REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

Third Division

SONOMA SERVICES, INC., *Petitioner,*	**CTA CASE NO. 9808**
-versus-	Members: **UY,** *Chairperson,* **RINGPIS-LIBAN,** *and* **MODESTO-SAN PEDRO,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: OCT 0 1 2020 10:40 a.m.

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DECISION

MODESTO-SAN PEDRO, J.:

The Case

This is a Petition for Review ("Petition") filed by petitioner, **SONOMA SERVICES, INC.,** against respondent, **COMMISSIONER OF INTERNAL REVENUE** ("CIR"), praying that this Court render judgment ordering the refund of or issuance of a Tax Credit Certificate ("TCC") in the amount of Php4,993,000.00, representing petitioner's excess and unutilized creditable withholding taxes ("CWT") for the calendar year ("CY") ended 31 December 2015.[1]

The Parties

Petitioner is a corporation duly organized and existing under the laws of the Republic of the Philippines, with principal office at 3rd Floor, Makati Stock Exchange Building, Ayala Triangle, Ayala Avenue, Makati City. It is registered with Bureau of Internal Revenue ("BIR"), Revenue Region No. 8 ("RR 8"), Revenue District Office No. 50 ("RDO 50") with Tax Identification No. 220-868-954-000.

Respondent is the duly appointed Commissioner of the BIR vested under the appropriate laws with the authority to carry out the functions, duties,

[1] See Statement of the Case in the Pre-Trial Order, Records, Vol. 1, p. 347.

and responsibilities of said office including the power to decide, approve, and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.

The Facts

On 13 April 2016, petitioner filed, through the BIR's Electronic Filing and Payment System ("eFPS"), its original Annual Income Tax Return ("ITR") for CY 2015.[2] On 25 April 2016, petitioner filed, through the eFPS, an Amended Annual ITR.[3] Following its filing of said ITRs, petitioner filed before BIR RDO 50 an administrative claim for refund of its excess and unutilized CWT for CY 2015 in the amount of Php4,993,000.00.[4]

On 25 September 2017, the BIR RR 8's Regional Director, Mr. Glen A. Geraldino, issued Letter of Authority ("LOA") No. eLA201500084361 authorizing revenue officers from RDO 50, namely, Mr. Roland Dela Torre and Ms. Marilou Cortez, to examine petitioner's books of accounts and other accounting records for CWT refund for CY 2015.[5]

In view of respondent's inaction on its claim for refund, petitioner filed the instant Petition before this Court on 11 April 2018.[6]

On 25 April 2018, Summons was issued to respondent,[7] and on 22 May 2018, respondent filed a Manifestation with Motion to Admit Answer with the Answer attached therein,[8] which was granted in a Resolution, dated 5 June 2018.[9]

On 8 June 2018, this Court issued a Notice of Pre-Trial Conference, setting the Pre-Trial Conference on 9 August 2018, at 9:00 a.m.[10]

On 3 July 2018, petitioner filed its Pre-Trial Brief[11] and submitted the Judicial Affidavits of Ms. Krystal E. Gamit,[12] which was noted in a Resolution, dated 5 July 2018.[13] Respondent filed his Pre-Trial Brief on 1 August 2018, which was noted in a Resolution, dated 2 August 2018.[14]

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[2] See Exhibit "P-4", Records, Vol. 2, pp. 490-531.
[3] See Exhibit "P-5", Records, Vol. 2, pp. 532-566.
[4] See Exhibit "P-9".
[5] See Exhibit "P-10", Records, Vol. 2, p. 640.
[6] See Petition, Records, Vol. 1, p. 13.
[7] See Summons, Records, Vol. 1, pp. 108-110.
[8] See Manifestation with Motion to Admit Answer with Attached Answer, Records, Vol. 1, pp. 111-118.
[9] See Resolution, dated 5 June 2018, Records, Vol. 1, pp. 119-120.
[10] See Notice of Pre-Trial Conference, Records, Vol. 1, pp. 121-122.
[11] See Petitioner's Pre-Trial Brief, Records, Vol. 1, pp. 127-138.
[12] See Sworn Statement of Ms. Krystal E. Gamit to Questions Propounded by Atty. Ian Jerrick B. Inandan, Exhibit "P-17", Records, Vol. 1, pp. 142-305.
[13] See Resolution, dated 5 July 2018.
[14] See Respondent's Pre-Trial Brief, Records, Vol. 1, pp. 124-125.

On 9 August 2018, the Pre-Trial Conference ensued.[15]

On 29 August 2018, petitioner filed a Motion to Commission Independent Certified Public Accountant ("ICPA"), attaching therein the Judicial Affidavit of Ms. Ma. Milagros F. Padernal,[16] which was granted by this Court.[17] On the same date, the parties filed their Joint Stipulation of Facts and Issues,[18] which was approved by this Court.[19]

In an Order, dated 19 September 2018, the Petition was transferred from this Court's First Division to this Court's Third Division.[20]

On 5 October 2018, a Pre-Trial Order was issued.[21]

Trial began on 16 October 2018 when petitioner presented its first witness, Kristal E. Gamit.[22]

