REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL THIRD DIVISION

GHD PTY LTD. (FORMERLY GUTTERIDGE HASKINS & DAVEY PTY LTD.), Petitioner,	**CTA CASE NO. 10374** *Present:*
vs.	**RINGPIS-LIBAN**, *Chairperson*, **MODESTO-SAN PEDRO**, and **FERRER-FLORES**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 15 2024 4:20 p.m.

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DECISION

FERRER-FLORES, J.:

The *Petition for Review* prays that the Court render judgment ordering respondent to refund or issue in favor of petitioner a tax credit certificate in the amount of ₱59,134,055.00 representing petitioner's excess and unutilized creditable withholding taxes (CWTs) for fiscal year (FY) ended June 30, 2018 (FY 2018).[1]

THE PARTIES

Petitioner GHD Pty Ltd. (Formerly Gutteridge Haskins & Davey Pty Ltd.) is a foreign company with a branch office duly licensed by the Philippine Securities and Exchange Commission, pursuant to the provisions of the Corporation Code of the Philippines (*Batas Pambansa Bilang* 68), and the Foreign Investments Act of 1991 (Republic Act No. 7042, as amended), with

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[1] Statement of the Case, *Pre-Trial Order* dated July 22, 2021, Docket – Vol. 1, p. 454.

principal or head office address at 10 Bond Street, Sydney NSW, Australia.[2] Petitioner's registered address is at 11/F Alphaland Southgate Tower, 2258 Chino Roces Avenue corner EDSA, Makati City, Philippines.[3] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), under Taxpayer Identification No. 203-471-895-000.[4]

Respondent is the duly appointed Commissioner of Internal Revenue 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 national internal revenue taxes. He may be served with summons, pleadings, and other processes of this Court at his office at the Legal Division of Revenue Region No. 8A Makati City located at 36th Floor Export Bank Plaza Bldg., Sen. Gil Puyat Ave. cor. Chino Roces Avenue, Makati City.[5]

ANTECEDENTS (ADMINISTRATIVE LEVEL)

On September 29, 2020, petitioner filed with the BIR, Revenue District Office No. 048, its letter requesting for the refund of unutilized CWTs for FY 2018, in the amount of ₱59,134,055.00.[6] Thereafter, on October 6, 2020, petitioner filed its *Application for Tax Credits / Refunds* (BIR Form No. 1914).[7]

PROCEEDINGS BEFORE THIS COURT

On October 15, 2020, petitioner filed the present *Petition for Review.*[8]

Respondent posted his *Answer* on January 25, 2021,[9] interposing his special and affirmative defenses.

On January 26, 2021, respondent transmitted the *BIR Records* for this case, consisting of 859 pages, in one (1) folder.[10]

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2 Exhibits "P-1" and "P-2", Docket – Vol. 2, pp. 804 to 893.
3 Par. 1, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1 p. 444.
4 Exhibit "P-3", Docket – Vol. 2, p. 894.
5 Par. 2, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 444.
6 Exhibit "P-9", Docket – Vol. 2, pp. 924 to 928.
7 Exhibit "P-9-A", Docket – Vol. 2, p. 929.
8 Docket – Vol. 1, pp. 6 to 23.
9 Docket – Vol. 1, pp. 208 to 217.
10 *Compliance* dated January 26, 2021, Docket – Vol. 1, pp. 205 to 206.

The Pre-Trial Conference was set and held on June 15, 2021.[11] Prior thereto, *Respondent's Pre-Trial Brief* was filed on June 8, 2021;[12] while *Petitioner's Pre-Trial Brief* was submitted on June 11, 2021.[13]

On July 15, 2021, the parties submitted their *Joint Stipulation of Facts and Issues*,[14] which was admitted and approved by the Court, in the Resolution dated July 22, 2021,[15] thereby deeming the termination of the Pre-Trial. The Pre-Trial Order dated July 22, 2021 was then issued.[16]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimonies of the following individuals, namely: (1) Ms. Katrina S. Maninang,[17] petitioner's Tax Manager; and, (2) Mr. Emmanuel Y. Mendoza,[18] the Court-commissioned Independent Certified Public Accountant (ICPA).[19]

The *Amended Report* of the said ICPA was submitted to the Court on April 27, 2022.[20]

Respondent's counsel manifested during the hearing held on June 15, 2022, that he will no longer present his witness in this case.[21]

Petitioner filed its *Formal Offer of Evidence* on July 5, 2022;[22] and respondent's *Comment (to Petitioner's Formal Offer of Evidence)* was posted on July 25, 2022.[23] In the Resolution dated October 5, 2022,[24] the Court admitted petitioner's offered exhibits, *except* for Exhibit "P-28-299-A" for being illegible.

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[11] *Notice of Pre-Trial Conference* dated February 8, 2021, Docket – Vol. 1, pp. 220 to 221; Minutes of the hearing held on, and Order dated, June 15, 2021, Docket – Vol. 1, pp. 412 to 415.
[12] Docket – Vol. 1, pp. 222 to 225.
[13] Docket – Vol. 1, pp. 231 to 244.
[14] Docket – Vol. 1, pp. 444 to 450.
[15] Docket – Vol. 1, pp. 467 to 468.
[16] Docket – Vol. 1, pp. 454 to 461.
[17] Exhibit "P-15", Docket – Vol. 1, pp. 27 to 39; Minutes of the hearing held on, and Order dated, July 22, 2021, Docket – Vol. 1, pp. 462 to 464.
[18] Exhibit "P-16", Docket – Vol. 2, pp. 762 to 777; Minutes of the hearing held on, and Order dated, June 15, 2022, Docket – Vol. 2, pp. 778 to 780.
[19] *Oath of Commission* dated July 22, 2021, Docket – Vol. 1, p. 465; Minutes of the hearing held on, and Order dated, July 22, 2021, Docket – Vol. 1, pp. 462 to 464.
[20] Exhibit "P-17", Docket – Vol. 2, pp. 609 to 630.
[21] Minutes of the hearing held on, and Order dated, June 15, 2022, Docket – Vol. 2, pp. 778 to 780.
[22] Docket – Vol. 2, pp. 781 to 803.
[23] Docket – Vol. 2, pp. 956 to 959.
[24] Docket – Vol. 2, pp. 966 to 967.

