REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

BETHLEHEM HOLDINGS, INC., *Petitioner,*	**CTA CASE NO. 10284**
	Members:
- versus -	**BACORRO-VILLENA**, *Acting Chairperson, and* **CUI-DAVID**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: SEP 26 2023 4:10 p.m.

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DECISION

CUI-DAVID, J.:

Before the Court is a *Petition for Review*[1] filed by petitioner Bethlehem Holdings, Inc. on June 25, 2020, praying for the Court to render judgment ordering respondent Commissioner of Internal Revenue to refund the amount of ₱8,488,148.00, representing petitioner's alleged unutilized creditable withholding taxes (CWT) for the calendar year (CY) 2017.

THE PARTIES

Petitioner is a domestic corporation duly organized and existing under Philippine laws, with principal office at 3F Globe Telecom Tower 1, Pioneer corner Madison Streets, Mandaluyong City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), Revenue District Office (RDO) No. 41, with Taxpayer Identification No. 006-731-601-000. Prior thereto, petitioner was registered with BIR RDO No. 43-A.[3]

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[1] Docket – Vol. I, pp. 7-24.

[2] Par. 2, Stipulated Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. I, p. 181; Exhibit "P-1", Docket – Vol. I, pp. 383 to 396.

[3] Par. 3, Stipulated Facts, JSFI, Docket – Vol. I, p. 182; Exhibit "P-2", Docket – Vol. I, p. 397.

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue (CIR) vested under the law with the authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes. He may be served with summons, pleadings, and other processes at his office on the 5th Floor, BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS AND THE PROCEEDINGS

On March 22, 2018, petitioner allegedly filed with the BIR, through the electronic Filing and Payment System (*e*FPS), its Annual Income Tax Return (ITR) for CY 2017, reporting a tax overpayment of ₱83,891,443.00, computed as follows:

MCIT Due		₱ 1,067,533.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits	₱76,470,828.00	
CWT from Previous Quarters (CY 2017)	6,366,111.00	
CWT for the Fourth Quarter (CY 2017)	2,122,037.00	84,958,976.00
Total Overpayment		₱ (83,891,443.00)

Petitioner avers that it did not carry over its excess and unutilized CWTs for CY 2017 amounting to ₱8,488,148.00[5] to the succeeding taxable year as it indicated on the face of its Annual ITR for CY 2017 its option to be refunded for the said amount.

Thus, on February 19, 2020, petitioner filed with the RDO No. 41 an *Application for Tax Credits/Refunds* (BIR Form No. 1914)[6] and a letter dated February 18, 2020,[7] applying for the refund of its alleged excess and unutilized CWTs for CY 2017, in the amount of ₱8,488,148.00.

Due to respondent's alleged inaction, petitioner elevated its claim for refund before the Court *via* the instant *Petition for Review* filed on June 25, 2020.

[4] Par. 1, Stipulated Facts, JSFI, Docket – Vol. I, p. 181.
[5] Computed as: ₱6,366,111.00 plus ₱2,122,037.
[6] Exhibit "P-12-A", Docket – Vol. I, p. 478.
[7] Exhibit "P-12", Docket – Vol. I, p. 477.

On August 24, 2020, respondent filed a *Motion for Extension of Time to File Answer*,[8] which the Court granted[9] and gave respondent an additional thirty (30) days from August 8, 2020, or until September 7, 2020, to file his *Answer*.

In his belatedly filed *Answer*, which the Court admitted per Resolution dated September 29, 2020, respondent submits that the instant *Petition for Review* should be dismissed for lack of merit. *First*, the filing of the instant *Petition for Review* is premature because of the failure of petitioner to exhaust administrative remedies. *Second*, petitioner is in bad faith for filing its administrative claim before the BIR one (1) month before its claim for refund prescribes, thus depriving the BIR of making an assessment and/or audit investigation on its claim. *Third*, for one to be entitled to a claim for a refund of excess and unutilized CWT, the following requirements must concur:

1. That the claim for refund was filed within the two-year reglementary period pursuant to Section 229 of the NIRC;

2. When it is shown on the ITR that the income payment received is being declared part of the taxpayer's gross income; and

3. When 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 income tax withheld from that amount.

For respondent, it is axiomatic that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund, as tax refunds, like tax exemptions, are construed strictly against the taxpayer.

The *Pre-Trial Conference* was then set for February 18, 2021.[10] Prior to the scheduled *Pre-Trial Conference, Petitioner's Pre-Trial Brief* was filed on February 11, 2021,[11] while *Respondent's Pre-Trial Brief* was filed on February 15, 2021.[12]

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[8] Docket – Vol. I, pp. 132 to 134.
[9] Resolution dated September 8, 2020, Docket – Vol. I, p. 136.
[10] Resolution dated September 29, 2020, Docket – Vol. I, pp. 150 to 151; Minutes of the hearing held on, and Order dated, February 18, 2021, Docket – Vol. I, pp. 173, and 176 to 177, respectively.
[11] Docket – Vol. I, pp. 153 to 165.
[12] Docket – Vol. I, pp. 166 to 168.