Meanwhile, on 18 October 2018, petitioner submitted its ICPA Report.[23] The USB containing the soft copies of the summaries, schedules, and exhibits supporting the ICPA Report was submitted on the same date.[24] These were admitted in a Resolution, dated 22 October 2018.[25]

On 20 November 2018, petitioner presented its second witness, ICPA Ma. Milagros F. Padernal who identified the ICPA Report.[26]

On 20 December 2018, on an allowed extension of time, petitioner filed its Formal Offer of Evidence,[27] to which respondent filed a Comment/Opposition (Petitioner's Formal Offer of Evidence).[28] In a Resolution, dated 21 February 2019, this Court admitted petitioner's **Exhibits "P-1", "P-2", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-13", "P-14", "P-15", "P-16", "P-17", "P-17-a", "P-19", "P-19-a", "P-25", "P-25-1", "P-25-2", "P-25-3", "P-25-4", "P-25-5", "P-25-6", "P-25-7", "P-25-10", "P-25-11", "P-25-12", "P-25-13", "P-**

[15] Records, Vol. 1, pp. 307-309.
[16] See Motion to Commission Independent Certified Public Accountant, Records, Vol. 1, pp. 310-325.
[17] See Order, dated 18 September 2018, Records, Vol. 1, pp. 343-344.
[18] See Joint Stipulation of Facts and Issues, Records, Vol. 1, pp. 326-331.
[19] See Resolution, dated 6 September 2018, Records, Vol. 1, pp. 332-334.
[20] See Order, dated 19 September 2018, Records, Vol. 1, p. 345.
[21] See Pre-Trial Order, Records, Vol. 1, pp. 346-354.
[22] Records, Vol. 1, pp. 355-356.
[23] See Independent Certified Public Accountant Report on Court of Tax Appeals Case No. 9786 ("ICPA Report"), Exhibit "P-42", Records, Vol. 1, pp. 357-417..
[24] See USB, Exhibit "P-42-b".
[25] See Resolution, dated 22 October 2018, Records, Vol. 1, p. 418.
[26] Records, Vol. 1, pp. 444-446.
[27] See Formal Offer of Evidence, Records, Vol. 2, pp. 461-715.
[28] See Comment/Opposition (Petitioner's Formal Offer of Evidence), Records, Vol. 2, pp. 716-718.

26", "P-27", "P-27-1" to "P-27-30", "P-28", "P-28-1-1" to "P-28-1-30", "P-28-2", "P-29", "P-29-1", "P-30", "P-30-1" to "P-30-31", "P-31", "P-31-1", "P-32", "P-32-1" to "P-32-12", "P-32-1-1" to "P-32-12-1", "P-33", "P-34", "P-34-1", "P-34-2", "P-34-3", "P-34-4", "P-35", "P-36", "P-36-1 to P-36-54", "P-37", "P-38", "P-38-1 to P-38-20", "P-39", "P-40", "P-40-1 to P-40-24", "P-41", "P-41-1", "P-41-2", "P-41-3", "P-42", "P-42-a", and "P-42-b"; but denied admission of **Exhibits "P-28" and "P-29".**[29]

On 14 March 2019, petitioner filed a Motion for Reconsideration (Re: Resolution dated February 21, 2019) appealing the disallowance of **Exhibits "P-28" and "P-29"**.[30] On 22 March 2019, this Court issued a Resolution ordering respondent to file a Comment on petitioner's Motion for Reconsideration (Re: Resolution dated February 21, 2019).[31] As respondent failed to file a Comment,[32] this Court issued a Resolution submitting the Motion for Reconsideration (Re: Resolution dated February 21, 2019) for resolution.[33] In a Resolution, dated 17 June 2019, this Court granted the Motion for Reconsideration (Re: Resolution dated February 21, 2019), and admitted **Exhibits "P-28" and "P-29".**[34]

During the hearing on 6 August 2019, respondent manifested that he would no longer be presenting any evidence in view of the fact that there is no BIR Report of Investigation. Further, the parties agreed to submit their respective Memoranda no later than 5 September 2019.[35]

On 5 September 2019, petitioner filed a Motion for Extension of Time to File Memorandum.[36] Similarly, on same date, respondent filed a Motion for Extension of Time to File Memorandum via registered mail.[37] These were granted in a Resolution, dated 24 September 2019.[38]

On 20 September 2019, respondent filed a Manifestation & Motion informing this Court that he is adopting his Answer as his Memorandum.[39]

On 25 September 2019, petitioner filed a Motion for Additional Time to File Memorandum,[40] which was granted by this Court in a Resolution, dated 2 October 2019.[41] Petitioner then filed its Memorandum on 15 October 2019.[42]

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[29] See Resolution, dated 21 February 2019, Records, Vol. 2, pp. 721-724.
[30] See Motion for Reconsideration (Re: Resolution dated February 21, 2019), Records, Vol. 2, pp. 725-763.
[31] See Resolution, dated 22 March 2019, Records, Vol. 2, pp. 764-765.
[32] See Records Verification Report, dated 16 April 2019, Records, Vol. 2, p. 766.
[33] See Resolution, dated 29 April 2019, Records, Vol. 2, pp. 767-768.
[34] See Resolution, dated 17 June 2019, Records, Vol. 2, pp. 769-771.
[35] Records, Vol. 2, pp. 778-779.
[36] See Motion for Extension of Time to File Memorandum, Records, Vol. 2, pp. 780-783.
[37] See Motion for Extension of Time to File Memorandum, Records, Vol. 2, pp. 787-789.
[38] See Resolution, dated 24 September 2019, Records, Vol. 2, pp. 790-791.
[39] See Manifestation & Motion, Records, Vol. 2, pp. 795-797.
[40] See Motion for Additional Time to File Memorandum, Records, Vol. 2, pp. 792-794.
[41] Resolution, dated 2 October 2019, Records, Vol. 2, pp. 798-799.
[42] See Memorandum, Records, Vol. 2, pp. 802-820.