Petitioner's *Memorandum* was filed on November 23, 2022,[25] while respondent's *Memorandum* was posted on November 16, 2022.[26]

This case was submitted for decision on January 16, 2023.[27]

THE ISSUE

As stipulated by the parties, the issue for this Court's resolution is as follows:

> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TAX CREDIT CERTIFICATE (TCC) FOR THE AMOUNT OF PHP59,134,055 REPRESENTING PETITIONER'S ALLEGED EXCESS AND UNUTILIZED CREDITABLE WITHHOLDING TAX (CWT) FOR FISCAL YEAR ENDED JUNE 30, 2018 (HEREINAFTER, 'FY 2018')."[28]

Petitioner's arguments:

Petitioner argues that it filed its administrative and judicial claims for refund of excess and unutilized CWTs for FY 2018 within the two-year prescriptive period provided in Sections 204(C) and 229, National Internal Revenue Code (NIRC), as amended; that its excess and unutilized CWTs for FY 2018 in the amount of ₱59,134,055.00 are duly substantiated by documentary evidence; that the income from which the CWTs being claimed for refund were withheld was reported as part of the revenue declared in petitioner's income tax return (ITR); that petitioner did not exercise the option to carry over its excess and unutilized CWT for FY 2018 to the succeeding taxable periods; and, that it applied its "prior year's excess credits" from FY 2017 as payment for its regular corporate income tax (RCIT) for FY 2018.

Respondent's counter-arguments:

Respondent contends that the instant petition for refund of CWTs for the entire FY ending June 30, 2018 is filed out of time; that the certificates representing CWTs for FY 2018 were not entirely executed under oath; that proof of actual remittance to the BIR and testimonial evidence of the payors and withholding agents are required; that petitioner failed to prove certificates of taxes withheld pertaining to prior years were declared as part of the income

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[25] Docket – Vol. 2, pp. 968 to 992.
[26] Docket – Vol. 2, pp. 994 to 1004.
[27] Resolution dated January 16, 2023, Docket – Vol. 2, p. 1010.
[28] Issue, *JSFI*, Docket – Vol. 1, p. 445.

for their respective years to prove the existence of prior excess credits; that petitioner accumulated credits for prior years are not enough to cover tax due for FY 2018; and, that claim for refund is strictly construed against the taxpayer for the same partakes the nature of tax exemption.

THE COURT'S RULING

The present *Petition for Review* is partly meritorious.

Petitioner complied with Section 76 of the NIRC of 1997, as amended.

Pertinent to the resolution of the present case is Section 76 of the NIRC of 1997, as amended, which provides:

> "SEC. 76. *Final Adjustment Return.* — Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:
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> (A) Pay the balance of tax still due; or
> (B) Carry-over the excess credit; or
> (C) Be credited or refunded with the excess amount paid, as the case may be.
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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."

The above provision discusses the two options of a taxable corporation whose total quarterly income tax payments in a given taxable year exceed its total income tax due. The taxpayer may either: *(1)* carry-over the excess amount to the succeeding taxable quarters/years until it is fully utilized, or *(2)* file a claim for refund in the form of cash or tax credit certificate. Note, however, that, once the carry-over option is taken actually or constructively, it becomes irrevocable for that taxable period.[29] The phrase *"for that taxable*

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[29] *Rhombus Energy, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206362, August 1, 2018, citing the case of *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team*

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

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.[31]

A perusal of petitioner's amended *Annual ITR* for FY 2018 shows that petitioner had income tax credits in the total amount of ₱124,634,714.00,[32] broken down as follows:[33]

Prior Year's Excess Credits Other Than MCIT		₱ 65,500,659.00
Add: Creditable Taxes Withheld – FY 2018		
from Previous Quarter/s	₱16,734,670.00	
for the 4th Quarter	42,399,385.00	59,134,055.00
Total Tax Credits		**₱124,634,714.00**

Petitioner claims that its income tax due for FY 2018 in the amount of ₱32,719,577.00[34] was paid using a portion of its prior year's excess credits of ₱65,500,659.00,[35] thus, leaving the prior year's excess tax credits in the amount of ₱32,781,082.00 and creditable taxes withheld during FY 2018 in the amount of ₱59,134,055.00, or a total of ₱91,915,137.00, unutilized as of June 30, 2018, as shown below:

Prior Year's Excess Credits Other Than MCIT	₱ 65,500,659.00
Less: Income Tax Due	32,719,577.00
Balance of Prior Year's Excess Credits	₱ 32,781,082.00
Add: Creditable Taxes Withheld – FY 2018	59,134,055.00
Excess CWT as of June 30, 2018	**₱ 91,915,137.00**

(Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation, G.R. No. 188016, January 14, 2015; *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.

30 *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; *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.

31 *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.

32 Exhibit "P-5", Docket – Vol. 2, at pp. 904 to 914.

33 Schedule 7 – Tax Credits/Payments, Exhibit "P-5", Docket – Vol. 2, at p. 910.

34 Lines 16 and 44, Exhibit "P-5", Docket – Vol. 2, pp. 904 and 905, respectively.

35 Line 1, Schedule 7 – Tax Credits/Payments, Exhibit "P-5", Docket – Vol. 2, p. 910.

In its original and amended *Annual ITR* for FY 2018, petitioner marked the box corresponding to the option *"To be refunded"*,[36] clearly manifesting its intention to claim for a refund of its excess/unutilized CWT for the FY 2018. Furthermore, as can be gleaned from its Annual ITR[37] and Quarterly ITRs[38] for FY 2019, petitioner reflected only the amount of ₱32,781,082.00 as "Prior Year's Excess Credits Other Than MCIT"/ "Prior Year's Excess Credits – Taxes Withheld". Correspondingly, the excess CWT for FY 2018 in the amount of ₱59,134,055.00 was not carried over in the succeeding taxable periods and, therefore, may be the subject of a tax credit or refund claim, under Section 76 of the NIRC of 1997, as amended.

To prove its prior year's excess credits of ₱65,500,659.00, petitioner submitted its Annual ITRs for FYs 2007 to 2017[39], and the related BIR Forms No. 2307 for FYs 2014[40] to 2015[41] issued by its withholding agents.

As earlier mentioned, petitioner's total tax credits for FY 2018 amounting to ₱124,634,714.00 comprised of prior year's excess credits in the amount of ₱65,500,659.00, and CWT during FY 2018 in the amount of ₱59,134,055.00.

The amount of ₱65,500,659.00 carried-over to the *Annual ITR* of FY 2018 came from petitioner's total overpayment of ₱113,825,534.00 per its amended *Annual ITR* for FY 2017,[42] of which the amount of ₱48,324,875.00[43] pertains to CWT during FY 2017. Since petitioner opted to be refunded of its ₱48,324,875.00 CWT during FY 2017 per its *Annual ITR* for FY 2017,[44] the said prior year's excess credits of ₱65,500,659.00[45] pertains to its excess CWT as of June 30, 2017 (or end of FY 2017).

