REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
Quezon City

Special Third Division

TULLETT PREBON (PHILIPPINES), INC.
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 9320

Members:

FABON-VICTORINO, *and*
RINGPIS-LIBAN, JJ.

Promulgated: APR 12 2019
10:00 a.m.

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DECISION

RINGPIS-LIBAN, J.

STATEMENT OF THE CASE

The case involves the Petition for Review filed by Tullett Prebon (Philippines) Inc., praying for the refund or issuance of tax credit certificate (TCC) in the amount of Fifteen Million Two Hundred Twenty-Six Thousand Seven Hundred Eighteen Pesos and 45/100 (₱15,226,718.45) allegedly representing excess and unutilized creditable withholding taxes (CWT) for calendar year (CY) 2013.

STATEMENT OF FACTS

Petitioner Tullett Prebon (Philippines) Inc. is a domestic corporation duly organized and existing under Philippines laws, with principal office at 25th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City.[1] It is registered with the Bureau of Internal Revenue (BIR) Large Taxpayers District Office

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[1] Par. 1, Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), vol. 1, p. 251.

(LTDO), Revenue District Office (RDO) No. 122, with Taxpayer Identification No. 004-653-622-000.[2]

Petitioner is engaged in the business of operating as a broker market participant in transactions involving, but not limited to, foreign exchange, deposits, interest rates instruments, fixed income securities, bonds/bills, repurchase agreements of fixed income securities, certificates of deposit, bankers acceptances, bills of exchange; over-the-counter options of the afore-mentioned instruments, lesser developed country (L.D.C.) debt, energy, and stock indexes and all related, similar or derivative products other than acting as a broker for the trading of securities.[3]

On the other hand, respondent Commissioner of Internal Revenue is sued in his official capacity, having been duly appointed and empowered to perform the duties of his office, including among others, the duty to act on and approve claims for refund as provided by law. He may be served with summons, notices and other court processes at his office at the BIR National Office Building, BIR Road, Diliman, Quezon City.

On April 14, 2014, petitioner filed with the BIR, through the electronic filing and payment system (eFPS), its Annual Income Tax Return (ITR) for CY 2013.[4] Petitioner reported a Regular Corporate Income Tax (RCIT) liability of ₱7,676,632.00. After deducting its RCIT liability against its income tax credits for CY 2013, petitioner purportedly had tax overpayment of ₱42,428,486.00 as of December 31, 2013.

Petitioner indicated on the face of its Annual ITR for CY 2013 its option to be issued a TCC for its alleged excess and unutilized CWT for CY 2013.

On April 30, 2015, petitioner filed with the BIR LTDO-Makati an administrative claim for refund of or issuance of TCC for its alleged excess and unutilized CWT for CY 2013 in the amount of ₱15,226,718.45.[5]

In view of respondent's inaction on petitioner's administrative claim for refund, petitioner filed the instant Petition for Review before this Court on March 31, 2016.

Respondent filed his Answer[6] on May 24, 2016, interposing the following Special and Affirmative Defenses:

[2] Exhibit "P-2", docket, vol. 2, p. 940.
[3] Exhibit "P-1", docket, vol. 2, p. 934.
[4] Exhibit "P-3", docket, vol. 2, pp. 941-953.
[5] Exhibit "P-7", docket, vol. 2, pp. 1005-1012.
[6] Docket, vol. I, pp. 72-79.

"4. Taxes collected are presumed to be in accordance with laws and regulations.

5. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue. A claim for refund is not *ipso facto* granted because respondent CIR still has to investigate and ascertain the validity of the claim.

6. Taxes are essential to government's very existence; xxx hence, the dictum that 'taxes are the lifeblood of the government.' For this reason, the right of taxation cannot easily be surrendered; statutes granting tax exemptions are considered as a derogation of the sovereign authority. xxx Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. xxx

7. In an action for refund, the burden of proof is on the taxpayer who claims the exemption and he must justify his claim by the clearest grant under the Constitutional or statutory law and cannot be permitted by vague implications. xxx The taxpayer is charged with the heavy burden of proving that he has complied with and satisfied all the statutory and administrative requirements to be entitled to the tax refund. xxx

8. Petitioner must prove that it filed the corresponding administrative and judicial claim for refund within the two-year prescriptive period pursuant to Sections 204 and 229 of the National Internal Revenue Code of 1997, as amended.

9. The amount of Php15,226,718.45 being claimed by petitioner as alleged excess and unutilized Creditable Withholding Taxes for the calendar year ended December 31, 2013 is not properly documented.

10. In the foregoing case, it should be noted that nowhere in the petition did petitioner aver that it complied with the required submission of supporting documents to justify its claim for refund.

11. In relation thereto, petitioner must prove compliance with the prescribed checklist of requirements to be submitted involving claims for Creditable Withholding Tax pursuant to Revenue Memorandum Order (RMO) No. 53-98 (Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax

Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which comprise a Complete Tax Docket), otherwise there would be no sufficient compliance with the filing of an administrative claim for refund, the administrative claim thereof being merely pro-forma.

