REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

FIRST DIVISION

SONY PHILIPPINES, INCORPORATED, *Petitioner,*	**CTA Case No. 10115**
	Members:
- versus -	**DEL ROSARIO**, *P.J., Chairperson,* **MANAHAN**, *and* **REYES-FAJARDO**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	**Promulgated:** DEC 16 2021 9:40 a.m.

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DECISION

DEL ROSARIO, P.J.:

This is a Petition for Review[1] filed on July 15, 2019 by petitioner Sony Philippines, Incorporated against respondent Commissioner of Internal Revenue, praying for the refund of the amount of ₱48,443,111.00, representing its alleged unutilized creditable withholding taxes (CWTs) for fiscal year (FY) ending March 31, 2017.

THE PARTIES

Petitioner Sony Philippines, Incorporated is a corporation duly organized and existing under and by virtue of the laws of the Philippines, with principal office at 12/F Inoza Tower, 40th Street, Bonifacio Global City, Fort Bonifacio, Taguig City.[2] It is a registered taxpayer of the Bureau of Internal Revenue (BIR), under the Regular Taxpayer Audit Division I (Revenue District Office [RDO] No. 116), with Taxpayer Identification No. 005-338-777-000.[3]

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[1] CTA Docket, pp. 10-29.
[2] Par. 1, Parties, Petition for Review, CTA Docket, p. 11; Exhibits "P-1" and "P-2", CTA Docket, pp. 571-592 and 593-606.
[3] Exhibit "P-12", CTA Docket, p. 678.

Respondent Commissioner of Internal Revenue (CIR) is the chief of the BIR, who, under the law is empowered to perform the duties of said office including, among others, the power to assess and collect all national internal revenue taxes, fees and charges, and to enforce all forfeitures, penalties, and fines connected therewith. He may be served with summons and other processes at the BIR National Office Building, BIR Road, Diliman, Quezon City.[4]

THE FACTS

On July 17, 2017, petitioner filed with the BIR, through the electronic Filing and Payment System (eFPS), its Annual Income Tax Return (ITR) for FY ending March 31, 2017 (FY 2017).[5]

Petitioner indicated on the face of its Annual ITR for FY 2017 its option to be refunded for its tax overpayments for FY 2017.[6]

On July 11, 2019, petitioner filed with the BIR RDO No. 116 an administrative claim for refund of its unutilized CWTs for FY 2017 in the amount of ₱48,443,111.00.[7]

Due to the inaction of respondent, and in order to preserve its right to judicially claim for refund its alleged unutilized CWTs for FY 2017 within the prescribed two (2)-year period, petitioner filed the present Petition for Review before this Court on July 15, 2019.[8]

On September 4, 2019, within the extended period,[9] respondent filed his Answer,[10] raising therein his special and affirmative defenses.

On September 23, 2019, petitioner filed a Motion for Leave to File Reply with Motion to Admit Attached Reply.[11] This was granted in the Resolution[12] dated October 11, 2019 and the attached Reply (To Respondent's Answer dated 4 September 2019)[13] was admitted.

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[4] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), CTA Docket, pp. 292-293.
[5] Exhibit "P-6", CTA Docket, pp. 644-651.
[6] Exhibit "P-6-3", CTA Docket, p. 644.
[7] Exhibits "P-3" and "P-4", CTA Docket, pp. 607-614 and 615.
[8] CTA Docket, p. 10.
[9] CTA Docket, p. 106.
[10] CTA Docket, pp. 110-117.
[11] CTA Docket, pp.126-129.
[12] CTA Docket, p. 159.
[13] CTA Docket, pp. 131-152.

Respondent's Pre-Trial Brief[14] was filed on October 15, 2019, while Petitioner's Pre-Trial Brief[15] was filed on November 7, 2019. Thereafter, a Pre-Trial Conference was held on November 14, 2019.[16]

On November 26, 2019, the parties filed their Joint Stipulation of Facts and Issues[17] which was approved by the Court in its Resolution[18] dated December 5, 2019 thereby terminating the Pre-Trial. On February 3, 2020, the Court issued a Pre-Trial Order.[19]

Upon motion[20] of petitioner, the Court commissioned Ms. Krista V. Bambao as Independent Certified Public Accountant (ICPA) on February 6, 2020.[21]

During trial, petitioner presented testimonial and documentary evidence. It presented the following witnesses: Mr. Alfredo Lotivo,[22] petitioner's Finance Controller; and, Ms. Krista V. Bambao,[23] the Court-commissioned ICPA.

On August 20, 2020, petitioner filed its Formal Offer of Evidence.[24] Petitioner's exhibits were admitted in evidence in the Resolution[25] dated November 16, 2020, save for Exhibit "P-24-4", for failure to submit the duly marked exhibit; Exhibits "P-25", "P-26", "P-39" to "P-40", "P-41" to "P-86", "P-87" to "P-138", "P-139" to "P-439", "P-440" to "P-470", and "P-471", for petitioner's failure to present the originals for comparison; and, Exhibits "P-2331" and "P-2331-1" for failure to comply with Section 3(a) and (b) of A.M. No. 12-8-8-SC or the Judicial Affidavit Rule, in relation to Section 10(c) of the same rule.

Considering respondent's manifestation that he will not be presenting any witness,[26] the Court directed the parties to file their

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[14] CTA Docket, pp. 160-162.
[15] CTA Docket, pp. 168-176.
[16] CTA Docket, pp. 284-286.
[17] CTA Docket, pp. 292-297.
[18] CTA Docket, p. 300.
[19] CTA Docket, pp. 303-309.
[20] CTA Docket, pp. 270-272.
[21] CTA Docket, pp. 310-313.
[22] Exhibit "P-2330", CTA Docket, pp. 336-351; and Minutes of Hearing dated March 10, 2020, CTA Docket, pp. 512-513.
[23] Exhibit "P-2331", CTA Docket, pp. 523-543; and Minutes of Hearing dated July 21, 2020, CTA Docket, pp. 549-551.
[24] CTA Docket, pp. 555-575.
[25] CTA Docket, pp. 740-744.
[26] CTA Docket, p. 731.

respective memoranda within thirty (30) days from receipt of the November 16, 2020 Resolution.[27]

Respondent filed his Memorandum[28] on December 15, 2020, while petitioner filed a Motion for Extension of Time to File Memoranda on December 29, 2020.[29] Thereafter, petitioner filed its Memorandum[30] on January 18, 2021.

In the Resolution dated January 19, 2021,[31] the Court expunged from the records of the case petitioner's Motion for Extension of Time to File Memoranda for being a prohibited motion and submitted the case for decision.