On 17 October 2019, this Court issued a Resolution submitting the instant Petition for decision.[43]

Hence, this Decision.

The Issue[44]

WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF OR ISSUANCE OF TCC FOR ITS EXCESS AND UNUTILIZED CWT FOR CY 2015 IN THE AMOUNT OF PHP4,933,000.00.

Arguments of the Parties

Petitioner's Arguments[45]

Petitioner averred the following in its Memorandum:

a) Petitioner's excess and unutilized CWT for CY 2015 in the amount of Php4,993,000.00 are duly substantiated by documentary evidence;

b) The income upon which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in petitioner's Annual ITR;

c) Petitioner did not carry over its excess and unutilized CWTs for CY 2015 to the succeeding taxable periods;

d) The prior year's excess credits in the amount of Php9,061,123.00 used as payment for the Regular Corporate Income Tax ("RCIT") due for CY 2015 in the amount of Php445,427.00 was properly substantiated; and

e) Petitioner's administrative and judicial claims for refund of excess and unutilized CWTs for CY 2015 were filed within the two (2)-year prescriptive period provided in ***Sections 204 (C) and 229 of the Tax Code.***

[43] See Resolution, dated 17 October 2019, Records, Vol. 2, pp. 820-821.
[44] See Issues in the Pre-Trial Order; Records, Vol. 1, p. 348.
[45] See Memorandum, Records, Vol. 2, pp. 807-819.

Respondent's Counter-Arguments[46]

Respondent alleged the following in his Answer:

a) In an action for refund/credit, the burden of proof is upon petitioner to establish its right to the claimed refund and failure to adduce sufficient proof is fatal to its claim. It is axiomatic that the applicant must prove not only entitlement to the claim but also compliance with all the documentary and evidentiary requirements therefor;[47]

b) Petitioner failed to duly substantiate its claim for refund/issuance of tax credit in the amount of Php4,993,000.00, as alleged excess and unutilized creditable income taxes withheld for CY 2015;

c) It failed to prove that the said amount is part of its gross income for CY 2015 and that it was not utilized in payment of its income tax liability for the succeeding taxable quarters/years;

d) Petitioner has already exercised its option to carry-over to the succeeding taxable quarters/years the subject of its claim pursuant to ***Section 76 of the Tax Code***;

e) Petitioner failed to prove that the amount of its claim was remitted in full to the BIR;

f) Petitioner failed to comply with the requirements under ***Section 76 of the Tax Code and Revenue Regulations No. 2-98 ("RR 2-98")*** relative to its claim for refund of excess/unutilized creditable income taxes withheld for CY 2015;

f) It is incumbent upon petitioner to prove that it complied with ***Sections 204 (C) and 229 of the Tax Code***; and

g) Claims for refund are construed strictly against petitioner for it partakes the nature of exemption from taxation.

The Ruling of the Court

We rule to **GRANT** the instant **Petition for Review**. Petitioner sufficiently proved its compliance with the requisites for granting a CWT refund, as discussed hereunder.

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[46] See Answer, Records, Vol. 1, pp. 115-117.
[47] Respondent cited ***J.R.A. Philippines, Inc. v. CIR***, G.R. No. 171307, 28 August 2013.

Petitioner opted to refund its excess CWT. It did not actually utilize or carry-over the said excess CWT as credit for income tax due in future taxable periods.

The refund of excess CWT is expressly allowed under ***Section 58 of the Tax Code,*** *viz*:

> "**SEC. 58. Returns and Payment of Taxes Withheld at Source.** – xxx xxx xxx
>
> ***(D) Income of Recipient.*** - **Income upon which any creditable tax is required to be withheld at source under Section 57 shall be included in the return of its recipient but the excess of the amount of tax so withheld over the tax due on his return shall be refunded to him subject to the provisions of Section 204;** if the income tax collected at source is less than the tax due on his return, the difference shall be paid in accordance with the provisions of Section 56.
>
> All taxes withheld pursuant to the provisions of this Code and its implementing rules and regulations are hereby considered trust funds and shall be maintained in a separate account and not commingled with any other funds of the withholding agent."
>
> (Emphasis, Ours)

Moreover, ***Section 76 of the Tax Code*** provides options on how excess CWT can be utilized, as follows:

> "**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.
>
> **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 tax credit certificate shall be allowed therefor."**
>
> (Emphasis, Ours)

Following these provisions, there are two options available to a corporation whenever it overpays its income tax for a given taxable year, which are: (1) to carry over and apply the overpayment as a tax credit against the estimated quarterly income tax liabilities of the succeeding taxable years (which is also known as an automatic tax credit) until fully utilized (which means that there is no prescriptive period); or (2) to apply for a cash refund or issuance of a tax credit certificate within the prescribed period.[48]

In ***Systra Philippines, Inc. v. Commissioner of Internal Revenue***,[49] the Supreme Court provided that in exercising its option, a corporation must signify in its Annual ITR its intention either to carry over the excess credit or to claim a refund by marking the appropriate option box in the BIR form. These remedies are alternative in nature and the choice of one precludes the other.[50] Once the carry over option is taken actually or constructively, it becomes irrevocable for that taxable period.[51] The phrase "for that taxable period" merely identifies the excess income tax, subject of the option, by referring to the taxable period when it was acquired by the taxpayer.[52] Hence, once a corporate taxpayer makes a choice, it cannot have a change of heart.