12. RMO No. 53-98 was issued to identify the documents required from a taxpayer during audit of the application for refund. For Income Tax/Withholding Tax, the specific documents that need to be submitted are as follows:

INCOME TAX/WITHHOLDING TAX

A) Requirements from Taxpayer

1) Certified Financial Statements, including comparative Profit and Loss Statement with Statement of Cost of Goods Manufactured and Sold, if applicable.
2) Proof of claimed tax credit if applicable.
3) Proof of the claimed 'Interest Expense', if applicable.
4) Proof of claimed Bad Debts/worthlessness of credits, if applicable.
5) Reconciliation of 'Book Income' and 'Taxable Income'.
6) Certificate of Registration issued by the appropriate regulatory agency, together with the conditions attached to such registration. If applicable.
7) Proof of Exemption under special laws, if applicable.
8) Certification of the appropriate regulatory agency as to taxpayer's entitlement to tax incentives, if applicable.
9) Xerox copy of used Tax Credit Certificate with annotation of issued TDM at the back, if applicable.
10) Proof of payment of deficiency tax, if any/applicable.
    a. current year/period
    b. previous year/period
11) Reports submitted to applicable regulatory agency that reflects the financial condition and result of operation of the taxpayer e.g., Annual Statement prepared by insurance

> companies submitted to the Insurance Commission etc., if applicable.

13. Further, Revenue Regulations (R.R.) 2-2006 (Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld At Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments) proves:

> Section 2. MANDATORY SUBMISSION OF SUMMARY ALPHALIST OF WITHHOLDING AGENTS OF INCOME PAYMENTS SUBJECTED TO CREDITABLE WITHHOLDING TAXES (SAWT) BY THE PAYEE/INCOME RECIPIENT AND OF MONTHLY ALPHALIST OF PAYEES (MAP) SUBJECTED TO WITHHOLDING TAX BY THE WITHHOLDING AGENT INCOME PAYOR AS ATTACHMENTS TO THEIR FILED RETURNS.
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> A. xxx ... xxx ... xxx...
>
> B. Persons required to submit Summary Alphalist of Withholding Agents of Income Payments subjected to Withholding-Taxes (SAWT)
>
> 1. All persons claiming refund or applying their creditable tax withheld at source against the tax due with not more than ten (10) withholding agents-payor of income payment per return period are strictly required to submit SAWT in hard copy as attachment to the required tax return;
>
> 2. All persons claiming for refund or applying their creditable tax withheld at source against the tax due with more than ten (10) withholding agents-payor of income payment per return period are strictly required to submit SAWT electronically in 3.5 inch floppy diskette following the format to be prescribed by the BIR;

xxx ... xxx ... xxx...

14. In its claim for refund for the calendar year ended December 31, 2013, petitioner clearly failed to submit the pertinent documents required pursuant to RMO No. 53-98 and R.R. 2-2006.

15. Likewise, petitioner must prove that it has fully complied with the requisites to sustain a claim for refund or tax credit of excess and unutilized Creditable Withholding Tax as ruled by the Supreme Court in **Citibank N.A. vs. Court of Appeals, et al.** quoted herewith, to wit:

a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;

b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom.

c.) That the income upon which the taxes were withheld was included in the return of the recipient.

16. Petitioner must also prove that it did not carry-over the excess Creditable Withholding Taxes against the Quarterly and Annual Income Tax Returns in the succeeding taxable years as provided under Section 76 of the 1997 Tax Code.

17. For ease of reference, Sections 76 of the NIRC, as amended is quoted herewith as follows:

xxx xxx xxx

18. Following the premise above-mentioned, petitioner has the burden of proving that the right to such tax refund indubitably exists and well-founded doubt is fatal to the claim."

Respondent filed his Pre-Trial Brief[7] on September 9, 2016, while petitioner's Pre-Trial Brief[8] was filed on September 22, 2016. The pre-trial conference was held on September 27, 2016.[9]

In compliance with the order of the Court during the pre-trial conference, the parties filed their Joint Stipulation of Facts and Issues[10] on October 11, 2016, which the Court adopted in the Pre-Trial Order[11] dated November 11, 2016.

During trial, petitioner presented Mr. Philip G. Arabia, its Finance Manager,[12] and Ms. Katherine B. Constantino, the Court-commissioned Independent Certified Public Accountant (ICPA),[13] as its witnesses.

After presentation, marking and identification, petitioner formally offered its documentary evidence on April 17, 2017, consisting of Exhibits "P-1" to "P-13-a" and "P-21" to "P-2499-a", inclusive of submarkings.[14] All the formally offered exhibits were admitted as part of petitioner's documentary evidence pursuant to Resolutions dated September 28, 2017[15] and February 1, 2018[16], except for Exhibits "P-255", "P-256", "P-257", "P-258", "P-259", "P-260", "P-261", "P-262", "P-263", "P-269", "P-273", "P-274", "P-275", "P-276", "P-277", "P-278", "P-279", "P-280", "P-281", "P-282", and "P-283".

