REPUBLIC OF THE PHILIPPINES
# *Court of Tax Appeals*
QUEZON CITY

*Third Division*

**WINEBRENNER & IÑIGO INSURANCE BROKERS, INC.,**
Petitioner,

- *versus* -

**COMMISSIONER OF INTERNAL REVENUE,**
Respondent.

**CTA CASE NO. 8072**

Members:
**BAUTISTA,** *Chairperson*
**PALANCA-ENRIQUEZ,** and
**COTANGCO-MANALASTAS,** *JJ.*

**Promulgated:**
JUL 24 2012
ABFernando 10:33 a.m.

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# *D E C I S I O N*

*BAUTISTA, J.:*

The Petition for Review, filed pursuant to Sections 204(C)[1] and 229[2] of the 1997 National Internal Revenue Code, as amended, prays for the refund or issuance

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[1] SECTION 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –

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(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.

A Tax Credit Certificate validly issued under the provisions of this Code may be applied against any internal revenue tax, excluding withholding taxes, for which the taxpayer is directly liable. Any request for conversion into refund of unutilized tax credits may be allowed, subject to the provisions of Section 230 of this Code: *Provided,* That the original copy of the Tax Credit Certificate showing a creditable balance is surrendered to the appropriate revenue officer for verification and cancellation: *Provided, further,* That in no case shall a tax refund be given resulting from availment of incentives granted pursuant to special laws for which no actual payment was made.

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of a tax credit certificate representing unutilized creditable withholding tax for the taxable year 2007 in the amount of ₱4,889,924.00.

## FACTS OF THE CASE

Petitioner, Winebrenner & Iñigo Insurance Brokers, Inc., is a domestic corporation duly organized and existing under the laws of the Republic of the Philippines, with Securities and Exchange Commission Registration No. 70271, and with registered address at the 8th Floor, 88 Corporate Center, Sedeño corner Valero Streets, Salcedo Village, Makati City. It is likewise registered with Revenue Region No. 8 of Revenue District Office No. 50 – South Makati of the Bureau of Internal Revenue ("BIR"), and has been issued Taxpayer Identification No. 000-151-714-000.

On the other hand, respondent, Commissioner of Internal Revenue, is the officer vested by law with authority to refund overpaid, as well as, erroneously or illegally collected internal revenue taxes.

On April 15, 2008, petitioner filed its Annual Income Tax Return for the calendar year 2007.

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[2] SECTION 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.

On April 8, 2010, petitioner filed with the BIR a letter of even date, claiming for refund of its excess and unutilized creditable withholding tax for the calendar year 2007, in the amount of ₱4,889,924.00.

Claiming inaction on the part of respondent, petitioner filed the present Petition for Review on April 13, 2010.[3]

On June 4, 2010, respondent filed her Answer,[4] and interposed the following Special and Affirmative Defenses:

> 3. [Sh]e reiterates and repleads the preceding paragraphs of this answer as part of [her] Special and Affirmative Defenses;
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> 4. Petitioner's claim for refund is still subject to the administrative routinary investigation/examination by the respondent's Bureau;
>
> 5. Taxes paid and collected are presumed to have been made in accordance with law and implementing regulations, hence, not refundable;
>
> 6. Petitioner's claim for refund/issuance of tax credit in the amount of ₱4,889,924.00, as alleged excess and unutilized creditable income taxes withheld for taxable year 2007 were not fully substantiated by proper documentary evidence, such as, but not limited to certificates of income taxes withheld at source;
>
> 7. Petitioner failed to prove that the amount of ₱4,889,924.00, as alleged excess and unutilized creditable income taxes withheld for taxable year 2007 was included as part of its gross income for taxable year 2007 and the same was not utilized in payment of its income tax liability for the succeeding taxable quarters/years;
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> 8. Petitioner has already exercised its option to carry-over to the succeeding taxable quarters/years the subject of its claim;
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> 9. Petitioner failed to prove that the amount subject of its claim was remitted in full to the BIR;

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[3] *Records*, pp. 1-101, with Annexes.
[4] *Id.*, at pp. 107-109.

10. Petitioner failed to comply with the requirements prescribed under Section 76 of the 1997 Tax Code;

11. Assuming but without admitting that petitioner is entitled to tax refund, it is incumbent upon the latter to show that it has complied with the provisions under Section 204, in relation to Section 230 (now 229) of the Tax Code. Otherwise, its failure to prove the same is fatal to its claim for refund; and

12. Claims for refund are construed strictly against the claimant for 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 1211*).[5]

On August 26, 2010, the parties entered their Joint Stipulations of Facts and Issues.[6]

Petitioner presented and offered its documentary and testimonial evidence; while respondent manifested that she will not present any evidence.

On November 11, 2011,[7] the Court resolved to submit the case for decision, taking into consideration the Memorandum for the Respondent filed on October 6, 2011,[8] and petitioner's Memorandum filed on October 12, 2011.[9]

Hence, this Decision.

