REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

PHELPS DODGE PHILIPPINES, INC.,
Petitioner,

- versus -

C.T.A. CASE NO. 6051

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
FEB 22 2002

x - x

DECISION

This case involves a claim for refund in the amount of P4,630,506.00 representing alleged unutilized tax credits for the calendar year 1997.

Petitioner is a corporation duly organized under and existing by virtue of the laws of the Republic of the Philippines with office address at No. 2 Pioneer Street, Mandaluyong City.

On April 15, 1997, Petitioner filed its 1996 Annual Income Tax Return (Exhibit A) which declared the following:

Gross Income	P353,454,111.00
Less: Deductions	336,976,406.00
Taxable Income	16,477,705.00
Tax Due	5,767,197.00
Less: Tax Credits	4,124,019.00
Tax Payable	P1,643,178.00

Petitioner made a check payment of the tax still due in the amount of P1,643,178.00 as evidenced by the BPI check deposit slip and the BPI Certification dated August 11, 2000 (Exhibits L and M).

On November 24, 1998, Petitioner amended its 1996 Annual Income Tax Return (Exhibit B) reflecting the following:

Gross Income	P353,454,111.00
Less: Deductions	336,976,406.00
Taxable Income	16,477,705.00
Tax Due	5,767,197.00
Less: Tax Credits	17,333,970.00
Tax Payable	(P11,566,773.00)

Petitioner's tax credits for the year 1996 in the amount of P17,333,970.00 consisted of the following:

Prior Year's Excess Credit	P 7,160,242.00
Quarterly Payments for 1996	1,643,178.00
Creditable Tax Withheld for 1997	8,530,550.00
Total Tax Credits	P17,333,970.00

A second amendment of the 1996 Annual Income Tax Return was later filed by Petitioner on May 28, 1999 (Exhibit C), showing a net loss of P33,522,295.00 and a refundable amount of P10,173,728, computed as follows:

Gross Income	P303,454,111.00
Less: Deductions	336,976,406.00
Taxable Income	(P 33,522,295.00)
Tax Due	NIL

Less: Tax Credits/Payments		
1.) Income tax paid per original 1996 ITR (Exhibits A & L)	P1,643,178.00	
2.) Creditable taxes withheld for 1996	8,530,550.00	P 10,173,728.00
Income Tax Refundable		(P10,173,728.00)

Petitioner opted to apply the above refundable amount of P10,173,728.00 as tax credit to the succeeding taxable year, 1997.

On April 15, 1998, Petitioner filed its 1997 Annual Income Tax Return showing a taxable income of P51,104,351.00 and tax payable of P9,775,156.00 (Exhibit D) computed as follows:

Gross Income		P231,004,443.00
Less: Deductions		179,900,092.00
Taxable Income		P51,104,351.00
Tax Due		17,886,523.00
Less: Tax Credits		
1) Quarterly Income Payments	P 347,201.00	
2) Creditable Taxes withheld for 1997	7,764,166.00	8,111,367.00
Tax Payable		P9,775,156.00

On November 24, 1998, Petitioner amended its 1997 Annual Income Tax Return (Exhibit E) declaring a taxable income of P51,104,351.00 and a tax refundable of P6,023,551.00, computed as follows:

Gross Income	P231,004,443.00

Less: Deductions		179,900,092.00
Taxable Income		51,104,351.00
Tax Due		17,886,523.00
Less: Tax Credits		
1.) Prior Year's Excess Credits	P11,566,773.00	
2.) Quarterly Income Payments	347,201.00	
3.) Creditable Tax Withheld for 1997	11,996,100.00	23,910,074.00
Tax Refundable		(P6,023,551.00)

A second amendment of the 1997 Annual Income Tax Return was later filed by Petitioner on May 28, 1999 (Exhibit F), showing a taxable income of P51,104,351.00 and a refundable tax of P4,630,506.00, computed as follows:

Gross Income			P231,004,443.00
Less: Deductions			179,900,092.00
Taxable Income			P51,104,351.00
Tax Due			P17,886,523.00
Less: Tax Credits			
1.) Prior Year's Excess Credit		P10,173,728.00	
2.) Quarterly Income Payments		347,201.00	
3.) Creditable Taxes Withheld			
1st Quarter	P3,423,442.00		
2nd Quarter	1,058,965.00		
3rd Quarter	1,233,341.00		
4th Quarter	6,280,352.00	11,996,100.00	22,517,029.00
Tax Refundable			P(4,630,506.00)

The prior year's excess credit in the amount of P10,173,728.00 represents the excess or unutilized withholding tax credit for taxable year 1996 which Petitioner carried over to the taxable year 1997 due to its loss position for taxable year 1996 (Exhibit C).