During the hearing held on February 5, 2018, respondent, through counsel, manifested that he will no longer present evidence. Thus, upon motion of both counsels, the parties were granted thirty (30) days to file their respective memoranda.[17]

Petitioner filed its Memorandum[18] on April 6, 2018, while respondent failed to file his Memorandum as per Records Verification Report[19] issued by the Court's Judicial Records Division dated March 8, 2018. Hence, the Court declared the case submitted for decision as of April 13, 2018.[20]

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[7] Docket, vol. 1, pp. 115-119.
[8] Docket, vol. 1, pp. 120-136.
[9] Minutes of the Hearing held on September 27, 2016, docket, vol. 1, p. 247.
[10] Docket, vol. 1, pp. 251-257.
[11] Docket, vol. 1, pp. 288-294.
[12] Minutes of the Hearing held on February 27, 2017, docket, vol. 2, p. 567.
[13] Minutes of the Hearing held on March 27, 2017, docket, vol. 2, p. 911.
[14] Docket, vol. 2, pp. 914-929.
[15] Docket, vol. 3, pp. 1034-1035.
[16] Docket, vol. 3, pp. 1055-1056.
[17] Minutes of the Hearing, docket, vol. 3, p. 1057.
[18] Docket, vol. 3, pp. 1065-1084.
[19] Docket, vol. 3, p. 1062.
[20] Resolution, docket, vol. 3, p. 1086.

STATEMENT OF ISSUES

The parties submitted the following main issue for this Court's resolution:[21]

> Whether or not petitioner is entitled to its claim for refund of or issuance of TCC allegedly representing excess and unutilized CWT for CY 2013 in the amount of ₱15,226,718.45.
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> This issue may be broken down into the following sub-issues:
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> 1. Whether or not petitioner's alleged excess and unutilized CWT for CY 2013 in the amount of ₱15,226,718.45 are duly substantiated by documentary evidence.
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> 2. Whether or not the alleged income from which the CWTs being claimed for refund were withheld was purportedly reported as part of the revenues declared in petitioner's annual ITR.
>
> 3. Whether or not petitioner exercised the option to carry over its alleged excess and unutilized CWT for CY 2013 to the succeeding taxable periods.
>
> 4. Whether or not petitioner filed its administrative and judicial claims for refund of its alleged excess and unutilized CWT for CY 2013 within the two-year prescriptive period provided under Sections 204(C) and 229 of the National Internal Revenue Code of 1997.

RULING OF THE COURT

Based on relevant jurisprudence and BIR Revenue Regulations, in order for a taxpayer to be entitled to a refund of or an issuance of TCC for unutilized excess CWT, the following three (3) basic requisites must be sufficiently established:

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

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[21] Issues, JSFI, docket, vol. 1, p. 252.

2. The fact of withholding must be established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

3. The income upon which the taxes were withheld must be included in the return of the recipient.[22]

Anent the first requisite, the pertinent provisions are Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide:

> "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."
>
> "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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[22] *Republic of the Philippines, represented by the Commissioner of Internal Revenue vs. Team (Phils.) Energy Corporation (formerly Mirant (Phils.) Energy Corporation)*, G.R. No. 188016, January 14, 2015; *United International Pictures AB vs. Commissioner of Internal Revenue*, G.R. No. 168331, October 11, 2012; *Citibank N.A. vs. Court of Appeals, et al.*, G.R. No. 107434, October 10, 1997; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991; Section 2.58, Revenue Regulations No. 2-98, as amended.

> 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."

The above-stated provisions mandate that the administrative and judicial remedy of filing a claim for refund of erroneously or excessively paid tax must be done within two years from the date of payment of the tax. For actions for refund of excess corporate income tax, the Supreme Court ruled that the two-year prescriptive period should be counted from the filing of the Final Adjustment Return, because it is only during that date that the exact tax liability or refundability of the tax can be determined.[23]

The present claim pertains to taxable year 2013 for which petitioner filed its Annual ITR[24] on April 14, 2014. Counting from this date, petitioner had until April 14, 2016 within which to file a claim for refund of its excess CWT both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim[25] for refund on April 30, 2015 and its judicial claim for refund through the instant Petition for Review on March 31, 2016.

With regard to the second and third requisites, Section 2.58.3(B) of Revenue Regulations (RR) No. 02-98, as amended, states:

> "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.**" (*Emphasis supplied*)

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[23] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992; *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.

[24] Exhibit "P-3".

[25] Exhibit "P-7".

To prove the fact of withholding of the claimed CWT of ₱15,226,718.45, petitioner presented its Schedule[26] of Creditable Withholding Tax and the related Certificates[27] of Creditable Tax Withheld at Source (BIR Forms No. 2307) for CY 2013. Upon examination of these documents, the Court-commissioned ICPA summarized her findings as follows:[28]

			Per Schedule of Creditable Withholding Tax for CY 2013 (*Exhibit P-22*)	Per creditable withholding tax certificates (Exhibits P-50 to P-284, P-1434 to P-1589)	
	Particulars	**Annex Reference to ICPA Report[29]**	**CWT amount per schedule**	**Income Payment**	**CWT amount**
1.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱9,617,233.79	₱95,713,483.11	₱9,617,233.79
2.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307). **CWT amount per certificate is lower than amount in the schedule/income tax return**	Annex 2-b	1,027,304.42	9,499,756,25	993,660.40
3.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307). **CWT amount per certificate is higher than amount in the schedule/income tax return**	Annex 2-c	1,990,786.29	34,620,693.92	2,348,168.09
4.	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the **Petitioner's name is different**, the **Petitioner's TIN number is wrong or not indicated and CWT amount per certificate is lower than amount in the schedule/income tax return**	Annex 2-d	88,039.87	878,617.63	87,861.76
5.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307) **not dated within CY 2013** and **CWT amount per certificate is lower than amount in the schedule/income tax return**	Annex 2-e	25,262.84	1,022,211.69	24,702.07
6.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with **no date indicated or not dated within CY 2013**, and **Petitioner's TIN number is wrong or not indicated**	Annex 2-f	105,607.19	1,056,074.99	105,607.50
7.	CWT duly supported by **photocopied** Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-g	609,087.40	15,510,444.25	1,080,989.17
8.	CWT without available supporting documents at the time of verification	Annex 2-h	1,763,396.65	-	-
	TOTAL		**₱15,226,718.45**	**158,301,281.84**	**14,258,222.78**