## ISSUES

As stipulated upon by the parties, the issues for this Court's consideration are as follows:

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[5] *Id.*, at pp. 107-108.
[6] *Id.*, at pp. 132-135.
[7] *Id.*, at p. 1730.
[8] *Id.*, at pp. 1679-1687.
[9] *Id.*, at pp. 1692-1725.

I. WHETHER OR NOT THE INCOME PAYMENTS FROM WHICH THE 2007 CREDITABLE WITHHOLDING TAX SOUGHT TO BE REFUNDED/ISSUED TCC WERE WITHHELD WERE INCLUDED AS PART OF PETITIONER'S GROSS INCOME FOR TAXABLE YEAR 2007;

II. WHETHER OR NOT PETITIONER HAS EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2007 IN THE AMOUNT OF ₱4,889,924.00;

III. WHETHER OR NOT PETITIONER CARRIED-OVER TO THE SUCCEEDING TAXABLE QUARTERS OR YEARS THE CLAIMED EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2007 AND APPLIED THE SAME IN PAYMENT OF ITS INCOME TAX LIABILITY FOR THE SUCCEEDING TAXABLE QUARTERS OR YEARS;

IV. WHETHER OR NOT PETITIONER'S CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2007 IN THE AMOUNT OF ₱4,889.924.00 AS WELL AS REMITTANCE THEREOF TO THE BUREAU OF INTERNAL REVENUE WERE DULY SUBSTANTIATED BY PROPER DOCUMENTARY EVIDENCE SUCH AS INVOICES, OFFICIAL RECEIPTS, CERTIFICATES OF CREDITABLE TAX WITHHELD AT SOURCE, CERTIFICATES OF REMITTANCES ISSUED BY THE BIR, AND OTHER REQUIRED RETURNS; and

V. WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS UNDER SECTION 76 OF THE 1997 TAX CODE, IN RELATION TO SECTIONS 204 AND 229 OF THE SAME CODE, AND IS ENTITLED TO THE CLAIMED REFUND OR ISSUANCE OF A TAX CREDIT CERTIFICATE IN THE SUM OF ₱4,889,924.00 AS EXCESS CREDITABLE WITHHOLDING TAX FOR TAXABLE YEAR 2007.[10]

## RULING OF THE COURT

The Court finds the Petition for Review unmeritorious.

[10] *Id.*, at pp. 133-134.

In its Annual Income Tax Return ("ITR") (BIR Form No. 1702) for calendar year 2007,[11] petitioner reflected income tax overpayment in the amount of ₱7,033,481.00,[12] of allegedly excess and unutilized prior years creditable withholding tax and for the calendar year 2007, computed as follows:

| | | | | |
|---|---|---|---|---|
| Sales/Revenues/Receipts/Fees | | | ₱ | 43,938,277.00 |
| Less: Cost of Sales | | | | 32,155,527.00 |
| Gross Income from Operation | | | | 11,782,750.00 |
| Add: Non-Operating and Other Income | | | | 8,244,764.00 |
| Gross Income | | | | 20,027,514.00 |
| Less: Deductions | | | | 16,611,494.00 |
| Taxable Income | | | | 3,416,020.00 |
| Tax Rate | | | | 35% |
| Regular Income Tax | | | | 1,195,607.00 |
| Minimum Corporate Income Tax | | | | 400,565.00 |
| Income Tax Due | | | ₱ | 1,195,607.00 |
| Less: Prior Year's Excess Credits | ₱ | 3,339,164.00 | | |
| Creditable Tax Withheld for the 1st Three Quarters | | 2,476,504.00 | | |
| Creditable Tax Withheld for the 4th Quarter | | 2,413,420.00 | | 8,229,088.00 |
| *Tax Payable/(Overpayment)* | | | ₱ | (7,033,481.00) |

Based on the foregoing, petitioner asserts that from its gross revenues from commission payments made by various insurance companies in the amount of ₱43,938,277.00, and other income in the amount of ₱8,244,764.00, the corresponding creditable taxes withheld amounted to ₱4,889,924.00 (₱2,476,504.00 plus ₱2,413,420.00); and has excess unutilized withholding tax credits carried over from prior years in the total amount of ₱3,339,164.00. It then claims that it was not able to fully utilize its withholding tax credits for the calendar year 2007 and the previous years since its income tax liability for the calendar year 2007 only amounted to ₱1,195,607.00; its "*Prior Year's Excess Credits*" in the amount of ₱3,339,164.00, which

[11] *Exhibit "K."*
[12] *Exhibit "K,"* line 31.

was carried from its Annual ITR for the calendar year 2006, is enough to cover the "*Aggregate Income Tax Due*" for the calendar year 2007 in the amount of ₱1,195,607.00. Thus, it posits that its total excess and unutilized withholding tax credits amounted to ₱7,033,481.00.

In this regard, Section 76 of the 1997 National Internal Revenue Code ("NIRC"), as amended, states:

> 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:
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> (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 a tax credit certificate shall be allowed therefor.