In the present case, petitioner indicated in its Amended Annual ITR that it has an income tax overpayment in the amount of Php13,608,696.00, which was arrived at after deducting the RCIT due for CY 2015 in the amount of Php445,427.00 from the prior year's excess credits in the amount of Php9,061,123.00, and adding the CWT for CY 2015 in the amount of Php4,993,000.00 (which is subject of the current claim for refund/issuance of TCC), *viz:*

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[48] ***University Physicians Services, Inc. - Management, Inc. v. Commissioner of Internal Revenue***, G.R. No. 205955, 7 March 2018.
[49] G.R. No. 176290, 21 September 2007.
[50] ***Systra Philippines, Inc. v. Commissioner of Internal Revenue***, G.R. No. 176290, 21 September 2007, *citing* ***Philippine Bank of Communications v. Commissioner of Internal Revenue, et al.***, G.R. No. 112024, 28 January 1999.
[51] ***Philam Asset Management, Inc. v. Commissioner of Internal Revenue***, G.R. Nos. 156637 and 162004, 14 December 2005.
[52] ***Commissioner of Internal Revenue v. Bank of the Philippine Islands***, G.R. No. 178490, 7 July 2009.

RCIT Due		Php445,427.00
Less: Tax Credits/Payments		
Prior Year's Excess Credits		Php9,061,123.00
CWT from Previous Quarters	Php4,783,000.00	
CWT for the Fourth Quarter	210,000.00	4,993,000.00
Total Tax Credits/Payments		Php14,054,123.00
Tax Overpayment		**(Php13,608,696.00)**

In both the original Annual ITR[53] and Amended Annual ITR[54] for CY 2015, petitioner chose the option to refund its excess income tax payments. This being so, it complied with the requirement that the intention to refund/issue TCC for excess CWT must be indicated in the taxpayer's ITR as a prerequisite for granting the claim for refund/issuance of TCC.

In fact, petitioner's intention to refund the excess CWT for CY 2015 was affirmed when it carried over only the amount of Php8,615,696 (Php9,061,123.00 prior year's excess credits for CY 2015 - Php445,427.00 RCIT due for CY 2015) as prior year's excess tax credits in its original and Amended Quarterly ITR[55] and original and Amended Annual ITR[56] for CY 2016 to be used as credit for income tax due for said period. The Php4,993,000.00 sought to be refunded as excess CWT for CY 2015 is no longer part of said amount.[57] The said excess CWT for CY 2015 (claimed for refund/issuance of TCC) was not actually utilized or carried over as credit for CY 2016 income taxes. This made petitioner compliant with the requirement in CWT refund that taxpayers should not actually utilize or carry-over the said excess CWT as credit for income tax due in future taxable periods.

Petitioner timely filed both its administrative and judicial claims for refund.

Sections 204 (C) and 229 of the Tax Code provide that both administrative and judicial claims for refund/issuance of TCC of erroneously or illegally collected taxes should be filed within two (2) years from the date of payment of taxes, *viz:*

[53] See Exhibit "P-4", Records, Vol. 2, pp. 491.
[54] See Exhibit "P-5", Records, Vol. 2, pp. 533.
[55] See Exhibits "P-13" to "P-16", Records, Vol. 2, pp. 641-700.
[56] See Exhibits "P-11" to "P-12", Records, Vol. 2, pp. 701-715.
[57] See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 371.

> **"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.
>
> xxx xxx xxx
>
> **"Section 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, of any sum alleged to have been excessively or in any manner wrongfully collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty** regardless of any supervening cause that may arise after payment: Provided, however, That the Commissioner may, even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid."
>
> (Emphasis, Ours)

In ***ACCRA Investments Corporation v. The Honorable Court of Appeals, et al.***,[58] the Supreme Court ruled that the two (2)-year prescriptive period for claiming a refund commences to run from the date of filing of the final adjusted return or the Annual ITR. The two (2)-year period starts to run

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

from the filing of the Annual ITR since it is only the time when the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[59]

Here, petitioner filed its original Annual ITR via the eFPS on 13 April 2016 and subsequently filed an Amended Annual ITR via the eFPS on 25 April 2016. Thus, counting from 25 April 2016 (which is considered the final adjustment return), petitioner had until 25 April 2018 within which to file both its administrative and judicial claims.

Evidence shows that petitioner filed its administrative claim on 7 September 2017 before BIR RDO 50.[60] On the other hand, it filed the present Petition on 11 April 2018. Undoubtedly, petitioner timely filed both its administrative and judicial claims for refund/issuance of TCC.