Only the above claims which are classified under numbers 1 to 3 and summarized under Annexes 2-a to 2-c of the ICPA Report are properly supported with BIR Forms No. 2307. However, it was noted that there were instances wherein the CWT per certificates exceeded those reflected per schedule/ITR or vice-versa. Inasmuch as the basis of the instant claim for refund is the amount reflected in the Annual ITR as filed, the Court shall consider only the lesser of the two amounts. Thus, petitioner complied with

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[26] Exhibit "P-22".

[27] Exhibits "P-50" to "P-254", "P-264" to "P-268", "P-270" to "P-272", "P-284" and "P-1434" to "P-1556", "P-1558" to "P-1562", and "P-1564 to "P-1589".

[28] Exhibit "P-2499", pp. 12-13, docket, vol. 2, pp. 585-586.

[29] Exhibit "P-2499", docket, vol. 2, pp. 616-681.

the second requisite but only to the extent of ₱12,601,680.48, broken down as follows:

			Per creditable withholding tax certificates (Exhibits P-50 to P-284, P-1434 to P-1589)		Per Schedule of Creditable Withholding Tax for CY 2013 (*Exhibit P-22*)	Valid CWT
	Particulars	**Annex Reference**	**Income Payment**	**CWT amount**	**CWT amount**	
1.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱95,713,483.11	₱9,617,233.79	₱9,617,233.79	₱9,617,233.79
2.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307). **CWT amount per certificate is lower than amount in the schedule/income tax return**	Annex 2-b	9,499,756,25	993,660.40	1,027,304.42	993,660.40
3.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307). **CWT amount per certificate is higher than amount in the schedule/income tax return**	Annex 2-c	34,620,693.92	2,348,168.09	1,990,786.29	1,990,786.29
	TOTAL		**130,334,177.03**	**12,959,062.28**	**12,635,324.50**	**12,601,680.48**

This brings us to the third requisite, which is whether or not the income upon which the subject taxes were withheld was included and reported by petitioner in its Annual ITR for CY 2013.

The certificates show that the claimed CWT were withheld on income payments amounting to ₱158,301,281.84 representing gross commissions or service fees to customs, insurance, stock, real estate, immigration and commercial brokers.

On the other hand, petitioner's Audited Financial Statements (AFS)[30] for CY 2013 disclosed that the principal activity of petitioner is to operate as a broker between market participants in foreign exchange, deposits and fixed income securities, among others. Brokerage fees derived from such activity in 2013 amounted to ₱169,032,655.00[31]. This is the same amount reflected as "Net Sales/Revenues/Receipts/Fees" from Sales of Services[32] in petitioner's Annual ITR for CY 2013.

As ascertained by the ICPA, petitioner's revenue account subjected to withholding tax was lodged under "Account 60055 – Gross Brokerage Name

[30] Exhibit "P-3-a", Note 15, docket, vol. 2, p. 988.
[31] Exhibit "P-3-a", Statement of Comprehensive Income for the year ended December 31, 2013, docket, vol. 2, p. 960.
[32] Exhibit "P-3", Schedule 1, docket, vol. 2, p. 945.

Give Up" which shows a total amount of ₱169,032,655.28 per petitioner's general ledger, broken down as follows:[33]

Particulars	Amount
AR 48127 Receivables 5949462	₱ 25,613,720.19
Receivables A 994457 8594298	22,242,604.99
Receivables A 1027487 8684794	24,886,759.36
Receivables A 1057486 8783742	19,738,074.27
Receivables A 1090678 8874819	12,441,834.73
Receivables A 1118724 8963518	9,455,681.48
Receivables A 1149738 9063960	12,745,631.09
Receivables A 1181935 9172018	6,745,290.16
Receivables A 1208935 9257242	10,081,327.77
Receivables A 1241966 9366771	11,250,648.31
Receivables A 1267956 9478957	8,174,959.49
Receivables A 1300985 9608532	5,656,123.44
Total	**₱169,032,655.28**

To verify that the ₱158,301,281.84 gross income per certificates was included in the ₱169,032,655.28 gross income reported in petitioner's Annual ITR, the ICPA traced in the revenue general ledger[34] of "Account 60055 – Gross Brokerage Name Give Up" the corresponding income amount of the creditable withholding tax claim based on petitioner's Schedule[35] of Creditable Withholding Taxes, billing invoices[36] and official receipts[37] for CY 2013. The ICPA's detailed analysis is presented as follows:

			Per Schedule of Creditable Withholding Tax for CY 2013 (*Exhibit P-22*)	Per creditable withholding tax certificates (Exhibits P-50 to P-284, P-1434 to P-1589)		Per 2013 Gross Brokerage Account General Ledger (Exhibit P-28)		CY 2012
	Particulars	Annex Reference	CWT amount per schedule	Income Payment	CWT amount	Revenue amount	Correspondin g CWT amount per schedule	Correspondin g CWT amount per schedule
1.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	9,617,233.79	95,713,483.11	9,617,233.79	(87,194,097.76)	9,025,938.50	591,295.29
2.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307).	Annex 2-b	1,027,304.42	9,499,756,25		(9,068,699.10)	971,290.20	56,014.22

[33] Exhibit "P-28".
[34] Exhibit "P-28".
[35] Exhibit "P-22".
[36] Exhibits "P-599" to "P-1054" and "P-1976" to "P-2262".
[37] Exhibits "P-1055" to "P-1483" and "P-2263" to "P-2498".