After the *Pre-Trial Conference*, the parties filed their *Joint Stipulation of Facts and Issues*[13] on March 18, 2021, based on which a *Pre-Trial Order*[14] was issued on June 3, 2021. The *Pre-Trial Order* stated that respondent would not present any testimonial and/or documentary evidence.

Thus, during the trial, only petitioner presented evidence in support of its claim. Petitioner presented (1) Mr. James Kenneth Venta, its Comptroller and Administrative Head, and (2) Mr. Glenn Ian D. Villanueva, the Court-commissioned Independent Certified Public Accountant (ICPA), as witnesses to prove its allegations.

Mr. James Kenneth Venta (Mr. Venta), by way of a Judicial Affidavit,[15] testified that he is petitioner's Comptroller and Administrative Head since August 1, 2013. As Comptroller and Administrative Head, he is responsible for planning, reporting, evaluating, and overseeing the financial aspects of petitioner's business. According to him, these duties include compliance with the tax laws and regulations implemented by the BIR and the preparation of petitioner's tax returns and other financial reports. He added that he also handles the processing of petitioner's administrative and judicial claims for refund of overpaid and erroneously paid taxes.

Mr. Venta declared that he is aware of the circumstances of this case, which involves petitioner's claim for refund of excess and unutilized CWTs for CY 2017 in the amount of ₱8,488,148.00. According to him, petitioner was unable to utilize its CWTs for CY 2017 because petitioner reported zero net taxable income for CY 2017. He explained that in CY 2017, petitioner's gross revenues from the sale of services amounted to ₱57,473,344.00, while its cost of sales/services amounted to ₱4,096,706.00. Thus, petitioner had a gross income of ₱53,376,638.00. However, after deducting petitioner's ordinary allowable deductions for CY 2017 of ₱22,373,208.00 and Net Operating Loss Carry Over (NOLCO) of ₱31,003,430.00, petitioner was left with a zero net taxable income.

Mr. Venta continued that since petitioner reported zero net taxable income, petitioner was not liable for the 30% regular corporate income tax (RCIT) but for the minimum corporate income tax (MCIT), which amounted to ₱1,067,533.00.

[13] Docket – Vol. I, pp. 181 to 186.
[14] Docket – Vol. I, pp. 249 to 255.
[15] Exhibit "P-12", Docket, pp. 64 to 76.

Mr. Venta further declared that petitioner deducted the MCIT due for CY 2017 from its available income tax credits in the aggregate amount of ₱84,958,976.00 consisting of the prior year's excess credits in the amount of ₱76,470,828.00 and CWTs accumulated during the four (4) quarters of CY 2017 in the aggregate amount of ₱8,488,148.00. Thus, petitioner allegedly had a tax overpayment of ₱83,891,443.00 for CY 2017.

When asked what petitioner did, if any, with the remaining tax credits for CY 2017, Mr. Venta answered that with respect to the CWTs that petitioner had accumulated during the four (4) quarters of CY 2017, petitioner opted to file a claim for refund of the amount of ₱8,488,148.00 by ticking the said option in its amended quarterly and annual ITRs for CY 2017. Concerning the remainder of the "prior year's excess credits" carried over from CY 2014, amounting to ₱77,440,461.00, petitioner continued to carry it forward to CY 2018 after deducting the MCIT due for CY 2017. Thus, only the amount of ₱75,403,295.00 was carried over to CY 2018, as reflected in petitioner's amended quarterly and annual ITRs for CY 2018.

Since petitioner opted to refund its excess and unutilized CWTs for CY 2017, petitioner filed on February 19, 2020, a letter-request for refund with the BIR RDO No. 41. Attached to the said letter-request is the Application for Tax Credits/Refunds (BIR Form No. 1914) and the documentary requirements in support of petitioner's administrative claim for refund. To date, respondent has not yet decided on petitioner's administrative claim for a refund.

ICPA Glenn Ian D. Villanueva (ICPA Villanueva), also by way of Judicial Affidavit,[16] testified that he was commissioned by the Court to perform the duties and responsibilities of an ICPA pursuant to Rule 13 of the Revised Rules of the Court of Tax Appeals (RRCTA).

According to ICPA Villanueva, and pursuant to the directive of the Court, he submitted his Report[17] on petitioner's claim for refund of excess and unutilized CWTs for CY 2017 on May 28, 2021. He declared that the objectives of his examination of petitioner's supporting documents are as follows:

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[16] Exhibit "P-14", Docket – Vol. I, pp. 263 to 272.
[17] Exhibit "P-15", Docket – Vol. I, pp. 219 to 246.

1. To verify that the CWTs being claimed for a refund by petitioner were duly supported by Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by various withholding agents;

2. To ascertain whether the income from which the CWTs being claimed for refund was declared as part of petitioner's gross income in its ITR;

3. To verify the validity of the "prior year's excess credits" in the amount of ₱76,470,828.00 that was reported in petitioner's Amended Annual ITR for CY 2017, to determine whether the CWTs being claimed for refund were applied against petitioner's income tax liability for CY 2017; and

4. To ascertain whether the CWTs being claimed for refund were carried over and/or utilized or applied against petitioner's income tax liability for the succeeding periods.