The Court finds the submission of petitioner's Annual ITR for FY 2017 sufficient to prove petitioner's "Prior Year's Excess Credits Other Than MCIT" of ₱65,500,659.00 for FY 2018. In the language of *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*,[46] any refundable amount indicated in the final adjustment return (FAR) of the preceding taxable year may be credited against the estimated income tax liabilities for the

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36 Line 21, Exhibits "P-4" and "P-5", Docket – Vol. 2, pp. 895 and 904, respectively.

37 Line 1, Schedule 7 – Tax Credits/Payments, Exhibits "P-13" and "P-14", Docket – Vol. 2, pp. 944 and 952, respectively.

38 Line 31A, Exhibits "P-10", "P-11" and "P-12", Docket – Vol. 2, pp. 930, 933 and 936, respectively.

39 Exhibits "P-26-1" to "P-26-11".

40 Exhibits "P-28-224-A" to "P-28-298-A", "P-28-300-A" to "P-28-389-A".

41 Exhibits "P-28-1-A" to "P-28-223-A".

42 Line 20, Exhibit "P-26-11", p. 1 of 8.

43 Sum of ₱33,133,378.00 and ₱15,191,497.00, Lines 5 and 6, respectively, Schedule 7 – Tax Credits/Payments, Exhibit "P-26-11", p. 6 of 8.

44 Line 21, Exhibit "P-26-11", p. 1 of 8.

45 ₱113,825,534.00 less ₱48,324,875.00.

46 G.R. Nos. 156637/162004, December 14, 2005.

taxable quarters of the succeeding taxable year. Thus, the amount of ₱65,500,659.00 representing the balance of petitioner's total tax credits for FY 2017 may be carried over and allowed as a credit for the ₱32,719,577.00[47] income tax due for FY 2018.

With the above findings, we shall now proceed to determine petitioner's compliance with the requisites for claiming a tax credit or refund of excess and unutilized CWTs.

Requisites to claim a tax credit or refund of excess and unutilized CWT.

In addition to the requisites provided under Section 76 of the NIRC of 1997, as amended, jurisprudence and pertinent Revenue Regulations (RR) provide that, in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for unutilized excess CWTs, the following three (3) requisites must also be complied with:

1. The claim for refund must be filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the NIRC of 1997;

2. The fact of withholding must be 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. The income upon which the taxes were withheld must be included in the return of the recipient.[48]

Thus, it behooves petitioner to establish the foregoing requisites.

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[47] Lines 16 and 44, Exhibit "P-5", Docket – Vol. 2, pp. 904 and 905, respectively.

[48] *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; *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; Section 2.58, Revenue Regulations No. 2-98, as amended.

First requisite: Petitioner's administrative and judicial claims for refund were timely filed.

As to the *first* requisite, that the claim for refund was filed within the two (2)-year prescriptive period, the pertinent legal bases are Sections 204(C) and 229 of the NIRC of 1997, which read as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. **No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty**: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
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> xxx xxx xxx
>
> 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.
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> **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)*

The above-stated provisions mandate that the administrative and judicial claims for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

It is well settled that the two (2)-year prescriptive period for claiming a refund of overpaid income tax/CWTs commences to run from the date of filing of the FAR[49] (or Annual ITR). This is so because it is only when the FAR 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.[50] In other words, it is only logical to reckon the two (2)-year prescriptive period from the time the FAR or the Annual ITR was filed, since it is only at that time that it would be possible to determine whether the corporate taxpayer paid an amount exceeding its annual income tax liability.[51]

In this case, petitioner filed its original *Annual ITR*[52] via the electronic filing and payment system or eFPS of the BIR on **October 15, 2018**. Thus, counting from October 15, 2018, petitioner had until **October 15, 2020**, within which to file both its administrative and judicial claims.

Considering that petitioner filed its administrative claim for refund with the BIR on September 29, 2020,[53] and its *Application for Tax Credits / Refunds* (BIR Form No. 1914) on October 6, 2020,[54] while the present judicial claim was filed on October 15, 2020,[55] both claims for refund of unutilized/excess CWTs were seasonably filed within the two (2)-year prescriptive period. Thus, the *first* requisite was fulfilled.

Second requisite: A portion of the claimed excess CWTs was duly substantiated with BIR Forms No. 2307.

With regard to the *second* requisite, the basis thereof is Section 2.58.3(B) of RR No. 2-98, as amended, 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

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[49] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *Commissioner of Internal Revenue vs. The Philippine American Life Insurance Co., et al.*, G.R. No. 105208, May 29, 1995.

[50] *Commissioner of Internal Revenue vs. TMX Sales Inc., et al.*, G.R. No. 83736, January 15, 1992.

[51] *Metropolitan Bank & Trust Company vs. The Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.

[52] Exhibit "P-4", Docket – Vol. 2, pp. 895 to 903.

[53] Exhibit "P-9", Docket – Vol. 2, pp. 924 to 928.

[54] Exhibit "P-9-A", Docket – Vol. 2, p. 929; and Exhibit "P-15" (Q&A No. 25), Docket - Vol. 1, p. 32.

[55] Docket – Vol. 1, pp. 6 to 23.

> 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)*

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[56] the Supreme Court held that the *Certificate of Creditable Tax Withheld at Source* (BIR Form No. 2307) is the competent proof to establish the fact that taxes are withheld, to wit:

> **"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*,[57] 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:
>
> xxx xxx xxx
>
> Moreover, as correctly held by the Court of Tax Appeals En Banc, the figures appearing in the withholding tax certificates can be taken at face value since these documents were executed under the penalties of perjury, pursuant to Section 267 of the 1997 National Internal Revenue Code, as amended, xxx
>
> xxx xxx xxx
>
> Thus, upon presentation of a withholding tax certificate complete in its relevant details and with a written statement that it was made under the penalties of perjury, the burden of evidence then shifts to the Commissioner of Internal Revenue to prove that (1) the certificate is not complete; (2) it is false; or (3) it was not issued regularly." (*Emphasis supplied*)

Based on the foregoing, it is undeniable that the fact of withholding may be established by presenting the pertinent BIR Forms No. 2307 complete with relevant details.

To prove the fact of withholding of its ₱59,134,055.00 CWT during FY 2018, petitioner submitted various *Certificates of Creditable Tax Withheld at*

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[56] G.R. No. 180290, September 29, 2014.
[57] 548 Phil. 32 (2007) [Per *J.* Austria-Martinez, Third Division].