	CWT amount per certificate is lower than amount in the schedule/income tax return				993,660.40			
3.	Creditable Withholding Tax (CWT) duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307). **CWT amount per certificate is higher than amount in the schedule/income tax return**	Annex 2-c	1,990,786.29	34,620,693.92	2,348,168.09	(32,314,493.74)	1,964,214.94	26,571.35
4.	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the **Petitioner's name is different**, the **Petitioner's TIN number is wrong or not indicated and CWT amount per certificate is lower than amounr in the schedule/income tax return**	Annex 2-d	88,039.87	878,617.63	87,861.76	(771,533.72)	77,072.04	10,967.83
5.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307) **not dated within CY 2013** and **CWT amount per certificate is lower than amount in the schedule/income tax return**	Annex 2-e	25,262.84	1,022,211.69	24,702.07	-	-	25,262.84
6.	CWT duly supported by **original** Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with **no date indicated or not dated within CY 2013**, and **Petitioner's TIN number is wrong or not indicated**	Annex 2-f	105,607.19	1,056,074.99	105,607.50	-	-	105,607.19
7.	CWT duly supported by **photocopied** Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-g	609,087.40	15,510,444.25	1,080,989.17	(8,800,910.72)	469,976.85	139,110.55
8.	CWT without available supporting documents at the time of verification	Annex 2-h	1,763,396.65	-	-	-	-	-
			15,226,718.45	**158,301,281.84**	**14,258,222.78**	**(138,149,735.04)**	**12,508,492.53**	**954,829.27**

However, the Court observed that petitioner's general ledger does not show the billing invoice number corresponding to the revenue/income amount recorded therein except for "AR 48127 Receivables 5949462". Thus, the Court was able to trace to the general ledger only the income payments related to the following claimed CWT of ₱1,952,059.85, detailed as follows:

Date	Invoice No.	Client's Name	Income Payment	CWT Amount
Annex 2-a				
2/12/2013	INV#101596	Philippine Veterans Bank	₱ 97,600.00	₱ 9,760.00
2/12/2013	INV#101601	Mizuho Corporate Bank Ltd	88,651.88	8,865.31
2/12/2013	INV#101631	Philippine Veterans Bank	6,506.56	650.67
2/12/2013	INV#101637	Planters Bank	8,960.00	896.00
2/13/2013	INV#101608	United Coconut Planters Bank	104,308.29	9,820.84
2/19/2013	INV#101566	Eastwest Banking Corp - Man	93,836.80	99,428.82
2/20/2013	INV#101584	Bdo Private Bank Inc - Man	52,093.15	6,809.41
2/20/2013	INV#101593	Philippine Savings - Man	64,000.00	6,400.00
2/20/2013	INV#101594	Philippine Bk Of Com - Man	377,073.98	37,707.40
2/20/2013	INV#101603	Philippine Bk Of Com - Man	12,850.45	1,285.07
2/20/2013	INV#101619	Phil Business Bank - Man	64,000.00	6,400.00
2/20/2013	INV#101633	Philippine Savings - Man	14,639.76	1,464.01
2/20/2013	INV#101635	Phil. Commercial Cap - Man	93,200.00	9,320.00
2/20/2013	INV#101650	Ucpb2 - Man	24,000.00	2,400.00
2/20/2013	INV#101653	Phil Business Bank - Man	4,066.60	406.67
2/21/2013	INV#101597	Rcbc Savings Bank - Man	738,750.00	73,878.55
2/21/2013	INV#101618	Philippine Nat Bank - Man	422,625.00	42,262.50
2/21/2013	INV#101652	Pnb-2 - Man	11,250.00	1,125.00
2/22/2013	INV#101644	United Coconut Pltrs - Man	274,560.00	27,456.00
2/22/2013	INV#101645	Std Chart Bk Ltd - Man	294,915.25	100,269.45
2/25/2013	INV#101579	Hongkong & Shang Bc - Man	206,583.28	29,977.61
2/25/2013	INV#101646	International Neder - Man	9,868.54	986.85
2/26/2013	INV#101580	Union Bk Philippines - Man	253,165.72	110,570.07
2/27/2013	INV#101578	Asia United Bk Corp - Man	52,865.80	1,857.38
2/28/2013	INV#101567	Sterling Bank - Man	74,012.12	7,462.38
2/28/2013	INV#101571	Bank Of Commerce - Man	189,300.23	18,930.36
2/28/2013	INV#101576	International Neder - Man	549,600.55	77,149.99
2/28/2013	INV#101598	Bank Of Commerce - Man	288,000.00	28,800.00
2/28/2013	INV#101604	Botm-Ufj Ltd - Man	129,317.88	12,931.93
2/28/2013	INV#101626	Sterling Bank - Man	228,400.00	23,640.00
2/28/2013	INV#101639	Sterling2 - Man	81,361.60	8,136.16
3/5/2013	INV#101582	Chinatrust (Philippines) Commercial Bank Corp	120,981.35	12,098.27
3/6/2013	INV#101649/101586/101613	Rizal Commercial Banking Corp	387,007.70	14,895.44
3/7/2013	INV#101589	First Metro Investment Corp	1,108,799.39	110,879.94
3/8/2013	INV#101621/101600/101573	Metropolitan Bank & Trust Company	39,465.36	141,835.57
3/15/2013	INV#101622/101709	Eastwest Banking Corporation	142,331.00	112,944.17
3/19/2013	INV#101615	Chinatrust (Philippines) Commercial	523,035.05	51,705.29