ICPA Villanueva concluded that based on the results of the procedures performed, it was established that the excess and unutilized CWTs for CY 2017 in the amount of ₱8,488,148.00 may be refunded since these were fully supported with valid and compliant BIR Form No. 2307 duly issued by the authorized representatives of its customers, the related income payments in the CWT certificates were recorded properly in the General Ledger/Annual Financial Statements and declared as taxable revenues in the ITR, and the adjusted balance of prior year's excess credits were sufficient to cover the MCIT due for CY 2017.

There being no more witnesses to present, and upon the instance of petitioner's counsel, petitioner was granted fifteen (15) days from March 17, 2022, or until April 1, 2022, to file its Formal Offer of Evidence (FOE), copy furnished respondent's counsel by personal service. Respondent was also given ten (10) days from receipt of petitioner's FOE to file his comment thereto.[18]

On March 31, 2022, petitioner filed its *Formal Offer of Evidence*.[19] Respondent, on the other hand, filed his *Comment*[20] thereto on April 12, 2022.

[18] Minutes of the Hearing held on March 17, 2022, Docket – Vol. I, p. 364.
[19] Docket – Vol. I, pp. 367 to 382.
[20] Docket – Vol. I, pp. 480 to 481.

On May 31, 2022, the Court issued a Resolution[21] admitting petitioner's exhibits, *except* for Exhibits "P-27 to P-28", for failure to present the originals for comparison. Petitioner moved for reconsideration,[22] but the same was denied in the Resolution[23] dated September 1, 2022.

On October 14, 2022, petitioner filed its *Memorandum*.[24] Respondent failed to file his memorandum per Records Verification Report dated October 18, 2022.[25]

On November 7, 2022, the instant case was submitted for decision.[26]

Hence, this Decision.

THE ISSUE

The parties agreed that the sole issue[27] to be resolved by the Court is:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF THE AMOUNT OF PHP8,488,148.00, REPRESENTING PETITIONER'S EXCESS AND UNUTILIZED CWTs FOR THE CALENDAR YEAR 2017."

Petitioner's Arguments:

Petitioner argues that based on the law and relevant jurisprudence, it is entitled to the refund of the amount of ₱8,488,148.00, as it was able to comply with the requirements for claiming a refund or issuance of tax credit certificate for its excess and unutilized CWTs for CY 2017. In addition, it was also able to prove that it did not carry over or utilize its excess CWTs to the succeeding taxable year and that its "Prior Year's Excess Credits" are sufficient to cover the MCIT due for CY 2017.

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[21] Docket – Vol. II, pp. 486 to 487.
[22] Docket – Vol. II, pp. 488 to 494.
[23] Docket – Vol. II, pp. 502 to 507.
[24] Docket – Vol. II, pp. 508 to 530.
[25] Records Verification dated October 18, 2022 issued by this Court's Judicial Records Division, Docket – Vol. II, p. 532.
[26] Docket – Vol. II, p. 534.
[27] Issue, JSFI, Docket – Vol. I, p. 182.

Respondent's Counter-arguments:

For his part, respondent contends that petitioner is in bad faith for allegedly filing an administrative claim before the BIR one (1) month before its claim for refund prescribes; that petitioner carried over the balance of its prior years' excess credits in its Annual and Quarterly ITRs for CY 2018 and, thus, it is now barred from claiming tax refund; that petitioner did not file any evidence to prove its allegations that its excess CWTs for CY 2017 or even accumulated creditable withholding taxes for such year is earmarked for refund; that petitioner is estopped from claiming a refund because although it signified its option to refund its excess creditable withholding tax, it carried over the same to the succeeding taxable year; and that petitioner failed to demonstrate that the tax subject in the instant case was erroneously or illegally collected.

THE COURT'S RULING

The instant *Petition for Review* is impressed with merit.

The Court has jurisdiction over the instant Petition.

Considering the timely filing of the instant *Petition for Review*, as discussed below, the Court has jurisdiction to take cognizance of the instant case pursuant to Section 3(a)(2),[28] Rule 4 of the RRCTA.

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[28] SEC. 3. *Cases Within the Jurisdiction of the Court in Divisions.* — The Court in Divisions shall exercise:
(a) Exclusive original or appellate jurisdiction to review by appeal the following:
xxx xxx xxx
(2) Inaction by the Commissioner of Internal Revenue in cases involving disputed assessments, refunds of internal revenue taxes, fees or other charges, penalties in relation thereto, or other matters arising under the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code or other applicable law provides a specific period for action: Provided, that in case of disputed assessments, the inaction of the Commissioner of Internal Revenue within the one hundred eighty day-period under Section 228 of the National Internal Revenue Code shall be deemed a denial for purposes of allowing the taxpayer to appeal his case to the Court and does not necessarily constitute a formal decision of the Commissioner of Internal Revenue on the tax case; Provided, further, that should the taxpayer opt to await the final decision of the Commissioner of Internal Revenue on the disputed assessments beyond the one hundred eighty day-period abovementioned, the taxpayer may appeal such final decision to the Court under Section 3(a), Rule 8 of these Rules; and Provided, still further, that in the case of claims for refund of taxes erroneously or illegally collected, the taxpayer must file a petition for review with the Court prior to the expiration of the two-year period under Section 229 of the National Internal Revenue Code; xxx

Petitioner's compliance with the requirements of Section 76 of the NIRC of 1997, as amended.