Source (BIR Form No. 2307),[58] as well as the Schedule of CWT[59] and Quarterly Summary Alpha List of Withholding Tax (SAWT)[60] for FY 2018. Upon verification of these documents, the Court-commissioned ICPA, Mr. Emmanuel Y. Mendoza, provided a summary of petitioner's CWTs for FY 2018 in the amount of ₱59,134,055.00, with related income payments amounting to ₱557,115,404.00, as follows:[61]

Findings	Annex Reference	Revenue per schedule of CWT	CWT
Revenue recorded, reported and collected in 2018 subjected by Petitioner's customer to creditable withholding tax			
Transactions in Philippine peso			
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were properly supported by official receipts and billing statements	A-1	₱147,911,422.00	₱17,008,677.00
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported by official receipts but without billing statements	A-2	111,399,850.00	14,052,367.00
CWT claimed were properly supported by BIR Form 2307 but without supporting official receipts and billing statements	A-3	5,412,776.00	540,232.00
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported by official receipts but billing statements are incomplete	A-4	3,803,630.00	452,895.00
CWT claimed were properly supported by BIR Form 2307 with electronic signature and the revenue were supported by official receipts and billing statements	A-5	65,140,108	6,182,647.00
CWT claimed were properly supported by BIR Form 2307 with electronic signature while the revenue were supported only by official receipts but without billing statements	A-6	49,397,467.00	6,638,767.00
CWT claimed were properly supported by BIR Form 2307 and billing statements but without supporting official receipts	A-7	11,424,834.00	1,127,747.00
CWT claimed were supported by BIR Form 2307, official receipts and billing statement but the amount of CWT per schedule is higher than the amount in the supporting BIR Form 2307	A-8	5,576,484.00	638,030.00
CWT claimed were not supported by BIR Form 2307 but the billing statements are presented	A-9	1,097,877.00	164,683.00

58 Exhibits "P-29-1-1-A" to "P-29-1-98-A"; "P-29-2-1-A" to "P-29-2-43-A"; "P-29-3-1-A" to "P-29-3-3-A"; "P-29-4-1-A" to "P-29-4-6-A"; "P-29-5-1-A" to "P-29-5-56-A"; "P-29-6-1-A" to "P-29-6-30-A"; "P-29-7-1-A" to "P-29-7-12-A"; "P-29-8-1-A"; "P-29-10-1-A" to "P-29-10-11-A"; "P-29-11-1-A" to "P-29-11-7-A"; "P-29-12-1-A" to "P-29-12-2-A"; "P-29-13-1-A" to "P-29-13-7-A"; "P-29-14-1-A"; "P-29-15-1-A" to "P-29-15-3-A"; "P-29-16-1-A" to "P-29-16-3-A"; "P-29-17-1-A"; "P-29-18-1-A" to "P-29-18-3-A"; "P-30-1-1-A" to "P-30-1-26-A"; "P-30-4-1-A" to "P-30-4-2-A"; "P-30-6-1-A"; "P-30-7-1-A" to "P-30-7-2-A"; "P-30-9-1-A"; and "P-31-1-1-A"; *Exhibits "P-30-2-1-A" to "P-30-2-5-A"; "P-30-3-1-A" to "P-30-3-23-A" [identified exhibits per Amended Sworn Statement of Mr. Emmanuel Y. Mendoza, dated June 9, 2022, Exhibit "P-16" (Q&A No. 17), Docket – Vol. 2, pp. 770 to 771].*

59 Exhibit "P-21".

60 Exhibits "P-22-1" to "P-22-12".

61 Table 7 and Annexes A-1 to C-1, Exhibit "P-17", ICPA's *Amended Report*, Docket – Vol. 2, pp. 619 to 622 and 631 to 660, respectively.

Findings	Annex Reference	Revenue per schedule of CWT	CWT
CWT claimed were supported only by photocopied Form 2307	A-10	4,842,865.00	160,694.00
CWT is not duly signed by the customer	A-11	5,871,647.00	375,460.00
CWT claimed were supported by Form 2307 but the form is dated outside the period of claim	A-12	677,958.00	101,694.00
Subtotal		**₱412,556,918.00**	**₱47,443,893.00**
Transactions in foreign currency			
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were properly supported by official receipts and billing statements	A-13	₱ 18,315,550.00	₱ 540,890.00
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported by official receipts but without billing statements	A-14	24,104.00	3,659.00
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported by official receipts but billing statements are incomplete	A-15	9,794,836.00	1,067,077.00
CWT claimed were properly supported by BIR Form 2307 with electronic signature and billing statements, while the official receipt are incomplete	A-16	9,383,438.00	712,083.00
CWT claimed were properly supported by BIR Form 2307 with electronic signature and official receipt, while the billing statements are incomplete	A-17	9,758,456.00	1,463,768.00
CWT claimed were properly supported by BIR Form 2307 and billing statements but without supporting official receipts	A-18	3,517,979.00	527,653.00
Subtotal		**₱ 50,794,363.00**	**₱ 4,315,130.00**
Total income recorded, reported and collected in 2018 subjected by Petitioner's customer to creditable withholding tax		**₱463,351,281.00**	**₱51,759,023.00**
Revenue recorded and reported in FY 2017 Income Tax Return and collected in FY 2018 subject to creditable withholding tax			
Transactions in Philippine peso			
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were properly supported by official receipts and billing statements	B-1	₱ 30,071,889.00	₱ 2,665,725.00
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported only by official receipts	B-2	3,505,167.00	490,900.00
CWT claimed were supported by BIR Form 2307 with electronic signature and the revenue were supported by official receipts and billing statements	B-3	38,855,419.00	2,051,821.00
CWT claimed were supported by BIR Form 2307 with electronic signature while the revenue were supported only by official receipts	B-4	3,554,094.00	533,114.00
CWT were not supported by BIR Form 2307 but the official receipt and billing statements are presented	B-5	732,143.00	109,821.00
CWT is supported only by photocopied 2307	B-6	242,858.00	4,857.00
CWT claimed were supported by Form 2307 but the form is dated outside the period of claim	B-7	756,924.00	65,049.00
Subtotal		**₱ 77,718,494.00**	**₱ 5,921,287.00**

Findings	Annex Reference	Revenue per schedule of CWT	CWT
Transactions in foreign currency			
CWT were properly supported by BIR Form 2307 issued by the Petitioner's Customer's while the revenue were properly supported by official receipts and billing statements	B-8	₱ 7,104,829.00	₱ 339,549.00
CWT claimed were properly supported by BIR Form 2307 but without supporting official receipts and billing statements.	B-9	3,559,854.00	533,978.00
CWT claimed were properly supported by BIR Form 2307 and billing statements but without supporting official receipts	B-10	3,724,946.00	558,742.00
Subtotal		**₱ 14,389,629.00**	**₱ 1,432,269.00**
Total income recorded and reported in FY 2017 but collected in 2018 subjected by Petitioner's customer to creditable withholding tax		**₱ 92,108,123.00**	**₱ 7,353,556.00**
Revenue recorded and reported in FY 2016 Income Tax Return and collected in FY 2018 subject to creditable withholding tax			
Transactions in Philippine peso			
CWT claimed were properly supported by BIR Form 2307 issued by the Petitioner's Customers while the revenue were supported by official receipts but without billing statements	C-1	₱ 1,656,000.00	₱ 33,120.00
Total income recorded and reported in FY 2016 but collected in 2018 subjected by Petitioner's customer to creditable withholding tax		**₱ 1,656,000.00**	**₱ 33,120.00**
GRAND TOTAL		**₱557,115,404.00**	**₱59,145,699.00**
Less: Difference between SAWT and CWT per income tax return / per schedule		-	11,644.00
GRAND TOTAL		**₱557,115,404.00**	**₱59,134,055.00**

