amount of ₱995,903.10,[19] leaving the amount of ₱1,266,531.50 prior year's excess credits and creditable taxes withheld during the year 2009 in the amount of ₱4,045,410.00,[20] totaling ₱5,311,941.50[21] unutilized as of December 31, 2009.

[18] Exhibits "TT", and "TT-1" to "TT-23".
[19] Exhibit "B", line 27.
[20] Exhibit "B", lines 28C and 28D.
[21] Exhibit "B", line 31.

Since petitioner marked the option "To be refunded" in its Annual ITR[22] for the year 2009 and reflected only the amount of ₱1,266,531.50 as "Prior Year's Excess Credits" in its first[23], second[24] and third[25] Quarterly Income Tax Returns and Annual ITR[26] for the taxable year 2010, the unutilized creditable withholding taxes for the taxable year 2009 in the amount of ₱4,045,410.00 may be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

In claiming for the refund of excess creditable withholding tax, the Supreme Court in the case of *United International Pictures AB vs. Commissioner of Internal Revenue*[27] stated that the taxpayer must comply with the following requisites:

1. The claim for refund must be filed within two years as prescribed under Section 229 of the NIRC of 1997;

2. The fact of withholding must be established by a copy of a statement (BIR Form 1743.1) duly issued by the payor (withholding agent) to the payee showing the amount paid and the amount of tax withheld therefrom (Section 10, Revenue Regulations No. 6-85); and

3. The income upon which the taxes were withheld must be included in the return of the recipient (Section 10, Revenue Regulations No. 6-85).

A taxpayer has two years from the date of payment of the tax within which to claim a tax refund. Sections 204(C) and 229 of the NIRC of 1997 provide:

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[22] Exhibit "B-3".
[23] Exhibit "F-1".
[24] Exhibit "G-1".
[25] Exhibit "H-1".
[26] Exhibit "F", line 30A.
[27] G.R. No. 168331, October 11, 2012.

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

xxx xxx xxx

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

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

Moreover, the reckoning date of the two-year prescriptive period for instituting a suit or proceeding for refund of excess and unutilized CWT is the date of filing of the Final Adjustment Return.[28] In the instant case, petitioner filed its Annual ITR on April 15, 2010.[29] Counting two years from that date, petitioner had until April 14, 2012 to file its administrative claim as well as the Petition for Review before this Court. Considering that the administrative and the judicial claims for refund were filed on June 24, 2010[30] and April 11, 2012 respectively, the refund claims were filed within the reglementary period.

Petitioner likewise complied with the second requirement. It presented the Certificates of Creditable Tax Withheld at Source[31] duly issued to it by various withholding agents for the year 2009, reflecting creditable withholding taxes in the total amount of ₱4,045,410.00, detailed as follows:

Withholding Agent	**Period Covered**	**Revenues**	**Creditable Withholding Tax**	**Exhibit**
Corullon Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-1"
Elija Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-2"
FBC Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-3"
Fercat Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-4"
Gilmon Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-5"
Mermac, Inc.	01/01/2009 to 03/31/2009	1,706,100.00	255,915.00	"P-6"
Reinosa Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-7"
San Puente Holdings, Inc.	01/01/2009 to 03/31/2009	1,540,000.00	231,000.00	"P-8"
Steps Dance Studio	03/01/2009 to 03/31/2009	150,000.00	15,000.00	"P-9"
Padilla Alejandro Zobel	01/01/2009 to 03/31/2009	800,000.00	120,000.00	"P-10"
Steps Dance Studio	06/01/2009 to 06/30/2009	150,000.00	15,000.00	"P-11"
Corullon Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-12"
Elija Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-13"
FBC Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-14"
Fercat Holdings, Inc.	07/01/2009 to	1,540,000.00		"P-15"

[28] *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et. al.*, G.R. No. 105208, May 29, 1995.
[29] Exhibit "B".
[30] Exhibit "A".
[31] Exhibits "P-1" to "P-22".