Section 76 of the National Internal Revenue Code (NIRC) of 1997, as amended, specifies the manner by which claims for refund or credit of excess income tax payments or unutilized CWT may be made by a corporate taxpayer, to wit:

> 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
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> (B) Carry-over the excess credit; or
>
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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> 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)*

Under the above provision, there are two options available to a corporation whenever it *overpays* its income tax for the taxable year: *(1)* to **carry over** and apply the overpayment as a tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years until fully utilized, and *(2)* to apply for a **cash refund** or issuance of a **tax credit certificate** within the prescribed period.[29] However, once the carry-over option is taken actually or constructively, it becomes irrevocable

[29] *University Physicians Services, Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.

for that taxable period.[30] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[31]

In exercising its option, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR form) its intention either to carry over the excess credit or to claim a refund. To facilitate tax collection, these remedies are in the alternative, and the choice of one precludes the other.[32]

In the case at bar, petitioner marked the box corresponding to the option "To be Refunded" in its annual ITR for CY 2017.[33] The same return shows that petitioner had income tax credits in the total amount of ₱84,958,976.00,[34] consisting of the ₱76,470,828.00 prior year's excess credits other than MCIT and ₱8,488,148.00 creditable taxes withheld during the CY 2017, to wit:

Prior Year's Excess Credits other than MCIT		₱ 76,470,828.00
Add: Creditable Taxes Withheld – CY 2017		
Creditable tax withheld for the first three quarters	₱ 6,366,111.00	
Creditable tax withheld per BIR Form 2307 for the fourth quarter	2,122,037.00	8,488,148.00
Total tax credits		**₱ 84,958,976.00**

Petitioner claims that its MCIT due in the amount of ₱1,067,533.00[35] for CY 2017 was paid using a portion of its prior year's excess credits of ₱76,470,828.00. This leaves the prior year's excess credits in the amount of ₱75,403,295.00 and creditable taxes withheld during the CY 2017 in the amount of ₱8,488,148.00, totaling ₱83,891,443.00 as unutilized as of December 31, 2017, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 76,470,828.00
Less: Tax Due (MCIT)	1,067,533.00
Balance of Prior Year's Excess Credits	₱ 75,403,295.00
Add: Creditable Taxes Withheld – CY 2017	8,488,148.00
Excess Creditable Withholding Taxes as of December 31, 2017	**₱ 83,891,443.00**

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[30] *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 & 162004, December 14, 2005; *Systra Philippines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[31] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[32] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[33] Exhibit "P-3", Line 21, Docket – Vol. I, p. 398.
[34] Exhibit "P-3", Schedule 7, Docket - Vol. I, p. 403.
[35] Exhibit "P-3", Line 44, Docket – Vol. I, p. 399.

As illustrated below, the prior year's excess credits of ₱76,470,828.00 arose from the years 2009 to 2014, *viz*:

Annual Income Tax Return *(Exhibit)*	**Taxable Year**	**Income Tax Due** *(a)*	**Prior Year's Excess Credits** *(b)*	**(Income Tax Still Due)/Balance of Prior Year's Excess Credits** *(c)= (b)+(a)*	**CWT for the Year** *(d)*	**Excess CWT at the end of the Year** *e = (c)+(d)*
"P-130"	2008		-	-	1,785.71	1,785.71
"P-131"	2009		1,785.00	1,785.00	13,945,304.00	13,947,089.00
"P-132"	2010		13,947,089.00	13,947,089.00	16,644,391.00	30,591,480.00
"P-133"	2011	2,209,777.00	30,591,480.00	28,381,703.00	14,148,920.00	42,530,623.00
"P-134"	2012	2,120,567.22	42,530,623.00	40,410,055.78	13,816,757.00	54,226,812.78
"P-135"	2013	1,860,538.00	54,226,813.00	52,366,275.00	14,465,223.00	66,831,498.00
"P-137"	2014	1,806,281.00	66,831,498.00	65,025,217.00	13,386,790.00	78,412,007.00
"P-139"	2015	971,547.00	78,412,007.00	77,440,460.00	8,004,578.00**	85,445,038.00
"P-140"	2016	969,632.00	77,440,461.00*	76,470,829.00	7,859,319.00**	84,330,148.00

- *Amount carried-over from CY 2015 is greater by ₱1 which resulted in the balance of the prior year's excess credits of ₱76,470,829.00, instead of ₱76,470,828.00 as of the end of CY 2016*

***Amount claimed for refund or issuance of TCC under CTA Case No. 9789* (Exhibit "P-150")
***Amount claimed for refund under CTA Case No. 10050* (Exhibit "P-151")

To prove the existence of the prior year's excess credits of ₱76,470,828.00, petitioner submitted various BIR Forms No. 2307 - *Certificates of Creditable Taxes Withheld at Source* (CWT certificates) for the CYs 2009 to 2014[36] duly issued by its clients, as well as the *Schedules of Creditable Taxes Withheld* for the CYs 2009 to 2014,[37] reflecting CWTs in total amount of ₱86,374,133.37.

