REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL SECOND DIVISION

STATELAND, INC., Petitioner,	**CTA CASE NO. 8633**
	Members:
- versus -	**CASTAÑEDA, JR.,** *Chairperson* and **CASANOVA,** *JJ.*
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JAN 10 2018 1:10 p.m.

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AMENDED DECISION

CASTAÑEDA, JR., J.:

For resolution is petitioner's **Motion for Reconsideration (Re: Decision dated 12 July 2016)**, filed on July 27, 2016 with respondent's **Opposition**, filed on September 7, 2016.

Petitioner seeks reconsideration of this Court's Decision dated July 25, 2016 (assailed Decision), the dispositive portion of which reads:

> "**WHEREFORE**, premises considered, the instant Petition for Review is hereby **DENIED** for insufficiency of evidence.
>
> **SO ORDERED**."

In the assailed Decision, this Court denied the instant petition for failure to comply with the requirements for refund or issuance of

TCC of unutilized excess Creditable Withholding Tax (CWT), more specifically, its failure to sufficiently establish that the income from which the subject taxes were withheld was duly reported in its Annual Income Tax Return (AITR).

Petitioner in its Motion for Reconsideration asserts that based on the Independent Certified Public Accountant's (ICPA's) findings, it had declared in its ITR the income pertaining to the taxes subject of this claim for refund.

Petitioner also attached additional evidence in the instant motion, consisting of the breakdown of the total withholding taxes, the corresponding sales transactions for which these taxes were withheld, and the schedules of income reported from year 2004 to 2012 and the AITRs for the years 2004 to 2009, and 2011 to 2012, to prove that the gross income of the sales subject of the withholding taxes were actually reported in the Income Tax Returns of the said years. The Affidavit of petitioner's Accounting Head Ann Celeste A. Mercado was also submitted to corroborate the report previously submitted by the ICPA.

Petitioner further includes in its motion an alternative prayer to be allowed to carry-over its unutilized CWT for taxable year 2010 for its future tax liabilities. [1]

On the other hand, respondent, in his Opposition[2] to petitioner's Omnibus Motion for Reconsideration, avers that petitioner cannot assume that the ICPA's report should be taken as gospel truth and the Court has the final determination on whether petitioner is entitled to a refund based on all the evidence presented and not based on the ICPA's report alone.

Respondent further argues that petitioner's attempt to present additional evidence attached to its motion after a decision has already been rendered by the Court is absolutely obnoxious to a system of orderly procedure.

In a Resolution dated September 9, 2016[3], without ruling upon the merits of petitioner's arguments in its motion, the Court granted petitioner's prayer to present additional evidence.

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[1] Docket, vol. VI, p. 3032.
[2] Docket, vol. VI, pp. 3323-3330.
[3] Docket, vol. VI, p. 3332-3335.

On November 16, 2016[4], petitioner offered the Direct Testimony of its witness, Ann Celeste Mercado to establish petitioner's causes of action and reliefs set forth in the instant Omnibus Motion for Reconsideration and For Leave To Present/Admit Additional Attached Evidence With Alternative Relief.

A Commissioner's Hearing was later set on December 5, 2016 and petitioner was granted fifteen (15) days to file its Supplemental Formal Offer of Evidence.[5]

Upon motion of petitioner, another Commissioner's Hearing was set on December 12, 2016 and petitioner was given fifteen days (15) from December 12, 2016 to file its Formal Offer of Evidence.[6]

On December 22, 2016[7] and December 27, 2016[8], petitioner filed its Supplemental Formal Offer of Additional Evidence and Ex-Parte Motion to Admit Attached Formal Offer of Evidence, respectively.

On August 30, 2017, this Court issued a Resolution on petitioner's Supplemental Formal Offer of Additional Evidence and Ex-Parte Motion to Admit Attached Formal Offer of Evidence. In the said Resolution, the Court admitted Exhibits "P-1507" to "P-1541-A", except Exhibits "P-1509", "P-1512", "P-1509-5", "P-1515", "P-1516", "P-1508-10", and "P-1516-2", which were denied admission by the Court.

On September 29, 2017, petitioner filed an Urgent Omnibus Motion for Partial Reconsideration on the Resolution dated 30 August 2017 and to Admit Attached Amendment to the Amended Supplemental Formal Offer of Additional Evidence dated 27 December 2016.

Subsequently, in a Resolution dated October 12, 2017, the Court granted petitioner's Urgent Omnibus Motion for Partial Reconsideration and admitted Exhibits "P-1509", "P-1512", "P-1509-5", "P-1515", "P-1516", "P-1508-10", "P-1516-2", "P-1536-A", "P-

[4] Docket, vol. VII, pp. 3342-3402.
[5] Order dated November 21, 2016, docket, vol. VII, pp. 3717-3718.
[6] Docket, vol. VII, p. 3731.
[7] Docket, vol. VIII, pp. 3742-3753.
[8] Docket, vol. VIII, pp. 4126-4146.