However, the examination done by the ICPA revealed that a total of ₱1,017,843.00 should be disallowed from petitioner's claim, due to the following grounds:[62]

Findings	Reference	CWT <u>*Not Properly Substantiated*</u>
Revenue recorded, reported and collected in <u>2018</u> subjected by Petitioner's customer to creditable withholding tax		
CWT claimed were supported by BIR Form 2307, official receipts and billing statement but the amount of CWT per schedule is higher than the amount in the supporting BIR Form 2307	Annex A-8 (Exhibit "P-29-8-1-A")	₱ 212,780.00
CWT claimed were not supported by BIR Form 2307 but the billing statements are presented	Annex A-9 (Exhibit "P-29-9-1-C")	164,683.00
CWT is not duly signed by the customer	Annex A-11 (Exhibits "P-29-11-1-A" to "P-29-11-7-A")	375,460.00
CWT claimed were supported by Form 2307 but the form is dated outside the period of claim	Annex A-12 (Exhibits "P-29-12-1-A" to "P-29-12-2-A")	101,694.00
Subtotal		**₱ 854,617.00**

[62] Table 7, Exhibit "P-17", ICPA's *Amended Report*, Docket – Vol. 2, pp. 619 to 622.

Findings	Reference	CWT *Not Properly Substantiated*
Revenue recorded and reported in FY 2017 Income Tax Return and collected in FY 2018 subject to creditable withholding tax		
CWT were not supported by BIR Form 2307 but the official receipt and billing statements are presented	Annex B-5 (Exhibits "P-30-5-1-B" to "P-30-5-1-C")	₱ 109,821.00
CWT claimed were supported by Form 2307 but the form is dated outside the period of claim	Annex B-7 (Exhibits "P-30-7-1-A" to "P-30-7-2-A")	65,049.00
Subtotal		**₱ 174,870.00**
GRAND TOTAL		**₱1,029,487.00**
Less: Difference between SAWT and CWT per ITR / per schedule		11,644.00[63]
GRAND TOTAL		**₱1,017,843.00**

Upon further verification, the following CWTs in the total amount of ₱165,550.98, shall likewise be denied based on the following grounds:

Exhibit No.	Payor	Amount of Income Payment	Amount of CWT
Revenue recorded, reported and collected in FY 2018 subjected by Petitioner's customer to creditable withholding tax			
CWT are supported only by photocopied BIR Form No. 2307.[64]			
"P-29-10-1-A"	Millennium Pan-Asia Hotel & Resort, Inc.	₱ 250,000.00	₱ 37,500.00
"P-29-10-2-A"	Mt. Labo Exploration and Development Corp.	80,735.00	12,110.25
"P-29-10-3-A"	Mt. Labo Exploration and Development Corp.	160,315.00	24,047.25
"P-29-10-4-A"	SMC Consolidated Power Corporation	61,538.46	1,230.77
"P-29-10-5-A"	SMC Consolidated Power Corporation	1,026,415.38	20,528.31
"P-29-10-6-A"	SMC Consolidated Power Corporation	61,538.46	1,230.77
"P-29-10-7-A"	SMC Consolidated Power Corporation	1,026,415.38	20,528.31
"P-29-10-8-A"	SMC Consolidated Power Corporation	61,538.46	1,230.77
"P-29-10-9-A"	SMC Consolidated Power Corporation	1,026,415.38	20,528.31
"P-29-10-10-A"	SMC Consolidated Power Corporation	61,538.46	1,230.77
"P-29-10-11-A"	SMC Consolidated Power Corporation	1,026,415.38	20,528.31
Subtotal		***₱4,842,865.36***	***₱160,693.82***
Revenue recorded and reported in FY 2017 Income Tax Return and collected in FY 2018 subject to creditable withholding tax			
CWT is supported only by photocopied BIR Form No. 2307.[65]			
"P-30-6-1-A"	Central Azucarera De La Carlota, Inc.	242,858.14	4,857.16
Subtotal		***₱242,858.14***	***₱ 4,857.16***
TOTAL		**₱5,085,723.50**	**₱165,550.98**

[63] Pertains to CWT issued by *Propriedad del Norte, Inc.* amounting to ₱71,919.64 but not recorded in the books and recorded CWT from *Quezon Power (Philippines) Ltd. Co.* amounting to ₱60,275.25 (Sum of ₱26,511.60 and ₱33,763.65) but not reported in the SAWT, Table 1, Exhibit "P-17", Docket – Vol. 2, p. 614; Annexes H-1 and H-4, Exhibit "P-17", Docket – Vol. 2, pp. 697 and 702, respectively.

[64] Annex A-10, Exhibit "P-17", Docket – Vol. 2, p. 641.

[65] Annex B-6, Exhibit "P-17", Docket – Vol. 2, p. 655.

Accordingly, petitioner was able to satisfy the *second* requisite, but only to the extent of the duly substantiated CWT of ₱57,950,661.02, as computed below:

Particular	CWT related to revenue reported in		Total amount of CWT
	FY 2018	FYs 2017 & 2016	
Amount of claim	51,747,379.00[66]	7,386,676.00[67]	₱ 59,134,055.00
Less: Disallowances			
Per ICPA's verification	₱842,973.00[68]	174,870.00	1,017,843.00
Per this Court's verification	160,693.82	4,857.16	165,550.98
TOTAL	**₱50,743,712.18**	**₱7,206,948.84**	**₱57,950,661.02**

Third requisite: A portion of the income payments upon which the excess CWTs were withheld were included in petitioner's Annual ITR.

As regards the *third* requisite, as provided under the previously quoted Section 2.58.3(B) of RR No. 2-98, petitioner must prove that the income payments from which the substantiated excess CWTs of ₱57,950,661.02 were withheld, were declared as part of its gross income in its Annual ITR.