Under the afore-quoted provision, a corporation entitled to a tax credit or refund of its excess estimated quarterly income taxes paid has two options: (1) to carry-over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period.[13]

Also it cannot be overly emphasized that in cases of refund, the claim should be made within the two (2)-year period allowed by law. On the other hand, if the option to carry-over the excess credit is exercised, the same shall be irrevocable for that taxable period, and no application for cash refund or issuance of a tax credit certificate shall be allowed therefore. The "taxable period" referred to under Section 76 is that taxable period which the taxpayer made the choice of carry-over and not to the next taxable year when the said excess or unutilized tax credits be carried-over.[14]

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 ease the administration of tax collection, these remedies are in the alternative and the choice of one precludes the other.[15]

A perusal of the records shows that petitioner marked the option *"To be issued a Tax Credit Certificate,"*[16] in its income tax return for the taxable year 2007. Further, it did not carry-over the unutilized tax credits of ₱4,889,924.00 to the succeeding year's quarterly,[17] and annual income tax returns,[18] thus, the same may be a valid

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[13] Systra Philippines, Inc. *v.* Commissioner of Internal Revenue, G.R. No. 176290, September 21, 2007, 533 SCRA 776.
[14] SC&C Cosmetech Co., Inc. *v.* Commissioner of Internal Revenue, CTA Case No. 6650, June 6, 2005.
[15] Philippine Bank of Communications *v.* Commissioner of Internal Revenue, G.R. No. 112024, January 28, 1999, 302 SCRA 241.
[16] *Exhibit "K,"* line 31.
[17] *Exhibits "H," "I"* and *"J."*
[18] *Exhibit "D."*

claim for refund or tax credit certificate under Section 76 of the 1997 NIRC, as amended.

And in a number of cases, the following requisites must be further complied in order that the subject claim may be granted, *viz*:

1. That the claim for refund was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the 1997 NIRC, as amended;

2. That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee (BIR Form No. 1743-A), showing the amount paid and the amount of tax withheld therefrom; and

3. That it is shown on the return of the recipient that the income payment received was declared as part of the gross income.[19]

Anent the first requirement, the provisions of the 1997 NIRC, as amended, particularly Sections 204(C) and 229, provide as follows:

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

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[19] Section 2.58 of Revenue Regulations No. 2-98, as amended; Citibank N.A. *v.* Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation *v.* Court of Appeals, 204 SCRA 957.

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> 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.

Well-settled in our jurisprudence is that the two-year prescriptive period within which to claim a refund commences to run, at the earliest, is on the date of the filing of the adjusted final tax return.[20] The reason is obvious: it is only when the adjustment return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[21]

In the case at bench, petitioner's claim covers taxable year 2007 for which it filed its Annual ITR on April 15, 2008.[22] Counting therefrom, petitioner had until April 15, 2010 within which to file its claim. From the records of the case, the

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[20] Atlas Consolidated Mining and Development Corporation *v.* Commissioner, G.R. Nos. 141104 & 148763, June 8, 2007, 524 SCRA 73.
[21] Commissioner of Internal Revenue *v.* TMX Sales, Inc., G.R. No. 83736, January 15, 1992, 205 SCRA 184.
[22] *Exhibit "K."*

administrative claim was filed on April 8, 2010,[23] while the Petition for Review was filed on April 13, 2010. Clearly, both the administrative and judicial claims were made within the two-year prescriptive period.

Likewise, to prove the fact of withholding of the subject claim in compliance with the second requisite, petitioner submitted a Summary of Creditable Withholding Tax Certificates issued to it for the year 2007,[24] and the corresponding Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307).[25] In the summary, the certificates reflect creditable withholding taxes in the amount of only ₱4,871,334.32, as compared to the total claimed amount of ₱4,889,924.00. Thus, the Court will consider only up to the extent of the former amount, or of ₱4,871,334.32, to have complied with the second requisite. The summary of tax withheld per income payments are as follows:

| Exhibit | Payor | Amount of Income Payments | Tax Withheld | Nature of Income Payments |
|---|---|---|---|---|
| "V-1" | Asalus Corporation | ₱ 304,557.90 | ₱ 30,455.79 | Commission |
| "V-2" | Asalus Corporation | 629,110.90 | 62,911.09 | Commission |
| "V-3" | Asalus Corporation | 98,973.70 | 9,897.37 | Commission |
| "V-4" | Asia Traders Insurance Corp. | 81,887.37 | 8,188.74 | Commission |
| "V-5" | Asia Traders Insurance Corp. | 225.00 | 22.50 | Commission |
| "V-6" | Asia Traders Insurance Corp. | 20,236.00 | 2,021.61 | Commission |
| "V-7" | Asia Traders Insurance Corp. | 8,206.58 | 820.66 | Commission |
| "V-8" | Asia Traders Insurance Corp. | 1,005.00 | 100.50 | Commission |
| "V-9" | Asianlife & General Assurance Corp. | 243,019.71 | 24,301.97 | Commission |
| "V-10" | Blue Cross Insurance, Inc. | 11,448.40 | 1,144.84 | Commission |
| "V-11" | Blue Cross Insurance, Inc. | (12,075.90) | (1,207.59) | Commission |
| "V-12" | Blue Cross Insurance, Inc. | 7,875.50 | 787.55 | Commission |
| "V-13" | Blue Cross Insurance, Inc. | 74,564.80 | 7,456.48 | Commission |
| "V-14" | BPI/MS Insurance Corp. | 1,474,874.96 | 147,488.68 | Commission |
| "V-16" | Corporate Guarantee & Insurance Co., Inc. | 216,996.90 | 21,699.66 | Commission |