1537", "P-1537-A", "P-1538", "P-1538-A", "P-1539", "P-1539-A" and "P-1540".

Accordingly, in the same Resolution, the Court submitted for resolution petitioner's Motion for Reconsideration (Re: Decision dated 12 July 2016).

The main issue of this case is whether petitioner is entitled to a refund or an issuance of tax credit certificate for its unutilized excess CWT for the taxable year 2010 in the amount of ₱13,654,157.00.

In the assailed Decision, it has been discussed that petitioner was able to comply with the first and second requisites in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for its unutilized excess CWT.[9]

Petitioner's claim for refund was filed within the two-year prescriptive period as provided under Sections 204(C) and 229 of the National Internal Revenue Code (NIRC) of 1997, as amended and the fact of withholding the amount of ₱13,654,157.00 was established.

In view thereof, the Court shall now discuss petitioner's compliance with the third requisite wherein the income upon which the taxes were withheld must be declared as part of the gross income of the recipient.

The Court shall first ascertain whether the total amount of sale of goods and services which were booked/recorded by petitioner in its sales register and general ledger (GL) for the taxable year 2010 tally with the sale of goods and services declared as taxable gross income per petitioner's AITR for the same year.

In the instant motion, petitioner explains that being a real estate company, it follows, for "accounting purposes", the Percentage of Completion Method. In this method, the gross profit from sale is realized based on percentage of completion of the inventories or house and lots sold to its customers. While for tax purposes, income recognition varies and depends on the terms of payment and actual collection of the sales; whether the sale is considered under "cash basis" or "installment plan".

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[9] Assailed Decision, docket, vol. V, pp. 3002 to 3011.

Petitioner claims that it adheres with Section 2.57.2 of BIR Revenue Regulations (RR) No. 02-98, as amended by RR No. 17-03 by way of practice in recognizing income from sale for tax purposes.

Petitioner explains the following scenarios arising from its installment sales:

> 1) where <u>income from installment sales were already reported in the prior year ITR/s but the payments of CWTs were made only in 2010, upon receipt of the final installments</u>;
>
> 2) the situation where sales are booked on installment plan and the gross income corresponding to the installment payment is already recognized in 2010 and prior years but the withholding tax is not paid until the payment of final amortization is made by the buyer in subsequent years coinciding with the end of installment period.

Petitioner also explains that for sales under cash basis, there is also a timing difference on the recognition of sales for income tax purposes and the payment of withholding as the requirement of payment of the withholding tax falls on the 10^{th} day of the month following the month when the payment of more than 25% of the contract price is reached.

For sales with collected amount of more than 25% of the selling price for the months of January to November of the year, the withholding taxes are remitted to the BIR in the months February to December of the same year. While sales with more than 25% collection in the month of December and which gross income reported for income tax purposes in the same year, the related withholding taxes are remitted to the BIR in January of the following year.

Petitioner states that due to the nature of its business, it cannot fall within the general rule that the income or sales amount to which the CWT relates should be shown as forming part of the gross income of the taxpayer AITR on the same year the Withholding Tax is withheld.

The instant motion is meritorious. *[initials]*

The relevant figures are as follows:

Realized Gross Profit during the year 2010 (per books)[10]	Gross profit on Sales of Real Estate per Audited FS 2010[11]	Sales Revenue per Income Tax Return 2010[12]
₱ 184,574,274.00	₱ 190,627,713.00	₱ 200,434,138.00

Petitioner reconciled these three figures in the following manner, to show that whatever was recorded per books as Realized Gross Profit for taxable year 2010, formed part of Gross Income per ITR for taxable 2010 to wit[13]:

		Amount	Reference
Gross Profit (net of sales discount) from 2010 bookings		**₱ 184,574,274.00**	Annex A-1-2
Add: Gross profit of unconstructed units under percentage of completion deferred per books but already taxed in 2009 and realized per books in 2010		6,053,439.00	Annex A-1-3
Gross Profit on Sales per Audited Financial Statements		**₱ 190,627,713.00**	
Realized gross profit from prior years' sales		42,279,839.00	Annex A-1-4
Gross profit of unconstructed units under percentage of completion deferred per books this year but already taxable in 2010		9,673,231.00	Annex A-1-5
Gross profit of lot sales in Washington Place deferred per books but taxable in 2010		4,830,777.00	Annex A-1-6
Gross profit of unconstructed units under percentage of completion deferred but already taxed in 2009 and recognized in 2010 per books		(6,053,429.00)	Annex A-1-3
Interest income earned from socialized housing (Summer Crest Village)		(24,195.00)	Annex A-1-7
Gross Profit and Interest Income earned from BOI registered projects		(14,393,935.00)	Annex A-1-8
Unrealized Gross Profit on current year's sale with less than 25% principal collection		(78,745,136.00)	Annex A-1-9
Total realized gross profits shown as Net Sales/Revenues/Receipts per 2010 Income Tax Return		148,194,865.00	
Interest Income	₱ 38,019,341.00		
Other Income	14,219,943.00	52,239,284.00	
Total Gross Income per 2010 ITR		**₱ 200,434,149.00**	Annex A-1