In compliance therewith, aside from the CWT certificates for FY 2018, petitioner likewise offered in evidence the following documents: *Annual ITRs* for FYs 2018,[69] 2017,[70] and 2016,[71] *Quarterly ITRs* for FY 2018,[72] *Audited Financial Statements* (AFS) for FY 2018,[73] *Schedule of CWT* for FY 2018,[74] *Quarterly Summary Alpha List of Withholding Taxes* (SAWT) for FY 2018,[75] *General Ledger* (GL) of CWT,[76] *Revenue – GL* for FYs 2018, 2017, and 2016,[77] *International Sales Ledger* for FY 2018,[78] *GL of revenue for Unbilled Work* for FY 2018,[79] *GL of Revenue* (528-71-0-114001),[80] *Schedule of Job Order/Summary of Sales to local and foreign Corporations*,[81] *Schedule of Travel Outside the Philippines*,[82] *Foreign sales allocated to the time of the*

66 ₱51,759,023.00 less difference between SAWT and CWT per ITR / per schedule ₱11,644.00.
67 Sum of ₱7,353,556.00 and ₱33,120.00, for FYs 2017 and 2016, respectively.
68 ₱854,617.00 less difference between SAWT and CWT per ITR / per schedule ₱11,644.00.
69 Exhibits "P-4" to "P-5", Docket - Vol. 2, pp. 895 to 914.
70 Exhibit "P-26-11".
71 Exhibit "P-26-10".
72 Exhibits "P-6" to "P-8", Docket - Vol. 2, pp. 915 to 923.
73 Exhibit "P-27".
74 Exhibit "P-21".
75 Exhibits "P-22-1" to "P-22-12".
76 Exhibit "P-23".
77 Exhibits "P-24-1", "P-24-2" and "P-24-3", respectively.
78 Exhibit "P-35".
79 Exhibits "P-36-1" to "P-36-3".
80 Exhibit "P-37".
81 Exhibit "P-38".
82 Exhibit "P-39".

employee schedule,[83] *Foreign sales allocated to the cost of the employee schedule*,[84] *Journal Entry Vouchers* for FYs 2018,[85] 2017,[86] and 2016,[87] *official receipts* (ORs) for FYs 2018,[88] 2017,[89] and 2016,[90] and *billing statements* for FYs 2018[91] and 2017.[92]

Records show that the Court-commissioned ICPA was able to trace the total revenue in the amount of ₱557,115,404.00, which was subjected by petitioner's customer to CWTs in the amount of ₱59,134,055.00, summarized as follows:[93]

Findings	**Revenue Subjected to CWT per GL (a)**	**Difference in the receipt reported by petitioner's client per BIR Form 2307 and the receipt recorded in the petitioner's ledger[94] (b)**	**Revenue per schedule of CWT (c=a+b)**	**CWTs**
Revenue recorded, reported and collected in **2018** subjected by Petitioner's customer to CWT	₱ 444,768,415	₱ 18,582,866	**₱ 463,351,281**	₱ 51,759,023
Revenue recorded and reported in **FY 2017** ITR and collected in FY 2018 subject to CWT	66,220,555	25,887,568	**92,108,123**	7,353,556
Revenue recorded and reported in **FY 2016** ITR and collected in FY 2018 subject to CWT	1,656,000	-	**1,656,000**	33,120
GRAND TOTAL	**₱ 512,644,970**	**₱ 44,470,434**	**₱ 557,115,404**	**₱ 59,145,699**
Less: Difference between SAWT and CWT per ITR / per schedule	-	-	-	11,644[95]
GRAND TOTAL	**₱512,644,970**	**₱44,470,434**	**₱557,115,404**	**₱59,134,055**

[83] Exhibit "P-40".
[84] Exhibit "P-41".
[85] Exhibits "P-32-1" to "P-32-34".
[86] Exhibits "P-33-1" to "P-33-10".
[87] Exhibit "P-34-1".
[88] Exhibits "P-29-1-1-B" to "P-29-1-99-B", "P-29-2-1-B" to "P-29-2-44-B", "P-29-4-1-B" to "P-29-4-8-B", "P-29-5-1-B" to "P-29-5-57-B", "P-29-6-1-B" to "P-29-6-30-B", "P-29-8-1-B" to "P-29-8-3-B", "P-29-10-1-B" to "P-29-10-10-B", "P-29-11-1-B" to "P-29-11-2-B", "P-29-12-1-B" to "P-29-12-2-B", "P-29-13-1-B" to "P-29-13-8-B", "P-29-14-1-B", "P-29-15-1-B" to "P-29-15-7-B", "P-29-16-1-B" to "P-29-16-5-B", and "P-29-17-1-B".
[89] Exhibits "P-30-1-1-B" to "P-30-1-26-B", "P-30-2-1-B" to "P-30-2-5-B", "P-30-3-1-B" to "P-30-3-24-B", "P-30-4-1-B" to "P-30-4-2-B", "P-30-5-1-B", "P-30-6-1-B", "P-30-7-1-B" to "P-30-7-2-B", and "P-30-8-1-B".
[90] Exhibit "P-31-1-1-B".
[91] Exhibits "P-29-1-1-C" to "P-29-1-125-C", "P-29-4-1-C" to "P-29-4-9-C", "P-29-5-1-C" to "P-29-5-68-C", "P-29-7-1-C" to "P-29-7-13-C", "P-29-8-1-C" to "P-29-8-5-C", "P-29-9-1-C", "P-29-10-1-C" to "P-29-10-9-C", "P-29-11-1-C" to "P-29-11-8-C", "P-29-12-1-C" to "P-29-12-2-C", "P-29-13-1-C" to "P-29-13-25-C", "P-29-15-1-C" to "P-29-15-9-C", "P-29-16-1-C" to "P-29-16-13-C", "P-29-17-1-C" to "P-29-17-3-C", and "P-29-18-1-C" to "P-29-18-3-C".
[92] Exhibits "P-30-1-1-C" to "P-30-1-39-C", "P-30-3-1-C" to "P-30-3-30-C", "P-30-5-1-C", "P-30-6-1-C" to "P-30-6-3-C", "P-30-7-1-C" to "P-30-7-2-C", "P-30-8-1-C" to "P-30-8-4-C", and "P-30-10-1-C" to "P-30-10-2-C".
[93] Table 7, Exhibit "P-17", ICPA *Amended Report*, Docket – Vol. 2, pp. 619 to 622.
[94] Annexes H-1 and H-2, Exhibit "P-17", ICPA *Amended Report*, Docket – Vol. 2, pp. 695 to 698; Annex H-2, Docket – Vol. 2, p. 557.
[95] Pertains to CWT issued by *Propriedad del Norte, Inc.* amounting to ₱71,919.64 but not recorded in the books and recorded CWT from *Quezon Power (Philippines) Ltd. Co.* amounting to ₱60,275.25 (Sum of ₱26,511.60 and ₱33,763.65) but not reported in the SAWT, Table 1, Exhibit "P-17", Docket – Vol. 2, p. 614; Annexes H-1 and H-4, Exhibit "P-17", Docket – Vol. 2, pp. 697 and 702, respectively.