		Bank Corp		
3/21/2013	INV#101577/101642/101591	Citibank Na	29,310.25	135,696.66
Sub-total			**₱7,261,293.54**	**₱1,347,103.77**
Annex 2-b				
03/20/2013	INV#101627	Jp Morgan Chase Bank Na	₱ 62,958.09	₱ 6,295.82
03/12/2013	INV#101570	Jp Morgan Chase Bank Na	238,140.09	23,814.41
2/7/2013	INV#101568	Allied Banking Corp	1,796,827.21	179,683.94
2/11/2013	INV#101636	Allied Banking Corp	72,000.00	7,200.00
03/21/2013	INV#101612	Australia & New Zealand Banking Group Ltd	187,876.92	21,433.34
03/27/2013	INV#101617/101607/ 101575/101624	Australia & New Zealand Banking Group Ltd	389,702.24	90,059.50
Sub-total			**₱2,747,504.55**	**₱ 328,487.01**
Annex 2-c				
2/12/2013	INV#101648	Deutsche Bank Ag	₱ 58,062.86	₱ 5,806.29
2/12/2013	INV#101643	Deutsche Bank Ag	67,418.10	6,741.81
2/12/2013	INV#101614	Deutsche Bank Ag	116,298.27	11,629.83
2/12/2013	INV#101572	Deutsche Bank Ag	414,880.02	41,487.92
2/20/2013	INV#101587	Development Bk Phili - Man	147,568.66	22,314.01
2/12/2013	INV#101581	Philippine National Bank	189,910.22	18,991.43
2/13/2013	INV#101647	Bank Of The Philippine Islands	61,534.80	1,230.70
2/12/2013	INV#101585	Bank Of The Philippine Islands	226,916.26	4,538.32
2/28/2013	INV#101590	Bk Of Philippine Isl - Man	1,375,187.50	27,503.75
2/14/2013	INV#101609	Bk Of Philippine Isl - Man	330,233.28	6,604.16
2/11/2013	INV#101629	Security Bank Corp	461,400.00	46,140.00
2/11/2013	INV#101634	Security Bank Corp 2	93,000.00	9,300.00
2/28/2013	INV#101625	Security Bk Corp - Man	145,461.41	14,546.13
2/28/2013	INV#101569	Security Bk Corp - Man	266,626.63	26,662.66
2/20/2013	INV#101595	Land Bk Philippines - Man	1,573,650.00	25,733.51
2/19/2013	INV#101602	Land Bk Philippines - Man	72,385.48	7,238.55
Sub-total			**₱5,600,533.49**	**₱ 276,469.07**
Total				**₱1,952,059.85**

In sum, petitioner complied with the three basic requisites for refund of excess CWT for CY 2013 to the extent of only ₱1,952,059.85.

The Court shall now proceed to determine whether the aforesaid CWT of ₱1,952,059.85 are unutilized and may be the proper subject of a claim for refund or issuance of tax credit certificate pursuant to Section 76 of the NIRC of 1997, as amended, which reads:

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

(A) Pay the balance of tax still due; or
(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."

Based on Section 76, in case of overpayment of income taxes, a taxable corporation has two options, it may file a claim for refund, either in the form of cash or TCC, or it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry-over option is taken, actually or constructively, it becomes irrevocable for that taxable period.[38] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[39]

In exercising its option, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR Form) its intention, either to carry over the excess credit or to claim a refund. To ease the administration of tax collection, these remedies are in the alternative and the choice of one precludes the other.[40]

A perusal of petitioner's Annual ITR[41] for CY 2013 shows that petitioner had income tax credits in the total amount of ₱50,105,118.00 consisting of the (a) prior year's excess tax credits in the amount of ₱34,878,400.00, and (b) CWT accumulated during the four quarters of CY 2013 in the aggregate amount of ₱15,226,718.00 (the sum of ₱12,611,705.00 and ₱2,615,013.00).[42]

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[38] *Philam Asset Management, Inc. vs. Commissioner of Internal Revenue*, G.R. Nos. 156637 and 162004, December 14, 2005; *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.

[39] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[40] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[41] Exhibit "P-3".
[42] Exhibit "P-3", Schedule 7, docket, vol. 2, p. 948.