The groupings of the different kinds of sales revenues that petitioner earned during taxable year 2010 yielded the following

[10] Exhibit "P-1508-2", docket, vol. VIII, pp. 3766-3771.
[11] Exhibit "P-887", docket, vol. V, p. 2719.
[12] Exhibit "P-5", Line 21 C, docket, vol. V, p. 2693.
[13] Exhibit "P-1508-1", docket, vol. VIII, p. 3765.

CWT[14] and the corresponding basis from the schedules provided by petitioner:

#	Type of Sales Transactions	Amount of CWT	Basis of CWT
1	Cash Basis	₱ 7,693,130.47	Selling Price (net of VAT)
2	Installment Method – Fully Settled Accounts in 2010 which Gross Profits were recognized in 2010 and prior years (Individual Buyers)	2,933,235.02	Selling Price (net of VAT)
3	Installment Method – Last Collection was made in 2010 but gross profit was already fully recognized in Income Tax Returns prior to 2010	2,160,852.69	Selling Price (net of VAT)
4	Installment – Corporate Buyers	292,550.00	Installment Payment
5	Installment – Accounts under Home Development Mutual Fund (HMDF)	266,518.10	Selling Price (net of VAT)
6	Installment Sales of Prior Years which were fully settled in 2011	148,660.71	Selling Price (net of VAT)
7	Installment – Bank Financing Accounts	159,210.00	Selling Price (net of VAT)
	Total	**₱ 13,654,157.00**	

Applicable to the case at hand is Section 2.57.2 of RR No. 02-98, as amended by RR No. 06-01, further amended by RR No. 17-03, which provides for the imposition of Creditable Withholding Tax on Real Property sales, to wit:

> "(J) *Gross selling price or total amount of consideration or its equivalent paid to the seller/owner for the sale, exchange or transfer of real property classified as ordinary asset.*— A creditable withholding tax based on the gross selling price/total amount of consideration or the fair market value determined in accordance with Section 6(E) of the Code, whichever is higher, paid to the seller/pwner for the sale, transfer or exchange of real property, other than capital asset, shall be imposed upon the withholding agent/buyer, in accordance with the following schedule:
>
> A. Where the seller/transferor is exempt from creditable withholding tax in accordance with Sec. 2.57.5 of these regulations — Exempt
>
> B. Upon the following values of real property where the seller/transferor is habitually engaged in real estate business: *gr*

[14] Q&A No. 25, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3351.

With a selling price of five hundred thousand pesos (P500,000.00) or less	1.5%
With a selling price of more than five hundred thousand pesos (P500,000.00) but not more than two million pesos (P 2,000,000.00)	3%
With selling price of more than two million pesos (P2,000,000.00)	5%
C. Where the seller/transferor is not habitually engaged in the real estate business	6%

xxx xxx

Gross selling price shall mean the consideration stated in the sales document or the fair market value determined in accordance with Section 6(E) of the Code, as amended, whichever is higher. In an exchange, the fair market value of the property received in exchange, shall be considered as the consideration. *(Emphasis supplied)*

If the buyer is an **individual not engaged in trade or business**, the following rules shall apply:

i. If the sale is a sale of property on the **installment plan** (i.e payments in the year of sale do not exceed 25% of the selling price), **no withholding of tax is required to be made on the periodic installment payments**. In such a case, the applicable rate of tax based on the gross selling price or fair market value of the property at the time of the execution of the contract to sell, whichever is higher, **shall be withheld on the last installment** or instalments immediately prior to such last installment, if the last installment is not sufficient to cover the tax due, to be paid to the seller until the tax is fully paid.

ii. If on the other hand, the sale is on a **"cash basis" or is a "deferred payment sale"** and not on the installment plan (that is, payment in the year of sale exceed 25% of selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property whichever is higher on the **first <u>installment</u>.**

However, if the buyer is **engaged in trade or business, whether a corporation or otherwise**, the following rules shall apply: *ja*

i. If the sale is a sale of property on the **installment plan** (i.e payments in the year of sale do not exceed 25% of the selling price), the tax shall be deducted and **withheld** by the buyer on **every installment** which tax shall be based on the ratio of actual collection of the consideration against the agreed consideration appearing in the Contract to Sell applied to the gross selling price or fair market value of the property at the time of the execution of the Contract to Sell whichever is higher.

xxx xxx

ii. If on the other hand, the sale is on a **"cash basis" or is a "deferred payment sale"** and not on the installment plan (that is, payment in the year of sale exceed 25% of selling price), the buyer shall withhold the tax based on the gross selling price or fair market value of the property whichever is higher **on the first installment**. *(Emphasis ours)*

The Court finds that petitioner correctly adhered to the foregoing, when it comes to the timing and basis of remittance of CWT. For cash basis and installment transactions with non-corporate buyers, the basis is the gross selling price net of VAT, whereas, for installment sales with corporate buyers, the basis is the installment payments made during each year.