[23] *Exhibit "C."*
[24] *Exhibit "HH."*
[25] *Exhibits "V-1"* to *"V-167."*

| | | | | |
|---|---|---|---|---|
| "V-17" | Federal Phoenix Assurance Co., Inc. | 458,079.50 | 45,807.95 | Commission |
| "V-18" | Federal Phoenix Assurance Co., Inc. | 1,216,186.90 | 121,618.69 | Commission |
| "V-19" | Federal Phoenix Assurance Co., Inc. | 209,396.50 | 20,939.65 | Commission |
| "V-20" | Federal Phoenix Assurance Co., Inc. | 573,815.90 | 57,381.59 | Commission |
| "V-21" | First Guarantee Life Assurance Co., Inc. | 50,860.56 | 5,086.06 | Commission |
| "V-22" | First Guarantee Life Assurance Co., Inc. | 19,489.00 | 1,948.90 | Commission |
| "V-23" | First Guarantee Life Assurance Co., Inc. | 27,839.70 | 2,783.97 | Commission |
| "V-24" | First Guarantee Life Assurance Co., Inc. | 8,534.20 | 853.42 | Commission |
| "V-25" | FLT Prime Insurance | 231,027.90 | 23,102.79 | Commission |
| "V-26" | Fortune General Insurance Corp. | 3,296,764.00 | 329,676.40 | Commission |
| "V-27" | Generali Pilipinas Insurance Co., Inc. | 7,748.80 | 774.88 | Commission |
| "V-28" | Generali Pilipinas Insurance Co., Inc. | 342,811.53 | 34,281.16 | Commission |
| "V-29" | Generali Pilipinas Life Insurance Co., Inc. | 14,115.00 | 1,411.50 | Commission |
| "V-30" | Generali Pilipinas Life Insurance Co., Inc. | 5,623.20 | 562.32 | Commission |
| "V-31" | Generali Pilipinas Life Insurance Co., Inc. | 4,360.00 | 436.00 | Commission |
| "V-33" | Insurance Company of North America | 4,032.10 | 403.21 | Commission |
| "V-34" | Insurance Company of North America | 6,306.70 | 630.67 | Commission |
| "V-35" | Insurance Company of North America | 2,470.20 | 247.02 | Commission |
| "V-36" | Insurance Company of North America | 5,337.60 | 533.76 | Commission |
| "V-37" | Insurance Company of North America | 2,117.60 | 211.76 | Commission |
| "V-38" | Insurance Company of North America | 4,007.90 | 400.79 | Commission |
| "V-39" | Insurance Company of North America | 166,421.00 | 16,642.10 | Commission |
| "V-40" | Insurance Company of North America | (162,403.80) | (16,240.38) | Commission |
| "V-41" | Intra Strata Assurance Corporation | 28,866.70 | 2,886.67 | Commission |
| "V-42" | MAA Genral Assurance Phils., Inc. | 967,436.80 | 96,743.78 | Commission |
| "V-52" | The Manila Insurance Co., Inc. | 2,352.10 | 235.21 | Commission |
| "V-53" | The Manila Insurance Co., Inc. | 1,736.81 | 173.69 | Commission |
| "V-54" | The Manila Insurance Co., Inc. | 688.40 | 68.84 | Commission |
| "V-55" | Mapfre Insular Insurance Corporation | 799,088.72 | 77,414.16 | Commission |
| "V-56" | Maxicare Healthcare Corporation | 27,542.60 | 2,754.26 | Commission |
| "V-57" | Maxicare Healthcare Corporation | 180,053.50 | 18,005.35 | Commission |
| "V-58" | Maxicare Healthcare Corporation | 136,477.85 | 13,647.79 | Commission |
| "V-59" | Maxicare Healthcare Corporation | 29,893.24 | 2,989.32 | Commission |
| "V-60" | Medicard Philippines, Inc. | 1,363,192.63 | 136,319.27 | Commission |
| "V-61" | Medicard Philippines, Inc. | 1,047,174.56 | 104,717.46 | Commission |
| "V-62" | Medicard Philippines, Inc. | 906,468.04 | 90,646.80 | Commission |
| "V-63" | Medicard Philippines, Inc. | 119,099.06 | 11,909.91 | Commission |
| "V-64" | The Mercantile Insurance Co., Inc. | 6,153.38 | 615.34 | Commission |
| "V-65" | The Mercantile Insurance Co., Inc. | 1,553.29 | 155.33 | Commission |
| "V-66" | The Mercantile Insurance Co., Inc. | 3,410.84 | 341.08 | Commission |
| "V-67" | The Mercantile Insurance Co., Inc. | 8,034.10 | 803.41 | Commission |
| "V-68" | Meridian Assurance Corporation | 1,282.50 | 128.25 | Commission |
| "V-69" | Meridian Assurance Corporation | 4,215.36 | 421.54 | Commission |
| "V-70" | Meridian Assurance Corporation | (120.00) | (12.00) | Commission |
| "V-71" | Metropolitan Insurance Co., Inc. | 2,654.68 | 265.47 | Commission |
| "V-72" | Metropolitan Insurance Co., Inc. | 88,535.75 | 8,853.57 | Commission |
| "V-73" | Metropolitan Insurance Co., Inc. | 4,139.70 | 413.97 | Commission |
| "V-74" | Oriental Assurance Corporation | 2,467,900.48 | 246,790.06 | Commission |
| "V-76" | Paramount Life & General Insurance Corp. | 549,790.10 | 54,979.01 | Commission |