Petitioner claims that its RCIT due for CY 2013 in the amount of ₱7,676,632.00[43] was paid using a portion of its prior year's excess credits of ₱34,878,400.00. This leaves the prior year's excess tax credits in the amount of ₱27,201,768.00 and creditable taxes withheld during CY 2013 in the amount of ₱15,226,718.00 totaling ₱42,428,486.00 unutilized as of December 31, 2013, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 34,878,400.00
Less: Tax Due (RCIT)	7,676,632.00
Balance of Prior Year's Excess Credits	27,201,768.00
Add: Creditable Taxes Withheld – CY 2013	15,226,718.00
Excess Creditable Taxes Withheld as of December 31, 2013	**₱42,428,486.00**

Petitioner indicated on its Annual ITR for CY 2013 its option to be issued a TCC for its excess and unutilized CWT for CY 2013.[44] Consequently, only the prior year's excess tax credits of ₱27,201,768.00 were carried over in petitioner's Quarterly ITRs[45] and Annual ITR[46] for CY 2014.

To prove the existence of its prior year's excess credits of ₱34,878,400.00, petitioner presented BIR Forms No. 2307 for the years 2011[47] and 2012[48], which were accounted for by the ICPA as follows:[49]

Summary of Findings for CY 2011	Annex Reference to ICPA Report[50]	Income Payment	CWT Amount per GL
CWT duly supported by original Certificate of BIR Form 2307	5-a	₱83,061,907.76	₱8,642,632.50
CWT duly supported by original Certificate of BIR Form 2307 CWT amount per Certificate is lower than the amount in the schedule/income tax return	5-b	15,983,805.99	1,598,380.60
CWT duly supported by original Certificate of BIR Form 2307 CWT amount per Certificate is higher than the amount in the schedule/income tax return	5-c	31,637,732.27	2,824,594.16
CWT duly supported by original Certificate of BIR Form 2307 but with different income payment	5-d	32,922.36	32,922.35
CWT duly supported by original Certificate of BIR Form 2307 but the Petitioner's name and ATC are different	5-e	181,288.50	3,625.77

[43] Exhibit "P-3", Line 16, docket, vol. 2, p. 942.
[44] Exhibit "P-3".
[45] Exhibits "P-8", "P-9" and "P-10", Line 31A.
[46] Exhibit "P-11", Schedule 7, Line 1, docket, vol. 2, p. 1024.
[47] Exhibits "P-461" to "P-598" and "P-1779" to "P-1978".
[48] Exhibits "P-285" to "P-460" and "P-1590" to "P-1778".
[49] Exhibit "P-2499", Annexes 5 and 4, docket, vol. 2, pp. 832-832 and 754-755, respectively.
[50] Exhibit "P-2499", docket, vol. 2, pp. 833 to 885.

CWT duly supported by original Certificate of BIR Form 2307 but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, CWT amount per Certificate is lower than the amount in the schedule/income tax return	5-f	826,081.50	16,521.63
CWT duly supported by original Certificate of BIR Form 2307 but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, CWT amount per Certificate is higher than the amount in the schedule/income tax return	5-g	11,355,370.50	163,568.96
CWT duly supported by original Certificate of BIR Form 2307 but the Petitioner's name is different and the Petitioner's TIN number is wrong or not indicated and with different ATC per certificate	5-h	236,800.00	23,680.00
CWT duly supported by original Certificate of BIR Form 2307 with no date indicated or not dated within CY 2011 and Petitioner's name is different	5-i	376,703.09	37,670.31
CWT duly supported by original Certificate of BIR Form 2307 with no date indicated or not dated within CY 2011, but the Petitioner's TIN number is wrong or not indicated	5-j	331,697.10	17,489.71
CWT duly supported by original Certificate of BIR Form 2307 but with different income payment and CWT amount per Certificate is lower than the amount in the schedule/income tax return	5-k	21,405.45	21,405.45
CWT duly supported by photocopied Certificate of BIR Form 2307	5-l	4,208,977.00	420,897.72
Over claim of CWT amount per income tax return vs. certificate for Annex 5-b, 5-f and 5-k			72,617.01
CWT without available supporting documents at the time of verification	5-m		3,682,543.61
Total – CY 2011		**₱148,254,691.52**	**₱17,558,549.78**

Summary of Findings for CY 2012	**Annex Reference to ICPA Report[51]**	**Income Payment**	**CWT Amount**
CWT duly supported by original BIR Form 2307.	4-a	₱ 98,672,311.13	₱ 10,072,251.48
CWT duly supported by original BIR Form 2307. CWT amount per Certificate is lower than the amount in the schedule/income tax return	4-b	31,784,809.09	2,194,132.47
CWT duly supported by original BIR Form 2307. CWT amount per Certificate is higher than the amount in the schedule/income tax return	4-c	23,071,678.88	1,617,552.04
CWT duly supported by original BIR Form 2307 but the Petitioner's name is different, Petitioner's TIN number is wrong or not indicated, and with different ATC per certificate	4-d	118,623.79	11,862.36

[51] Exhibit "P-2499", docket, vol. 2, pp. 756 to 830.