The number of accounts for each type of sale transaction and the corresponding income in 2010, prior years and succeeding years are also summarized as follows[15]:

#	No. of Buyers (Transactions)	Amount of CWT	Gross Income in 2010 ITR	Gross Income reported in prior years	Gross Income Reported in succeeding years
1	98	₱ 7,693,130.47	₱ 85,026,958.97	-	-
2	71	2,933,235.02	20,771,866.58	₱ 16,362,534.12	-
3	82	2,160,852.69	0.00	34,139,557.12	-
4	38	292,550.00	1,986,089.93	1,600,830.49	₱ 2,557,168.28
5	12	266,518.10	2,601,081.65	319,188.45	771,009.57
6	2	148,660.71	186,987.92	331,416.73	1,047,522.68
7	2	159,210.00	354,417.23		1,723,066.14
		₱ 13,654,157.00	**₱ 110,927,402.28**	**₱ 52,753,526.91**	**₱ 6,098,766.67**

The Court noted the CWT relating to each kind of sales transaction to the Schedule of Gross Profit (Net of Sales Discount) in 2010 per Books[16]. Je

[15] Exhibit "P-888", docket, vol. IV, p.2396; Q&A No. 27, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3352.
[16] Exhibit "P-1508-2", docket, vol. VIII, pp. 3766-3771.

The Court's verification resulted to the following:

I. Under the Sale on Cash Basis

1. Transaction categorized as Unrealized Gross Profit

Upon tracing the related income to the reported Realized Gross Profit per Books (as reconciled to the Annual Income Tax Returns)[17], the Court noted the following transactions were categorized under the column "Unrealized Gross Profit per Books", and hence, did not form part of the total Realized Gross Profit (RGP) per Books of ₱184,574,274.00:

Period Covered	Payor/Withholding Agents	Tax Withheld	Gross Income (Tax Base)	Exhibit No.	Unrealized Gross Profit per 2010 Books	Sales Type
1st Quarter	**Sheryll P. Alvarez**	**₱ 20,760.00**	**₱ 692,000.00**	**"P-299"**	183,057.00	**HDMF Sales**
2nd Quarter	**Michael L. De Jesus**	**21,230.52**	**707,684.00**	**"P-300"**	313,644.00	**HDMF Sales**
2nd Quarter	**Sps. Jaime C. Callano & Lina S. Callano**	**19,650.96**	**655,032.00**	**"P-301"**	390,282.00	**HDMF Sales**
2nd Quarter	**SPS. RUTH & ALBERT ROMANO**	**17,604.00**	**586,800.00**	**"P-302"**	141,203.00	**HDMF Sales**
2nd Quarter	**SPS. ROMEO & PATRICIA RACAL**	**17,955.00**	**598,500.00**	**"P-303"**	275,173.00	**HDMF Sales**
3rd Quarter	**SPS. EDWIN & RONALYN ASTORGA**	**7,471.28**	**498,085.00**	**"P-304"**	129,305.00	**HDMF Sales**
	Sub-total	***104,671.76***	***3,738,101.00***		***1,432,664.00***	
4th Quarter	SPS. GLADYS & MICHAEL NIELES	22,176.00	739,200.00	"P-89"	240,870.00	Cash Basis
4th Quarter	Elias C. Arnoco	42,851.79	1,428,392.86	"P-90"	396,943.00	Cash Basis
4th Quarter	JOY & JOY LIN PAROHINOG	31,980.90	1,066,030.00	"P-88"	296,730.00	Cash Basis
4th Quarter	SPS. ARLAN RAYMUND & RHIA REYES	25,620.00	854,000.00	"P-81"	254,200.00	Cash Basis
4th Quarter	SPS. SALVACION & TOBIAS CORDOVALES	104,352.15	2,087,043.00	"P-104"	971,016.00	Cash Basis
4th Quarter	SPS. ROLANDO & ALEXIS BINAS	19,575.00	652,500.00	"P-404"	180,596.00	Cash Basis
4th Quarter	AIZA J. DOMINGO	29,767.50	992,250.00	"P-103"	220,500.00	Cash Basis
4th Quarter	MYP GBY PHILIPPINE CORPORATION	1,339.29	26,785.71	"P-82"		Cash Basis
4th Quarter	MYP GBY PHILIPPINE CORPORATION	25,027.45	500,548.94	"P-101"		Cash Basis
4th Quarter	MYP GBY PHILIPPINE CORPORATION	87,936.84	1,758,736.78	"P-102"	979,842.00	Cash Basis
	Sub-total	***390,626.92***	***10,105,487.29***		***3,540,697.00***	
	TOTAL	**₱ 495,298.68**	**₱ 13,843,588.29**		**₱ 4,973,361.00**	