Upon verification, the Court finds that out of the CWTs from the prior years of ₱86,374,133.37, the amount of ₱16,511,558.67 shall be disallowed due to the following reasons:

[36] Exhibits "P-18" to "P-26", "P-29" to "P-121".
[37] Exhibit "P-15", Annexes B-1 to B-6, Docket – Vol. I, pp. 237 to 242.

Exhibit	Payor	Income Payment	Tax Withheld
Supported by CWT certificates without the petitioner's address			
"P-19"	Altimax Broadcasting Co., Inc.	₱ 61,680,000.00	₱ 9,252,000.00
"P-26"	Halo Holdings, Inc.	53,571.42	2,678.57
	Sub-total	**₱ 61,733,571.42**	**₱ 9,254,678.57**
Supported by CWT certificates with incorrect TIN of petitioner			
"P-35"	Broadcast Enterprises and Affiliated Media (Beam) Inc	₱ 6,772,100.64	₱ 1,015,815.10
"P-39"	Altimax Broadcasting Co. Inc	41,607,100.01	6,241,065.00
	Sub-total	**₱ 48,379,200.65**	**₱ 7,256,880.10**
	TOTAL	**₱110,112,772.07**	**₱16,511,558.67**

Accordingly, petitioner's prior years' tax credits amounted only to ₱69,862,574.70, which shall then be utilized to pay the prior years' income tax liabilities in the total amount of ₱9,938,342.22; thus, leaving only an amount of ₱59,924,232.48 prior year's excess tax credits, as computed below:

CWTs for CY 2009[38]		₱ 13,928,803.57
CWTs for CY 2010[39]		16,644,390.40
CWTs for CY 2011[40]		14,124,170.02
CWTs for CY 2012[41]		13,816,757.35
CWTs for CY 2013[42]		14,465,222.76
CWTs for CY 2014[43]		13,394,789.27
Total		**₱ 86,374,133.37**
Less: Disallowances		16,511,558.67
Valid CWTs for CYs 2009 to 2014		₱ 69,862,574.70
Less: Income Taxes Due		
CY 2009[44]	₱ 0.00	
CY 2010[45]	0.00	
CY 2011[46]	2,209,777.00	
CY 2012[47]	2,120,567.22	
CY 2013[48]	1,860,538.00	
CY 2014[49]	1,806,281.00	
CY 2015[50]	971,547.00	
CY 2016[51]	969,632.00	9,938,342.22
Excess tax credits as of December 31, 2016		**₱ 59,924,232.48**

[38] Exhibit "P-15", Annex B-1, Docket – Vol. I, p. 237.
[39] Exhibit "P-15", Annex B-2, Docket – Vol. I, p. 238.
[40] Exhibit "P-15", Annex B-3, Docket – Vol. I, p. 239.
[41] Exhibit "P-15", Annex B-4, Docket – Vol. I, p. 240.
[42] Exhibit "P-15", Annex B-5, Docket – Vol. I, p. 241.
[43] Exhibit "P-15", Annex B-6, Docket – Vol. I, p. 242.
[44] Exhibit "P-131", Line 29.
[45] Exhibit "P-132", Line 28.
[46] Exhibit "P-133", Line 32.
[47] Exhibit "P-134", Line 32.
[48] Exhibit "P-135", Line 44.
[49] Exhibit "P-136", Line 44.
[50] Exhibit "P-139", Line 44.
[51] Exhibit "P-140", Line 44.

Apparently, the substantiated prior year's excess tax credits amounting to ₱59,924,232.48 are more than sufficient to cover petitioner's income tax liability for CY 2017 in the amount of ₱1,067,533.00.[52]

As stated earlier, in its annual ITR for CY 2017, petitioner marked the box corresponding to the option "To be Refunded,"[53] clearly manifesting its intention to claim for a refund of its excess CWTs for the period. Further, as gleaned from its Quarterly[54] and Annual[55] ITRs for CY 2018, petitioner reflected only the amount of ₱75,403,295.00 as "Prior Year's Excess Credits." Indeed, the excess CWTs for CY 2017 for ₱8,488,148.00, subject of the present case, have not been carried over to the succeeding CY 2018 and may be refunded to petitioner under Section 76 of the NIRC of 1997, as amended, if it complies with the other requirements, as discussed below.

Petitioner's compliance with the other requirements or requisites for a claim for refund of excess or unutilized CWTs.