ISSUE

The parties stipulated the following issue for the Court's resolution:

> Whether or not petitioner is entitled to a refund of its alleged unutilized excess CWTs amounting to ₱48,443,111.00, for taxable FY 2017.[32]

PARTIES' ARGUMENTS

Petitioner, in its Petition for Review, argues that: (i) it is entitled to a tax refund pertaining to unutilized excess CWTs withheld and remitted to respondent for FY 2017; (ii) the claim for refund was filed within the two (2)-year prescriptive period; (iii) the income payments where the taxes were withheld were included as part of the gross income declared in petitioner's 2017 Annual ITR; (iv) the fact of withholding is substantiated by the BIR Form No. 2307 issued by the income payor to petitioner; (v) petitioner elected to refund the excess CWTs in its 2017 Annual ITR; and, (v) the amount claimed for refund was not carried over to or applied to the succeeding year.[33]

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[27] CTA Docket, pp. 740-744.
[28] CTA Docket, pp. 753-760.
[29] CTA Docket, pp. 763-765.
[30] CTA Docket, pp. 767-778.
[31] CTA Docket, p. 781.
[32] Stipulated Issues, JSFI, CTA Docket, p. 293.
[33] Discussion, Petition for Review, CTA Docket, pp. 15-28.

On the other hand, respondent in his Answer and Memorandum counter-argues that: (i) the Petition for Review must be dismissed outright as it lacks proper verification since the Petition for Review is dated July 12, 2019 while the Verification/Certification Against Non-Forum Shopping was subscribed on July 10, 2019; (ii) petitioner is not entitled to the claim for refund of alleged unutilized CWTs as it failed to comply with the requirements; (iii) it is incumbent upon petitioner to prove that the alleged claim for refund was filed within the two (2)-year period provided under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended; (iv) petitioner failed to prove that income related to CWTs was declared in the Annual ITR; and, (v) the claim for tax refund is tainted with procedural infirmity due to petitioner's failure to submit complete documents to support its administrative claim for refund.[34]

Petitioner, in its Reply, added the following arguments: (i) it substantially complied with the requirements for verification and certification for non-forum shopping; (ii) the Petition for Review completely provided the documents supporting its claim for refund; and, (iii) actual remittance of taxes withheld by withholding agents need not be proven in claiming refund of unutilized CWTs.[35]

THE COURT'S RULING

Procedural Matter

Before delving into the main issue, the Court deems it necessary to address respondent's argument that the Petition for Review must be dismissed outright as it lacks proper verification since the Petition for Review is dated July 12, 2019 while the Verification/Certification Against Non-Forum Shopping was subscribed on July 10, 2019.

Respondent's assertion is misplaced. Needless to say, a verification is a formal requirement, and is not jurisdictional. It is mainly intended to secure an assurance that matters alleged are done in good faith or are true and correct, and not of mere speculation.[36]

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[34] Arguments/Discussions, Memorandum, CTA Docket, pp. 754-758; Special and Affirmative Defenses, Answer, CTA Docket, pp. 111-115.
[35] Reply, CTA Docket, pp. 131-152.
[36] *Narciso Victoriano vs. Juniper Dominguez,* G.R. No. 214794, July 23, 2018.

The Court laid down the following guidelines with respect to non-compliance with the requirements on or submission of a defective verification and certification against forum shopping, *viz.*:

> "1) A distinction must be made between non-compliance with the requirement on or submission of defective verification, and non-compliance with the requirement on or submission of defective certification against forum shopping.
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> **2) As to verification, non-compliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.**
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> **3) Verification is deemed substantially complied with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.**
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> **4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."**
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> 5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.
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> 6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf."[37] *(Boldfacing supplied)*

In *Datem Incorporated vs. Alphaland Makati Place, Inc. and/or Alphaland Southgate Tower, Inc.*[38] *(Datem case)*, the Supreme Court held that a variance between the dates of the verification and the petition is not fatal when the variance is satisfactorily explained and

[37] *People of the Philippines vs. Mateo A. Lee, Jr.*, G.R. No. 234618, September 16, 2019.
[38] G.R. No. 242904-05, February 10, 2021.

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petitioner substantially complied with the objective of the verification requirement, to wit:

> "The variance between the dates of the verification and the petition does not necessarily contradict the categorical declaration made by petitioners that they read and understood the contents of the pleading. **A variance in their dates is a matter that may satisfactorily be explained.** To demand the litigants to read the very same document that is to be filed in court is too rigorous a requirement since what the Rules require is for a party to read the contents of a pleading without any specific requirement on the form or manner in which the reading is to be done. **What is important is that efforts were made to satisfy the objective of the Rule, that is, to ensure good faith and veracity in the allegations of a pleading.**
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> Here, **the variance between the filing date of the petition and the date it was verified is not fatal to DATEM's case. In its reply, DATEM satisfactorily explained the variance in dates and narrated that the petition was already prepared and verified as of 21 November 2018.** However, DATEM's counsel was only able to secure the certified documents from the CA and CIAC thereafter. Moreover, the collation, scanning, and reproduction of all documentary requirements were later completed on 17 December 2018. **Clearly, even if the dates were different, DATEM substantially complied with the objective of the verification requirement.**" *(Boldfacing supplied)*

In the present case, the variance between the date of the Verification/Certification Against Non-Forum Shopping and the Petition for Review was satisfactorily explained by petitioner's counsel in the Reply, stating that upon instructions of petitioner, counsel forwarded to petitioner the drafts of the Verification/Certification Against Non-Forum Shopping and the Petition for Review on July 10, 2019. Petitioner, through its authorized representative, Mr. Alfredo Lotivo, proceeded to execute the Verification/Certification Against Non-Forum Shopping on July 10, 2019 before a notary public prior to delivering it back to its counsel. Petitioner's counsel then made some revisions on the Petition for Review (on its form) subsequent to the signing of the Verification/Certification Against Non-Forum Shopping.

Applying the *Datem case*, the Court finds that the variance of the dates in the Petition for Review and the Verification/Certification Against Non-Forum Shopping is therefore not fatal. There is no ground for the outright dismissal of the case for lack of verification as petitioner substantially complied with the objective of the verification requirement.