The excess CWT sought to be refunded is properly substantiated with BIR Form No. 2307 issued by petitioner's income payors.

Before a refund of excess CWT can be allowed, a taxpayer must adequately establish that its income payors actually withheld the income tax sought to be refunded or issued a TCC. ***Section 2.58.3 (B) of Revenue Regulations No. 02-98 ("RR 2-98")*** is instructive, to wit:

> "SECTION 2.58.3. Claim for Tax Credit or Refund. –
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom."**
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> (Emphasis and Underscoring, Ours)

As proof of the fact of withholding, petitioner presented the Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued to it by various income payors for CY 2015 reflecting a total CWT of

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[59] ***Commissioner of Internal Revenue v. TMX Sales, Inc., et al.***, G.R. No. 83736, 15 January 1992; ***Metropolitan Bank & Trust Company v. Commissioner of Internal Revenue***, G.R. No. 182582, 17 April 2017.

[60] See Exhibit "P-9".

Php4,993,000.00 on management fees in the amount of Php33,420,000.00, *viz:*[61]

EXHIBIT NO.	PERIOD COVERED	PAYOR	INCOME PAYMENTS	CWT
P-27-1[62]	1st Quarter	Corullon Holdings, Inc.	1,750,000.00	262,500.00
P-27-2[63]	3rd Quarter	Corullon Holdings, Inc.	1,750,000.00	262,500.00
P-27-3[64]	4th Quarter	Corullon Holdings, Inc.	200,000.00	30,000.00
P-27-4[65]	1st Quarter	FBC Holdings, Inc.	1,750,000.00	262,500.00
P-27-5[66]	3rd Quarter	FBC Holdings, Inc.	1,750,000.00	262,500.00
P-27-6[67]	4th Quarter	FBC Holdings, Inc.	200,000.00	30,000.00
P-27-7[68]	1st Quarter	FBC Steps Reality, Inc.	300,000.00	45,000.00
P-27-8[69]	3rd Quarter	FBC Steps Reality, Inc.	300,000.00	45,000.00
P-27-9[70]	1st Quarter	Fercat Holdings, Inc.	1,750,000.00	262,500.00
P-27-10[71]	3rd Quarter	Fercat Holdings, Inc.	1,750,000.00	262,500.00
P-27-11[72]	4th Quarter	Fercat Holdings, Inc.	200,000.00	30,000.00
P-27-12[73]	1st Quarter	Gilmon Holdings, Inc.	1,750,000.00	262,500.00
P-27-13[74]	3rd Quarter	Gilmon Holdings, Inc.	1,750,000.00	262,500.00
P-27-14[75]	4th Quarter	Gilmon Holdings, Inc.	200,000.00	30,000.00
P-27-15[76]	1st Quarter	Gracie Square Holdings, Inc.	1,750,000.00	262,500.00

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[61] See Exhibit "P-27", See ICPA Report, Exhibit "P-42", Records, Vol. 2, p. 387; See Exhibit "P-26", See ICPA Report, Exhibit "P-42", Records, Vol. 2, p. 386; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.
[62] Found in the USB, Exhibit "P-42-b".
[63] *Ibid.*
[64] *Ibid.*
[65] *Ibid.*
[66] *Ibid.*
[67] *Ibid.*
[68] *Ibid.*
[69] *Ibid.*
[70] *Ibid.*
[71] *Ibid.*
[72] *Ibid.*
[73] *Ibid.*
[74] *Ibid.*
[75] *Ibid.*
[76] *Ibid.*

P-27-16[77]	3rd Quarter	Gracie Square Holdings, Inc.	1,750,000.00	262,500.00
P-27-17[78]	4th Quarter	Gracie Square Holdings, Inc.	200,000.00	30,000.00
P-27-18[79]	4th Quarter	JZA Artwork, Inc.	300,000.00	45,000.00
P-27-19[80]	1st Quarter	Mermac Incorporated	2,345,000.00	351,750.00
P-27-20[81]	3rd Quarter	Mermac Incorporated	3,125,000.00	468,750.00
P-27-21[82]	1st Quarter	Reinosa Holdings, Inc.	1,750,000.00	262,500.00
P-27-22[83]	3rd Quarter	Reinosa Holdings, Inc.	1,750,000.00	262,500.00
P-27-23[84]	4th Quarter	Reinosa Holdings, Inc.	200,000.00	30,000.00
P-27-24[85]	1st Quarter	San Puente Holdings, Inc.	1,750,000.00	262,500.00
P-27-25[86]	3rd Quarter	San Puente Holdings, Inc.	1,750,000.00	262,500.00
P-27-26[87]	4th Quarter	San Puente Holdings, Inc.	200,000.00	30,000.00
P-27-27[88]	1st Quarter	Steps Dance Center, Inc.	100,000.00	10,000.00
P-27-28[89]	3rd Quarter	Steps Dance Center, Inc.	100,000.00	10,000.00
P-27-29[90]	4th Quarter	Steps Dance Center, Inc.	200,000.00	20,000.00
P-27-30[91]	1st Quarter	Zobel De Ayala, Jaime Pfitz	750,000.00	112,500.00
TOTAL			**33,420,000.00**	**4,993,000.00**

Without a doubt, petitioner properly substantiated the excess CWT it seeks to refund/issue TCC using the BIR Form No. 2307 it received from its income payors.

