REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

- versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

C.T.A. Case No. 7915

Members:

Bautista, *Chairperson*
Palanca-Enriquez,
Cotangco-Manalastas, *JJ.*

Promulgated:

JUN 6 2012
ABFernando 2:57 p.m.

x- -x

D E C I S I O N

COTANGCO-MANALASTAS, J.:

This is a Petition for Review filed on April 15, 2009 by Philippine Bank of Communications pursuant to the Revised Rules of the Court of Tax Appeals, Rule 8, Section 4(a), in relation to Rule 4 thereof, to review by appeal the inaction of the Commissioner of Internal Revenue over petitioner's administrative claim for the issuance of tax credit certificate in the amount of P24,716,655.00, representing alleged unutilized creditable withholding tax for taxable year 2006.

THE FACTS

Petitioner Philippine Bank of Communications is a domestic corporation organized and existing under the laws of the Republic of the Philippines, with principal office address at PBCOM Tower, 6795 Ayala Avenue corner V. A. Rufino

Street, Makati City. It is engaged in the commercial banking business and registered as such with the Bureau of Internal Revenue (BIR), with Tax Identification Number (TIN) 000-263-340-000.[1]

Respondent, on the other hand, is the duly appointed Commissioner of the Bureau of Internal Revenue duly authorized to perform the duties of said office including, among others, the power to decide, approve and grant refunds or tax credits of erroneously or excessively paid taxes. She holds office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 16, 2007, petitioner filed with the BIR its Annual Income Tax Return (BIR Form No. 1702) for taxable year 2006, through the Electronic Filing and Payment System (EFPS).[2]

On May 2, 2007, petitioner filed an Amended Annual Income Tax Return for the year 2006[3], showing a net loss of P903,582,307.00 and a creditable tax withheld for the fourth quarter of 2006 in the amount of P24,716,655.00. Petitioner also marked the box "To be issued a Tax Credit Certificate" in Line 31 of the above-mentioned Return, indicating its intention to apply for the issuance of tax credit certificate for its excess/unutilized creditable withholding tax (CWT) for the year 2006, in the amount of P24,716,655.00.

On April 3, 2009, petitioner filed with the BIR its letter requesting the issuance of tax credit certificate for the excess creditable tax withheld covering taxable year 2006, in the amount of P24,716,655.44.[4]

---

[1] Pars. 1 and 3, Stipulation of Facts, Joint Stipulation of Facts and Issues (JSFI), docket, pp. 78 and 79.
[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "E"; Par. 4, Stipulation of Facts, JSFI, docket, p. 79; Per instant Petition for Review, amount claimed is P24,716,655.00.

Due to respondent's failure to render a decision on petitioner's claim for tax credit certificate, petitioner filed the instant Petition for Review on April 15, 2009, praying for the issuance of tax credit certificate for its alleged unutilized creditable withholding tax for taxable year 2006, in the amount of P24,716,655.00.

In her Answer[5], respondent interposed the following special and affirmative defenses:

"SPECIAL AND AFFIRMATIVE DEFENSES

4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.

5. The petitioner should fully comply with the provisions stated in Revenue Regulations 6-86 and CIR vs. PERF Realty Corp., GR No. 163345 dated July 4, 2008, which states that:

> 'The CTA, citing Section 10 of Revenue Regulations 6-85 and Citibank, N.A. v. Court of Appeals, determined the requisites for a claim for refund, thus:
>
> 1) That the claim for refund was filed within the two (2) year period as prescribed under Section 230 of the National Internal Revenue Code;
>
> 2) That the income upon which the taxes were withheld was included in the return of the recipient;
>
> 3) 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.

x x x

6. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund/credit.

7. 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 such, they are looked upon with disfavor (*Western Minolco Corp. vs. Commissioner of Internal Revenue, 124 SCRA 1211*)."

---

[5] Docket, pp. 51-54.

During trial, petitioner presented Mr. Percival Ordejon, Head of its Financial Accounting and Tax Management Unit and Mr. Edwin F. Ramos, the duly appointed Independent Certified Public Accountant (Independent CPA) as its witnesses. Thereafter, petitioner filed its Formal Offer of Documentary Exhibits[6], submitting Exhibits "A" to "N", inclusive of sub-markings; which this Court admitted in the Resolution[7] dated June 3, 2011. On the other hand, respondent presented her lone witness, Ms. Cecille V. Uy. Subsequently, respondent filed her Formal Offer of Evidence[8], offering Exhibits "1" to "4"; which were admitted in evidence in the Resolution[9] dated October 13, 2011.

