REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS, *Petitioner,*	**CTA CASE NO. 8460**
- versus-	**Members:**
	Castañeda, *Chairperson* Casanova, and Cotangco-Manalastas, *JJ.*
COMMISSIONER OF INTERNAL, REVENUE, *Respondent.*	**Promulgated:** APR 24 2014 11:15 a.m.

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DECISION

COTANGCO-MANALASTAS, *J.:*

This is a claim for refund or issuance of tax credit certificate in the amount of Forty-Four Million Five Hundred Sixty-Two Thousand Nine Hundred Ninety-Five Pesos and Five Centavos (₱44,562,995.05), allegedly representing unutilized creditable withholding taxes (CWT) of Philippine Bank of Communications for calendar year 2009.

FACTS

Petitioner Philippine Bank of Communications is a domestic corporation engaged in the commercial banking business duly organized and existing under Philippine law, with principal office at PBCOM Tower, 6795 Ayala Avenue corner V.A. Rufino Street, Makati City. It is registered with the Bureau of Internal Revenue (BIR) as a large taxpayer, with Tax Identification Number (TIN) 000-263-340-000.[1]

Respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, vested with authority to carry out all the functions, duties and responsibilities of said office, including, *inter alia,* the power to decide, approve, and grant

[1] Pars. 1 and 2, Stipulation of Facts, Joint Stipulation of Facts and Issue, docket, p. 272; Exhibits "A" and "B".

refunds or tax credits of overpaid or erroneously paid or collected internal revenue taxes. She holds office at the BIR National Office Building, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return[2] and Amended Annual Income Tax Return[3] for calendar year 2009 on April 15, 2010 and May 6, 2010, respectively, reporting a net loss amounting to ₱592,038,205.25 and prior year's excess credits other than minimum corporate income tax (MCIT) in the amount of ₱40,811,031.83. It also reported unutilized creditable withholding taxes for the same year in the amount of ₱44,562,995.05.

On March 15, 2012, petitioner filed with the BIR Large Taxpayers Regular Audit Division an administrative claim for refund or issuance of tax credit certificate for its purported excess and unutilized creditable withholding tax for the four quarters of calendar year 2009 in the amount of ₱44,562,995.05.[4]

Respondent failed to render a decision on petitioner's claim for refund or issuance of tax credit certificate, prompting petitioner to file a Petition for Review before this Court on April 12, 2012.[5]

In her Answer[6] filed on June 7, 2012, respondent alleged the following Special and Affirmative Defenses:

> "On the basis of the foregoing allegations and in further support of the Specific Denials herein set forth, respondent respectfully alleges as her affirmative defense that:
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> 4. Taxes collected are presumed to be in accordance with laws and regulations.
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> 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.

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[2] Exhibit "C".
[3] Exhibit "D".
[4] Exhibit "M".
[5] Docket, pp. 6-21.
[6] Docket, pp. 224-235.

6. Taxes are essential to government's very existence; **(CIR v. Solidbank Corporation, G.R. No. 148191, November 25, 2003)** 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. **(CIR v. Fortune Tobacco Corporation, G.R. Nos. 167274-75, July 21, 2008)** Since tax refunds are regarded as tax exemptions therefore, these are to be construed ***strictissimi juris*** against the person or entity claiming the exemption. **(Philippine Phospate Fertilizer Corporation vs. Commissioner of Internal Revenue, G.R 141973, June 28, 2005)**

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 **(BPI Leasing Corporation vs. Honorable Court of Appeals, G.R 127624, November 18, 2003)** 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. **(Commissioner of Internal Revenue vs. Eastern Telecommunications Philippines, Inc., G.R. 163835, July 7, 2010)**

8. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

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.

9. The petitioner must prove that it filed the corresponding administrative and judicial claim for refund within the two-year prescriptive period under the tax code.

10. The Schedules of Creditable Withholding Tax Payments for the calendar year 2009 prepared by petitioner to show the fact of withholding of the creditable taxes at source is unverified and at its best is self-serving. /

11. The allegation that income payments received by petitioner upon which the subject creditable taxes were withheld for the calendar year 2009 were declared as part of the gross income is a mere assertion without substantiation as to the contents or entries on the gross income in its Annual Income Tax Return.