CWT duly supported by original BIR Form 2307 but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, and without ATC per certificate	4-e	679,320.90	67,932.13
CWT duly supported by original BIR Form 2307 without date indicated or not dated within CY 2012, Petitioner's name is different, and CWT amount per Certificate is higher than amount in the schedule/income tax return	4-f	475,149.13	47,512.39
CWT duly supported by original BIR Form 2307 with no date indicated or not dated within CY 2012, Petitioner's name is different, CWT amount per Certificate is higher than amount in the schedule/income tax return, and without ATC per Certificate	4-g	3,369,433.08	75,857.07
CWT duly supported by original BIR Form 2307 but the Petitioner's name is different, CWT amount per Certificate is higher than amount in the schedule/income tax return, without ATC per Certificate	4-h	1,591,047.90	154,102.49
CWT duly supported by original BIR Form 2307 not dated within CY 2012 and Petitioner's name is different	4-i	1,071,599.54	106,597.78
CWT duly supported by original BIR Form 2307 not dated within CY 2012, Petitioner's name is different, and without ATC per Certificate.	4-j	470,928.80	26,469.12
CWT duly supported by original BIR Form 2307 but the Petitioner's name is different and without ATC per Certificate.	4-k	1,321,578.27	132,158.97
CWT duly supported by original BIR Form 2307 without date indicated or not dated within CY 2012, with different income payment and with different ATC per Certificate	4-l	39,227.48	39,314.54
CWT duly supported by original BIR Form 2307 with different income payment and ATC per Certificate	4-m	34,452.28	34,452.28
CWT duly supported by original BIR Form 2307 with CWT amount per Certificate is higher than the schedule and with different ATC per Certificate	4-n	2,937,592.17	23,601.20
Over claim of CWT amount per income tax return vs. certificate for Annex 4-b			82,293.71
CWT without available supporting documents at the time of verification	4-o		3,309,649.86
Total – CY 2012		**₱165,637,752.44**	**₱17,995,739.89**

Based on the preceding tables, only the CWT of ₱13,065,607.26 and ₱13,883,935.99 for CYs 2011 and 2012, respectively, totalling ₱26,949,543.25, were properly supported by BIR Forms No. 2307, to wit:

	2011		2012	
Particulars	**Income Payment**	**CWT**	**Income Payment**	**CWT**
CWT duly supported by original Certificate of BIR Form 2307.	₱ 83,061,907.76	₱ 8,642,632.50	₱ 98,672,311.13	₱ 10,072,251.48

nd

CWT duly supported by original Certificate of BIR Form 2307. CWT amount per Certificate is lower than the schedule (amount indicated pertains to certificate amount).	15,983,805.99	1,598,380.60	31,784,809.09	2,194,132.47
CWT duly supported by original Certificate of BIR Form 2307. CWT amount per Certificate is higher than the schedule (amount indicated pertains to schedule amount)	31,637,732.27	2,824,594.16	23,071,678.88	1,617,552.04
Total properly substantiated	**₱130,683,446.02**	**₱13,065,607.26**	**₱153,528,799.10**	**₱13,883,935.99**

However, these CWTs do not represent petitioner's excess CWTs for CYs 2011 and 2012 since petitioner reflected in its Annual ITRs for the said years, income tax due in the respective amounts of ₱14,233,716.00[52] and ₱12,400,630.50[53] or in the sum of ₱26,634,346.50. Deducting this total income tax liabilities of ₱26,634,346.50 from the CWT of ₱26,949,543.25 yields an amount of only ₱315,196.75 excess tax credits as of the end of CY 2012, as shown below:

Total Income Tax Due for 2011 and 2012		₱26,634,346.50
Less: *Total Valid CWTs for 2011 and 2012*		
Valid CWT for 2011	₱13,883,935.99	
Valid CWT for 2012	₱13,065,607.26	26,949,543.25
Excess Tax Credits Carried Forward to 2013		**(₱315,196.75)**

As stated earlier, petitioner's properly substantiated CWT for CY 2013 amounted only to ₱1,952,059.85, which when added to the prior year's excess credits of ₱315,196.75 yields an aggregate tax credits of ₱2,267,256.60. Considering that petitioner's income tax due for CY 2013 in the amount of ₱7,676,632.00 is a lot higher than the tax credits of ₱2,267,256.60, petitioner has no excess CWT available for refund, computed below:

Total Income Tax Due for CYs 2011 and 2012		₱26,634,346.50
Less: *Total Valid CWTs for CYs 2011 and 2012*		
Valid CWT for CY 2011	₱13,883,935.99	
Valid CWT for CY 2012	13,065,607.26	26,949,543.25
Excess Tax Credits Carried Forward to CY 2013		**(₱315,196.75)**

Total Income Tax Due for CY 2013		₱ 7,676,632.00
Less: *Tax Credits for CY 2013*		
Prior Year's Excess Tax Credits	₱ 315,196.75	
Valid CWTs for CY 2013	1,952,059.85	2,267,256.60
Tax Payable (Overpayment)		**₱5,409,375.40**

[52] Exhibit "P-36", Line 32.
[53] Exhibit "P-32", Line 32.

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.[54] 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.[55]

WHEREFORE, premises considered, the instant Petition for Review is **DENIED**.

SO ORDERED.

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ESPERANZA R. FABON-VICTORINO
Associate Justice
Acting Chairperson

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[54] *Citibank, N.A. vs. Court of Appeals, et al.,* G.R. No. 107434, October 10, 1997.
[55] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, and the Acting Division Chairperson's Attestation, is it 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