On December 23, 2011, this case was submitted for decision, considering petitioner's Memorandum filed on November 16, 2011 and respondent's Memorandum filed on November 18, 2011.[10]

THE ISSUES

The following are the parties' jointly stipulated issues[11] submitted for this Court's consideration:

> "A. Whether or not the claim for the issuance of a tax credit certificate was filed within the two-year prescriptive period prescribed under Section 204 (C), in relation to Section 229 of the NIRC of 1997 as amended;
>
> B. Whether or not petitioner has an unutilized creditable withholding tax in the amount of P24,716,655 for the calendar year 2006, which is a proper subject of a claim for refund/issuance of tax credit certificate pursuant to Section 76 of the NIRC as amended;
>
> C. Whether or not the income from which the subject creditable taxes were withheld were included as part of the gross income in petitioner's annual income tax return for the calendar year 2006; and

---

[6] Docket, pp. 198-207.
[7] Docket, pp. 212-213.
[8] Docket, pp. 233-235.
[9] Docket, pp. 244-245.
[10] Docket, pp. 277-278.
[11] Docket, pp. 79-80.

D. Whether or not the unutilized creditable withholding tax for the calendar year 2006 in the amount of P24,716,655 was carried–over and applied by petitioner against its tax liabilities in the succeeding taxable year."

The foregoing issues boil down to the issue of whether or not petitioner is entitled to the issuance of tax credit certificate in the amount of P24,716,655.00, representing unutilized creditable withholding taxes for taxable year 2006.

RULING OF THE COURT

In order to be entitled to the issuance of tax credit certificate for excess/unutilized creditable withholding tax, petitioner must satisfy the following requisites:

1. That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(C) in relation to Section 229 of the NIRC of 1997, 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, showing the amount paid and the amount of tax withheld therefrom; and

3. That the income upon which the taxes were withheld were included in the return of the recipient.[12]

Anent the first requisite, the provisions of the National Internal Revenue Code (NIRC) of 1997, as amended, pertinent to claiming a tax refund/tax credit are Sections 204(C) and 229, which provide:

"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

---

[12] Section 2.58, Revenue Regulations No. 2-98, as amended; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

> discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however*, That a return filed showing an overpayment shall be considered as a written claim for credit or refund." *(Emphasis supplied)*
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* - No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." *(Emphasis supplied)*

In *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*[13], the Supreme Court held that the two-year prescriptive period for claiming a refund commences to run on the date of filing of the Final Adjustment Return. It is only when the Final 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.[14]

Based on the foregoing, petitioner has two years from the date of filing of the Final Adjustment Return within which to file a claim for refund or tax credit of excess creditable withholding taxes both in the administrative and judicial levels. The present claim covers taxable year 2006 for which petitioner filed its Annual Income

---

[13] G.R. No. 96322, December 20, 1991.

[14] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992.

Tax Return on April 16, 2007[15]. Counting from this date, the administrative claim filed by petitioner on April 3, 2009[16] and the Petition for Review filed on April 15, 2009 fall within the two-year prescriptive period. Clearly, the first requirement has been satisfied.

As regards petitioner's compliance with the second requisite, the Court of Tax Appeals *En Banc* in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[17] ruled that claims for refund of creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, to wit:

> "On the outset, the third condition is imposed by Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98, which states:
>
> > Sec. 2.58.3. Claim for Tax Credit or Refund. -
> >
> > xxx xxx xxx
> >
> > (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is **established by a copy of the withholding tax statement duly issued by the payor to the payee** showing the amount paid and the amount of tax withheld therefrom. (Emphasis provided)
>
> Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to furnish the same shall be a ground for mandatory audit, *viz.*:
>
> > Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. -
> >
> > xxx xxx xxx
> >
> > (B) Withholding tax statement for taxes withheld. - **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether**

[15] Exhibit "A".
[16] Exhibit "E".
[17] CTA EB Case No. 699, July 27, 2011 (CTA Case No. 7758).