12. In claiming a refund a claimant must file a written claim for refund, categorically demanding recovery of overpaid taxes with the Commissioner of Internal Revenue, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of the subordinate officers; and second to notify the government that such taxes have been questioned, and the notice should then be borne in mind in estimating the revenue available for expenditure **(CIR vs. Rosemarie Acosta, G.R No. 154068, Aug. 3, 2007)** In the foregoing case, it should be noted that nowhere in the petition did petitioner aver the required submission of supporting documents to justify its claim for refund. With that, the intendment of the law was not served.

13. Petitioner failed to submit the relevant documents to support its application for refund in 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.

14. 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

15. 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 Alpha list 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) provides:

> 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 ATTACHMENT TO THEIR FILED RETURNS.
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> A. xxx xxx xxx
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> 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

16. In its claim for refund for the calendar year 2009, petitioner clearly failed to submit the pertinent documents required pursuant to RMO No. 53-98 and R.R. No. 2-2006.

17. The amount of forty four million five hundred sixty two thousand nine hundred ninety five and 05/100 (P44,562,995.05) being claimed by petitioner representing alleged excess and unutilized creditable withholding taxes for the calendar year 2009 is not properly documented.

18. Furthermore, 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 for under Section 76 of the 1997 Tax Code.

19. For ease of reference, Section 76 of the NIRC is quoted as follows:

> SEC. 76. Final Adjustment Return. – Every corporation liable to tax under Section 27 shall file a final adjustment return covering the 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 credits; 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 a tax credit certificate shall be allowed therefore.

20. The presentation of the quarterly income tax returns is very important. Without which, it cannot be ascertained whether petitioner did not carry over the excess/unutilized creditable withholding taxes to the subsequent quarters of a taxable year.

21. 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."

During trial, both parties presented and formally offered their testimonial and documentary evidence. Subsequently, the Court granted the parties thirty (30) days from July 24, 2013 or until August 23, 2013 to file their memoranda.

The case was submitted for decision on October 4, 2013, considering the "Memorandum for Petitioner" filed on August 23, 2013 and respondent's "Memorandum" filed on October 2, 2013.[7]

ISSUE

The parties stipulated that the sole issue[8] for resolution is:

"Whether or not petitioner is entitled to a refund or tax credit in the total amount of Forty Four Million Five Hundred Sixty Two Thousand Nine Hundred Ninety Five and 05/100 Pesos (Php44,562,995.05)."

[7] Docket, p. 632.
[8] Docket, p. 273.

DISCUSSION/RULING

Jurisprudence and pertinent revenue regulations provide that a taxpayer must satisfy the following requirements in order to be entitled to a refund or issuance of tax credit certificate for excess/unapplied CWT:

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

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.[9]

As regards the first requisite, the applicable provisions of the NIRC of 1997 are as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may -
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> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon proof of destruction. No credit or refund of taxes or penalties shall be allowed unless the taxpayer files in writing with the Commissioner a claim for credit or refund within two (2) years after the payment of the tax or penalty: *Provided, however,* That a return filed showing an overpayment shall be considered as a written claim for credit or refund."
>
> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any

[9] *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.

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.

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."

It is well-settled in our jurisprudence that the reckoning of the two-year prescriptive period for the filing of a claim for refund/tax credit of excess income tax paid/withheld, both in the administrative and judicial levels, commences from the date of filing of the Final Adjustment Return.[10] It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[11]

Based on the foregoing, petitioner has two years from the date of filing of the Final Adjustment Return within which to file a claim for refund or issuance of tax credit certificate for its excess creditable withholding taxes, both in the administrative and judicial levels. The present claim covers taxable year 2009 for which petitioner originally filed its Annual Income Tax Return on April 15, 2010.[12] Counting from this date, the administrative claim filed by petitioner on March 15, 2012[13] and the Petition for Review filed on April 12, 2012 fall within the two-year prescriptive period. Clearly, petitioner satisfied the first requirement.

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

[11] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992.

[12] Exhibit "C".

[13] Exhibit "M".