Based on the Court's review, all the 4th Quarter Cash Basis sales in the above table can be traced to Exhibit "P-1508-6" representing the "Gross Profit of Lot Sales in Washington Place Deferred per Books but Taxable in 2010 in the amount of ₱4,830,777.00"[18]. The same is

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[17] *Id.*

[18] Docket, vol. VIII, p.3785.

one of the reconciling items added to the RGP per Books to arrive at the Gross Income per ITR[19], as can be seen in the earlier table. The aforementioned RGP included the RGP of ₱3,540,697.00 relating to the CWT amount of ₱390,626.92 is found to have formed part of the 2010 Annual ITR of petitioner.

As for the 1st to 3rd Quarter Cash Basis sales in the above table which are HDMF Sales in the total amount of ₱104,671.76 (₱ 495,298.68 less ₱390,626.92), according to the ICPA report, the revenue of ₱3,738,101.00 (₱13,843,588.29 less ₱10,105,588.29) to which those CWTs relate must have been reported in the years when the petitioner received the loan proceeds.[20] However, despite submission of petitioner's Schedules for the years 2011[21] and 2012[22], the Court cannot trace or verify the realizations of income on these CWTs.

Hence, the CWT on these HDMF Sales in the sum of **₱104,671.76** is **disallowed**, since the related income was not recorded in petitioner's books during the year 2010, and did not form part of the Gross Income in the ITR for taxable year 2010.

2. ICPA's Findings[23]

The ICPA noted a transaction with Air Insurance Agency, Inc. which was categorized by petitioner under cash basis transaction. However, the transaction pertains to commission given by the former to the latter in exchange for client referral. Petitioner treated the commission income received as deduction from related insurance expense incurred from Air Insurance Agency, Inc.

The details of the transaction are as follows[24]:

TIN	LAST NAME	TAX BASE	TAX WITHHELD
004-521-292-000	AIR INSURANCE AGENCY, INC.	₱ 13,389.65	₱ **1,338.96**

[19] Exhibit "P-5", Section E, Line 121, docket, vol. V, p. 2694.
[20] Exhibit "P-1414", docket, vol. IV, p. 2554.
[21] Exhibit "P-1516-1", docket, vol. VIII, p. 3990.
[22] Exhibit "P-1515-1", docket, vol. VIII, p. 3959.
[23] Exhibit "P-1414", docket, vol. IV, p. 2533-2556.
[24] Exhibit "P-1414", docket, vol. IV, p. 2550.

With regard to the rest of the items under Cash Basis, the Court finds the same in order.

II. Installment Sales

These are fully settled accounts in 2010 wherein the last collection was made in 2010 but the Gross Profit was realized in prior years.

These accounts pertain to installment sales from prior years wherein buyers are individuals not engaged in trade or business. The payments in the year of sale do not exceed 25% of the selling price.

The final installments on these sales were recognized in prior years corresponding to payments and the last realization of gross profit was in 2010, the same year when the CWT was withheld and remitted to the BIR.[25]

Meanwhile the category "Last Collection Made in 2010 but Gross Profit Realized in Prior Years" contains accounts which were already recognized in full as taxable income in prior years but the full payment of the outstanding balance only happened in 2010. [26]

To reiterate, the timing of withholding for individual buyers not engaged in trade or business, is upon final payment, and the basis is the entire Gross Selling Price, net of VAT, if any, whereas the timing of recognition of gross profit is based on the installment collection made every year.

In addition, the Court finds the following per verification of the GL schedules provided in the Supplemental ICPA Report and Motion for Reconsideration:

1. Traced to 2010 GL Schedules

The same procedure was done with the income payments falling under Category 2 (2010 Sales - Fully settled accounts in 2010,

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[25] Q&A No. 51, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3361.

[26] Q&A No. 80, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3377.

and Gross Profit Realized in 2010) of the CWT Summary, being traced to Exhibit "1508-4"[27] which is the breakdown of the reconciling item "Realized GP from Prior Year's Sales".

Further, it is noted that Court was able to match all of the accounts in the CWT summary to Exhibit "1508-2"[28] which means that petitioner was able to sufficiently prove that the CWT being claimed for refund met the third requisite, hence, may be entitled to the refund of CWT in connection with the income payments under Category B in the amount of ₱ 2,933,235.02.