Entitlement to refund of excess CWTs

In its Annual ITR for FY 2017, petitioner had total tax credits of ₱339,747,185.00, broken down as follows:[39]

PARTICULARS	AMOUNT
Prior Year's Excess Credits other than MCIT	₱ 272,859,084.00
Excess MCIT Applied this Current Taxable Year	18,444,990.00
Creditable Tax Withheld from Previous Quarter/s per BIR Form No. 2307	36,610,554.00
Creditable Tax Withheld per BIR Form No. 2307 for the 4th Quarter	11,832,557.00
Total Tax Credits/Payments	**₱ 339,747,185.00**

Petitioner claims that its regular corporate income tax for the period amounted to ₱31,560,092.00, which was paid for using its Excess MCIT credits amounting to ₱18,444,990.00 and its Prior Year's Excess Credits other than MCIT of ₱13,115,102.00; thus, leaving a balance of ₱259,743,982.00 in prior year's excess credits. Petitioner alleges that its CWTs in the total amount of ₱48,443,111.00 incurred during the period were not utilized to cover its current income tax liability, as shown below:

PARTICULARS	AMOUNT
Income Tax Due	₱ 31,560,092.00
Less: Excess MCIT Applied this Current Taxable Year	18,444,990.00
Income Tax Due to be Settled thru Prior Year's Excess Credits other than MCIT	13,115,102.00
Prior Year's Excess Credits other than MCIT	272,859,084.00
Balance of Prior Year's Excess Credits	259,743,982.00
Add: Creditable Taxes Withheld for FY 2017	48,443,111.00
Excess Creditable Withholding Taxes as of March 31, 2017	308,187,093.00
Less: Subject of the present claim for refund	48,443,111.00
Net Excess Creditable Withholding Taxes as of March 31, 2017	₱ 259,743,982.00

In support of its claim for refund, petitioner offered in evidence the following pertinent documents: Annual ITR for FY 2017,[40] Original[41] and Amended[42] Annual ITR for FY ending March 31, 2016 (FY 2016), Original[43] and Amended[44] Annual ITR for FY ending March 31, 2018

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[39] Exhibit "P-6", CTA Docket, p. 649.
[40] Exhibit "P-6", CTA Docket, pp. 644-669.
[41] Exhibit "P-13", CTA Docket, pp. 679-686.
[42] Exhibit "P-13-1", CTA Docket, pp. 687-694.
[43] Exhibit "P-7", CTA Docket, pp. 652-669.
[44] Exhibit "P-7-2", CTA Docket, 670-677.

(FY 2018), Summary Alphalist of Withholding Tax at Source (SAWT) for FY 2017,[45] SAWT for FY 2016,[46] General Ledger (GL) of Revenue for FY 2017,[47] GL of Revenue for FY 2016,[48] BIR Form 2307 supporting CWTs claims for revenue reported in the Annual ITR for FY 2017,[49] and BIR Form 2307 supporting CWTs claims for revenue reported in the Annual ITR for FY 2016.[50]

Petitioner's compliance 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 states:

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

Pursuant to the above-mentioned provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, essentially, has two (2) options, either: (a) to carry-over the excess credit and apply the same against the estimated quarterly income tax liabilities for the taxable quarters of the

[45] Exhibit "P-895".
[46] Exhibit "P-34".
[47] Exhibits "P-888" to "P-894".
[48] Exhibits "P-27" to "P-33".
[49] Exhibits "P-900" to "P-2329".
[50] Exhibits "P-39" to "P-887".

succeeding taxable year; or (2) to apply for a cash refund or issuance of a TCC within the prescribed period.[51] If the carry-over option is selected, such is irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor.

In exercising its option, the corporation must signify in its Annual ITR (by marking the option box provided therein) its intention, either to carry over the excess credit or to claim a refund.[52] To facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

An examination of petitioner's Annual ITR for FY 2017 shows that petitioner chose the option to be refunded.[53] Thus, petitioner was able to validly choose the refund option under Section 76 of the NIRC of 1997, as amended.

Likewise, a perusal of petitioner's Annual ITR for FY 2017 reveals that the amount ₱48,443,111.00 representing the excess and unutilized CWTs requested to be refunded has not been carried over to the succeeding taxable periods. The presentation of the Annual ITR for the succeeding taxable year would suffice in proving that prior year's excess credits were not utilized for the succeeding taxable year in order to make a final determination of the total tax due.[54]

The "Prior Year's Excess Credits Other Than MCIT" found in petitioner's Original[55] and Amended[56] Annual ITR for FY 2018 shows the amount of ₱259,743,982.00. This amount reflects the excess credits of petitioner from years prior to FY 2017. Thus, the amount prayed to be refunded in this case has not been carried over to the succeeding FY 2018. The unutilized CWTs for FY 2017 in the amount of ₱48,443,111.00 may accordingly be the subject of a claim for refund under Section 76 of the NIRC of 1997, as amended.

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[51] *University Physicians Services Inc.-Management, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 205955, March 7, 2018.
[52] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[53] Exhibit "P-6-3", CTA Docket, p. 644.
[54] *Winebrenner & Iñigo Insurance Brokers, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 206526, January 28, 2015.
[55] Exhibit "P-7-1", CTA Docket, p. 667.
[56] Exhibit "P-7-2", CTA Docket, p. 675.

Petitioner's compliance with the other requisites to claim a tax credit or refund of excess and unutilized CWTs

Sections 204(C) and 229 of the NIRC of 1997, as amended, provide for the prescriptive period in the filing of the administrative and judicial claims for refund or recovery of tax erroneously or illegally collected, to wit:

> "**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 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
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> **SEC. 229**. ***Recovery of Tax Erroneously or Illegally Collected.*** – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
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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."

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Section 204 of the NIRC of 1997, as amended, applies to administrative claims for refund, while Section 229 of the same Code pertains to judicial claims for refund.[57]

A claimant for refund of tax erroneously or illegally collected must first file an administrative claim for refund before the CIR, prior to filing a judicial claim before the Court. Notably, both the administrative and judicial claims for refund should be filed within the two (2)-year prescriptive period indicated therein, and that the claimant is allowed to file the latter even without waiting for the resolution of the former in order to prevent the forfeiture of its claim through prescription.[58]

While the law provides that the two (2)-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two (2)-year prescriptive period to claim a refund actually commences to run, at the earliest, on the date of the filing of the adjusted final tax return because this is where the figures of the gross receipts and deductions have been audited and adjusted, thus, reflecting the results of the operations of a business enterprise.[59]

In addition, Section 2.58.3(B) of Revenue Regulations (RR) No. 2-98, as amended, provides for the procedure in claiming for tax credit or refund of CWTs, as follows:

> *"Sec. 2.58.3.* ***Claim for tax credit or refund.*** *–*
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> (A) 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**. xxx" (*Boldfacing supplied*)

Thus, petitioner must satisfy the following three (3) essential requisites for the grant of a claim for refund of creditable withholding income tax, to wit:

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[57] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc. (formerly Nissan Motor Philippines, Inc.)*, G.R. No. 231581, April 10, 2019.
[58] *Metropolitan Bank & Trust Company vs. Commissioner of Internal Revenue*, G.R. No. 182582, April 17, 2017.
[59] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019.