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[77] *Ibid.*
[78] *Ibid.*
[79] *Ibid.*
[80] *Ibid.*
[81] *Ibid.*
[82] *Ibid.*
[83] *Ibid.*
[84] *Ibid.*
[85] *Ibid.*
[86] *Ibid.*
[87] *Ibid.*
[88] *Ibid.*
[89] *Ibid.*
[90] *Ibid.*
[91] *Ibid.*

<u>The income upon which the excess CWT was withheld was included in petitioner's Amended Annual ITR.</u>

As stated in ***Section 2.58.3 (B) of RR 2-98***, a claim for CWT refund may only prosper upon proof that income payment has been declared as part of the gross income subjected to income tax.

As explained in the ICPA Report, the Php33,420,000.00 management fees upon which CWT in the amount of Php4,993,000.00 has been withheld from petitioner (and which now is the subject of the present claim for refund/issuance of TCC) can be fully traced to petitioner's official receipts ("ORs"),[92] cash receipts book ("CRB")[93] and general ledger ("GL").[94] This amount, in turn, has been reported in petitioner's CY 2015 Audited Financial Statements ("AFS") and CY 2015 Amended Annual ITR.[95]

While the amount reported in petitioner's CY 2015 AFS and Amended Annual ITR as management fees is Php55,575,000.00, the Php22,155,000.00 difference from the Php33,420,000.00 management fees subjected to CWT pertains to management fees from payors who were not required to withhold taxes on income payments to petitioner.[96] The Php22,155,000.00 income payments by payors not required to withhold income are fully supported by ORs[97] and have been traced to the CRB.[98]

Thus, there is no reason to doubt that the income upon which the excess CWT was withheld (and which is now the subject of the present claim for refund/issuance of TCC) was included in petitioner's Amended Annual ITR and was part of the computation for the income tax due against it. ɣ

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[92] See Exhibits "P-28-1-1" to "P-28-1-30", Found in the USB, Exhibit "P-42-b"; See Exhibit "P-28", See ICPA Report, Exhibit "P-42", Records, Vol. 2, pp. 388-389; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.

[93] See Exhibit "P-28-2", Found in the USB, Exhibit "P-42-b"; See Exhibit "P-28", See ICPA Report, Exhibit "P-42", Records, Vol. 2, pp. 388-389; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.

[94] See Exhibit "P-31-1", Found in the USB, Exhibit "P-42-b"; See Exhibit "P-31", See ICPA Report, Exhibit "P-42", Records, Vol. 2, p. 393; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 367-388.

[95] See Exhibit "P-5", Records, Vol. 2, pp. 532-566; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.

[96] See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 374-376.

[97] See Exhibits "P-30-1" to "P-30-31", Found in the USB, Exhibit "P-42-b"; See Exhibit "P-29", See ICPA Report, Exhibit "P-42", Records, Vol. 2, p. 390; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.

[98] See Exhibit "P-28-2", Found in the USB, Exhibit "P-42-b"; See Exhibit "P-30", See ICPA Report, Exhibit "P-42", Records, Vol. 2, pp. 391-392; See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 357-417.

<u>Petitioner's prior year's excess tax credits are fully accounted for.</u>

Petitioner hinges its claim for refund on its prior year's excess tax credits in the amount of Php9,061,123.00 which was used to pay-off the RCIT due for CY 2015 in the amount of Php445,427.00.

To fully grant the claim for refund/issuance of TCC in the amount of Php4,993,000.00 (which represents excess CWT for CY 2015), it is important for petitioner to fully account for said prior year's excess tax credits.

In the case at bar, petitioner was able to accomplish this feat. Based on the ICPA Report, petitioner's CY 2015 prior year's excess tax credits are composed of: (1) CY 2011 CWT in the amount of Php219,355.05; (2) CY 2004 CWT reinstated in CY 2013 amounting to Php4,357,499.04; (3) adjustment in CY 2013 amounting to Php380,481.09 to reduce the CY 2010 excess credits; and (4) CY 2014 CWT amounting to Php4,864,750.00.[99]

The adjustment to CY 2010 income tax due amounting to Php380,481.09 arose from the difference between the income tax due per CY 2010 Annual ITR and income tax due as disclosed in the CY 2010 AFS, to wit:

CY 2010 Annual ITR income tax due-Minimum Corporate Income Tax due ("MCIT")[100]	Php178,1931.38
CY 2010 AFS – Note 11 (Current provision for income tax)[101]	559,413.00
Unpaid portion of CY 2010 income tax due	(Php380,481.09)

The unpaid portion was then settled by reducing "prior year's excess tax credits other than MCIT" reported in CY 2013 Annual ITR. Hence, this adjustment which became part of the CY 2015 prior year's excess tax credit.

On the other hand, the CY 2004 CWT reinstated in CY 2013 amounting to Php4,357,499.04 pertains to petitioner's claim for CWT refund that was denied by this Court in CTA EB No. 697 due to its failure to prove that it did not utilize said excess CWT in the succeeding taxable quarters of CY 2005.[102]

[99] See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 368.
[100] See Exhibit No. "P-25-8", Found in the USB, Exhibit "P-42-b"; See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 370.
[101] See Exhibit No. "P-25-13", Found in the USB, Exhibit "P-42-b"; See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 370.
[102] See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 369.