On June 2, 1999, Petitioner filed an administrative claim for refund or issuance of a tax credit certificate corresponding to the alleged 1997 excess tax credits of P4,630,506.00 (Exhibit I).

On April 4, 2000, Petitioner filed a Petition for Review with this Court since Respondent did not act on the administrative claim.

Respondent, in his Answer filed on May 25, 2000, raised the following Special and Affirmative Defenses:

> "4.) In an action for refund, the taxpayer has the burden to show that the taxes paid were erroneously or illegally collected and failure to do so is fatal to the action;
>
> 5.) Claims for tax refund are strictly construed against the taxpayer. Petitioner has no cause of action."

To prove his case, Petitioner presented the following exhibits:

Exhibit	**Particulars**
A, B, C	1996 Annual Income Tax Return (original and amended)
D, E, F	1997 Annual Income Tax Return (original and amended)
G	1998 Annual Income Tax Return
H	3rd Quarterly Income Tax Return for 1997
I	Letter claim for refund
J & K	Summary of Creditable Taxes Withheld for 1996 and 1997
J-1 to J-107 K-1 to K-155	Various Certificates of Creditable Taxes Withheld for 1996 and 1997
L	Check deposit slip in the amount of P1,643,178.00
M	BPI Certification dated August 11, 2000

The sole issue for our consideration is whether or not Petitioner is entitled to a refund or issuance of a tax credit certificate in the amount of P4,630,506.00 representing unutilized creditable withholding tax for the year 1997.

Revenue Regulations No. 12-94 (amending Revenue Regulations No. 6-85) as affirmed by jurisprudence laid down the following three basic requirements for the refund of excess creditable withholding taxes, thus:

1) That the claim for refund was filed within the two-year prescriptive period provided under Section 204 (3) [now Section 204 (C)] in relation to Section 230 [now Section 229] of the Tax Code, as amended;

2) That the fact of withholding is 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.

3) That the income upon which the taxes were withheld were included in the return of the recipient; **Citytrust Finance Corporation vs. The Honorable Commissioner of Internal Revenue, CTA Case No. 4134, November 11, 1991; affirmed by the Court of Appeals in Citytrust Finance Corporation vs. Court of Tax Appeals and the Commissioner of Internal Revenue, C.A. G.R. SP No, 28239, March 14, 1994; and Citytrust Finance Corporation (formerly Investor's Finance Corporation/FNCB Finance) vs. Commissioner of Internal Revenue, CTA Case No. 4046, February 24, 1993; affirmed by the Court of Appeals in Commissioner of Internal Revenue vs. Citytrust Finance Corporation (formerly Investor's Finance Corp./FNCB Finance) and the Court of Tax Appeals, C.A. G.R. SP No. 31104, April 18, 1994; Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue, 280 SCRA 459; ACCRA Investments Corporation vs. Court of Appeals, 204 SCRA 957]**

Records reveal that Petitioner satisfactorily complied with the aforementioned requirements.

The administrative claim for refund was filed on June 2, 1999 and the judicial claim was filed on April 4, 2000. Both dates are well-within the two-year prescriptive period referred to in requirement No. 1. Reckoned from the date when Petitioner filed its original 1997 Annual Income Tax Return on April 15, 1998, both the administrative and judicial claims filed by Petitioner fall within the two-year prescriptive period provided under Section 204(3) [now 204(C)] in relation to Section 230 [now 229] of the Tax Code, as amended.

Petitioner presented Certificates of Creditable Tax Withheld at Source issued by various withholding agents in order to comply with the second requirement and to establish the fact of withholding of the reported creditable taxes withheld for the years 1996 and 1997, in the amounts of P8,530,550.00 and P11,996,100.00 (Section E of both Exhibits C and E), respectively. However, only the amounts of P8,444,319.77 and P11,996,100.83 for the years 1996 and 1997, respectively, were substantiated by Certificates of Creditable Tax Withheld, to wit:

For taxable year 1996

Exhibit	Withholding Agent	Income Payment	Tax Withheld
J-1	Alaska Milk Corporation	P 7,184,988.00	P 71,849.88
J-2	ASB Realty Corporation	1,593,472.60	15,934.73
J-3	Ayala Land, Inc.	338,880.00	3,388.80
J-4	Century Container Corp.	2,408,739.72	24,087.39
J-5	Electronic Telephone Sys Inc.	41,147,835.00	411,478.35
J-6	First Asia Realty Devt. Corp.	45,257.09	452.57
J-7	Int'l Wiring Sys Phils. Inc.	37,863,170.00	378,631.70
J-8	D.V. Construction, Inc.	4,026,125.83	40,261.26
J-9	Phil. Long Distance Tel. Co.	290,406,138.00	2,904,061.38
J-10	Procter & Gamble Phils.	38,181.82	381.82
J-11	Procter & Gamble Phils.	436,772.73	4,367.73
J-12	Procter & Gamble Phils.	166,745.46	1,667.45
J-13	Romago Incorporated	1,834,925.00	18,349.25
J-14	Rowell Can Corporation	16,620,725.00	166,207.25
J-15	Siemens Inc.	2,652,740.00	26,527.40
J-16	Tiffany Tower Realty Corp.	5,916,449.57	59,164.50