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(1) The claim must be filed within the two (2)-year period from the date of payment of the tax; and/or the filing of the Annual ITR;

(2) The fact of withholding is established by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld; and

(3) It must be shown on the return of the recipient that the income received was declared as part of the gross income.[60]

First requisite: The administrative and judicial claims for refund were timely filed

Records show that petitioner electronically filed its Annual ITR for FY 2017 on July 17, 2017.[61] Thus, petitioner had until July 17, 2019 within which to file both its administrative and judicial claims for refund. The administrative claim was filed by petitioner on July 11, 2019.[62] Without waiting for the decision of respondent on its application and to prevent the forfeiture of its claim through prescription, petitioner filed the subject Petition for Review on July 15, 2019.[63] Both the administrative and judicial claims were filed within the two (2)-year prescriptive period in accordance with Sections 204(C) and 229 of the NIRC of 1997, as amended. As the judicial claim was timely filed, the Court therefore has jurisdiction to take cognizance of this case.

Second Requisite: Fact of withholding is established by copies of withholding statements duly issued by the payor

The second requisite mandates petitioner to prove the fact of withholding of the claimed CWTs by a copy of the statement duly issued by the payor, acting as the withholding agent, to the payee, showing the names of the payor and payee, the income payment, the amount of tax withheld, and the nature of the tax paid.

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[60] *Commissioner of Internal Revenue vs. Team (Philippines) Operations Corporation*, G.R. No. 185728, October 16, 2013.
[61] Exhibit "P-6", CTA Docket, p. 644.
[62] Exhibits "P-3 and "P-44", CTA Docket, pp. 607-614 and 615.
[63] CTA Docket, p. 10.

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In *Commissioner of Internal Revenue vs. Philippine National Bank*,[64] the Supreme Court held that the certificate of creditable tax withheld at source (CWT certificate) is the competent proof to establish the fact that taxes are withheld, and it is not even 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.

The Court-commissioned ICPA examined the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307). The ICPA was able to trace the total revenue subjected by petitioner's customers to CWTs in the amount of ₱4,844,311,086.00 with corresponding CWTs of ₱48,443,110.86, broken down as follows:[65]

CUSTOMER	SAWT	
	INCOME PAYMENT	CWTs
ABENSON LIBERTY APPL. INC.	₱ 26,057,242.00	₱ 260,572.42
ABENSON VENTURES INC.	696,544,964.00	6,965,449.64
ACHIEVE ENTERPRISES	556,586.00	5,565.86
ADDESSA CORPORATION	3,126,060.00	31,260.60
ALTURAS ABENSON APPL. BOHOL INC.	15,576,244.00	155,762.44
ALTUS COMMUNICATIONS INC	3,055,582.00	30,555.82
ANSON @ HOME INC.	22,100,807.00	221,008.07
ANSON EMPORIUM CORP	76,139,136.00	761,391.36
ANSON MARKETING AND COMMERCIAL INC.	29,951,388.00	299,513.88
APPLIANCE CENTRUM -BACOLOD	23,433,598.00	234,335.98
ARL CUBAO APPLIANCE CENTER INC	1,163,812.00	11,638.12
AUDIO VISUAL DRIVER INTL. INC.	2,088.00	20.88
AUTOMATIC CENTRE-GREENBELT 1	148,686,868.00	1,486,868.68
AVESCO MKTG. CORP (5TH AVE. ELECT)	219,660.00	2,196.60
AVID SALES CORPORATION	520,997,534.00	5,209,975.34
AXN NETWORKS PHILS. INC.	365,634.00	3,656.34
BANBROS COMMERCIAL INC.	26,149,046.00	261,490.46
BONIFACIO ART FOUNDATION INC.	2,003,068.00	20,030.68
CABLE ACCESS TECHNOLOGIES INC.	229,584,036.00	2,295,840.36
CameraSound Inc-Malate Main	8,492,982.00	84,929.82
CELLCOM WORLD COMMUNICATIONS TRADIN	414,535.00	4,145.35
CENTRAL QUALITY APPL. -CAGAYAN	31,610,089.00	316,100.89
CITY SUPERMARKET INC.	66,269,987.00	662,699.87
CITYSUPER INCORPORATED	704,661.00	7,046.61
COLOURS FOTOSHOP	12,187,162.00	121,871.62
CRL MAKATI MARKETING CENTER INC.	1,906,744.00	19,067.44
DAVAO IMPORT DIST. INC.	11,462,862.00	114,628.62
DBK ELECTRONICS	17,034,205.00	170,342.05
DES APPLIANCE - OROQUIETA	41,226,369.00	412,263.69
DESMARK CORPORATION -CAPTAIN ROA	164,953,416.00	1,649,534.16

[64] G.R. No. 180290, September 29, 2014.
[65] Exhibit "P-895".

DGTE APPLIANCE CENTRUM	4,248,083.00	42,480.83
DIGI-KADEN INC.	66,307,657.00	663,076.57
DU EK SAM INC. -LESSAGE	181,169,114.00	1,811,691.14
DUTY FREE PHILS.	27,265,501.00	272,655.01
ELECTROWORLD INC.	35,428,206.00	354,282.06
E-PHONE CO. INC.	4,620,118.00	46,201.18
ERL PARANAQUE MARKETING CENTER INC	1,443,063.00	14,430.63
Eton Properties Phils. Inc.	2,773,125.00	27,731.25
FONE STYLE	6,913,093.00	69,130.93
GLOBE TELECOM INC	48,105,556.00	481,055.56
Guanzon Merchandising Corporation	21,107,461.00	211,074.61
HENRYS PROFESSIONAL PHOTO MKTG	665,925.00	6,659.25
HONDA CARS PHILIPPINES INC	521,481.00	5,214.81
HOTEL PHILIPPINE PLAZA	3,082,309.00	30,823.09
IMPERIAL APPL. PLAZA	474,979,621.00	4,749,796.21
Innove Communications Inc	656,483.00	6,564.83
JANDR ELECTRONICS -BINONDO	2,520,538.00	25,205.38
JUAN TY FULE GEC STATIONERY AND GEN. MERCHANDISE	970,552.00	9,705.52
Lyceum of the Phil. University Inc	462,002.00	4,620.02
MAGIC APPLIANCES -DAGUPAN	40,578,158.00	405,781.58
MEGA CELLULAR NETWORK INC.	68,848,011.00	688,480.11
METRO ILOCOS APPLIANCE INC.	595,760.00	5,957.60
METRO PLAZA -DAVAO	35,855,840.00	358,558.40
METRO RETAIL STORES GROUP INC.	62,888.00	628.88
MOBILESTYLE DISTRIBUTION INC.	45,843,552.00	458,435.52
NISSAN PHILIPPINES INC	266,988.00	2,669.88
OGILVY AND MATHER (PHILIPPINES) INC.	1,794,474.00	17,944.74
OMNI SOLID SERVICES INC.	345,300.00	3,453.00
PAN APPLIANCE CORPORATION	395,364.00	3,953.64
PHILIPPINE LONG DISTANCE TELEPHONE	1,573,305.00	15,733.05
POS MARKETING -BACOLOD	5,282,394.00	52,823.94
PROTON MICROSYTEMS INC	8,361,714.00	83,617.14
RJ HOMES -MAIN	56,240,275.00	562,402.75
RL APPLIANCE INC.-TACLOBAN	31,764,934.00	317,649.34
ROBINSONS APPL CORP. -NOVALICHES	171,359,227.00	1,713,592.27
RRL MARIKINA MARKETING CENTER INC	4,891,947.00	48,919.47
Savers Electronic World Inc.	(1,048,890.00)	(10,488.90)
SAVERS TAR-TARLAC MAC ENT.INC.	29,016,322.00	290,163.22
SCAN AND PRINT GRAPHIC HOUSE INC.	30,594,616.00	305,946.16
SCRAP SALES	234,331.00	2,343.31
Seascapes Resort Inc.	38,560.00	385.60
SILICON FOREST PHILS. -SFDM	3,795,578.00	37,955.78
Sky Cable Corporation	65,703.00	657.03
SMART COMMUNICATIONS INC.	16,004,408.00	160,044.08
SOLID ELECTRONICS CORP.	76,260,948.00	762,609.48
SOLID VIDEO CORPORATION	5,635,916.00	56,359.16
SONY GLOBAL BUSINESS SERVICES INC.	5,634.00	56.34
STAR APPLIANCE CENTER INC.	956,825,041.00	9,568,250.41
STROM MOBILE GADGETS CORP. / POWERTEL	19,210.00	192.10
SUPER EAST ASIA ENT. INC.	58,306,003.00	583,060.03
Sykes Asia Inc.	1,760,293.00	17,602.93