> **individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) showing the income payments made and the amount of taxes withheld therefrom**, for every month of the quarter, within twenty (20) days following the close of taxable quarter employed by the payee in filing his/its quarterly income tax return. The payor, nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.
>
> xxx xxx xxx

The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. **And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307** issued by the income-payor to the recipient-payee." *(Emphasis supplied)*

The breakdown of petitioner's total claim amounting to P24,716,655.00 is summarized as follows:

Findings	**Supporting BIR Returns**	**Reference**	**Amount of Creditable Withholding Tax**
PER ICPA REPORT			
A. ***Sale of property***			
1. Creditable withholding tax payments supported by **original BIR Returns** stamped "received" by the BIR agent and **original** copies of bank validated deposit slips as evidence of tax remittance	1606 & 1706	Annex A1-1, Exhibit F-20	P 616,431.56
2. Creditable withholding tax payments supported by **original BIR Returns** stamped "received" by the BIR agent and **photocopies** of bank validated deposit slips as evidence of tax remittance	1606	Annex A1-2, Exhibit F-20	175,200.00
3. Creditable withholding tax payments supported by **certified true copies of BIR Returns** stamped "received" by the BIR agent and **photocopies** of bank validated deposit slips as evidence of tax remittance	1606	Annex A1-3, Exhibit F-20	600,000.00
4. Creditable withholding tax payments supported by **original BIR Returns** stamped "received" by the BIR agent	1606	Annex A1-4, Exhibit F-20	11,202,694.80
5. Creditable withholding tax payment supported by **original BIR Returns** stamped "received" by the BIR agent and **original certification** issued by the BIR confirming the validity of transaction	1606	Annex A1-1, Exhibit L	228,000.00
6. Creditable withholding tax payment supported by **photocopy of BIR Return** stamped "received" by the BIR agent but with **original certification** issued by the BIR confirming the validity of transaction	1606	Annex A1-2, Exhibit L	210,000.00

7. Creditable withholding tax payments supported by **original BIR** returns stamped "received" by the BIR agent **dated outside the period of claim** and with photocopies of bank validated deposit slips as evidence of tax remittance.	1606	Annex A1-7, Exhibit F-20	144,000.00
8. Underclaimed creditable withholding tax payments	1606	Annex A1-8, Exhibit F-20	(13,531.56)
9. Supporting documents not yet available for verification		Annex A1-9, Exhibit F-20	93,120.00
Sub-total			**P13,255,914.80**
B. *Lease of office space - PBCOM Tower*			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A2-1, Exhibit F-20	P 5,155,697.64
2. Creditable withholding tax payments supported by **original BIR Form 2307 without** the Company's TIN indicated therein	2307	Annex A2-2, Exhibit F-20	438,087.24
3. Creditable withholding tax payments supported by **original BIR Form 2307 with erasure** in amount but with countersignature	2307	Annex A2-3, Exhibit F-20	1,378.13
4. Creditable withholding tax payments supported by **original BIR Form 2307 but with different** Company TIN indicated therein	2307	Annex A2-4, Exhibit F-20	624,626.60
5. Underclaimed creditable withholding tax payments	2307	Annex A2-5, Exhibit F-20	(828,122.91)
6. Supporting documents not yet available for verification		Annex A2-6, Exhibit F-20	2,102,762.24
Sub-total			**P 7,494,428.94**
C. *Interest Income on commercial loans*			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A3-1, Exhibit F-20	P 1,551,051.26
		Annex A2-1, Exhibit L	432,560.44
2. Creditable withholding tax payments supported by **original BIR Form 2307 without** the Company's TIN indicated therein	2307	Annex A3-2, Exhibit F-20	315,980.87
		Annex A2-2, Exhibit L	207,221.67
3. Creditable withholding tax payments supported by **original BIR Form 2307 but not signed** by the withholding agent	2307	Annex A3-3, Exhibit F-20	5,882.52
4. Creditable withholding tax payments supported by **original BIR Form 2307 but with erasure** in the amount	2307	Annex A3-6, Exhibit F-20	3,654.42
		Annex A2-4, Exhibit L	1,088.54
5. Creditable withholding tax payments supported by **original BIR Form 2307 but with different** withholding agent name indicated therein	2307	Annex A3-7, Exhibit F-20	7,941.29
6. Creditable withholding tax payments supported by **original BIR Form 2307 but are not dated within** the period of claim	2307	Annex A2-3, Exhibit L	15,247.12
7. Creditable withholding tax payments supported by **photocopies of BIR Form 2307**	2307	Annex A2-5, Exhibit L	77,305.11
8. Underclaimed creditable withholding tax payments		Annex A3-9, Exhibit F-20	(2.33)
9. Overclaimed creditable withholding tax payments	2307	Annex A2-6, Exhibit L	828.95
Sub-total			**P 2,618,759.86**