J-17	Universal Export	27,972,000.00	279,720.00
J-18	Beta Electric Corporation	30,508.21	305.08
J-19	Bicutan Container Corp.	630,917.80	6,309.18
J-20	Bicutan Container Corp.	600,700.00	6,007.00
J-21	Bicutan Container Corp.	2,484,271.54	24,842.72
J-22	Board of Investments	42,446.25	385.88
J-23	Cagayan Elect Power & Light	534,894.55	5,348.95
J-24	Cagayan Elect Power & Light	30,600.00	306.00
J-25	Cagayan Elect Power & Light	175,414.55	1,754.15
J-26	Century Container Corp.	5,710,273.92	57,102.75
J-27	Century Container Corp.	4,517,285.76	45,172.85
J-28	Century Container Corp.	6,602,320.00	66,023.20
J-29	Century Container Corp.	5,415,252.26	54,152.52
J-30	Concepcion Industries, Inc.	2,660,658.88	26,606.57
J-31	Concepcion Industries, Inc.	2,265,921.00	22,659.21
J-32	Columbia Wise & Cable Corp.	736,674.55	7,366.75
J-33	Columbia Wise & Cable Corp.	1,230,535.40	12,305.35
J-34	Columbia Wise & Cable Corp.	667,967.26	6,679.66
J-35	Columbia Wise & Cable Corp.	1,164,118.18	11,641.18
J-36	Columbia Wise & Cable Corp.	467,290.90	4,672.90
J-37	Dagupan Electric Corporation	1,333,089.50	13,330.89
J-38	Dagupan Electric Corporation	81,890.00	818.90
J-39	Dagupan Electric Corporation	132,638.00	1,326.38
J-40	Eng'g & Const. Corp. of Asia	166,591.00	1,665.91
J-41	Fibertex Corporation	40,775.00	407.75
J-42	Fil-American Hardware Co., Inc.	881,402.00	8,814.02
J-43	Fil-American Hardware Co., Inc.	101,783.00	1,017.83
J-44	Fil-American Hardware Co., Inc.	168,840.00	1,688.40
J-45	Fil-American Hardware Co., Inc.	174,242.00	1,742.42
J-46	Fil-American Hardware Co., Inc.	212,736.00	2,127.36
J-47	Inphase Construction Co., Inc.	67,982.00	679.82
J-48	Int'l Communications Corporation	6,027,255.00	60,272.55
J-49	Kasamahan Realty Devt. Corp.	1,800,000.00	90,000.00
J-50	Manila Bay Spinning Mills, Inc.	81,739.00	817.39
J-51	Manila Electric Company	3,968,136.00	39,681.36
J-52	Manila Electric Company	10,269,000.00	102,690.00
J-53	Manila Electric Company	26,635,100.00	266,351.00
J-54	Manila Electric Company	6,128,200.00	61,282.00
J-55	Mitsubishi Corp. (Visayas Proj)	879,054.55	8,790.55
J-56	Nestle Philippines, Inc.	5,040,677.00	50,406.77
J-57	Nestle Philippines, Inc.	631,157.00	6,311.57
J-58	Nestle Philippines, Inc.	3,761,449.00	37,614.49
J-59	Nestle Philippines, Inc.	1,228,384.00	12,283.84
J-60	Nestle Philippines, Inc.	2,216,966.00	22,169.66
J-61	Nestle Philippines, Inc.	1,162,658.00	11,626.58
J-62	Nestle Philippines, Inc.	4,843,594.00	48,435.94
J-63	Oriental Construction	5,336,879.15	53,368.79
J-64	Oriental Construction	8,373,914.04	83,739.14
J-65	Oriental Construction	6,360,061.05	63,600.61
J-66	Oriental Construction	3,904,803.05	39,048.03
J-67	Oriental Const. & Electrical	26,399,098.41	263,990.98
J-68	Oriental Construction	23,703,341.26	237,033.41
J-69	Oriental Tin Can & Metal Sheet Mfg	8,283,593.17	82,835.92
J-70	Oriental Tin Can & Metal Sheet Mfg	10,933,206.83	109,332.08