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|---|---|---|---|---|
| "V-81" | Philamcare Health Systems, Inc. | 27,604.40 | 2,760.44 | Commission |
| "V-82" | Philam Insurance Company, Inc. | 853,092.70 | 85,309.45 | Commission |
| "V-83" | Philam Insurance Company, Inc. | 724,335.50 | 72,433.55 | Commission |
| "V-84" | Philam Insurance Company, Inc. | 1,308,132.80 | 130,813.28 | Commission |
| "V-85" | Philam Insurance Company, Inc. | 1,122,139.70 | 112,213.97 | Commission |
| "V-86" | The Philippine American Life & Gen. Insurance Co. | 69,915.20 | 6,991.52 | Commission |
| "V-87" | The Philippine American Life & Gen. Insurance Co. | 9,687.80 | 968.78 | Commission |
| "V-88" | The Philippine American Life & Gen. Insurance Co. | 24,804.54 | 2,480.45 | Commission |
| "V-89" | Philippine AXA Life Insurance | 52,418.55 | 4,680.23 | Commission |
| "V-90" | Philippine British Assurance Co., Inc. | 127,165.60 | 12,716.56 | Commission |
| "V-91" | Philippine British Assurance Co., Inc. | 9,509.00 | 950.90 | Commission |
| "V-92" | Philippine British Assurance Co., Inc. | 4,750.10 | 475.01 | Commission |
| "V-93" | Philippine British Assurance Co., Inc. | 9,518.80 | 951.88 | Commission |
| "V-94" | Philippine British Assurance Co., Inc. | 21,638.20 | 2,163.82 | Commission |
| "V-95" | Philippine British Assurance Co., Inc. | 6,979.40 | 697.94 | Commission |
| "V-96" | Philippine British Assurance Co., Inc. | 4,971.00 | 497.10 | Commission |
| "V-97" | Philippine British Assurance Co., Inc. | 7,035.40 | 703.54 | Commission |
| "V-98" | Philippine British Assurance Co., Inc. | 5,102.50 | 510.25 | Commission |
| "V-99" | Philippine British Assurance Co., Inc. | 21,703.00 | 3,255.45 | Commission |
| "V-100" | Philippine British Assurance Co., Inc. | 17,996.93 | 2,699.54 | Commission |
| "V-101" | Philippine British Assurance Co., Inc. | 24,761.20 | 2,476.12 | Commission |
| "V-102" | Philippine British Assurance Co., Inc. | 17,499.80 | 1,749.98 | Commission |
| "V-103" | Philippine Phoenix Surety & Insurance, Inc. | 24,967.43 | 2,496.75 | Commission |
| "V-104" | Philippine Phoenix Surety & Insurance, Inc. | 60,866.24 | 6,086.62 | Commission |
| "V-105" | Philippine Phoenix Surety & Insurance, Inc. | 71,362.50 | 7,039.53 | Commission |
| "V-106" | Philippine Phoenix Surety & Insurance, Inc. | 6,114.88 | 611.49 | Commission |
| "V-107" | Philippines First Insurance Co., Inc. | 4,116.30 | 411.63 | Commission |
| "V-108" | Pioneer Insurance & Surety Corporation | 2,677,639.68 | 264,764.17 | Commission |
| "V-109" | Pioneer Intercontinental Insurance Corporation | 162.40 | 16.24 | Commission |
| "V-111" | PNB Genral Insurers Co., Inc. | 119,398.90 | 11,939.89 | Commission |
| "V-112" | PNB Genral Insurers Co., Inc. | 20,905.60 | 2,090.56 | Commission |
| "V-113" | PNB Genral Insurers Co., Inc. | 34,741.90 | 3,474.19 | Commission |
| "V-114" | PNB Genral Insurers Co., Inc. | 8,646.50 | 864.65 | Commission |
| "V-115" | The Premier Insurance & Surety Corporation | 19,910.60 | 1,991.06 | Commission |
| "V-116" | The Premier Insurance & Surety Corporation | 16,181.00 | 1,618.10 | Commission |
| "V-117" | Prudential Guarantee and Assurance, Inc. | 69,327.65 | 6,932.77 | Commission |
| "V-118" | Prudential Guarantee and Assurance, Inc. | 162,122.10 | 16,212.21 | Commission |
| "V-119" | Prudential Guarantee and Assurance, Inc. | 145,555.10 | 14,555.51 | Commission |
| "V-120" | Prudential Guarantee and Assurance, Inc. | 184,421.80 | 18,442.18 | Commission |
| "V-121" | QBE Insurance (Philippines), Inc. | 113,891.90 | 11,389.19 | Commission |
| "V-122" | QBE Insurance (Philippines), Inc. | 132,279.40 | 13,227.94 | Commission |
| "V-123" | Recovery Insurance Agency, Inc. | 5,072.87 | 507.29 | Commission |
| "V-124" | Seaboard-Eastern Insurance Co., Inc. | 234,044.50 | 23,404.45 | Commission |
| "V-125" | Standard Insurance Co., Inc. | 3,549,571.60 | 354,957.16 | Commission |