In ***University Physicians Services, Inc. - Management, Inc. v. Commissioner of Internal Revenue***,[103] the Supreme Court ruled that a denied CWT refund claim is allowed to be carried over back to the Annual ITR as an excess CWT that may be used to pay off the RCIT for the current taxable year. As such, petitioner's act of reinstating its denied CWT refund claim in CTA EB No. 697 as a creditable tax was properly called for.

Meanwhile, the court commissioned ICPA verified that the CY 2011 CWT in the amount of Php219,355.05 and the CY 2014 CWT amounting to Php4,864,750.00 are fully supported with BIR Form 2307 issued to petitioner by its income payors.[104] Based on the examination performed by the ICPA, these amounts were arrived at through the movements of the excess CWT from CY 2003 to CY 2015 which were as follows:[105]

Particulars	Prior Years' Excess Credits	CWT for the Year	Total
2003 Tax credits/payments	Php -	Php2,506,600.00	Php2,506,600.00
Less application of excess tax credits against RCIT due	-	(289,502.00)	(289,502.00)
Amount carried over to 2004	Php -	Php2,217,098.00	Php2,217,098.00
2005 Tax credits/payments	Php2,217,098.00	Php5,188,970.00	Php7,406,068.00
Less:			
Application of excess tax credits against RCIT due	(550,220.00)	-	(550,220.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 7613)	-	(5,188,970.00)	(5,188,970.00)
Amount carried over to 2005	Php1,666,878.00	Php -	Php1,666,878.00
2005 Tax credits/payments	Php1,666,878.00	Php5,070,932.00	Php6,737,810.00
Less:	(1,029,302.00)	-	(1,029,302.00)

[103] G.R. No. 205955, 7 March 2018.
[104] Exhibits "P-38" and "P-40", Found in the USB, Exhibit "P-42-b"; See ICPA Report, Exhibit "P-42", Records, Vol. 1, p. 378.
[105] See ICPA Report, Exhibit "P-42", Records, Vol. 1, pp. 366-368.

Application of excess tax credits against RCIT due Amount claimed for refund or issuance of TCC (CTA Case No. 7757)	-	(5,070,932.00)	(5,070,932.00)
Amount carried over to 2006	Php637,576.00	Php -	Php637,576.00
2006 Tax credits/payments	Php637,576.00	Php3,991,800.00	Php4,629,376.00
Less: Application of excess tax credits against RCIT due	(434,043.00)	-	(434,043.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 7911)	-	(3,991,800.00)	(3,991,800.00)
Amount carried over to 2007	Php203,533.00	Php -	Php203,533.00
2007 Tax credits/payments	Php203,533.00	Php3,643,050.00	Php3,846,583.00
Less: Application of excess tax credits against RCIT due	(203,533.00)	(553,207.00)	(756,740.00)
Amount carried over to 2008	Php -	Php3,089,843.00	Php3,089,843.00
2008 Tax credits/payments	Php3,089,843.00	Php3,683,100.00	Php6,772,943.00
Less: Application of excess tax credits against RCIT due	(827,408.40)	-	(827,408.40)
Amount claimed for refund or issuance of TCC (CTA Case No. 8266)	-	(3,683,100.00)	(3,683,100.00)

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Amount carried over to 2009	Php2,262,434.60	Php -	Php2,262,434.60
2009 Tax credits/payments	Php2,262,434.60	Php4,045,410.00	Php6,307,844.60
Less:			
Application of excess tax credits against RCIT due	(995,903.10)	-	(995,903.10)
Amount claimed for refund or issuance of TCC (CTA Case No. 8458)	-	(4,045,410.00)	(4,045,410.00)
Amount carried over to 2010	Php1,266,531.50	Php -	Php1,266,531.50
2010 Tax credits/payments	Php1,266,531.50	Php3,911,850.00	Php5,178,381.50
Less:			
Application of excess tax credits against RCIT due	(178,931.38)	-	(178,931.38)
Amount claimed for refund or issuance of TCC (CTA Case No. 8639)	-	(3,911,850.00)	(3,911,850.00)
Amount carried over to 2011	Php1,087,600.12	Php -	Php1,087,600.12
2011 Tax credits/payments	Php1,087,600.12	Php4,386,654.40	Php5,474,254.52
Less:			
Application of excess tax credits against RCIT due	(1,087,600.12)	(392,088.25)	(1,479,688.37)
Amount carried over to 2012	Php -	Php3,994,566.15	Php3,994,566.15
2012 Tax credits/payments	Php3,994,566.15	Php3,911,850.00	Php5,178,381.50
Less:			
Application of excess tax	(1,479,209.10)	-	(178,931.38)