J-71	Oriental Tin Can & Metal Sheet Mfg	8,160,140.91	81,601.41
J-72	Oriental Tin Can & Metal Sheet Mfg	11,193,845.46	111,938.46
J-73	Oriental Tin Can & Metal Sheet Mfg	7,288,581.82	72,885.82
J-74	Philippine Dairy Corporation	2,400.00	24.00
J-75	Philippine Dairy Corporation	2,400.00	65.45
J-76	Philippine Electric Corporation	7,832,753.00	78,327.53
J-77	Philippine Electric Corporation	17,675,322.00	176,753.22
J-78	Philippine Electric Corporation	30,917,026.00	309,170.26
J-79	Philippine Electric Corporation	17,009,737.00	170,097.37
J-80	Pointer Enterprises, Inc.	204,736.47	2,047.37
J-81	Pointer Enterprises, Inc.	976,886.00	9,768.85
J-82	Pointer Enterprises, Inc.	1,243,431.68	12,434.30
J-83	Pointer Enterprises, Inc.	1,431,147.54	14,311.45
J-84	Pointer Enterprises, Inc.	822,609.76	8,226.09
J-85	Pointer Enterprises, Inc.	749,292.84	7,492.92
J-86	Pointer Enterprises, Inc.	165,480.74	1,654.81
J-87	Reliable Electric Co. Inc.	1,353,474.64	13,534.75
J-88	Reliable Electric Co. Inc.	724,863.11	7,248.63
J-89	Reliable Electric Co. Inc.	519,215.38	5,192.15
J-90	Reliable Electric Co. Inc.	18,103,478.54	181,034.79
J-91	Reliable Electric Co. Inc.	1,610,986.61	16,109.87
J-92	Reliable Electric Co. Inc.	1,968,165.75	19,681.66
J-93	Reliable Industries, Inc.	6,647,065.00	66,470.65
J-94	Reliable Industries, Inc.	6,805,758.00	68,057.58
J-95	Reliable Industries, Inc.	2,449,901.00	24,499.01
J-96	Reliable Industries, Inc.	4,525,032.00	45,250.32
J-97	Reliable Industries, Inc.	6,589,728.00	65,897.28
J-98	Republic-Asahi Glass Corp.	1,545,454.43	15,454.55
J-99	Rowell Ind'l Corp. Sanican Div	3,556,988.00	35,569.88
J-100	Sta. Lucia Realty & Dev. Inc.	4,067,544.05	40,675.44
J-101	Tripower, Inc.	4,166,412.85	37,876.38
J-102	Tripower, Inc.	100,563.10	914.21
J-103	Tripower, Inc.	220,230.22	2,002.09
J-104	United Container Corp.	528,659.09	5,286.59
J-105	United Container Corp.	3,786,893.18	37,868.93
J-106	Universal Export	7,560,000.00	75,600.00
J-107	Universal Export	7,182,000.00	71,820.00
		P 837,639,636.01	P 8,444,319.77

For taxable year 1997

Exhibit	Withholding Agent	Income Payment	Tax Withheld
K-1	Alaska Milk Corporation	P 4,149,989.77	P 41,499.90
K-2	APO Cement Corporation	3,514,333.15	35,143.33
K-3	APO Cement Corporation	36,861.36	368.61
K-4	APO Cement Corporation	1,513,681.82	15,136.82
K-5	ASB Devt. Corporation	2,241,454.22	22,414.55
K-6	ASB Devt. Corporation	20,621.70	206.21
K-7	Asiaphil Manufacturing Industries	2,932,365.90	29,323.65
K-8	Cagayan Electric Power & Light Co.	153,650.00	1,536.50