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|---|---|---|---|---|
| "V-126" | Standard Insurance Co., Inc. | 1,137,678.70 | 113,767.87 | Commission |
| "V-127" | Standard Insurance Co., Inc. | 1,270,751.40 | 127,075.14 | Commission |
| "V-128" | Standard Insurance Co., Inc. | 1,432,263.80 | 143,226.38 | Commission |
| "V-129" | Stronghold Insurance Company, Inc. | 206,798.03 | 20,679.80 | Commission |
| "V-130" | Sun Life of Canada (Philippines), Inc. | 6,559.27 | 655.93 | Commission |
| "V-131" | Sun Life of Canada (Philippines), Inc. | 45,419.57 | 4,541.96 | Commission |
| "V-132" | Tokio Marine Malayan Insurance Co., Inc. | 64,949.70 | 6,494.97 | Commission |
| "V-133" | Tokio Marine Malayan Insurance Co., Inc. | 20,037.49 | 2,003.75 | Commission |
| "V-134" | Tokio Marine Malayan Insurance Co., Inc. | 93,422.40 | 9,342.24 | Commission |
| "V-135" | Tokio Marine Malayan Insurance Co., Inc. | 632,149.40 | 63,214.94 | Commission |
| "V-136" | UCPB General Insurance Co., Inc. | 1,329,093.50 | 132,909.35 | Commission |
| "V-137" | UCPB General Insurance Co., Inc. | 1,161,216.10 | 116,121.61 | Commission |
| "V-138" | UCPB General Insurance Co., Inc. | 1,428,078.90 | 142,807.89 | Commission |
| "V-139" | UCPB General Insurance Co., Inc. | 5,030,136.60 | 503,013.66 | Commission |
| "V-140" | United Coconut Planters Life Assurance Corporation | 107,460.39 | 10,746.04 | Commission |
| "V-141" | United Coconut Planters Life Assurance Corporation | 838,105.46 | 83,810.51 | Commission |
| "V-142" | United Coconut Planters Life Assurance Corporation | 333,733.59 | 33,373.37 | Commission |
| "V-143" | United Coconut Planters Life Assurance Corporation | 442,613.59 | 44,261.36 | Commission |
| "V-146" | Dunlop Slazenger Philippines, Inc. | 948,201.73 | 94,820.17 | Commission |
| | **TOTAL Commission** | **47,064,202.59** | **4,702,251.88** | |
| | | | | |
| "V-15" | CCC Insurance Corporation | 1,752.74 | 175.27 | Insurance Agents/Adjusters |
| "V-32" | Great Life Financial Assurance Corp. | 5,494.20 | 824.13 | Insurance Agents/Adjusters |
| "V-43" | MAA Genral Assurance Phils., Inc. | 188,410.90 | 18,841.09 | Insurance Agents/Adjusters |
| "V-44" | MAA Genral Assurance Phils., Inc. | 352,904.30 | 35,290.43 | Insurance Agents/Adjusters |
| "V-45" | MAA Genral Assurance Phils., Inc. | 216,062.30 | 21,606.23 | Insurance Agents/Adjusters |
| "V-49" | Malayan Insurance Co., Inc. | 1,497.60 | 149.76 | Insurance Agents/Adjusters |
| "V-50" | Malayan Insurance Co., Inc. | 33,916.99 | 3,391.71 | Insurance Agents/Adjusters |
| "V-51" | Malayan Insurance Co., Inc. | 23,727.97 | 2,372.78 | Insurance Agents/Adjusters |
| "V-75" | Pacific Union Insurance Company | 10,074.50 | 1,007.45 | Insurance Agents/Adjusters |
| "V-77" | Philippine Charter Insurance Corporation | 82,496.60 | 8,249.73 | Insurance Agents/Adjusters |
| "V-78" | Philippine Charter Insurance Corporation | 60.00 | 6.00 | Insurance Agents/Adjusters |
| "V-79" | Philippine Charter Insurance Corporation | 2,248.69 | 224.87 | Insurance Agents/Adjusters |
| "V-80" | Philippine Charter Insurance Corporation | 26,029.64 | 2,603.01 | Insurance Agents/Adjusters |
| "V-110" | Plaridel Surety & Insurance Company | 3,205.80 | 320.58 | Insurance Agents/Adjusters |
| "V-144" | Value Care Health Systems, Inc. | 12,117.60 | 1,211.76 | Insurance Agents/Adjusters |
| "V-145" | Value Care Health Systems, Inc. | 14,678.00 | 1,467.80 | Insurance Agents/Adjusters |
| "V-152" | FLT Pime Insurance Corporation | 77,617.21 | 1,552.34 | Insurance Agents/Adjusters |
| | **TOTAL Insurance Agents/Adjusters** | **1,052,295.04** | **99,294.94** | |
| | | | | |
| "V-147" | Berkley International Plans, Inc. | 400.00 | 8.00 | Prime Contractors/Sub-Con |
| "V-148" | Berkley International Plans, Inc. | 400.00 | 8.00 | Prime Contractors/Sub-Con |
| "V-149" | Berkley International Plans, Inc. | 400.00 | 8.00 | Prime Contractors/Sub-Con |
| "V-156" | Schenker Philippines, Inc. | 1,200.00 | 24.00 | Prime Contractors/Sub-Con |
| "V-157" | Schenker Philippines, Inc. | 1,600.00 | 32.00 | Prime Contractors/Sub-Con |
| "V-158" | Schenker Philippines, Inc. | 1,400.00 | 28.00 | Prime Contractors/Sub-Con |