For FY 2018, petitioner reported in its Annual ITR the amount of ₱873,211,368.00 as Net Sales/Revenues/Receipts/Fees.[96] Comparing the same to the total revenues per GL/AFS in the amount of ₱914,180,355.00,[97] there is a variance of ₱40,968,987.00,[98] reconciled by the Court-commissioned ICPA, as follows:

Account Title	Subjected to CWT	Not Subjected to CWT	Total	Exhibit No.
Revenue per GL FY 2018[99]				
GL 528-71-01-114001	₱444,768,414[100]	₱137,539,579[101]	₱582,307,993	"P-37"
International Sales		375,232,979	375,232,979	"P-35"
Less: Unbilled Work		43,360,617	43,360,617	"P-36-1" to "P-36-3"
Revenue per GL/AFS			**₱914,180,355**	
Less: Services rendered outside PH considered income not subject to tax[102]				
Services rendered to foreign clients		37,718,055	₱37,718,055	"P-38"
Services rendered to local clients		1,699,749	1,699,749	"P-38"
Services rendered outside PH but unbilled as of FY 2018		1,551,183	1,551,183	"P-38"
Total Services rendered outside PH			**₱40,968,987**	
GL – Revenue, net of services outside PH			**₱873,211,368**	
Revenue – ITR for FY 2018			**₱873,211,368**	"P-5"
		Difference	**0.00**	

The Court-commissioned ICPA explained that the ₱40,968,987.00 variance pertains to the revenues generated from international and local clients, of which the services were performed outside the Philippines, thus, considered by petitioner as not subject to tax in the Philippines.[103]

Furthermore, a comparison between the revenues subjected to CWTs per GL for FY 2018 amounting to ₱444,768,414.00, as shown in the reconciliation above, against the revenues subject to CWTs per SAWT amounting to ₱557,115,404.00,[104] shows a variance of ₱112,346,990.00,[105] reconciled by the Court-commissioned ICPA, as follows:[106]

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96 Line 30, Exhibit "P-5", Docket – Vol. 2, p. 905.
97 Service Fees, Statements of Comprehensive Income, Exhibit "P-27"; Note 17 of AFS, Exhibit "P-27".
98 ₱914,180,355.00 less ₱873,211,368.00.
99 Table 5, Exhibit "P-17", Docket – Vol. 2, p. 616.
100 Annexes A-1 to A-18, Exhibit "P-17", Docket – Vol. 2, pp. 631 to 649.
101 Annexes F and G, Exhibit "P-17", Docket – Vol. 2, pp. 684 to 694.
102 Item 5, Findings and Observations, Exhibit "P-17", Docket – Vol. 2, p. 615.
103 Item 5, Findings and Observations, Exhibit "P-17", Docket – Vol. 2, p. 615.
104 Exhibits "P-22-1" to "P-22-12".
105 ₱557,115,404.00 less ₱444,768,414.00.
106 Table 6.2, Exhibit "P-17", Docket – Vol. 2, p. 616.

Description	Annex	Amount
2018 Revenue subjected to CWTs per GL	Annex A	₱ 444,768,414
Add: A. Revenue recorded and reported in FY 2017 and 2016 ITR but collected and subjected to withholding tax only in FY ending 2018		
2017 Revenue	Annex E-1	₱ 66,220,556
2016 Revenue	Annex E-2	1,656,000
Total		₱ 67,876,556
Total revenue collected and subjected to CWT		**₱512,644,970**
Add:		
Difference in the receipt reported by petitioner's client per BIR Form 2307 and the receipt recorded in the petitioner's ledger *(Portion of Gross receipts/revenue reflected in the BIR form but not recorded in the GL for Fiscal Year ended 2018)*		
2018 Revenue	Annex H-1	₱ 18,582,866
2017 Revenue	Annex H-2	25,887,568
Total		₱ 44,470,434
Revenue Subjected to Withholding Tax		**₱557,115,404**
Revenue Subjected to Withholding Tax per SAWT		**₱557,115,404**
	Difference	**0.00**

Notwithstanding the timing difference, the ICPA found that the revenues amounting to ₱67,876,556.00, as shown in the table above, was still recorded and reported by petitioner as part of its gross income, albeit during a different taxable period, *i.e.*, FYs 2017 and 2016.

In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*,[107] the Supreme Court elucidated that the delay in the receipt of CWT Certificates is not fatal as what is important is that the income per CWT Certificates were reported in the ITRs, albeit for prior years, *viz.*:

> **"It must be noted that while the income payments from which the CWTs which were declared in its return covered the years 2006, 2008, 2009 and 2010, there was nothing wrong with it as what is important is that the respondent complied with the third requisite, that is, the income which the taxes were withheld was included in the returns of the respondent.**
>
> The CTA *En Banc* correctly appreciated the explanation of the independent CPA (ICPA) why the income payments from which the CWT amounting to P12,729,617.90 were withheld, were declared in its returns covering the years 2006, 2008, 2009 and 2010. In gist, the ICPA suggests that there were delays in collection of certain income payments to respondent. For one, certain sales made by respondent to its dealers in 2008 and 2009 were only paid in 2010. In other words, there were certain income payments which, although respondent expected to receive in 2006, 2008 and 2009, were only remitted to it in 2010. **As concluded by the CTA *En Banc*, the delay in collection of certain income payments of respondent caused the timing difference between the actual reporting of the income by respondent and the actual withholding of the corresponding creditable income tax by respondent's customers.** What is important is that the

[107] G.R. No. 231581, April 10, 2019.

> creditable withholding taxes corresponding to the related income in the respondent's books for CY's 2006, 2008 and 2009 were not yet claimed as income tax credits in respondent's annual ITRs corresponding to the said years. Hence, it is just proper that these income payments should form part of respondent's tax credit for 2010." *(Emphasis supplied)*

To prove that the ₱67,876,556.00 revenues formed part of petitioner's declared income per Annual ITR for FYs 2017 and 2016, petitioner offered in evidence its *Annual ITR* for FYs 2017[108] and 2016,[109] *GL of Revenue* for FYs 2017[110] and 2016,[111] *Journal Entry Vouchers* for FYs 2017[112] and 2016,[113] ORs for FYs 2017[114] and 2016,[115] *billing statements* for FY 2017,[116] and *ICPA Report* for FYs 2017 and 2016.[117]

While it is true that the delay in the receipt of CWT Certificates is not fatal as what is important is that the income per CWT Certificates were reported in the ITRs, albeit for prior years,[118] the amount of revenues reported in petitioner's GL for FYs 2017 and 2016 did not tally with the amount of revenues declared in the Annual ITR for FYs 2017 and 2016, as follows:

FY	Revenues per ITR	Revenues per GL	Difference
2017	₱536,581,845[119]	₱460,015,101.21[120]	₱ 76,566,743.79
2016	459,801,346[121]	357,904,884.29[122]	101,896,461.71

Petitioner, however, did not provide a reconciliation of the revenues per GL against the reported revenues per ITR. Thus, the Court cannot ascertain whether the ₱67,876,556.00 revenue was included in petitioner's Annual ITR for FYs 2017 and 2016. As such, it is appropriate for the Court to disallow the related CWT Certificates amounting to ₱7,386,676.00.[123]

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[108] Exhibit "P-26-11".
[109] Exhibit "P-26-10".
[110] Exhibit "P-24-2".
[111] Exhibit "P-24-3".
[112] Exhibits "P-33-1" to "P-33-10".
[113] Exhibit "P-34-1".
[114] Exhibits "P-30-1-1-B" to "P-30-1-26-B", "P-30-2-1-B" to "P-30-2-5-B", "P-30-3-1-B" to "P-30-3-24-B", "P-30-4-1-B" to "P-30-4-2-B", "P-30-5-1-B", "P-30-6-1-B", "P-30-7-1-B" to "P-30-7-2-B", "P-30-8-1-B".
[115] Exhibit "P-31-1-1-B".
[116] Exhibit "P-30-1-1-C" to "P-30-1-39-C", "P-30-3-1-C" to "P-30-3-30-C", "P-30-5-1-C", "P-30-6-1-C" to "P-30-6-3-C", "P-30-7-1-C" to "P-30-7-2-C", "P-30-8-1-C" to "P-30-8-4-C", and "P-30-10-1-C" to "P-30-10-2-C".
[117] Exhibits "P-42-1" and "P-42-2", respectively.
[118] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.
[119] Line 6, Schedule 1 – Sales/Revenues/Receipts/Fees, Exhibit "P-26-11", p. 3 of 8.
[120] Exhibit "P-24-2".
[121] Line 6, Schedule 1 – Sales/Revenues/Receipts/Fees, Exhibit "P-26-10", p. 3.
[122] Exhibit "P-24-3".
[123] Sum of ₱7,353,556.00 and ₱33,120.00, Exhibit "P-17", Docket – Vol. 2, pp. 621 to 622.

With regard to the ₱44,470,434.00 difference in the revenue/receipt reported by petitioner's clients per BIR Form No. 2307 and the revenue/receipt recorded in the petitioner's ledger, the ICPA verified that such difference is mainly attributable to (1) foreign exchange difference, and (2) erroneous application of withholding tax rate by petitioner's customer from revenue that originates from FYs 2018 and 2017, amounting to ₱18,582,865.00 and ₱25,887,569.00, respectively, and collected in 2018, as follows:[124]

	Foreign exchange difference per Petitioner's books and CWT Certificate[125]	**Erroneous application of withholding tax rate by the petitioner's customer[126]**	**Total**
Difference in the receipt reported by petitioner's client per BIR Form 2307 and the receipt recorded in the petitioner's ledger			
From FY Ending 2018 Revenue[127]	₱ 1,613,695	₱16,969,170	₱18,582,865
From FY Ending 2017 Revenue[128]	238,688	25,648,881	25,887,569
TOTAL	**₱ 1,852,383**	**₱42,618,051**	**₱44,470,434**

As ascertained by the ICPA, the net foreign exchange discrepancy of ₱1,852,383.00 between petitioner's books and CWT Certificates was due to petitioner's practice of converting its foreign currency billings to its customers to Philippine Peso using the prevailing foreign exchange rate at the time the transactions are recorded in its books. On the other hand, the foreign exchange rate used by petitioner's customers in the CWT Certificates are different. Hence, causing a discrepancy in the net amount of ₱1,852,383.00 between gross sales subject to withholding tax per SAWT and sales per GL.[129]

Moreover, the discrepancy in the net amount of ₱42,618,051.00 pertains to certain transactions where there were differences in the withholding tax base between the amount reported in the BIR Form No. 2307/SAWT and the amount reported in the billing statements/GL. Petitioner claims that the revenue reported in the said BIR Form No. 2307 was the grossed-up value. As verified by the Court-commissioned ICPA, the related ORs issued show that the amount of revenues actually collected was different from the amount reported in BIR Form No. 2307, but bearing the same amount of CWT. Hence, the different tax rates used in the BIR Form No. 2307, and the actual rate used per ORs resulted in an over/under statement of the tax

[124] Table 6.2.1, Item b., Exhibit "P-17", Docket – Vol. 2, pp. 617 to 618.
[125] Annex H-3, Exhibit "P-17", Docket – Vol. 2, pp. 699 to 701.
[126] Annex H-4, Exhibit "P-17", Docket – Vol. 2, p. 702.
[127] Annex H-1, Exhibit "P-17", Docket – Vol. 2, pp. 695 to 697.
[128] Annex H-2, Exhibit "P-17", Docket – Vol. 2, p. 698; See also Docket – Vol. 2, p. 557.
[129] Item 7.b.1., Findings and Observations, Exhibit "P-17", Docket – Vol. 2, pp. 617 to 618.

base/income payment as reported in the BIR Form No. 2307. Thus, the net difference was added to the revenue reported in the GL to arrive at the revenue subjected to withholding tax per SAWT.[130]

Considering the foregoing, petitioner was able to prove that the income payments related to the CWTs of ₱50,743,712.18, formed part of the income declared in its FY 2018 *Annual ITR*; thus, the *third* requisite was complied with.

In sum, petitioner has sufficiently proven that it is entitled to a refund/TCC in the amount of **₱50,743,712.18**, representing its excess and unutilized CWTs for FY 2018, computed as follows:

	Amount of CWT
Amount of claim	₱59,134,055.00
Less disallowances:	
CWT related to revenues not traced in FY 2017 ITR	(7,353,556.00)
CWT related to revenues not traced in FY 2016 ITR	(33,120.00)
CWT not valid per ICPA's verification	(842,973.00)
CWT not valid per this Court's verification	(160,693.82)
TOTAL	**₱50,743,712.18**

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND OR ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, the amount of **₱50,743,712.18**, representing its excess and unutilized creditable withholding taxes (CWTs) for the fiscal year ended June 30, 2018.

SO ORDERED.

CORAZON G. FERRER-FLORES
Associate Justice

WE CONCUR:

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

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[130] Item 7.b.2., Findings and Observations, Exhibit "P-17", Docket – Vol. 2, p. 618.

MARIA ROWENA MODESTO-SAN PEDRO
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.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

CERTIFICATION

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

ROMAN G. DEL ROSARIO
Presiding Justice