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TAGUM FIESTA APPLIANCE INC.	8,156,087.00	81,560.87
The Landmark Corporation	2,214,858.00	22,148.58
TIGER RESORT LEISURE AND ENTERTAIN	3,454,830.00	34,548.30
WAVE MOBILE INC. / PLAYTELCOM	20,025,840.00	200,258.40
WESTERN GRAND CENTRAL CO.INC.	47,806,610.00	478,066.10
WESTERN MARKETING CORP.	36,331,716.00	363,317.16
WILLY AND SONS CORP.	8,722,906.00	87,229.06
WRENLEYS APPLIANCE PLAZA	393,460.00	3,934.60
YUSEN LOGISTICS CENTER INC	42,500.00	425.00
YUSEN LOGISTICS PHILLIPINES INC	372,222.00	3,722.22
TOTAL	**₱ 4,844,311,086.00**	**₱ 48,443,110.86**

The ICPA then segregated the foregoing into CWTs with exceptions and CWTs which are properly substantiated, *viz.*:[66]

PARTICULARS	ANNEX	EXHIBIT REFERENCE	CWTs PER SAWT
A. BIR FORM NO. 2307 SUPPORTING CWTS WITH EXCEPTIONS:			
Unsupported CWTs claimed as credits	Annex 11		₱ 6,172,892.51
CWTs supported by BIR Form No. 2307 but with incorrect/no TIN of Petitioner	Annex 12	**P-900 to P-905**	261,774.25
CWTs supported by BIR Form No. 2307 but with incorrect address of Petitioner	Annex 13	**P-906 to P-932**	550,820.59
Out of period CWTs credits claimed in FY 2017	Annex 14	**P-933 to P-935**	51,355.40
CWTs supported by BIR Form No. 2307 which were not signed by customer of Petitioner	Annex 15	**P-936 to P-972**	111,483.09
Unreported income per ITR where CWTs were claimed as credits and the amount of CWTs per BIR No. 2307 is greater than the amount per SAWT	Annex 16	**P-973 to P-974**	69,130.93
SUBTOTAL			**₱ 7,217,456.77**
B. WITH NO EXCEPTIONS NOTED:			
Properly substantiated CWTs but exceeds amount reported in SAWT	Annex 17	**P-975 to P-1369**	12,905,329.21
Properly substantiated CWTs **(Annex 18)**	Annex 18	**P-1370 to P-2329**	28,320,325.00
SUBTOTAL			**₱ 41,225,654.21**
TOTAL			**₱ 48,443,110.98**

Under Annex 11 of the ICPA Report, the ICPA noted that CWTs amounting to ₱6,172,892.51 were not supported by CWT certificates (BIR Form No. 2307). Upon verification, however, the Court determined that CWTs amounting to ₱55,668.43 withheld and remitted by petitioner's customer, **DIMDI CENTRE, INC.,** were not actually reported in the SAWT and were not part of the subject refund claim. Thus, the Court shall only sustain the disallowed amount of ₱6,117,224.08 representing CWTs unsupported by CWT certificates.[67]

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[66] ICPA Report, p. 12.
[67] ₱6,172,892.51 - ₱55,668.43 = ₱6,117,224.08.

The ICPA also noted that CWTs in the total amount of ₱261,774.25 represented CWT certificates where petitioner's TIN is incorrect or not indicated. Upon verification by the Court, the said CWT certificates showed the following:[68]

EXHIBIT REFERENCE	PERIOD COVERED		CUSTOMER TIN	CUSTOMER NAME	TAX WITHHELD PER BIR FORM NO. 2307
	FROM	TO			
P-900	01-Mar-17	31-Mar-17	000255983000	TAGUM FIESTA APPLIANCE INC.	₱ 803.55
P-901	01-Feb-17	28-Feb-17	000255983000	TAGUM FIESTA APPLIANCE INC.	1,214.67
P-902	21-Dec-16	21-Dec-16	000249763000	CITY SUPERMARKET INC.	9,927.29
P-903	18-Nov-16	20-Nov-16	000249763000	CITY SUPERMARKET INC.	25,639.35
P-904	01-Jul-16	30-Sep-16	223-359-036-000	WESTERN GRAND CENTRAL CO., INC	125,185.48
P-905	01-Mar-17	31-Mar-17	223-359-036-000	WESTERN GRAND CENTRAL CO., INC	99,003.91
TOTAL					**₱ 261,774.25**

It must be noted that the withholding tax certificates which indicate petitioner's name and address, and the amount of CWTs withheld by the payor, albeit without petitioner's TIN, may be considered complete in relevant details necessary to aid the Court in evaluating the subject refund claim. Petitioner's name and address appearing on said certificates may be cross-referenced with petitioner's BIR Certificate of Registration showing its previous registered address. Therefore, even with an incorrect TIN, it can be reasonably inferred that the CWT certificates pertain to petitioner as the same recipient of such income subjected to withholding tax because the name and address appearing on the CWT certificate match with the details appearing on petitioner's BIR Certificate of Registration. Petitioner offered its BIR Certificate of Registration showing its previous registered address as its Exhibit "P-26". Exhibit "P-26", however, was denied admission for failure to present the original for comparison. The Court could not take into consideration the registered address stated therein to cross-reference such detail found in the CWT certificates. Thus, it is proper to sustain the disallowed CWTs in the total amount of ₱261,774.25.