	09/30/2009		231,000.00	
Gilmon Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-16"
Mermac, Inc.	07/01/2009 to 09/30/2009	1,706,100.00	255,915.00	"P-17"
Reinosa Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-18"
San Puente Holdings, Inc.	07/01/2009 to 09/30/2009	1,540,000.00	231,000.00	"P-19"
Padilla Alejandro Zobel	07/01/2009 to 09/30/2009	797,200.00	119,580.00	"P-20"
Steps Dance Studio	09/01/2009 to 09/30/2009	150,000.00	15,000.00	"P-21"
Steps Dance Studio	12/01/2009 to 12/31/2009	150,000.00	15,000.00	"P-22"
TOTAL		**27,169,400.00**	**4,045,410.00**	

Anent the third requisite, the certificates show that the creditable taxes in the amount of ₱4,045,410.00 were withheld on income payments received by petitioner for the year 2009 amounting to ₱27,169,400.00. However, petitioner's 2009 Annual ITR reflected a gross income of ₱44,641,000.00[32] that is higher by ₱17,471,600.00 when compared with the income payments per certificates of ₱27,169,400.00.

As found by the Court-commissioned Independent Certified Public Accountant (CPA), the discrepancy of ₱17,471,600.00 was due to the following:

Clients whose remittances were not subjected to withholding taxes	₱ 18,230,600.00[33]
Recovery on cost	(759,000.00)
Total	**₱17,471,600.00**

The amount of ₱18,230,600.00 pertained to administration fees received by petitioner from clients who were individuals and whose remittances were not subjected to withholding taxes. The various official receipts issued by petitioner to these individuals showed that no tax was withheld on the income payments of ₱18,230,600.00, to wit:

[32] Exhibit "B", line 15C.
[33] Exhibit "AA", p. 8.

Client	OR No.	Exhibit	Remittance Amount
Alfonso Zobel de Ayala Jr.	602	CC-12-B	500,000.00
Alfonso Zobel de Ayala Jr.	617	CC-20-A	511,500.00
Sofia Zobel Elizalde	595	CC-8-B	700,000.00
Sofia Zobel Elizalde	620	CC-21-B	700,000.00
Jaime Zobel de Ayala	599	CC-10-B	1,100,000.00
Jaime Zobel de Ayala	625	CC-24-A	2,137,900.00
Patricia Zobel de Ayala	597	CC-9-B	600,000.00
Patricia Zobel de Ayala	621	CC-22-A	600,000.00
Fernando Zobel de Ayala	600	CC-7-A	1,000,000.00
Fernando Zobel de Ayala	618	CC-23-B	800,000.00
Jaime Augusto Zobel de Ayala II	600	CC-11	1,100,000.00
Jaime Augusto Zobel de Ayala II	618	CC-20-B	1,600,000.00
Monica Zobel de Ayala	598	CC-10-A	400,000.00
Monica Zobel de Ayala	623	CC-23-A	700,000.00
Georgina Padilla Maccrohon	601	CC-12-A	1,100,000.00
Georgina Padilla Maccrohon	615	CC-19-A	981,200.00
Cristina Zobel de Ayala	596	CC-9-A	450,000.00
Cristina Zobel de Ayala	622	CC-22-B	650,000.00
Beatriz Zobel de Ayala	593	CC-7-B	1,000,000.00
Beatriz Zobel de Ayala	619	CC-21-A	1,600,000.00
TOTAL			**18,230,600.00**

As to the recovery cost of ₱759,000.00, the Independent CPA noted that:

> "Recovery on Cost pertained to rental and miscellaneous expenses shared by the Petitioner's managed companies in accordance with their Cost Recovery Agreements (to be presented to the Court as

> **Exhibits EE-1 to EE-3**). Subsequent collections of Recovery on Cost as supported by official receipts 581, 582, 583, 610, 612 and 614 (to be presented to the Court as **Exhibits CC-1-B, CC-2-A, CC-2-B, CC-16-B, CC-17-B and CC-18-B**) totaling ₱759,000 were directly credited to the Recovery on Costs ledger account (to be presented to the Court as **Exhibit BB-2**).
>
> xxx xxx xxx
>
> Recovery on Costs was reflected in the audited financial statements for CY 2009 (previously presented to the Court as **Exhibit B-4**) and annual income tax return for CY 2009 (previously presented to the Court as **Exhibit B**) as a reduction to Rental and Miscellaneous Expenses. xxx"

The clear explanation of the Independent CPA and petitioner's supporting documents prove that the income related to the creditable withholding tax of ₱4,045,410.00 was reported in its income tax return.

WHEREFORE, premises considered, the instant Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱4,045,410.00, representing petitioner's excess and unutilized creditable withholding taxes for the calendar year 2009.

SO ORDERED.

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

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

ERLINDA P. UY
Associate Justice

C E R T I F I C A T I O N

Pursuant to Article VIII, Section 13 of the Constitution, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice
Chairperson, 1st Division