K-9	CIPER Engineering Corp.	5,050,500.00	50,505.00
K-10	Columbia Wire & Cable Corp.	36,211,046.02	362,110.46
K-11	COMSYS Philippines, Inc.	2,687,796.91	26,877.97
K-12	Concepcion Industries, Inc.	55,063.08	550.63
K-13	Concepcion Industries, Inc.	1,381,040.00	13,810.38
K-14	Dagupan Electric Corporation	478,880.00	4,788.80
K-15	Dagupan Electric Corporation	896,422.90	8,964.22
K-16	Dagupan Electric Corporation	295,385.00	2,953.85
K-17	EL Realty Development Corp.	2,616,500.00	26,165.00
K-18	Electronic Telephone Systems, Inc.	2,039,735.00	20,397.35
K-19	Essilor Mfg. Phils. Inc.	336,090.45	3,360.90
K-20	Fil-American Hardware Co. Inc.	302,918.00	3,029.18
K-21	Fil-American Hardware Co. Inc.	296,630.00	2,966.30
K-22	Fil-American Hardware Co. Inc.	238,046.00	2,380.46
K-23	Global Universal Export, Inc.	2,268,000.00	22,680.00
K-24	Global Universal Export, Inc.	3,492,720.00	34,927.20
K-25	Global Universal Export, Inc.	3,492,720.00	34,927.20
K-26	Global Universal Export, Inc.	9,073,228.00	90,732.28
K-27	Hansei Corporation	266,872.00	2,668.72
K-28	Int'l Container Terminal Serv Inc	947,067.00	9,470.67
K-29	Int'l Wiring Sys Phils.	5,265,310.00	52,653.10
K-30	Lucent Technologies Phils. Inc.	542,487.27	5,424.88
K-31	Manila Electric Company	9,744,000.00	97,440.00
K-32	Metro Kidapawan Tel Corp	709,767.63	7,169.37
K-33	Neltex Development Co., Inc.	262,129.00	2,621.29
K-34	Neltex Development Co., Inc.	101,350.00	1,013.50
K-35	Neltex Development Co., Inc.	837,525.00	8,375.25
K-36	Neltex Development Co., Inc.	1,610,960.00	16,109.60
K-37	Nestle Philippines, Inc.	897,283.00	8,972.83
K-38	Nestle Philippines, Inc.	2,685,656.00	26,856.56
K-39	Nestle Philippines, Inc.	1,696,929.00	16,969.29
K-40	Nestle Philippines, Inc.	3,785,033.00	37,850.33
K-41	North Negros Marketing, Inc.	2,448,889.00	24,488.89
K-42	North Negros Marketing, Inc.	971,919.00	9,719.19
K-43	Oriental Tin Can & Metal Sheet Mfg.	12,536,660.91	125,366.61
K-44	Oriental Const. & Elec'l Supply	28,403,273.29	284,032.73
K-45	Philippine Electric Corporation	17,613,139.00	176,131.39
K-46	Phil. Long Distance & Tel. Co.	38,386,677.59	383,866.78
K-47	Philnet Ericsson, Inc.	41,863,655.00	418,636.55
K-48	Pirelli General PLC	3,732,507.00	37,325.07
K-49	Pointer Enterprises, Inc.	2,311,490.90	21,013.54
K-50	Procter & Gamble Phils.	207,463.64	2,074.64
K-51	Procter & Gamble Phils.	1,454,263.64	14,542.64
K-52	Reliable Electric Co. Inc.	7,481,682.00	74,816.82
K-53	Reliable Industries, Inc.	4,115,199.00	41,151.99
K-54	Reliable Industries, Inc.	3,465,775.00	34,657.75
K-55	Rizal Cement Co., Inc.	365,409.10	3,654.09
K-56	Rizal Cement Co., Inc.	101,914.00	1,019.14
K-57	Romago Incorporated	8,792,040.00	87,920.40
K-58	Rowell Can Corporation	10,639,332.00	106,393.32
K-59	SM Prime Holdings, Inc.	19,772,491.00	197,724.91
K-60	Toledo Power Company	16,000.00	800.00
K-61	Vernida Realty Devt. Corp.	1,945,708.28	19,457.09
K-62	Vernida Realty Devt. Corp.	375,079.71	3,750.81