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credits against RCIT due Amount claimed for refund or issuance of TCC (CTA Case No. 9026)	- 	 (4,880,190.40)	 (4,880,190.40)
Amount carried over to 2013	Php2,515,357.05	Php -	Php2,515,357.05
2013 Tax credits/payments	Php2,515,357.05	Php4,733,500.00	Php7,248,857.05
Add reinstatement of 2004 CWTs disallowed by the CTA (per decision in CTA EB Case No. 697 dated April 20, 2012)	4,357,499.04	-	4,357,499.04
Less adjustment made by the Petitioner	(380,481.09)	-	(380,481.09)
	6,492,375.00	4,733,500.00	11,225,875.00
Less: Application of excess tax credits against RCIT due	(971,659.00)	-	(971,659.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 9249)	-	(4,733,500.00)	(4,733,500.00)
Amount carried over to 2014	Php5,520,716.00	Php -	Php5,520,716.00
2014 Tax credits/payments	Php5,520,716.00	Php4,864,750.00	Php10,385,466.00
Less: Application of excess tax credits against RCIT due	(1,324,343.00)	-	(1,324,343.00)
Amount carried over to 2015	Php4,196,373.00	Php4,864,750.00	Php9,061,123.00
2015 Tax credits/payments	Php9,061,123.00	Php4,993,000.00	Php14,054,123.00

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Less: Application of excess tax credits against RCIT due	(445,427.00)	-	(445,427.00)
Amount claimed for refund or issuance of TCC (CTA Case No. 9808)	-	(4,993,000.00)	(4,993,000.00)
Amount carried over to 2016	Php8,615,696.00	Php -	Php8,615,696.00

With these findings by the ICPA, the Court finds that the petitioner adequately proved the existence of its CY 2015 prior year's excess tax credits, which it applied as payment for its CY 2015 RCIT.

In sum, petitioner has sufficiently proven its entitlement to a cash refund/issuance of TCC in the amount of Php4,993,000.00 representing unutilized excess CWT for CY 2015.

The taxpayer does not have to prove actual remittance of the taxes to the BIR.

As a last note and contrary to respondent's position, proof of actual remittance of the CWT to the BIR is not a requirement for claiming CWT refund/issuance of TCC.

Sections 2.58 and 2.58.3 of RR 2-98 provides as follows:

> "Section 2.58. Returns and Payment of Taxes Withheld at Source. -
>
> (A) xxx xxx xxx
>
> (B) Withholding tax assessment for taxes withheld. -Every payor required to deduct and withhold taxes under these regulations shall furnish each payee, whether individual or corporate, with a withholding tax assessment, using the prescribed form (BIR Form 1307) showing the income payments made and the amount of taxes withheld therefrom, for every month of the quarter within twenty (20) days, following the close of the taxable quarter employed by the payee in filing his/its quarterly income tax return. Upon request of the payee, however, the payor must furnish such statement to the payee simultaneously with the income payment. For final withholding taxes, the statement should be given to the payee on or before January 31, of the succeeding year.

xxx xxx xxx

Section 2.58.3. Claim for Tax Credit or Refund. –

(A) The amount of creditable tax withheld shall be allowed as a tax credit against the income tax liability of the payee in the quarter of the taxable year in which income was earned or received.

(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 show 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 dully issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom.

Proof of remittance is the responsibility of the withholding agent."

(Emphasis, Ours)

These provisions (which govern the manner and general prerequisites for claiming CWT refund/issuance of TCC) do not require that the taxpayer-claimant furnish the BIR with proof of remittance of the CWT being claimed for refund/issuance of TCC before his claim can be granted. In fact, these provisions place the burden of proving remittance of the CWT being claimed for refund/issuance of TCC on the withholding agent as the latter is the one obligated to remit the taxes it withheld to the BIR. It is sufficient that a taxpayer-claimant provides the BIR Form 2307 as evidence to prove that taxes were indeed withheld.

Indeed, in ***Commissioner of Internal Revenue vs. Philippine National Bank***,[106] the Supreme Court held that proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under ***Sections 57 and 58 of the Tax Code***, it is the payor-withholding agent, and not the payee-refund claimant, who is vested with the responsibility of withholding and remitting income taxes. As such the taxpayer-claimant should not be obligated to prove the fact of remittance.

The rationale for not requiring proof of remittance as a prerequisite to grant a CWT refund claim was adequately explained in ***Commissioner of Internal Revenue vs. Asian Transmission Corporation***, *viz*:

"[P]roof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to

[106] G.R. No. 180290, 19 September 2014.

> petitioner. Section 2.58.3 (B) of Revenue Regulation No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Sections 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility of the payor and not the payee. Therefore, respondent, x x x has no control over the remittance of the taxes withheld from its agent of the petitioner. **The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are prima facie proof of actual payment by herein respondent-payee to the government itself through said agents. We stress that the pertinent provisions of law and the established jurisprudence evidently demonstrate that there is no need for the claimant, respondent in this case, to prove actual remittance by the withholding agent (payor) to the BIR."**
>
> (Emphasis, Ours)

WHEREFORE, in view of the foregoing, the present Petition for Review is hereby **GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND OR TO ISSUE A TAX CREDIT CERTIFICATE** in the amount of **Php4,993,000.00** in favor of petitioner, representing its excess and unutilized CWT for CY 2015.

SO ORDERED.

MARIA ROWENA MODESTO-SAN PEDRO
Associate Justice

WE CONCUR:

ERLINDA P. UY
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
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.

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to *Section 13 of Article VIII of the Constitution* and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

ROMAN G. DEL ROSARIO
Presiding Justice