However, the Court found that the Tax Base used per withholding tax certificates (BIR Form No. 2307) and remittance forms (BIR Form No. 1606) on the following accounts is not the same as the Gross Selling Price, net of VAT (if any) as per GL Schedules:

NAME	Tax Base per CWT Schedule	Tax Withheld forming part of the Claim	Gross Selling Price per Annex "A-1-2"*	Should-be Tax Withheld	Difference (Tax Withheld)	Realized Gross Profit in 2010
JONATHAN BULAQUENA	₱ 500,000.00	₱ 7,500.00	₱ 632,256.00	₱ 18,967.68	₱ (11,467.68)	₱ 832.21
SPS. RICARDO & JOCELYN GALLEGO	500,000.00	7,500.00	739,754.00	22,192.62	(14,692.62)	108,920.08
SPS. RIONEL & IMELDA DITAN	500,000.00	7,500.00	624,002.00	18,720.06	11,220.06	6,644.25
ELMA ALMOSA	500,000.00	7,500.00	792,338.00	23,770.14	(16,270.14)	13,262.19
MARICEL GARCIA	500,000.00	7,500.00	766,660.00	22,999.80	(15,499.80)	52,357.65
LUCITO JUNIOR REGIS	554,331.00	16,629.93	766,660.00	22,999.80	(6,369.87)	81,767.54
SOLEDAD CAJEFE & FELISA YOUNGBERG	500,000.00	7,500.00	699,998.00	20,999.94	(13,499.94)	7,413.10
SPS. LEMUEL & JULIET DALISAY	375,000.00	5,625.00	530,853.00	15,925.59	(10,300.59)	14,001.63
DIGNA & ROMULO TORRES	375,000.00	5,625.00	482,635.00	14,479.05	(8,854.05)	35,979.69
ERNEST RAMIREZ	500,000.00	7,500.00	708,478.00	21,254.34	(13,754.34)	117,891.97
SPS. REYNALDO & JOSIE SOTELO	500,000.00	7,500.00	778,614.00	23,358.42	(15,585.42)	68,641.84
SPS. ROLLY & BEVERLY LACSE	450,000.00	6,750.00	435,694.00	13,070.82	(6,320.82)	51,776.40
TOTAL	**₱ 5,754,331.00**	***₱ 94,629.93***	**₱7,957,942.00**	**₱238,738.26**	**₱(121,395.21)**	**₱559,488.55**

*Computed as Selling Price less VAT, if any.

For the foregoing accounts, the income payments on which the taxes withheld were based had a different Selling Price per GL schedules compared to the Gross Selling Price per Exhibit "1508-2".

It is noted that the difference in amount does not correspond to the VAT component of the items. In this instance, petitioner was not able to provide the Court with an explanation or reconciliation of the difference in recording and reporting of the same.

[27] Docket, vol. VIII, pp. 3773-3783.
[28] Docket, vol. VIII, pp. 3766-3771.

In view of the foregoing, the Court **disallows** the sum of **₱94,629.93** representing an under-withholding of CWT.

In addition, as correctly found by the ICPA[29], the amount of ₱27,219.33 CWT pertaining to the account of Sps. Romulo and Merly Daraug with corresponding tax base of ₱907,311.00 should be disallowed because there was still outstanding balance as of 2010.

2. Traced to Prior Years GL Schedules

Out of the ₱2,160,852.69 CWT related to Installment Method – Last Collection was made in 2010 but gross profit was already fully recognized in Income Tax Returns prior to 2010, the ICPA aptly noted certain item which petitioner erroneously classified as a Fully Settled Account in 2010, but, upon examination turned out to still have an outstanding balance. Hence, the related amount withheld subject for refund is disallowed. Details of this account are as follows:

TIN	LAST NAME	FIRST NAME	TAX BASE	TAX WITHHELD
117-519-983-000	GUERRERO	SPS. RODGER & LUZ	₱ 3,992,044.64	**₱ 199,602.23**

3. Installment - Corporate Buyers

The following represent the CWT withheld from petitioner's corporate buyers, wherein the tax withheld by the buyer is based on every installment payment. The ICPA obtained all available official receipts and application of payment (AoP) to support installment income payments of corporate buyers, and these have been taken into consideration in the assailed Decision:[30]

NAME	Gross Amount of Income	Tax Withheld	Realized Gross Profit in 2010
Open Mission in the Philippines, Inc.	₱ 7,986.61	₱ 239.60	₱ 6,379.12
Open Mission in the Philippines, Inc.	8,106.41	243.19	6,474.80
Open Mission in the Philippines, Inc.	8,228.00	246.84	6,571.92
Open Mission in the Philippines, Inc.	8,351.42	250.54	6,670.50
Open Mission in the Philippines, Inc.	716,531.78	21,495.95	49,580.77
Open Mission in the Philippines, Inc.	55,861.71	1,675.85	44,244.18
Open Mission in the Philippines, Inc.	28,014.75	840.44	22,188.54
Open Mission in the Philippines, Inc.	8,673.59	260.21	6,869.75
Open Mission in the Philippines, Inc.	19,285.24	578.56	15,274.50

[29] Exhibit "P-1414", docket, vol. IV, p. 2551.
[30] Exhibit "P-1507", p. 7, docket, vol. VII, p. 3409.