D. ***Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)***			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A3-1, Exhibit L	P 53,857.24
2. Creditable withholding tax payments supported by **photocopies of BIR Form 2307** and are **not dated within** the period of claim	2307	Annex A4-1, Exhibit F-20	28,169.31
3. Overclaimed creditable withholding tax payments	2307	Annex A4-3, Exhibit F-20	813.93
4. Creditable withholding tax payments supported by **photocopies of BIR Form 2307**	2307	Based on Annex A3-2, Exhibit L	183,773.28
5. Creditable withholding tax payments supported by **original/photocopies of BIR Form 2307 not dated within** the period of claim	2307	Based on Annex A3-4, Exhibit L	72,238.04
Sub-total			**P 338,851.80**

OTHER FINDINGS

A. ***Interest Income on commercial loans***			
1. Creditable withholding tax payments supported by **original BIR Form 2307 but are not dated within** the period of claim/without date indicated therein/with erasure in the year indicated therein	2307	Based on Annex A3-4, Exhibit F-20 in relation to Annex A2-2, Exhibit L	P 62,786.96
2. Creditable withholding tax payments supported by **original/photocopies of BIR Form 2307 with different/no Company TIN** indicated therein	2307	Based on Annex A3-5, Exhibit F-20 in relation to Annex A2-2, Exhibit L	396,443.03
3. Creditable withholding tax payments supported by **photocopies of BIR Form 2307** only.	2307	Based on Annex A3-8, Exhibit F-20 in relation to Annex A2-1, Exhibit L	12,733.49
4. Supporting documents not yet available for verification		Based on Annex A3-10, Exhibit F-20 in relation to Annexes A2-1 to A2-6, Exhibit L	205,309.44
Sub-total			**P 677,272.92**
B. ***Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)***			
1. Creditable withholding tax payments supported by **photocopies of BIR Form 2307** only.	2307	Based on Annex A4-2, Exhibit F-20 in relation to Annex A3-1, Exhibit L	P 269,822.86
2. Supporting documents not yet available for verification		Based on Annex A4-4, Exhibit F-20 in relation to Annex A3-1 to A3-4, Exhibit L	61,604.26

Sub-total	**P 331,427.12**
Rounding-off difference	(0.44)
TOTAL	**P24,716,655.00**

Based on the above findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner was able to satisfy the second requirement in the amount of P7,738,179.01, as presented below:

Findings	Supporting BIR Returns	Reference	Amount of Creditable Withholding Tax
A. ***Lease of office space - PBCOM Tower***			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A2-1, Exhibit F-20	P5,155,697.64
2. Creditable withholding tax payments supported by **original BIR Form 2307 with erasure** in amount but with countersignature	2307	Annex A2-3, Exhibit F-20	1,378.13
B. ***Interest Income on commercial loans***			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A3-1, Exhibit F-20	1,551,051.26
		Annex A2-1, Exhibit L	432,560.44
2. Creditable withholding tax payments supported by **photocopies of BIR Form 2307**	2307	Annex A2-5, Exhibit L	77,305.11
3. Creditable withholding tax payments supported by **photocopies of BIR Form 2307** only.	2307	Based on Annex A3-8, Exhibit F-20 in relation to Annex A2-1 to A2-6, Exhibit L	12,733.49
C. ***Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)***			
1. Creditable withholding tax payments supported by **original BIR Form 2307**	2307	Annex A3-1, Exhibit L	53,857.24
2. Creditable withholding tax payments supported by **photocopies of BIR Form 2307**	2307	Based on Annex A3-2, Exhibit L	183,773.28
3. Creditable withholding tax payments supported by **photocopies of BIR Form 2307** only.		Based on Annex A4-2, Exhibit F-20 in relation to Annex A3-1, Exhibit L	269,822.86
Rounding-off difference			(0.44)
TOTAL			**P7,738,179.01**