As regards petitioner's compliance with the second requisite, the Court of Tax Appeals *En Banc* ruled in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[14] that claims for refund of creditable tax withheld shall only be given due course upon submission of BIR Form No. 2307 issued by the income-payor to the recipient-payee, to wit:

> "On the outset, the third condition is imposed by Section 2.58.3 (B) of Revenue Regulations (RR) No. 2-98, which states:
>
> Sec. 2.58.3. *Claim for Tax Credit or Refund.* –
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> 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 provided)
>
> Corollary to the condition set forth, the same RR No. 2-98 establishes the requirement on the part of the payor to furnish the payee the withholding tax statement using the prescribed form (BIR Form No. 2307), which shows the income payments made and the amount of taxes withheld. Otherwise, the failure of the payor to furnish the same shall be a ground for mandatory audit, *viz.*:
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> Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. -
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> xxx xxx xxx
>
> (B) Withholding tax statement for taxes withheld. - **Every payor required to deduct and withhold taxes under these regulations shall furnish, in triplicate, each payee, whether individual or corporate, with a withholding tax statement, using the prescribed form (BIR Form No. 2307) 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. The payor,

[14] CTA EB No. 699, July 27, 2011.

> nonetheless, should always retain a copy of duly issued BIR Form 2307. Failure to furnish the same shall be a ground for the mandatory audit of payor's income tax liabilities (including withholding tax) upon verified complaint of the payee.
>
> xxx xxx xxx
>
> The rules are clear. The income-payor, as the withholding agent, is required to furnish the recipient-payee of the statement of withholding or BIR Form No. 2307. And for purposes of claims for refund or tax credit of creditable income tax, the claim shall only be given due course when the income and withholding are established by a copy of the withholding tax statement or BIR Form No. 2307 issued by the income-payor to the recipient-payee."

Based on the Independent CPA Report, the breakdown[15] of petitioner's total claim amounting to ₱44,562,995.05[16] is summarized as follows:

	Findings	Annex Reference	Supporting BIR Returns	Amount of Creditable Withholding Tax
A. Creditable withholding tax payments duly supported by original BIR Forms 1606, 1706 and 2307				
	Sale of Property			
1.	Creditable withholding tax payments supported by original BIR Return stamped "received" by the bank	Annex A1-1	1606	₱21,973,448.70
2.	Creditable withholding tax payment supported by original BIR Form 1606 with no stamped "received" by the bank but with reference to check details and supported by BIR Certification confirming the remittance	Annex A1-2	1606	186,000.00
3.	Creditable withholding tax payment supported by original BIR Form 1606 stamped "received" by the bank with erasure in the amount but with countersignature	Annex A1-3	1606	8,100.00
	Sub-total			**22,167,548.70**
	Lease Income			
1.	Creditable withholding tax payment supported by original BIR Form 2307	Annex A2-1	2307	14,515,741.36
2.	Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A2-2	2307	3,125.00
3.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the date but with countersignature	Annex A2-3	2307	38,270.74
	Sub-Total			**14,557,137.10**
	Interest Income on Commercial and Trade Loans			
1.	Creditable withholding tax payment supported by original BIR Form 2307	Annex A3-1	2307	2,488,917.14

[15] Exhibit "S", pp. 3-6.
[16] Per finding is ₱44,562,975.05; the difference of ₱20.00 shall automatically be disallowed.

2. Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A3-2	2307	400,865.05
3. Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature	Annex A3-3	2307	61,518.43
4. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's name but with countersignature	Annex A3-4	2307	275.00
5. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN but with countersignature	Annex A3-5	2307	74,044.58
Sub-Total			**3,025,620.20**
Reimbursements			
1. Creditable withholding tax payments supported by original BIR Form 2307	Annex A4-1	2307	505,960.79
Sub-Total			**505,960.79**
TOTAL			**40,256,266.79**
B. Other Findings			
Sale of Property			
1. Creditable withholding tax payments supported by original BIR Form 1606 dated 25 November 2005 but stamped "received" by the bank on 6 February 2009 and with erasure on tax base but supported by BIR certification confirming the date of remittance on February 6, 2009 and with countersignature on tax base and the amount could be validated through re-computation	Annex A1-4	1606	1,170,000.00
2. Creditable withholding tax payments supported by original BIR Form 1606 stamped "received" by the bank on 5 March 2009 but no date was indicated in the return	Annex A1-5	1606	9,000.00
3. Creditable withholding tax payment supported by original BIR Form 1706 stamped "received" by the bank	Annex A1-6	1706	1,597,080.00
4. Creditable withholding tax payment supported by photocopy of BIR Form 1606 stamped "received" by the bank	Annex A1-7	1606	166,632.00
5. Creditable withholding tax payment supported by photocopy of BIR Form 1606 with no stamped "received" by the bank	Annex A1-8	1606	144,000.00
Sub-Total			**3,086,712.00**
Lease Income			
1. Creditable withholding tax payment supported by original BIR Form 2307 but with different Company TIN indicated therein	Annex A2-4	2307	3,125.00
2. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A2-5	2307	226,518.29
3. Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A2-6	2307	295,134.45
4. Supporting documents not available for verification	Annex A2-7	2307	1,549.80
5. Over claimed creditable withholding tax payment	Annex A2-8	1601	2,868.11
Sub-Total			**529,195.65**
Interest Income on Commercial and Trade Loans			
1. Creditable withholding tax payment supported by original BIR Form 2307 but with different Company TIN indicated therein	Annex A3-6	2307	125,145.78
2. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount without countersignature	Annex A3-7	2307	159,074.66
3. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A3-8	2307	268,559.88