K-63	Yazaki-Torres Mfg., Inc.	17,386,139.00	173,861.39
K-64	Yazaki-Torres Mfg., Inc.	6,809,515.00	68,095.15
K-65	Yazaki-Torres Mfg., Inc.	17,264,470.00	172,644.70
K-66	Yazaki-Torres Mfg., Inc.	59,743,594.91	597,435.95
K-67	Asian Telecommunications, Inc.	4,925,000.00	49,250.00
K-68	Cagayan Electric Power & Light Co.	210,316.82	2,103.17
K-69	Cagayan Electric Power & Light Co.	213,880.00	2,138.80
K-70	Cagayan Electric Power & Light Co.	407,840.00	4,078.40
K-71	Cagayan Electric Power & Light Co.	194,727.27	1,947.27
K-72	Cagayan Electric Power & Light Co.	428,958.18	4,289.58
K-73	Cavite Coll of Arts & Trade	224,838.00	6,745.14
K-74	Century Container Corporation	1,240,741.81	12,407.41
K-75	Century Container Corporation	3,098,106.20	30,981.06
K-76	COMSYS Philippines, Inc.	18,156,895.15	181,568.99
K-77	COMSYS Philippines, Inc.	3,643,396.95	36,433.96
K-78	COMSYS Philippines, Inc.	482,572.73	4,825.73
K-79	COMSYS Philippines, Inc.	258,955.27	2,589.55
K-80	Concepcion Industries, Inc.	5,983,297.02	59,832.96
K-81	Cyan Management Corp.	960,042.98	9,600.43
K-82	Concepcion Industries, Inc.	3,225,820.86	32,258.20
K-83	EEI Corporation	40,727.27	407.27
K-84	Fil-American Hardware Co. Inc.	241,615.00	2,416.15
K-85	Fil-American Hardware Co. Inc.	304,857.00	3,048.57
K-86	ITALTEL S.P.A. Phil. Branch	28,760,566.57	287,605.66
K-87	Jobbers Merchandising Corp.	1,830,317.79	16,639.19
K-88	Manila Electric Company	16,400.00	164.00
K-89	Manila Electric Company	5,228,000.00	52,280.00
K-90	Mitsubishi Corporation	3,496,272.63	34,962.73
K-91	Mitsubishi Corporation	4,602,817.27	46,028.17
K-92	Mitsubishi Corp. (Visayas Proj)	3,143,863.64	31,438.64
K-93	Nestle Philippines, Inc.	4,505,792.00	45,057.92
K-94	Nestle Philippines, Inc.	4,055,782.00	40,557.82
K-95	Nestle Philippines, Inc.	951,636.00	9,516.36
K-96	Nestle Philippines, Inc.	1,333,739.00	13,337.39
K-97	Nestle Philippines, Inc.	3,732,392.00	37,323.92
K-98	Oriental Const. & Elec'l Supply	7,805,215.30	78,052.15
K-99	Oriental Const. & Elec'l Supply	15,275,301.08	152,753.01
K-100	Oriental Construction	10,049,192.73	100,491.93
K-101	Oriental Construction	7,175,862.98	71,758.63
K-102	Oriental Construction	5,729,276.20	57,292.76
K-103	Oriental Construction	7,747,989.04	77,479.89
K-104	Oriental Construction	12,618,742.80	126,187.43
K-105	Oriental Construction	6,835,676.11	68,356.76
K-106	Oriental Construction	4,936,490.37	49,364.90
K-107	Oriental Const. & Elec'l Supply	8,276,357.66	82,763.58
K-108	Oriental Construction	17,810,536.92	178,105.37
K-109	Oriental Construction	20,104,895.34	201,048.95
K-110	Oriental Construction	24,930,986.62	249,309.87
K-111	Oriental Construction	18,324,561.54	183,245.62
K-112	Oriental Tin Can & Metal Sheet Mfg.	6,764,770.47	67,647.72
K-113	Oriental Tin Can & Metal Sheet Mfg.	10,300,053.66	103,000.56
K-114	Oriental Tin Can & Metal Sheet Mfg.	7,832,441.00	78,324.41
K-115	Oriental Tin Can & Metal Sheet Mfg.	7,280,805.45	72,808.05
K-116	Panay Electric Company, Inc.	290,651.08	2,898.61

K-117	Phelps Dodge Phils Energy Prods Corp	1,500,000.00	15,000.00
K-118	Phelps Dodge Phils Energy Prods Corp	1,200,000.00	12,000.00
K-119	Phelps Dodge Phils Energy Prods Corp	500,000.00	5,000.00
K-120	Philippine Electric Corporation	2,310,753.00	23,107.53
K-121	Phil. Long Distance Tel. Co.	35,388,897.30	353,888.83
K-122	Phil. Long Distance Tel. Co.	78,227,730.06	782,277.46
K-123	Phil. Long Distance Tel. Co.	60,707,080.12	606,809.84
K-124	Phil. Long Distance Tel. Co.	28,200,733.14	282,007.33
K-125	Phil. Long Distance Tel. Co.	37,371,613.43	373,716.24
K-126	Pointer Enterprises, Inc.	2,640,209.66	24,001.81
K-127	Pointer Enterprises, Inc.	3,887,455.54	35,342.40
K-128	Pointer Enterprises, Inc.	1,630,042.68	16,300.45
K-129	Pointer Enterprises, Inc.	10,541,941.68	95,835.94
K-130	Pointer Enterprises, Inc.	6,709,028.93	60,991.13
K-131	Reliable Electric Co., Inc.	12,460,074.31	124,600.75
K-132	Reliable Electric Co., Inc.	17,851,159.20	178,511.60
K-133	Reliable Electric Co., Inc.	11,698,767.00	116,987.67
K-134	Reliable Industries, Inc.	2,728,540.00	27,285.40
K-135	Reliable Industries, Inc.	865,277.00	8,652.77
K-136	Republic-Asahi Glass Corp.	3,462,251.00	34,622.51
K-137	Republic-Asahi Glass Corp.	111,924.00	1,119.24
K-138	Rowell Can Corporation	3,479,938.00	34,799.38
K-139	Rowell Can Corporation	5,100,811.00	51,008.11
K-140	Shoemart Inc.	14,064,650.00	140,646.50
K-141	Shoemart Inc.	4,782,376.00	47,823.76
K-142	Shoemart Inc.	3,386,781.00	33,867.81
K-143	Shoemart Inc.	981,940.00	9,819.40
K-144	Smart Communication, Inc.	673,159.91	6,731.60
K-145	Sta. Lucia Realty & Devt. Inc.	4,067,544.05	40,675.44
K-146	Sta. Lucia Realty & Devt. Inc.	11,244,112.41	112,441.13
K-147	Tripower, Inc.	269,060.67	2,690.60
K-148	United Container Corp.	1,018,977.27	10,189.77
K-149	United Container Corp.	2,230,081.81	22,300.81
K-150	United Container Corp.	400,000.00	4,000.00
K-151	United Container Corp.	896,254.55	8,962.55
K-152	United Container Corp.	2,247,872.00	22,478.72
K-153	United Container Corp.	345,713.64	3,457.14
K-154	Universal Export	1,512,000.00	15,120.00
K-155	Yazaki-Torres Mfg., Inc.	95,637,089.00	956,370.89
		P 1,201,654,149.27	P 11,996,100.83