Open Mission in the Philippines, Inc.	27,958.83	838.76	22,144.25
Open Mission in the Philippines, Inc.	27,958.83	838.76	22,144.25
St. Mary's School of Novaliches, Inc.	6,540.24	327.01	2,394.07
St. Mary's School of Novaliches, Inc.	13,409.41	670.47	1,227.04
St. Mary's School of Novaliches, Inc.	6,872.79	343.64	1,247.50
St. Mary's School of Novaliches, Inc.	6,987.34	349.37	3,868.63
St. Mary's School of Novaliches, Inc.	1,595,504.20	79,775.21	279,912.25
Youngji International School	6,927.71	346.39	3,713.16
Youngji International School	2,050.87	61.53	1,650.71
Youngji International School	7,868.58	236.06	6,284.85
Youngji International School	7,043.17	352.16	3,775.05
Youngji International School	7,986.61	239.60	6,379.12
Youngji International School	2,085.05	62.55	1,678.23
Youngji International School	8,106.41	243.19	6,474.80
Youngji International School	2,119.80	63.59	1,706.20
Youngji International School	8,228.00	246.84	6,571.92
Youngji International School	735,982.85	22,079.49	580,964.45
Youngji International School	724,883.20	21,746.50	563,855.32
Youngji International School	7,160.55	358.03	7,739.89
Youngji International School	14,681.12	734.06	8,000.04
Lightlife Baptist Church, Inc.	120,833.35	3,625.00	80,887.12
Lightlife Baptist Church, Inc.	19,166.65	575.00	1,868.39
Lightlife Baptist Church, Inc.	3,233.82	97.01	1,897.98
Lightlife Baptist Church, Inc.	3,285.03	98.55	1,928.03
Lightlife Baptist Church, Inc.	3,337.04	100.11	1,958.55
Lightlife Baptist Church, Inc.	3,389.87	101.70	1,989.56
Lightlife Baptist Church, Inc.	3,443.55	103.31	2,021.06
Lightlife Baptist Church, Inc.	3,498.07	104.94	2,053.07
St. Mary's School of Novaliches, Inc.	2,640,000.00	132,000.00	195,500.36
TOTAL	**₱6,881,582.45**	**₱ 292,550.01**	**₱1,986,089.93**

Here, the only relevant realized gross profits are the ones related to installment payments made during the year 2010. However, the amount of realized gross profit related to supposed installment payments were not found in any of the GL schedules for taxable year 2010.

Hence, the CWT claimed relating to Corporate Buyers for the amount of **₱292,550.01** should be **disallowed**.

4. Installment - HDMF Accounts

These represent sales to buyers availing themselves of Pag-Ibig/HDMF Financing. HDMF requires submission of title in the name of the buyers before the release of the loan proceeds. Hence, CWTs were paid in advance for the purpose of securing Certificate Authorizing Registration (CAR) from the BIR, being a requirement by the Register of Deeds to process title transfer. As such, the corresponding income will only be reported in the year when full payments are made upon receipts of the loan proceeds from the concerned financial institution. There are also CWTs under this category which pertain to installment buyers who later converted to HDMF financing. Hence, for the latter accounts, there were portions of income realized and reported in the prior years' ITR, and final realization of income is made when the account is fully paid from the proceeds of the HDMF loans.[31]

	Name	Tax Base	Amount of Tax Withheld
1	EUNICE SALON	658,800.00	19,764.00
2	SPS. FERLINETTE & RONNIE VERGUELA	707,684.00	21,230.52
3	SPS. ARIEL & SHERYLL JANE PACA	740,000.00	22,200.00
4	SHERYLL ALVAREZ	692,000.00	20,760.00
1ST QUARTER		**2,798,484.00**	**83,954.52**
5	MICHAEL DE JESUS	707,684.00	21,230.52
6	SPS. JAIME & LINA CALLANO	655,032.00	19,650.96
7	SPS. RUTH & ALBERT ROMANO	586,800.00	17,604.00
8	SPS. ROMEO & PATRICIA RACAL	598,500.00	17,955.00
2ND QUARTER		**2,548,016.00**	**76,440.48**
9	SPS. EDWIN & RONALYN ASTORGA	498,085.00	7,471.28
10	SPS. LEA & JERRY MEDRANO	808,400.00	24,252.00
11	SPS. LUZVIMINDA & EDGARDO PEREY	814,000.00	24,420.00
3RD QUARTER		**2,120,485.00**	**56,143.28**
12	SPS. WILLIAM & MINDA AGOJO	1,665,994.00	49,979.82
4TH QUARTER		**1,665,994.00**	**49,979.82**
TOTAL		**9,132,979.00**	**266,518.10**

However, not all of the above accounts can be traced to any of the Realized Gross Profit Schedules provided by petitioner, hence, we cannot ascertain the fact of its forming part of petitioner's Gross Income for tax purposes in any given taxable year.