The Court shall allow, however, the CWTs bearing the incorrect address of petitioner, provided the TIN stated therein are correct. As stated, petitioner's BIR Certificate of Registration showing its previous registered address was denied admission. Nonetheless, other pieces of evidence exhibit the TIN of petitioner, *i.e.*, Annual ITRs for FYs 2016, 2017, and 2018. Upon verification, petitioner's name and its correct TIN appear on all the CWT certificates, except on the certificate issued

[68] Exhibits "P-900" to "P-905".

on

by **SOLID ELECTRONIC CORPORATION** with CWTs of ₱189,777.36.[69] Thus, the Court shall sustain the disallowance but only to the extent of the amount of ₱189,777.36.

Furthermore, the ICPA noted that there were "unreported income per ITR where CWTs were claimed as credits and the amount of CWTs per BIR No. 2307 is greater than the amount per SAWT"[70] with CWTs of ₱69,130.93. Upon verification, however, the Court found that the CWTs were not reported in the SAWT and are not part of the subject claim. Therefore, it is not proper to sustain this disallowance.

Considering the adjustments due to the verification of the Court as described above, the total CWTs disallowances made by the ICPA stands at ₱6,731,614.17, computed below:

PARTICULARS	ANNEX	AMOUNT
Unsupported CWTs claimed as credits	Annex 11	₱ 6,117,224.08
CWTs supported by BIR Form No. 2307 but with incorrect/no TIN of Petitioner	Annex 12	261,774.25
CWTs supported by BIR Form No. 2307 but with incorrect address of Petitioner **[and incorrect TIN]**	Annex 13	189,777.36
Out of period CWTs credits claimed in FY 2017	Annex 14	51,355.40
CWTs supported by BIR Form No. 2307 which were not signed by customer of petitioner	Annex 15	111,483.09
Total ICPA Disallowances		**₱ 6,731,614.17**

Of the remaining CWT certificates offered by petitioner in evidence, further verification by the Court shows that the following certificates, in the total amount of ₱215,029.86, shall likewise be denied based on the stated grounds:

EXHIBIT	CUSTOMER	AMOUNT
1) CWT certificates with unreadable details		
P-2441	ROBINSONS APPLIANCES CORPORATION	₱ 468,253.23
P-2442	ROBINSONS APPLIANCES CORPORATION	372,564.24
Subtotal - CWT certificates with unreadable details		₱ 840,817.47
2) CWT certificates not signed by the payor's authorized representative		
P-1723	NISSAN PHILIPPINES, INC.	₱ 2,669.88
P-1781	TAGUM FIESTA APPLIANCE INC.	201.95
P-1782	TAGUM FIESTA APPLIANCE INC.	267.82
P-1785	TAGUM FIESTA APPLIANCE INC.	6,817.98
P-2292	TARLAC MAC ENTERPRISES INC	392.78
P-2299	TARLAC MAC ENTERPRISES INC	13,319.59
P-2306	TARLAC MAC ENTERPRISES INC	13,873.34
Subtotal - CWT certificates not signed by the payor's authorized representative		₱ 37,543.33
3) Unsupported CWTs claimed as credits		

[69] Exhibit "P-920".
[70] Exhibits "P-973" and "P-974".

N/A	CELLCOM WORLD COMMUNICATIONS TRADIN	₱	1,094.16
N/A	DAVAO IMPORT DIST. INC.		114,628.62
N/A	DGTE APPLIANCE CENTRUM		798.29
N/A	FONE STYLE		69,130.93
Subtotal - Unsupported CWTs claimed as credits		₱	185,652.00
Total Disallowances by the Court		**₱**	**1,064,012.80**

In summary, the total disallowances found by the ICPA and the Court stands at ₱7,533,852.72, thus leaving a balance of ₱40,647,484.03 to petitioner's refund claim, as follows:

PARTICULARS		AMOUNT
Petitioner's Claim	₱	48,443,111.00
Less: ICPA Disallowances		6,731,614.17
Court Disallowances		1,064,012.80
Total Disallowances		7,795,626.97
Total Valid Claim	**₱**	**40,647,484.03**

Third requisite: The income received was declared as part of the gross income

The third requisite mandates petitioner to prove that the income payments that were subjected to CWTs were reported or declared as part of its gross income in its Annual ITR for FY 2017.

Petitioner declared in its Annual ITR for FY 2017 sales/revenues/receipts/fees in the amount of ₱5,496,324,878.00, sourced both from sale of goods and sale of services. To prove that the income payments with CWTs of ₱40,647,484.03 were part of the ₱5,496,324,878.00, petitioner submitted its General Ledger (GL) No. 621001 to 621500.[71]

INCOME/REVENUES PER FY 2017 ANNUAL ITR		
a. Sale of Goods	₱ 5,493,689,516.00	
b. Sale of Services	2,635,362.00	₱ 5,496,324,878.00
INCOME/REVENUES PER GL		
a. General Ledger (GL) No. 621001	₱ 5,389,212,917.44	
b. GL No. 621002	-1,747,786.33	
c. GL No. 621052	12,202,967.88	
d. GL No. 621501	-12,202,967.88	
e. GL No. 621100	84,816,650.25	
f. GL No. 621200	2,635,362.32	
g. GL No. 621500	18,682,434.61	₱ 5,493,599,578.29
DIFFERENCE		**₱ 2,725,299.71**

[71] Exhibits "P-888" to "P-894".