Upon further verification, it was noted that the creditable taxes withheld for the year 1995 in the amounts of P1,216,456.19 and P316,591.75 were included in the creditable taxes withheld for the years 1996 and 1997, respectively, detailed as follows:

For taxable year 1996

Exhibit	Withholding Agent	Income Payment	Tax Withheld
J-18	Beta Electric Corporation	P 30,508.21	P 305.08
J-19	Bicutan Container Corp.	630,917.80	6,309.18
J-20	Bicutan Container Corp.	600,700.00	6,007.00
J-22	Board of Investments	42,446.25	385.88
J-26	Century Container Corp.	5,710,273.92	57,102.75
J-27	Century Container Corp.	4,517,285.76	45,172.85
J-28	Century Container Corp.	6,602,320.00	66,023.20
J-30	Concepcion Industries, Inc.	2,660,658.88	26,606.57
J-32	Columbia Wise & Cable Corp.	736,674.55	7,366.75
J-33	Columbia Wise & Cable Corp.	1,230,535.40	12,305.35
J-37	Dagupan Electric Corporation	1,333,089.50	13,330.89
J-38	Dagupan Electric Corporation	81,890.00	818.90
J-40	Eng'g & Const. Corp. of Asia	166,591.00	1,665.91
J-41	Fibertex Corporation	40,775.00	407.75
J-42	Fil-American Hardware Co., Inc.	881,402.00	8,814.02
J-43	Fil-American Hardware Co., Inc.	101,783.00	1,017.83
J-48	Int'l Communications Corporation	6,027,255.00	60,272.55
J-50	Manila Bay Spinning Mills, Inc.	81,739.00	817.39
J-51	Manila Electric Company	3,968,136.00	39,681.36
J-52	Manila Electric Company	10,269,000.00	102,690.00
J-56	Nestle Philippines, Inc.	5,040,677.00	50,406.77
J-57	Nestle Philippines, Inc.	631,157.00	6,311.57
J-58	Nestle Philippines, Inc.	3,761,449.00	37,614.49
J-59	Nestle Philippines, Inc.	1,228,384.00	12,283.84
J-69	Oriental Tin Can & Metal Sheet Mfg	8,283,593.17	82,835.92
J-70	Oriental Tin Can & Metal Sheet Mfg	10,933,206.83	109,332.08
J-71	Oriental Tin Can & Metal Sheet Mfg	8,160,140.91	81,601.41
J-74	Philippine Dairy Corporation	2,400.00	24.00
J-75	Philippine Dairy Corporation	2,400.00	65.45
J-76	Philippine Electric Corporation	7,832,753.00	78,327.53
J-80	Pointer Enterprises, Inc.	204,736.47	2,047.37
J-87	Reliable Electric Co. Inc.	1,353,474.64	13,534.75
J-88	Reliable Electric Co. Inc.	724,863.11	7,248.63
J-89	Reliable Electric Co. Inc.	519,215.38	5,192.15
J-91	Reliable Electric Co. Inc.	1,610,986.61	16,109.87
J-92	Reliable Electric Co. Inc.	1,968,165.75	19,681.66
J-93	Reliable Industries, Inc.	6,647,065.00	66,470.65
J-94	Reliable Industries, Inc.	6,805,758.00	68,057.58
J-98	Republic-Asahi Glass Corp.	1,545,454.43	15,454.55
J-100	Sta. Lucia Realty & Dev. Inc.	4,067,544.05	40,675.44
J-101	Tripower, Inc.	4,166,412.85	37,876.38
J-102	Tripower, Inc.	100,563.10	914.21
J-103	Tripower, Inc.	220,230.22	2,002.09
J-104	United Container Corp.	528,659.09	5,286.59
		P 122,053,270.88	P 1,216,456.19

For taxable year 1997

Exhibit	Withholding Agent	Income Payment	Tax Withheld
K-74	Century Container Corporation	P 1,240,741.81	P 12,407.41