However, out of the amount of P7,738,179.01, which was supported with BIR Form No. 2307, only the amount of P4,624,554.63 CWT shall be granted considering that this is the amount which corresponds to the income payments in the aggregate amount of P100,231,922.69; which the Court verified to have been included in petitioner's General Ledger and Annual Income Tax Return for taxable year 2006, in compliance with the third requisite, to wit:

Exhibit Reference (BIR Returns)	Received from	Amount of Income Payments	Amount of Creditable Withholding Tax
1. Creditable withholding tax payments supported by original BIR Form 2307			
1.A. Lease of Office Space - PBCom Tower			
(Annex A2-1, Exhibit F-20)			
F-2.18	BAX Global	P 697,938.40	P 34,896.93
F-2.19	BAX Global	697,938.40	34,896.92
F-2.25	Convergys	5,605,837.00	280,291.85
F-2.26	Convergys	2,826,918.60	141,345.92
F-2.27	Convergys	2,826,918.60	141,345.92
F-2.28	ESS Manufacturing Inc.	668,273.40	33,413.67
F-2.29	ESS Manufacturing Inc.	668,273.60	33,413.67
F-2.30	ESS Manufacturing Inc.	668,273.40	33,413.67
F-2.31	ESS Manufacturing Inc.	668,273.40	33,413.67
F-2.33	E-Telecare	10,071,057.00	503,552.85
F-2.34	E-Telecare	10,066,229.20	503,311.46
F-2.36	E-Telecare	20,498,955.60	1,024,947.78
F-2.37	Focus Media	21,052.80	1,052.64
F-2.38	La Farge Cement Services Phils., Inc.	2,028,043.60	101,402.18
F-2.43	La Farge Cement Services Phils., Inc.	2,338,050.80	116,902.54
F-2.49	Maersk Logistics Filipinas	1,713,333.60	85,666.68
F-2.55	Maersk Logistics Filipinas	1,793,600.20	89,680.01
F-2.56	Manpower Outsourcing Services	725,334.80	36,266.74
F-2.57	Manpower Outsourcing Services	725,334.80	36,266.74
F-2.58	Manpower Outsourcing Services	725,334.80	36,266.74
F-2.59	Manpower Outsourcing Services	725,334.80	36,266.74
F-2.65	Mitsubishi Corp.	945,475.80	47,273.79
F-2.68	Mitsubishi Corp.	995,237.80	49,761.89
F-2.72	Mitsubishi Corp.	995,237.80	49,761.89
F-2.94	Philam Insurance Co., Inc.	1,716,815.00	85,840.76
F-2.98	Philam Insurance Co., Inc.	1,716,815.20	85,840.76
F-2.105	Philam Insurance Co., Inc.	1,716,815.20	85,840.76
F-2.112	Primary Breeders	222,062.20	11,103.12
F-2.113	Primary Breeders	222,062.20	11,103.12
F-2.114	Primary Breeders	222,062.20	11,103.12