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Upon evaluation of the above-listed GLs, the Court has determined that the income payments pertaining to the following customers with corresponding valid CWTs in the total amount of ₱39,948,964.75, as determined above, have been included in the above GLs and were declared as part of petitioner's gross income for FY 2017:

CUSTOMER	CWTs
ABENSON LIBERTY APPL. INC.	₱ 248,862.42
ABENSON VENTURES INC.	6,867,106.35
ACHIEVE ENTERPRISES	762.82
ADDESSA CORPORATION	31,260.60
ALTURAS ABENSON APPL. BOHOL INC.	153,604.93
ALTUS COMMUNICATIONS INC	16,540.41
ANSON @ HOME INC.	203,745.29
ANSON EMPORIUM CORP	712,294.54
ANSON MARKETING AND COMMERCIAL INC.	274,734.23
ARL CUBAO APPLIANCE CENTER INC	11,638.12
AUDIO VISUAL DRIVER INTL. INC.	20.88
AUTOMATIC CENTRE-GREENBELT 1	1,252,082.41
AVESCO MKTG. CORP (5TH AVE. ELECT)	2,196.60
AVID SALES CORPORATION	5,052,159.68
AXN NETWORKS PHILS. INC.	3,656.34
BANBROS COMMERCIAL INC.	233,522.68
CABLE ACCESS TECHNOLOGIES INC.	1,719,944.03
CameraSound Inc-Malate Main	84,929.82
CENTRAL QUALITY APPL. -CAGAYAN	20,584.15
CRL MAKATI MARKETING CENTER INC.	19,067.44
DES APPLIANCE - OROQUIETA	404,719.31
DESMARK CORPORATION -CAPTAIN ROA	1,523,134.48
DGTE APPLIANCE CENTRUM	41,682.54
DIGI-KADEN INC.	643,829.74
DU EK SAM INC. -LESSAGE	1,811,691.14
DUTY FREE PHILS.	147,608.40
ELECTROWORLD INC.	298,409.33
E-PHONE CO. INC.	35,021.38
ERL PARANAQUE MARKETING CENTER INC	14,430.63
Guanzon Merchandising Corporation	200,344.94
HONDA CARS PHILIPPINES INC	5,214.81
IMPERIAL APPL. PLAZA	3,213,869.49
JUAN TY FULE GEC STATIONERY AND GEN. MERCHANDISE	8,213.00
MAGIC APPLIANCES -DAGUPAN	405,781.58
MEGA CELLULAR NETWORK INC.	687,800.66
METRO ILOCOS APPLIANCE INC.	5,957.59
METRO PLAZA -DAVAO	288,707.36
METRO RETAIL STORES GROUP INC.	628.88
MOBILESTYLE DISTRIBUTION INC.	128,280.22
OGILVY AND MATHER (PHILIPPINES) INC.	100.45
OMNI SOLID SERVICES INC.	3,453.00
PAN APPLIANCE CORPORATION	3,953.62

PHILIPPINE LONG DISTANCE TELEPHONE	5,062.23
POS MARKETING -BACOLOD	42,727.45
RJ HOMES -MAIN	407,317.06
RL APPLIANCE INC.-TACLOBAN	251,726.89
ROBINSONS APPL CORP. -NOVALICHES	782,886.67
RRL MARIKINA MARKETING CENTER INC	48,919.47
SCAN AND PRINT GRAPHIC HOUSE INC.	300,283.30
Seascapes Resort Inc.	385.60
SILICON FOREST PHILS. -SFDM	21,345.05
Sky Cable Corporation	657.03
SOLID ELECTRONICS CORP.	572,832.12
SOLID VIDEO CORPORATION	50,722.34
STAR APPLIANCE CENTER INC.	9,568,250.41
SUPER EAST ASIA ENT. INC.	516,620.56
Sykes Asia Inc.	17,602.93
TAGUM FIESTA APPLIANCE INC.	52,908.53
The Landmark Corporation	22,148.58
TIGER RESORT LEISURE AND ENTERTAIN	34,548.30
WESTERN GRAND CENTRAL CO.INC.	108,196.26
WESTERN MARKETING CORP.	274,002.26
WILLY AND SONS CORP.	87,229.06
YUSEN LOGISTICS CENTER INC	425.00
YUSEN LOGISTICS PHILLIPINES INC	621.37
TOTAL	**₱ 39,948,964.75**

In sum, the Court has determined that of the total valid claim of ₱40,647,484.03, only the CWTs in the amount of ₱39,948,964.75 were traced to the GLs submitted in evidence by petitioner, which in turn were subsequently reported in its Annual ITR for FY 2017. Thus, the income with the corresponding CWTs in the amount of ₱39,948,964.75 were declared as part of petitioner's gross income.

Determination of Refundable Amount

Review of petitioner's Amended Annual ITR for FY 2016[72] shows that petitioner had total tax credits for FY 2016 in the amount of ₱289,826,569.00, composed of ₱222,993,834.00 representing "Prior Year's Excess Credits other than MCIT", ₱16,967,485.00 representing "Excess MCIT Applied this Current Taxable Year" and creditable taxes withheld for the four (4) quarters of FY 2016 in the total amount of ₱49,865,250.00. For FY 2016, petitioner reported total income tax due of ₱16,967,485.00. Deducting this amount from the total tax credits/payments of ₱289,826,659.00, there remains a balance of ₱272,859,084.00 which was effectively carried over to the succeeding taxable year/quarter.

[72] Exhibit "P-13.1", CTA Docket, pp. 687-694.

The Court finds the submission of petitioner's Annual ITRs for FY 2016 sufficient to prove petitioner's "Prior Year's Excess Credits other than MCIT" in FY 2017 in the amount of ₱272,859,084.00.

The presentation of CWT certificates is not indispensable in proving the existence of prior year's excess credits since the aforesaid credits are not the actual subject of the claim for refund. Respondent never refuted or questioned the truthfulness and existence of petitioner's prior year's excess credits. Since respondent ought to know the tax records of all taxpayers, respondent could have easily disproved petitioner's claim that it has prior year's excess credits. Instead, respondent chose not to question or disprove the same. In fact, respondent failed to make any objection to petitioner's offer of its Annual ITRs for FY 2016 to prove the existence of petitioner's prior year's excess credits despite the opportunity given him. Respondent's failure to object to the evidence offered by petitioner renders the same admissible, and this Court cannot, on its own, disregard such evidence.[73]

As discussed, Section 76 of the NIRC of 1997, as amended, provides that a corporate taxpayer may choose to carry-over the excess amount shown on its final adjustment return or Annual ITR and credit the same against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years.

Section 2.58.3 of RR No. 2-98, as amended, likewise provides the procedure for the carry-over option, *viz*:

> *"Sec. 2.58.3.* ***Claim for tax credit or refund. –***
>
> (A) xxx
>
> (C) Excess Credits – An individual or corporate taxpayer's excess expanded withholding tax credits for the taxable quarter/year shall automatically be allowed as a credit against his income tax due for the taxable quarters/years immediately succeeding the taxable quarters/years in which the excess credit arose, provided **he submits with his income tax return, a copy of the first page of his income tax return for the previous taxable period showing the amount of his excess withholding tax credits**, and on which return **he has not opted for a cash refund or tax credit certificate.**" (*Boldfacing supplied*)

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[73] *Asian Construction and Development Corporation vs. COMFAC Corporation*, G.R. No. 163915, October 12, 2006.

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The carry-over option, once chosen, thus acts as an automatic credit against the income tax due for the taxable quarters immediately succeeding the taxable quarters in which the tax credits arose. Such automatic credit may be availed only upon compliance by the taxpayer of the following requisites:

(1) The taxpayer submits a copy of the first page of his ITR for the previous taxable period showing the amount of his excess withholding tax credits; and

(2) The ITR shows that he has not opted for a cash refund or tax credit certificate.