K-75	Century Container Corporation	3,098,106.20	30,981.06
K-140	Shoemart Inc.	14,064,650.00	140,646.50
K-141	Shoemart Inc.	4,782,376.00	47,823.76
K-142	Shoemart Inc.	3,386,781.00	33,867.81
K-145	Sta. Lucia Realty & Devt. Inc.	4,067,544.05	40,675.44
K-148	United Container Corp.	1,018,977.27	10,189.77
		P 31,659,176.33	P 316,591.75
	Total 1995 creditable withholding taxes	P 153,712,447.21	P 1,533,047.94

Pursuant to Section 69 of the Tax Code, as amended, the excess tax credits of a given taxable year may only be credited or applied to the succeeding year **(Paseo Realty and Development Corporation vs. Commissioner of Internal Revenue and the Court of Tax Appeals, CA-G.R. SP No. 33589 promulgated on October 14, 1994 and reiterated in the case of Belle Corporation vs. Commissioner of Internal Revenue, CTA Case No. 6070, dated April 10, 2001).** It follows then that the excess creditable withholding taxes for the year 1995 can only be applied against Petitioner's 1996 income tax liability. Considering that Petitioner incurred a net loss and had no income tax liability for the year 1996, it should have filed a claim for refund of the 1995 excess creditable withholding taxes within the two year prescriptive period provided under Section 230 (now 229) of the Tax Code, as amended.

The creditable value added tax (VAT) of P6,745.14 which was withheld in 1996 by the Cavite College of Arts and Trade (Exhibit K-73) was likewise, disallowed and reduced from Petitioner's claim. The said creditable VAT must be credited against its output VAT liability as provided under Section 110 (C) [now 114(C)] of the Tax Code, as amended, and not against its income tax liability.

Thus, only the amounts of P7,221,118.44 and P11,679,509.08 corresponding to the taxable years 1996 and 1997, respectively, were properly supported by Certificates of Withholding Taxes, to wit:

For taxable year 1996

	Income Payment	Tax Withheld
Creditable taxes withheld w/ certificates	P 837,639,636.01	P 8,444,319.77
Less: Creditable taxes withheld in 1995	(122,053,270.88)	(1,216,456.19)
Creditable VAT withheld	(224,838.00)	(6,745.14)
Creditable taxes withheld w/ proper certificates	P 715,361,527.13	P 7,221,118.44

For taxable year 1997

Creditable taxes withheld w/ certificates	P 1,201,654,149.27	P 11,996,100.83
Less: creditable taxes withheld in 1995	(31,659,176.33)	(316,591.75)
Creditable taxes withheld w/ proper certificates	P 1,169,994,972.94	P 11,679,509.08

Anent the third requirement, Petitioner has sufficiently complied with the same. The income corresponding to the substantiated amounts of creditable withholding taxes of P7,221,118.44 and P11,679,509.08, for the years 1996 and 1997, respectively, were proven to be included as part of the gross sales of P2,830,126,895.00 for 1996 and P2,772,729,521.00 for 1997.

Moreover, the income tax payments of P1,643,178.00 and P347,201.00 for the years 1996 and 1997, respectively, were actually paid as evidenced by the 1996 original income tax return (Exhibit A), BPI Certification (Exhibit M) and the machine validated 3rd quarterly income tax return for the year 1997 (Exhibit H).

In sum, Petitioner has sufficiently substantiated its claim for refund of unutilized creditable withholding taxes for the taxable year 1997 but only to the extent of P3,004,483.52, computed as follows:

Taxable year 1997

Gross Income		P 231,004,443.00
Less: Deductions		179,900,092.00
Taxable Income		P 51,104,351.00
Income Tax Due		P 17,886,523.00
Less: Tax Credits/Payments		
1.) Prior year's (1996) excess credits		
a.) Income tax paid per original 1996 ITR	P 1,643,178.00	

b.) Creditable taxes withheld in 1996	7,221,118.44	
2.) 1997 3rd qtr income tax payment	347,201.00	
3.) Creditable taxes withheld in 1997	11,679,509.08	20,891,006.52
Income Tax Refundable		P 3,004,483.52

WHEREFORE, in the light of all the foregoing, the instant Petition for Review is **PARTIALLY GRANTED**. Respondent is hereby **ORDERED** to **REFUND** in favor of Petitioner the amount of P3,004,483.52 representing unutilized creditable withholding taxes for the taxable year 1997.

SO ORDERED.

ERNESTO D. ACOSTA
Presiding Judge

WE CONCUR:

AMANCIO Q. SAGA
Associate Judge

JUANITO C. CASTAÑEDA, JR.
Associate Judge

CERTIFICATION

I hereby certify that the above decision was reached after due consultation with the members of the Court of Tax Appeals in accordance with Section 13, Article VIII of the Constitution.

ERNESTO D. ACOSTA
Presiding Judge