F-2.116	Prime Manpower	293,911.60	14,695.58
F-2.117	Prime Manpower	293,911.60	14,695.58
F-2.118	Prime Manpower	293,911.60	14,695.58
F-2.119	Prime Manpower	293,911.60	14,695.58
F-2.147	Smart Communications	36,465.20	1,823.26
F-2.148	Smart Communications	37,500.00	1,875.00
F-2.149	Smart Communications	37,500.00	1,875.00
F-2.150	Smart Communications	38,288.40	1,914.42
F-2.167	Wan Hai Lines Phils., Inc.	1,111,108.40	55,555.42
F-2.168	Wan Hai Lines Phils., Inc.	1,666,662.80	83,333.14
F-2.170	Wan Hai Lines Phils., Inc.	1,666,662.80	83,333.14
F-2.171	Wan Hai Lines Phils., Inc.	1,666,662.80	83,333.14
F-2.172	Wireless Service Asia	905,787.20	45,289.36
	Total	**P 83,855,174.20**	**P 4,192,758.73**
1.B.1. Interest Income on Commercial Loans			
(Annex A3-1, Exhibit F-20)			
F-2.174	Abacus Capital and Investment	P 54,049.35	P 1,080.99
F-2.175	Abacus Capital and Investment	47,818.70	956.37
F-2.176	Abacus Capital and Investment	50,162.96	1,003.26
F-2.177	Abacus Capital and Investment	54,000.79	1,080.02
F-2.178	Abacus Capital and Investment	49,620.78	992.42
F-2.179	Abacus Capital and Investment	40,688.85	813.78
F-2.180	Abacus Capital and Investment	47,406.49	948.13
F-2.186	Abacus Capital and Investment	206,994.75	4,139.90
F-2.635	Abacus Capital and Investment	341,066.52	6,821.33
F-2.636	Abacus Capital and Investment	178,049.66	3,560.99
F-2.188	Abacus Capital and Investment	176,215.72	3,524.31
F-2.639	Abacus Capital and Investment	170,163.27	3,403.27
F-2.640	Abacus Capital and Investment	372,816.03	7,456.32
F-2.189	Abacus Capital and Investment	180,757.24	3,615.14
F-2.645	Abacus Capital and Investment	55,772.99	1,115.46
F-2.194	Abacus Capital and Investment	38,034.26	760.69
F-2.212	Eastern Telecommunications Phils. Inc.	1,818,666.67	36,373.33
F-2.216	Eastern Telecommunications Phils. Inc.	520,000.00	10,400.00
F-2.224	Granexport Manufacturing Corp.	519,643.05	10,392.86
F-2.225	Granexport Manufacturing Corp.	349,375.00	6,987.50
F-2.227	Granexport Manufacturing Corp.	612,750.00	12,255.00
F-2.243	Lepanto Consolidated Mining Co.	86,507.68	1,730.15
F-2.244	Lepanto Consolidated Mining Co.	89,391.27	1,787.83
F-2.681	Vista Holding Corporation	167,319.48	3,346.39
F-2.682	Vista Holding Corporation	271,815.53	5,436.31
F-2.683	Vista Holding Corporation	143,158.04	2,863.16
F-2.685	Vista Holding Corporation	203,058.07	4,061.16
F-2.686	Vista Holding Corporation	224,548.65	4,490.97
F-2.687	Vista Holding Corporation	145,490.33	2,909.81
F-2.688	Vista Holding Corporation	135,325.76	2,706.52
F-2.689	Vista Holding Corporation	230,926.46	4,618.53
F-2.690	Vista Holding Corporation	222,405.79	4,448.12

F-2.691	Vista Holding Corporation	134,254.33	2,685.09
F-2.692	Vista Holding Corporation	213,956.55	4,279.13
F-2.693	Vista Holding Corporation	124,304.04	2,486.08
F-2.694	Vista Holding Corporation	234,947.13	4,698.94
F-2.695	Vista Holding Corporation	140,918.90	2,818.38
F-2.696	Vista Holding Corporation	211,885.12	4,237.70
	Total	**P 8,864,266.21**	**P 177,285.34**
1.B.2. Interest Income on Commercial Loans			
(Annex A2-1, Exhibit L)			
L-1.40	Abacus Securities Corporation	P 268,567.50	P 5,371.35
L-1.49	Eastern Telecommunicats Phils, Inc.	1,760,000.00	35,200.00
L-1.33	Lepanto Consolidated Mining Co.	92,274.86	1,845.50
	Total	**P 2,120,842.36**	**P 42,416.85**
1.C. Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)			
(Annex A3-1, Exhibit L)			
L-1.112	Banco de Oro (Daiichi Properties)	P 926,152.80	P 46,307.64
	Total	**P 926,152.80**	**P 46,307.64**
2. Creditable withholding tax payments supported by photocopies of BIR Form 2307			
2.A.1. Interest Income on Commercial Loans			
(Annex A2-5, Exhibit L)			
L-1.76	Northern Cement	P 678,125.00	P 13,562.50
L-1.77	Northern Cement	883,208.33	17,664.17
	Total	**P 1,561,333.33**	**P 31,226.67**
2.A.2. Interest Income on Commercial Loans			
(Based on Annex A3-8, Exhibit F-20 in relation to Annex A2-1, Exhibit L)			
F-2.246	Lepanto Consolidated Mining Co.	P 86,507.50	P 1,730.15
F-2.247	Lepanto Consolidated Mining Co.	89,391.27	1,787.83
F-2.251	Lepanto Consolidated Mining Co.	89,391.27	1,787.83
	Total	**P 265,290.04**	**P 5,305.81**
2.B.1. Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)			
(Based on Annex A3-2, Exhibit L)			
L-1.107	Blue Boz	P 157,445.00	P 7,872.25
L-1.108	Blue Boz	157,445.00	7,872.25
L-1.109	Blue Boz	157,445.00	7,872.25
L-1.110	Blue Boz	157,445.00	7,872.25
L-1.111	Blue Boz	157,445.00	7,872.25
L-1.120	GKE Group	75,496.00	3,774.80
L-1.116	GL Language	53,783.40	2,689.17
L-1.117	ING Bank	91,211.24	4,560.58
L-1.121	K International Service	147,378.00	7,368.90
L-1.122	K International Service	147,378.00	7,368.90
L-1.123	K International Service	147,378.00	7,368.90
L-1.132	SAS Institute Phils. Inc.	120,604.00	6,030.20
L-1.102	Sodexho Pass	102,324.00	5,116.20
L-1.103	Sodexho Pass	102,324.00	5,116.20
L-1.104	Sodexho Pass	102,324.00	5,116.20
L-1.105	Sodexho Pass	102,324.00	5,116.20
L-1.106	Sodexho Pass	102,324.00	5,116.20