In a plethora of cases,[56] the Supreme Court enumerated the requisites for claiming a refund of excess or unutilized CWT as follows:

> 1. The claim must be filed with the CIR within the two (2)-year period from the date of payment of the tax;
>
> 2. The fact of withholding must be established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and

[52] Exhibit "P-3", Line 16, Docket – Vol. I, p. 398.
[53] Exhibit "P-3", Line 21, Docket – Vol. I, p. 398.
[54] Exhibits "P-8" to "P-10", Line 31A, Docket – Vol. I, pp. 463, 465 and 467.
[55] Exhibit "P-11", Line 1, Schedule 7, Docket – Vol. I. p. 474.
[56] *Commissioner of Internal Revenue vs. Philippine Bank of Communications*, G.R. No. 211348, February 23, 2022, citing the cases of *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corp.*, 667 Phil. 208, 223 (2011), further citing *Commissioner of Internal Revenue vs. Far East Bank & Trust Company (now Bank of the Philippine Islands)*, 629 Phil. 405, 412 (2010); *Commissioner of Internal Revenue vs. Team [Philippines] Operations Corporation [formerly Mirant (Phils) Operations Corporation]*, G.R. No. 179260, April 2, 2014; *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012.

3. It must be shown on the return that the income received was declared as part of the gross income.

We examine each requisite *in seriatim.*

As to the *first* requisite that the claim for refund was filed within the two-year prescriptive period, the pertinent legal bases are Sections 204(C) and 229 of the NIRC of 1997, as amended, which read as follows:

> SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may-
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamped 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 therefore, 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)*

The above-stated provisions mandate that the administrative and judicial claims for refund of erroneously paid or illegally collected tax must be made within two (2) years from the *date of payment* of the tax, regardless of any supervening cause that may arise after payment.

While the law provides that the two years is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund commences to run at the earliest on the date of the filing of the *final adjustment return* or *adjusted final tax return*[57] because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise. Thus, 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.[58]

In the instant case, petitioner electronically filed its Annual ITR for CY 2017 on March 22, 2018.[59] Counting two (2) years, petitioner had until March 22, 2020, to file administrative and judicial claims for refund of its alleged unutilized and excess CWTs for CY 2017. Petitioner *timely* filed its administrative claim on February 19, 2020, as evidenced by its *Application for Tax Credits/Refunds* (BIR Form No. 1914)[60] and the letter dated February 18, 2020.[61]

As for petitioner's judicial claim, the Court notes that within the said two-year prescriptive period, the Supreme Court issued the following administrative circulars ordering the physical closure of courts and extending the filing of petitions, appeals, and court submissions in the National Capital Judicial Region, and nearby provinces due to the surge of Covid-19 cases, *viz.*:

Administrative Circular (AC) No.	***Date Issued***	***Content***
AC No. 31-2020	March 16, 2020	Re: Rising Cases of Covid-19 Infection "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due during the period from 15 March 2020 until 15 April

[57] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019, citing *ACCRA Investments Corp. vs. Court of Appeals*, 281 Phil. 1060, 1068-1069 (1991).
[58] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, supra. *Commissioner of Internal Revenue vs. TMX Sales, Inc.*, 282 Phil. 199, 207 (1992).
[59] Exhibit "P-3", Docket – Vol. II, pp. 398 to 405.
[60] Exhibit "P-12-A", Docket – Vol. I, p. 478.
[61] Exhibit "P-12", Docket – Vol. I, p. 477.

		2020 is EXTENDED for THIRTY (30) calendar days counted from 16 April 2020."
AC No. 34-2020	April 8, 2020	Re: Extension of Enhanced Community Quarantine Over Luzon Until 30 April 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 3 April 2020 is extended for 30 calendar days, counted from 1 May 2020, xxx."
AC No. 35-2020	April 27, 2020	Re: Extension of the Enhanced Community Quarantine in Certain Areas Until 15 May 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 15 May 2020 in the ECQ areas is extended for 30 calendar days, counted from 16 May 2020, xxx"
AC No. 39-2020	May 14, 2020	Re: Modified Enhance Community Quarantine in Certain Areas Until 31 May 2020 "The filing of petitions and appeals, complaints, motions, pleadings, and other court submissions that fall due up to 31 May 2020 before the courts in areas under MECQ areas is extended for 30 calendar days, counted from 1 June 2020, xxx."

It can be inferred from AC No. 39-2020 that petitioner had thirty (30) days from June 1, 2020, or until July 1, 2020, to file its judicial claim before this Court. Thus, the filing of the present *Petition for Review* on June 25, 2020, was timely.

Considering that petitioner's administrative and judicial claims for refund were seasonably filed within the two-year prescriptive period, the *first* requisite was fulfilled.

As regards respondent's contention that petitioner is in bad faith for allegedly filing an administrative claim before the BIR one (1) month before its claim for refund prescribes, depriving the BIR of making an assessment and/or audit investigation on its claim, the Court finds the same without merit.