Petitioner complied with the above-mentioned requisites. Petitioner submitted in evidence a copy of its Amended Annual ITR for FY 2016[74] which shows the balance of ₱272,859,084.00 representing its income tax overpayments for the period. This amount was carried over in FY 2017. The Annual ITR for FY 2017 utilized the said balance as its "Prior Year's Credit Other than MCIT" to pay off a portion of its income tax due for the period which amounted to ₱13,115,102.00. Thus, the amount of ₱259,743,982.00[75] (representing the balance of petitioner's total tax credits for FY 2017, net of the CWTs for the year which were chosen by petitioner to be refunded) may be carried over and allowed as a credit for the income tax due for FY 2018, as shown below. To reiterate, the amount of ₱259,743,982.00, computed below, may be carried over to FY 2018:

PARTICULARS	AMOUNT
Income Tax Due	₱ 31,560,092.00
Less: Excess MCIT Applied this Current Taxable Year	18,444,990.00
Income Tax Due to be Settled thru Prior Year's Excess Credits other than MCIT	13,115,102.00
Prior Year's Excess Credits other than MCIT	272,859,084.00
Balance of Prior Year's Excess Credits	259,743,982.00
Add: Creditable Taxes Withheld for FY 2017	48,443,111.00
Excess Creditable Withholding Taxes as of March 31, 2017	308,187,093.00
Less: Subject of the present claim for refund	48,443,111.00
Net Excess Creditable Withholding Taxes as of March 31, 2017	₱ 259,743,982.00

As already discussed above, examination of the "Prior Year's Excess Credits Other Than MCIT" found in petitioner's Original[76] and

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[74] Exhibit "P-13-1", CTA Docket, pp. 687-694.
[75] Prior Year's Credit other than MCIT of ₱272,859,084.00 less portion of tax due for TY 2017 of ₱13,115,102.00.
[76] Exhibit "P-7", CTA Docket, p. 667.

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Amended[77] Annual ITR for FY 2018 shows the amount of ₱259,743,982.00. This figure is the exact balance of the prior year's excess credits of petitioner for FY 2017, which means that the amount prayed to be refunded in this case has not been carried over to the succeeding FY 2018.

Under Section 76 of the NIRC of 1997, as amended, once the carry-over option has been chosen, such shall be irrevocable and the unutilized excess tax credits will remain in the taxpayer's account and may be carried over and applied to succeeding taxable years until fully utilized. As the Supreme Court elucidated in *Asiaworld Properties Philippine Corporation vs. Commissioner of Internal Revenue*:[78]

> "Section 76 of the NIRC of 1997 clearly states: "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 therefore." Section 76 expressly states that "the option shall be considered irrevocable for that taxable period" – referring to the period comprising the "succeeding taxable years." Section 76 further states that "no application for cash refund or issuance of a tax credit certificate shall be allowed therefore" – referring to "that taxable period" comprising the "succeeding taxable years."
>
> Section 76 of the NIRC of 1997 is different from the old provision, Section 69 of the 1977 NIRC, which reads:
>
>> SEC. 69. Final Adjustment Return. – Every corporation liable to tax under Section 24 shall file a final adjustment return covering the total net 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 net income of that year the corporation shall either:
>>
>> (a) Pay the excess tax still due; or
>>
>> (b) Be refunded the excess amount paid, as the case may be.
>>
>> In case the corporation is entitled to a refund of the excess estimated quarterly income taxes paid, the refundable amount shown on its final adjustment return may be credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable year.

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[77] Exhibit "P-7-2", CTA Docket, p. 675.
[78] G.R. No. 171766, July 29, 2010.

> Under this old provision, the option to carry-over the excess or overpaid income tax for a given taxable year is limited to the immediately succeeding taxable year only. In contrast, **under Section 76 of the NIRC of 1997, the application of the option to carry-over the excess creditable tax is not limited only to the immediately following taxable year but extends to the next succeeding taxable years. The clear intent in the amendment under Section 76 is to make the option, once exercised, irrevocable for the "succeeding taxable years."**
>
> Thus, **once the taxpayer opts to carry-over the excess income tax against the taxes due for the succeeding taxable years**, such option is irrevocable for the whole amount of the excess income tax, thus, prohibiting the taxpayer from applying for a refund for that same excess income tax in the next succeeding taxable years. **The unutilized excess tax credits will remain in the taxpayer's account and will be carried over and applied against the taxpayer's income tax liabilities in the succeeding taxable years until fully utilized.**" (*Boldfacing supplied*)

Here, petitioner exercised the carry-over option as reflected in its Amended Annual ITR for FY 2016. Thus, the balance of its income tax overpayments for FY 2016 in the amount of ₱272,859,084.00 may be utilized not just for the succeeding FY 2018, but also for succeeding periods until fully utilized. Such unutilized balance in the amount of ₱272,859,084.00 was validly used by petitioner in FY 2017 to pay off a portion of its income tax due for the period. Considering that the "Prior Year's Excess Credits other than MCIT" in the amount of ₱272,859,084.00 and the "Excess MCIT Applied this Current Taxable Year" in the amount of ₱18,444,990.00 is sufficient to cover the current income tax due of ₱969,632.00, petitioner's excess and unutilized CWTs for FY 2017 in the reduced amount of ₱39,948,964.75 may thus be claimed for refund.

It bears stressing that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[79] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[80] The pieces of evidence presented entitling a taxpayer to an exemption are also *strictissimi* scrutinized and must be duly proven.[81]

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[79] *Citibank N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[80] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc.*, G.R. No. 127105, June 25, 1999.
[81] *Kepco Philippines Corp. vs. Commissioner of Internal Revenue*, G.R. No. 179961, January 31, 2011.

In fine, petitioner has sufficiently proven that it is entitled to a refund in the reduced amount of ₱39,948,964.75 representing its excess and unutilized creditable withholding taxes for FY 2017.

WHEREFORE, premises considered, the present Petition for Review is **PARTIALLY GRANTED.** Accordingly, respondent is **ORDERED TO REFUND** in favor of petitioner Sony Philippines, Inc. the amount of **₱39,948,964.75** representing its excess and unutilized creditable withholding taxes for Fiscal Year ending March 31, 2017.

SO ORDERED.

ROMAN G. DEL ROSARIO
Presiding Justice

WE CONCUR:

CATHERINE T. MANAHAN
Associate Justice

(On Leave)
MARIAN IVY F. REYES-FAJARDO
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 writer of the opinion of the Court.

ROMAN G. DEL ROSARIO
Presiding Justice