L-1.101	Sodexho Pass	419,916.00	20,995.80
	Total	**P 2,501,989.64**	**P 125,099.50**
2.B.2. Lease of office space - Real and Other Properties Owned/Acquired (ROPOA)			
(Based on Annex A4-2, Exhibit F-20 in relation to Annex A3-1, Exhibit L)			
F-2.596	GL Language (Daiichi Properties)	P 107,566.80	P 2,689.17
F-2.610	Mechel Metal Properties (Daiichi Properties)	29,307.31	1,465.36
	Total	**136,874.11**	**4,154.53**
	Rounding off difference		**(0.44)**
	GRAND TOTAL	**P 100,231,922.69**	**P 4,624,554.63**

In sum, petitioner has sufficiently proven compliance with the three requisites for the refund of unutilized creditable withholding taxes, but only to the extent of P4,624,554.63 out of the total claimed CWT of P24,716,655.00.

The Court shall now determine whether petitioner exercised the option to carry-over its excess creditable withholding taxes to the succeeding quarters, as provided under Section 76 of the NIRC of 1997, as amended, which reads:

> "SEC. 76. *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
>
> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
>
> In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. **Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor.**" *(Emphasis supplied)*

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. However, once the option to carry-over has been made, the same becomes irrevocable for that taxable period.

Records reveal that in its Final Income Tax Return for taxable year 2006[18], petitioner reflected a net loss of P903,582,307.00[19] and income tax overpayment of P65,800,469.00[20], which petitioner marked as "To be Issued a Tax Credit Certificate"[21].

A perusal of said Return shows that the income tax overpayment of P65,800,469.00 consists of the following:

Prior year's excess credits	P 41,083,814.00
Creditable tax withheld during the year	24,716,655.00
Total	P 65,800,469.00

Petitioner was unable to utilize the total tax credits of P65,800,469.00 because it had no income tax liability due to losses incurred in its operations.

In petitioner's 2007 Quarterly Income Tax Returns for the first[22], second[23] and third[24] quarters as well as in its 2007 Annual Income Tax Return[25], only the amount of P41,083,814.00 was reflected as "Prior Year's Excess Credits". Clearly, the claimed CWT amounting to P24,716,655.00 for the year 2006 was not carried over to the succeeding quarters or taxable year.

WHEREFORE, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in the reduced amount of **FOUR MILLION SIX**

[18] Exhibit "B".
[19] Exhibit "B", Line 21B.
[20] Exhibit "B", Line 28G.
[21] Exhibit "B", Line 31.
[22] Exhibit "F-14".
[23] Exhibit "F-15".
[24] Exhibit "F-16".
[25] Exhibit "D".

HUNDRED TWENTY-FOUR THOUSAND FIVE HUNDRED FIFTY-FOUR AND 63/100 PESOS (P4,624,554.63), representing petitioner's unutilized creditable withholding tax for taxable year 2006.

SO ORDERED.

AMELIA R. COTANGCO- MANALASTAS
Associate Justice

WE CONCUR:

LOVELL R. BAUTISTA
Associate Justice

OLGA PALANCA-ENRIQUEZ
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, Article VIII of the Constitution and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court.

ERNESTO D. ACOSTA
Presiding Justice