In *CBK Power Company Limited vs. Commissioner of Internal Revenue*,[62] the Supreme Court emphasized that Section 229 of the NIRC of 1997 only requires that an administrative claim be priorly filed to give notice of warning to respondent that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded to wit:

> "With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA En Banc in debunking the alleged failure to exhaust administrative remedies. **Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding taxes it erroneously paid to the government thereby suffering irreparable damage**.
>
> Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. **There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed**.
>
> In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David (Kiener)*, wherein it was held that in no wise does the law, i.e., Section 306 of the old Tax Code (**now, Section 229 of the NIRC), imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action**. In Kiener, the Court went on to say that **the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow**. . ." *[Emphasis supplied.]*

It is for such reason that the Supreme Court, in *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*,[63] considered the filing of a judicial claim only thirteen (13) days after the filing of an administrative claim, as still timely made, thus:

[62] G.R. Nos. 193383-84, January 14, 2015.
[63] G.R. No. 216130, August 3, 2016.

> "Verily, the primary purpose of filing an administrative claim was to serve as a notice of warning to the CIR that court action would follow unless the tax or penalty alleged to have been collected erroneously or illegally is refunded. **To clarify, Section 229 of the Tax Code** — [then Section 306 of the old Tax Code] — **however does not mean that the taxpayer must await the final resolution of its administrative claim for refund, since doing so would be tantamount to the taxpayer's forfeiture of its right to seek judicial recourse should the two (2)-year prescriptive period expire without the appropriate judicial claim being filed**." *[Emphasis supplied.]*

Thus, considering the rationale behind the rule requiring the prior filing of an administrative claim for refund before the judicial claim, the Court finds the period of thirty (30) days given to respondent to decide on petitioner's administrative claim as sufficient to resolve the matter. Further, petitioner need not await the final resolution of its administrative claim for a refund since doing so would be tantamount to petitioner's forfeiture of its right to seek judicial recourse should the two-year prescriptive period expire without the appropriate judicial claim being filed.[64]

Anent the *second* requisite, *i.e.,* 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 of tax withheld therefrom. Section 2.58.3 (B) of Revenue Regulations (RR) No. 02-98, as amended, 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 supplied)*

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[64] *Id.*

In *Philippine National Bank vs. Commissioner of Internal Revenue*,[65] the Supreme Court affirmed that the CWT certificate is the competent proof to establish the fact that taxes are withheld and that proof of actual remittance is not a condition to a claim for refund of unutilized tax credits, to wit:

> "**The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment to the government through the agents**. In *Commissioner of Internal Revenue vs. Philippine National Bank*, the Supreme Court stressed the importance of presenting the pertinent CWT certificates in this wise:
>
>> '**The certificate of creditable tax withheld at source is the competent proof to establish the fact that taxes are withheld. It is not necessary for the person who executed and prepared the certificate of creditable tax withheld at source to be presented and to testify personally to prove the authenticity of the certificates**.
>>
>> In *Banco Filipino Savings and Mortgage Bank v. Court of Appeals*, this court declared that a certificate is complete in the relevant details that would aid the courts in the evaluation of any claim for refund of excess creditable withholding taxes:
>>
>>> In fine, the document which may be accepted as evidence of the third condition, that is, the fact of withholding, must emanate from the payor itself, and not merely from the payee, and must indicate the name of the payor, the income payment basis of the tax withheld, the amount of the tax withheld and the nature of the tax paid.
>
> At the time material to this case, the requisite information regarding withholding taxes from the sale of acquired assets can be found in BIR Form No. 1743.1. As described in Section 6 of Revenue Regulations No. 6-85, BIR Form No. 1743.1 is a written statement issued by the payor as withholding agent showing the income or other payments made by the said withholding agent during a quarter or year and the amount of the tax deducted and withheld therefrom. It readily identifies the payor, the income payment and the tax withheld. It is complete in the relevant details which would aid the courts in the evaluation of any claim for refund of creditable withholding taxes." *[Emphasis supplied.]*

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[65] G.R. Nos. 242647 & 243814, March 15, 2022.

Based on the foregoing jurisprudential pronouncements, withholding may undeniably be established by presenting the pertinent certificates of creditable tax withheld at source complete in the relevant details.

To prove the fact of withholding of the subject claim, petitioner submitted various CWT certificates[66] duly issued by its clients, as well as the *Schedule of Creditable Taxes Withheld*[67] for CY 2017, reflecting total CWTs of ₱8,488,147.60 on income payments, and representing management fees received by petitioner for the said year, in the amount of ₱56,587,650.68, detailed as follows:

Exhibit	Period Covered	Petitioner's client	Income Payment	CWT
"P-122"	January 1, 2017 to March 31, 2017	Altimax Broadcasting Co., Inc.	₱ 9,702,259.64	₱ 1,455,338.95
"P-123"	April 1, 2017 to June 30, 2017	Altimax Broadcasting Co., Inc.	9,702,259.64	1,455,338.95
"P-124"	July 1, 2017 to September 30, 2017	Altimax Broadcasting Co., Inc.	9,702,259.64	1,455,338.95
"P-125"	October 1, 2017 to December 31, 2017	Altimax Broadcasting Co., Inc.	9,702,259.64	1,455,338.95
		Subtotal – Altimax Broadcasting Co., Inc.	*₱ 38,809,038.56*	*₱ 5,821,355.80*
"P-126"	January 1, 2017 to March 31, 2017	Broadcast Enterprises & Affiliated Media (BEAM), Inc.	₱ 4,444,653.03	₱ 666,697.95
"P-127"	April 1, 2017 to June 30, 2017	BEAM, Inc.	4,444,653.03	666,697.95
"P-128"	July 1, 2017 to September 30, 2017	BEAM, Inc.	4,444,653.03	666,697.95
"P-129"	October 1, 2017 to December 31, 2017	BEAM, Inc.	4,444,653.03	666,697.95
		Subtotal – BEAM, Inc.	*₱ 17,778,612.12*	*₱ 2,666,791.80*
		TOTAL CWT FOR CY 2017	**₱56,587,650.68**	**₱8,488,147.60**

The Court finds the aforesaid CWT certificates valid and complete in their relevant details. Thus, petitioner has shown compliance with the *second* requisite, *i.e.*, the establishment of the fact of withholding of the amount of ₱8,488,147.60.

In compliance with the *third* requisite of proving that the management fees of ₱56,587,650.68, related to the substantiated CWTs of ₱8,488,147.60, were declared as part of its gross income subject to income tax in its AITR, petitioner presented its Audited Financial Statements (AFS),[68] General

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[66] Exhibits "P-122" to "P-129".
[67] Exhibit "P-15", Annex A, Docket – Vol. I, p. 236.
[68] Exhibit "P-7", Docket – Vol. I, pp. 418 to 462.

Ledger (GL),[69] official receipts, billing statements and verified reconciliation sheet[70] for CY 2017.

As correctly found by the ICPA, the total income payments/management fees per CWT certificates (BIR Forms No. 2307) and *Summary Alphalist of Withholding Taxes* (SAWT) were properly recorded in petitioner's GL/AFS and declared as taxable income in petitioner's 2017 Annual ITR as follows:[71]

	Per BIR Form No. 2307		Per GL / AFS / ITR		
Customer	**Total CWT**	**Total Income Payments**	**Management Fees per GL/AFS (A)**	**Unearned Management Fees per GL/AFS/ITR (B)**	**Total Income Payments Declared as Income in the ITR (A) + (B)**
a. Altimax Broadcasting Co., Inc.	₱5,821,355.80	₱38,809,038.56	₱37,548,048.48	₱1,260,990.08	₱38,809,038.56
b. BEAM, Inc.	2,666,791.80	17,778,612.12	17,778,612.12	-	17,778,612.12
Total	**₱8,488,147.60**	**₱56,587,650.68**	**₱55,326,660.60**	**₱1,260,990.08**	**₱56,587,650.68**

While petitioner's taxable *"Net Sales/Revenues/Receipts/Fees,"* as declared in its 2017 Annual ITR, in the amount ₱57,473,344.00,[72] is higher by ₱885,693,32 when compared with the total income payments of ₱56,587,650.68 reflected per CWT Certificates, such discrepancy was proven to be actually pertaining to accrued revenues from BEAM, Inc. reported as taxable revenues in the 2017 Annual ITR, but not yet collected and subjected to withholding tax.[73]

In other words, the income payments/management fees of ₱56,587,650.68 related to the claimed CWTs of ₱8,488,147.60 or ₱8,488,148.00 formed part of petitioner's taxable income per its 2017 Annual ITR.

Verily then, petitioner is considered to have complied with the *third* requisite.

[69] Exhibits "P-146" and "P-147".
[70] Exhibit "P-152".
[71] Exhibit "P-15", Procedures Performed, under item no. 5, Docket – Vol. I, pp. 226 to 227.
[72] Exhibit "P-3", Line 30, Docket – Vol. I, p. 399.
[73] Exhibit "P-15", Procedures Performed, under item no. 3.2, Docket – Vol. I, p. 225

Having complied with the requisites for claiming a refund of excess CWTs and showing that the amount thereof was not carried over to succeeding periods, the instant Petition for Review must be granted.

All told, petitioner has sufficiently proven its entitlement to a refund of ₱8,488,148.00, representing its excess and unutilized CWTs for the CY 2017.

WHEREFORE, premises considered, the instant *Petition for Review* is **GRANTED**. Accordingly, the Commissioner of Internal Revenue is **ORDERED TO REFUND** in favor of Bethlehem Holdings, Inc. the amount of **EIGHT MILLION FOUR HUNDRED EIGHTY-EIGHT THOUSAND ONE HUNDRED FORTY-EIGHT PESOS (₱8,488,148.00)**, representing its excess and unutilized Creditable Withholding Taxes for calendar year 2017.

SO ORDERED.

LANEE S. CUI-DAVID
Associate Justice

I CONCUR:

JEAN MARIE A. BACORRO-VILLENA
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.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice
Special 2nd Division Acting Chairperson

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Special 2nd Division Acting 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's Division.

ROMAN G. DEL ROSARIO
Presiding Justice