Considering the foregoing, as it has been discussed in Item # I (Cash Basis), the Court disallows ₱104,671.76 for refund.

5. Installment Sale of Prior Years And Bank Financing Accounts, Fully Settled in 2011

The following are prior years' installment sales which were settled in 2011, hence, recognized in 2011 but the corresponding CWT were paid in 2010 as required for early transfer of titles for bank take-out purposes or before the release of the loan proceeds:[32]

[31] Q&A No. 107, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3386.
[32] Q&A Nos. 118 and 125, Direct Testimony of Petitioner's Witness, Ann Celeste A. Mercado per her attached Judicial Affidavit, docket, vol. VII, p. 3388-3389.

Name	Loan Proceeds Received Date	Amount of Tax Withheld per CWT in 2010	Realized Gross Profit in Succeeding Year (2011)	Exhibit Reference
PRIOR YEARS' INSTALLMENT SALES				
Culla, Sps. June & Flordeliza	2011	₱ 126,160.71	₱ 838,269.00	"P-1516-2", p.3[33]
Suspene, Sps. Alejandro & Vannessa	2011	22,500.00	₱ 15,599.00	
Sub-total		*₱ 148,660.71*	*₱ 853,868.00*	
BANK FINANCING ACCOUNTS				
Terrenal, Sps. Efren & Lilibeth	2011	116,010.00	₱ 1,061,259.00	"P-1516-2", p.6[34]
Lindog, Sps. Maria Leonor & Raul	2011	43,200.00	₱ 661,807.00	"P-1516-2", p.8[35]
Sub-total		*159,210.00*	*₱ 1,723,066.00*	
TOTAL		**₱ 307,870.71**		

A scrutiny of the supporting documents reveals that indeed these accounts have been recognized as income in the succeeding year 2011 when the loan proceeds were received by the petitioner based on the bank credit memos presented by petitioner and the journal vouchers booking the corresponding income.

In view of the above, the Court allows the refund of the tax credits in the amount of ₱307,870.71 in connection with 2010 Installment Sales of Prior Year Fully Settled in 2011 and Bank Financing Accounts.

Lastly, the Court found that the schedules of Realized Gross Profit per Books for each prior taxable year are reconcilable to the Annual ITRs of the respective taxable years, hence, the Court can be certain that the realized gross profit per books were reported accordingly in the Gross Income for Annual Income Tax Return purposes.

In sum, petitioner has sufficiently proven its entitlement to a refund or issuance of tax credit certificate representing its unutilized excess CWT for the taxable year 2010, in the modified amount of ₱12,934,749.05, computed as follows:

Total CWT claimed per Petition	₱13,654,761.27
Less:	

gr

[33] Docket, vol. VIII, p. 3993.
[34] Docket, vol. VIII, p. 3996.
[35] Docket, vol. VIII, p. 3998.

1) ICPA's Findings	
Cash Basis	1,338.96
Installment Method – Last Collection in 2010 but RGP in Prior Years	199,602.23
Installment Method – Last Collection in 2010 but RGP in 2010	27,219.33
2) Court's Findings	
Cash Basis	94,629.93
Corporate Accounts	292,550.01
HDMF	104,671.76
Total refundable CWT for the taxable year 2010	**₱12,934,749.05**

WHEREFORE, premises considered, petitioner's **Motion for Reconsideration (Re: Decision dated 12 July 2016)**, is **PARTIALLY GRANTED**. Accordingly, the assailed Decision dated July 12, 2016 is hereby amended to read as follows:

> "**WHEREFORE,** the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO REFUND** or **ISSUE TAX CREDIT CERTIFICATE** to petitioner in the reduced amount of **₱12,934,749.05** for its unutilized excess CWT for the taxable year 2010.
>
> **SO ORDERED**."

SO ORDERED.

Juanito C. Castañeda, Jr.
JUANITO C. CASTAÑEDA, JR.
Associate Justice

I CONCUR:

CAESAR A. CASANOVA
Associate Justice

ATTESTATION

I attest that the conclusions in the above Amended Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Division.

JUANITO C. CASTAÑEDA, JR
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13, Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Amended 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