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|---|---|---|---|---|
| "V-159" | Schenker Philippines, Inc. | 800.00 | 16.00 | Prime Contractors/Sub-Con |
| "V-160" | Schenker Philippines, Inc. | 400.00 | 8.00 | Prime Contractors/Sub-Con |
| "V-165" | S.C. Johnson & Son, Inc. | 1,140,537.34 | 22,930.75 | Prime Contractors/Sub-Con |
| "V-166" | S.C. Johnson & Son, Inc. | 1,595,221.75 | 31,904.43 | Prime Contractors/Sub-Con |
| "V-167" | S.C. Johnson & Son, Inc. | 45,974.55 | 919.49 | Prime Contractors/Sub-Con |
| | **TOTAL Prime Contractors/Sub-Con** | **2,788,333.64** | **55,886.67** | |
| | | | | |
| "V-150" | British American Tobacco Philippines, Ltd. | 67,347.86 | 1,346.96 | Top 10,000 Corporations |
| "V-151" | Diageo Phils., Inc. | 502,066.00 | 10,041.32 | Top 10,000 Corporations |
| "V-153" | FLT Pime Insurance Corporation | 31,360.22 | 627.20 | Top 10,000 Corporations |
| "V-154" | Johnson Diversey Philippines, Inc. | 900.00 | 18.00 | Top 10,000 Corporations |
| "V-155" | Misys Int'l. Banking Systems, Inc. | 89,267.59 | 1,785.35 | Top 10,000 Corporations |
| "V-161" | Wrigley Philippines, Inc. | 400.00 | 8.00 | Top 10,000 Corporations |
| "V-162" | Wrigley Philippines, Inc. | 1,600.00 | 32.00 | Top 10,000 Corporations |
| "V-163" | Wrigley Philippines, Inc. | 800.00 | 16.00 | Top 10,000 Corporations |
| "V-164" | Wrigley Philippines, Inc. | 1,300.00 | 26.00 | Top 10,000 Corporations |
| | **TOTAL Top 10,000 Corporations** | **695,041.67** | **13,900.83** | |
| | | | | |
| | **GRAND TOTAL** | **₱51,599,872.94** | **₱4,871,334.32** | |

As for the third requisite, perusal of the withholding tax certificates reveal that the creditable withholding taxes in the amount of ₱4,871,334.32 were withheld from petitioner's income of ₱51,599,872.94,[26] which is lower by ₱583,168.06, as compared to the commission income of ₱52,183,041.00, *i.e.*, ₱43,938,277.00 plus ₱8,244,764.00,[27] reported in its 2007 Annual ITR.

Petitioner provided a Reconciliation of Income,[28] to account for the discrepancies. It contends that the variation was due to some timing difference[29] on its booking the commission income and the insurance companies' recognition of the commission expense that they paid, and the corresponding income tax liability, as well as the contingent profit commission it received from the insurance companies but are recorded as other income in its Annual ITR for the year 2007.

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[26] *Exhibit "HH."*
[27] *Exhibit "K,"* lines 15C and 18C.
[28] *Exhibit "KK."*
[29] *Exhibit "DD,"* number 23.

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The Court, however, is not convinced.