4.	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A3-9	2307	22,797.15
5.	Creditable withholding tax payment supported by photocopy of BIR Form 2307	Annex A3-10	2307	12,637.78
6.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount and year without countersignature	Annex A3-11	2307	2,609.32
7.	Supporting documents not available for verification	Annex A3-12		90,197.19
8.	Under claimed creditable withholding tax payment	Annex A3-13		(42,809.79)
	Sub-Total			**638,211.97**
	Reimbursement			
1.	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN without countersignature	Annex A4-2	2307	1,168.29
2.	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A4-3	2307	342.86
3.	Supporting documents not available for verification	Annex A4-4	2307	51,077.49
	Sub-Total			**52,588.64**
TOTAL - Other Findings				**4,306,708.26**
GRAND TOTAL				**₱44,562,975.05**

Based on the above-enumerated findings and the Court's ruling on strict compliance with the required Certificates of Creditable Tax Withheld at Source or BIR Form No. 2307 in claiming for CWT refund, petitioner was able to satisfy the second requirement in the amount of ₱17,697,365.82, as presented below:

Findings	**Annex Reference**	**Amount of Creditable Withholding Tax**
Creditable withholding tax payments duly supported by original BIR Forms 2307		
1. Lease Income	Annex A2-1	₱ 14,515,741.36
	Annex A2-3	38,270.74
2. Interest Income on Commercial and Trade Loans	Annex A3-1	2,488,917.14
	Annex A3-3	61,518.43
	Annex A3-4	275.00
	Annex A3-5	74,044.58
	Annex A3-10	12,637.78
3. Reimbursements	Annex A4-1	505,960.79
TOTAL		**₱17,697,365.82**

The income payments upon which the creditable withholding taxes of ₱17,697,365.82 were withheld amount to ₱444,481,135.90, as shown below:

Findings	Annex Reference	Income Payments	Amount of Creditable Withholding Tax
A. Creditable withholding tax payments where the related income are included in the Company's General Ledger			
Lease Income			
1. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by original lease contract and accounting ticket and traced to GL	B2-1	₱66,278,465.88	₱3,314,663.36
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of lease contract, original accounting ticket and traced to GL	B2-2	1,800,889.98	90,044.50
3. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by accounting ticket and traced to GL	B2-3	195,954,360.82	9,801,492.66
4. Creditable withholding tax payment supported by original BIR Form 2307 with erasure on the date but with countersignature; the related income of which is supported by accounting ticket and traced to GL	B2-4	765,411.52	38,270.74
Sub-Total		**264,799,128.20**	**13,244,471.26**
Interest Income on Commercial Loans			
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original promissory note (PN), and traced to GL	B3-1	9,100,694.04	182,013.80
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, and traced to GL	B3-2	16,244,261.40	324,885.22
3. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is supported by original instruction sheet and traced to GL	B3-3	722,337.33	14,446.75
4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt (TR), original debit advice and original instruction sheet, and traced to GL	B3-5	23,436,218.45	468,724.46
5. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original TR and supported by original debit advice and original instruction sheet, and traced to GL	B3-6	3,304,142.71	66,082.85
6. Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is supported by original instruction sheet and original PN, and traced to GL but the GL amount exceeds that of the BIR Form 2307.	B3-10	44,270.83	885.42
7. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original PN, and traced to GL but the GL amount exceeds that of the BIR Form 2307.	B3-11	727,078.07	14,541.55
8. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original TR, original debit advice and original instruction sheet, and traced to GL but the GL amount exceeds that of the BIR Form 2307	B3-14	1,144,065.00	26,034.30

9. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, and traced to GL but the GL amount exceeds that of the BIR Form 2307	B3-15	2,215,138.67	44,302.77
Sub-Total		**56,938,206.50**	**1,141,917.12**
Reimbursement			
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by accounting tickets and traced to GL	B4-1	67,978.67	1,371.58
Sub-Total		**67,978.67**	**1,371.58**
TOTAL		**321,805,313.37**	**14,387,759.96**
B. Other Findings			
Lease Income			
1. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by original lease contract and accounting ticket but partially traced to GL	B2-5	1,151,357.52	79,183.55
2. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by original lease contract	B2-6	602,012.64	20,519.07
3. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by photocopy of lease contract	B2-7	148,041.48	7,402.08
4. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by accounting ticket but partially traced to GL	B2-8	18,147,271.84	1,074,330.15
5. Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income of which is not available for verification	B2-9	2,623,215.86	128,106.00
Sub-Total		**22,671,899.34**	**1,309,540.85**
Interest Income on Commercial Loans			
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original TR, original debit advice and original instruction sheet but partially traced to GL	B3-16	140,942.56	2,818.85
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original PN but partially traced to GL	B3-17	2,349,247.83	46,956.06
3. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet but partially traced to GL	B3-18	2,971,601.08	59,432.01
4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and/or original PN and partially traced to GL	B3-19	5,788,189.63	115,763.79
5. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original PN, but partially traced to GL	B3-20	80,729.16	1,614.58
6. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is supported by original instruction sheet and original PN, but partially traced to GL	B3-21	561,841.00	11,236.82

7. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN but with countersignature; the related income of which is supported by original instruction sheet and original PN, but partially traced to GL	B3-22	3,702,229.00	74,044.58
8. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original TR and supported by original debit advice and original instruction sheet, but partially traced to GL	B3-25	6,348,009.38	126,960.20
9. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet	B3-27	13,913,916.02	278,277.93
10. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original PN	B3-28	2,721,633.63	54,432.66
11. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's name but with countersignature; the related income of which is supported by original instruction sheet and original PN	B3-29	13,750.00	275.00
12. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original instruction sheet	B3-31	1,023,361.11	20,467.21
13. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original TR and supported by original debit advice	B3-32	23,255,020.95	465,100.40
14. Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is partially supported by original instruction sheet and supported by original PN	B3-34	1,711,013.90	34,220.28
15. Creditable withholding tax payments supported by original BIR Form 2307; the supporting document of the related income is not available for verification	B3-35	9,133,880.54	182,693.90
16. Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	B3-37	427,186.59	8,543.74
17. Creditable withholding tax payment supported by photocopy of BIR Form 2307	A3-10	631,909.48	12,637.78
Sub-Total		**74,774,461.86**	**1,495,475.79**
Reimbursement			
1. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is partially supported by accounting tickets and partially traced to GL	B4-2	9,286,909.48	185,738.19
2. Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	B4-3	15,942,551.84	318,851.02
Sub-Total		**25,229,461.32**	**504,589.21**
TOTAL - Other Findings		**122,675,822.52**	**3,309,605.85**
GRAND TOTAL		**₱444,481,135.90**	**₱17,697,365.82**

Based on the foregoing and in compliance with the third requisite, this Court finds that only the income payments of ₱321,805,313.37 related to the creditable withholding taxes of ₱14,387,759.96 were clearly declared in petitioner's General Ledger and Annual Income Tax Return for calendar year 2009, as detailed below:

Findings	Annex Reference	Income Payments	Amount of Creditable Withholding Tax
A. Creditable withholding tax payments where the related income are included in the Company's General Ledger			
Lease Income			
1. Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by original lease contract and accounting ticket and traced to GL	B2-1	₱66,278,465.88	₱3,314,663.36
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of lease contract, original accounting ticket and traced to GL	B2-2	1,800,889.98	90,044.50
3. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by accounting ticket and traced to GL	B2-3	195,954,360.82	9,801,492.66
4. Creditable withholding tax payment supported by original BIR Form 2307 with erasure on the date but with countersignature; the related income of which is supported by accounting ticket and traced to GL	B2-4	765,411.52	38,270.74
Sub-Total		**264,799,128.20**	**13,244,471.26**
Interest Income on Commercial Loans			
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original promissory note (PN), and traced to GL	B3-1	9,100,694.04	182,013.80
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, and traced to GL	B3-2	16,244,261.40	324,885.22
3. Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is supported by original instruction sheet and traced to GL	B3-3	722,337.33	14,446.75
4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt (TR), original debit advice and original instruction sheet, and traced to GL	B3-5	23,436,218.45	468,724.46
5. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original TR and supported by original debit advice and original instruction sheet, and traced to GL	B3-6	3,304,142.71	66,082.85

6. Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature; the related income of which is supported by original instruction sheet and original PN, and traced to GL but the GL amount exceeds that of the BIR Form 2307.	B3-10	44,270.83	885.42
7. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original PN, and traced to GL but the GL amount exceeds that of the BIR Form 2307.	B3-11	727,078.07	14,541.55
8. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original TR, original debit advice and original instruction sheet, and traced to GL but the GL amount exceeds that of the BIR Form 2307	B3-14	1,144,065.00	26,034.30
9. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet, and traced to GL but the GL amount exceeds that of the BIR Form 2307	B3-15	2,215,138.67	44,302.77
Sub-Total		**56,938,206.50**	**1,141,917.12**
Reimbursement			
1. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by accounting tickets and traced to GL	B4-1	67,978.67	1,371.58
Sub-Total		**67,978.67**	**1,371.58**
TOTAL		**₱321,805,313.37**	**₱14,387,759.96**

In sum, petitioner has sufficiently proven compliance with the three requisites for the refund of unutilized creditable withholding taxes, but only to the extent of ₱14,387,759.96 out of the total claimed CWT of ₱44,562,995.05.

The Court shall now determine whether petitioner exercised the option to carry over its excess creditable withholding taxes to the succeeding quarters, as provided under 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 a tax credit certificate shall be allowed therefor."

Based on the afore-quoted provision, a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid in a given taxable year has two options: (1) to carry over the excess credit; or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed.[17]

Records reveal that in its Amended Income Tax Return for the year 2009[18], petitioner reflected a net loss of ₱592,038,205.25[19] and income tax overpayment of ₱85,374,026.88[20] that petitioner marked as "To be Issued a Tax Credit Certificate"[21]. A perusal of said return shows that the income tax overpayment of ₱85,374,026.88 consists of the following:

Prior Year's Excess Credits	₱ 40,811,031.83
Creditable Tax Withheld during the year	44,562,995.05
TOTAL	**₱85,374,026.88**

Petitioner was unable to utilize all the ₱85,374,026.88 tax credits because it had no income tax liability due to losses incurred in its operations.

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[17] *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007; *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation, et al.*, G.R. Nos. 171742 and 176165, June 15, 2011.

[18] Exhibit "D".

[19] Exhibit "D", Line 21B.

[20] Exhibit "D", Line 29.

[21] Exhibit "D", Line 31.

CERTIFICATION

Pursuant to Article VIII, Section 13 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

In petitioner's 2010 Quarterly Income Tax Returns for the first[22], second[23], and third[24] quarters of 2010 as well as in its 2010 Annual Income Tax Return[25], the amount of ₱40,811,031.83 was reflected as "Prior Year's Excess Credits". Clearly, the claimed CWT amounting to ₱44,562,995.05 for the year 2009 was not carried over to the succeeding quarters or taxable year.

WHEREFORE, premises considered, the instant Petition for Review is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **ORDERED TO REFUND** or **TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of **₱14,387,759.96**, representing petitioner's excess/unutilized creditable withholding taxes for calendar year 2009.

SO ORDERED.

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

WE CONCUR:

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

CAESAR A. CASANOVA
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.

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

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[22] Exhibit "R-5.1".
[23] Exhibit "R-5.2".
[24] Exhibit "R-5.3".
[25] Exhibits "H" and "R-3".