In the case of *Jardine Llyod Thompson Insurance Brokers, Inc., v. Commissioner of Internal Revenue,*[30] the Court resolved as follows:

> Comparing the income shown per valid certificates vis-à-vis the income per petitioner's 2006 Annual Income Tax Return, a difference of ₱29,916,993.65 is evident, as shown below:
>
> xxx xxx xxx
>
> Petitioner explains that the discrepancy of ₱29,244,394.37 was brought about by the timing difference between the recording of revenue by petitioner and the recognition by its clients of the creditable withholding taxes, and the discrepancy of ₱672,599.28 pertains to the sublease of its office space which was recorded as a reduction against the rent expense account in its general ledger.
>
> Nevertheless, **petitioner failed to support its claim with pieces of documentary evidence.** Except for the General Ledgers for Account Nos. 100001 (Brokerage and Others) and 120003 (Profit Commission), nothing more was presented by petitioner to bolster its claim and convince the Court that it deducted the rental income of ₱672,599.28 from its rental expense for the year 2006 and that the ₱29,244,394.37 discrepancy in its revenues from sales of services was merely due to timing difference. **Petitioner should have submitted documents such as, but not limited to,** lease contracts, breakdown of the rental expense per income tax return, **books of accounts such as general journal, detailed general ledger, sales journal, sales invoices/billing statements, official receipts, prior year's income tax return or any other document whereby the Court can verify that it properly reported the income related to the claimed CWT either in the current or prior year.** Petitioner's non-compliance with the third requisite is fatal to its claim. (*Boldfacing supplied.*)

Also in the case of *Havi Food Services, Phils., Inc., v. Commissioner of Internal Revenue,*[31] the Court ruled in this wise:

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[30] CTA Case No. 7916, September 23, 2011.
[31] CTA Case No. 7735, February 28, 2011.

> Based on the documentary evidence presented, petitioner's reported gross income in its Annual Income Tax Return for taxable year 2006 amounted to ₱201,584,012.00, broken down as follows:
>
> xxx xxx xxx
>
> On the other hand, the total income payments for the same year per BIR Form No. 2307 amounted to ₱229,131,716.50, detailed as follows:
>
> xxx xxx xxx
>
> From the foregoing, it is apparent that there is a discrepancy of ₱27,547,704.50 between the total gross income reflected per petitioner's income tax return vis-à-vis the total amount shown per BIR Form No. 2307. Here, petitioner failed to reconcile such discrepancy.
>
> While the Independent CPA reported that out of the total income of ₱228,510,328.59 reflected per BIR Form No. 2307, it was able to verify that the amount of ₱208,939,481.04 30 was recorded by petitioner in its books of accounts and declared in its income tax return, **this Court cannot confirm said findings due to petitioner's failure to present the source documents, such as invoices and official receipts, upon which the income amount of ₱208,939,481.04 was based.**
>
> In view of petitioner's failure to prove that it declared the income upon which the substantiated creditable withholding tax of ₱4,995,370.31 for taxable year 2006 was withheld, the refund claim cannot be granted. (*Boldfacing supplied.*)

Applying the foregoing in a similar case, the Court likewise held that failure of petitioner to present documents such as, but limited to, official receipts, sales invoices, detailed general ledger, sales register, reconciliation schedules or any other document whereby the income payments related to the claimed creditable withholding taxes may be traced and confirmed as forming part of the taxable gross income reflected in the Annual Income Tax Returns, is fatal to its claim.[32]

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[32] Winebrenner & Iñigo Insurance Brokers, Inc. *v.* Commissioner of Internal Revenue, CTA Case No. 7764, August 17, 2011.

This Court as a court of record is required to conduct a formal trial to prove every minute aspect of a claim.[33] At this juncture, it is to be stressed that petitioner as a claimant has the burden of proof to present all that is required for the successful prosecution of its claim. Hence, mere allegation is not evidence[34] and is not equivalent to proof.[35]

Since petitioner failed to fully support the discrepancies, and the same cannot be verified whether the income payments in the amount of ₱51,599,872.94 and its related creditable withholding tax amounting to ₱4,871,334.32 were actually declared in its 2007 Annual ITR, the third requisite was not duly complied.

In sum, the Court has no option but to deny the subject claim for refund/issuance of tax credit certificate of excess/unutilized creditable withholding taxes for the taxable year 2007.

**WHEREFORE,** the Petition for Review is hereby **DENIED** for insufficiency of evidence.

**SO ORDERED.**

**LOVELL R. BAUTISTA**
Associate Justice

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[33] Commissioner of Internal Revenue *v.* Manila Mining Corporation, G.R. No. 153204, August 31, 2005, 469 SCRA 571.
[34] Martinez *v.* National Labor Relations Commission, G.R. No. 117495, May 29, 1997, 272 SCRA 793.
[35] Philippine National Bank *v.* Court of Appeals, G.R. No. 116181, April 17, 1996, 266 SCRA 136.

***WE CONCUR:***

**OLGA PALANCA-ENRIQUEZ**
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.

**LOVELL R. BAUTISTA**
Associate Justice
Chairperson

## *CERTIFICATION*

Pursuant to Section 13 of Article VIII 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.

**ERNESTO D. ACOSTA**
Presiding Justice