REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

PHILIPPINE BANK OF COMMUNICATIONS,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8269

Members:

Castañeda, Jr., *Chairperson*
Casanova, and
Cotangco-Manalastas, *JJ.*

Promulgated:

NOV 07 2013 9:10 a.m.

x - x

DECISION

CASTAÑEDA, JR., *J.*:

This is a claim for issuance of tax credit certificate in the amount of Thirty-One Million Eight Hundred Nineteen Thousand One Hundred Sixteen Pesos and Twenty-Five Centavos (₱31,819,116.25), allegedly representing unutilized creditable withholding taxes (CWT) of Philippine Bank of Communications for calendar year 2008.

Petitioner Philippine Bank of Communications is a domestic corporation engaged in the commercial banking business duly organized and existing under Philippine laws, 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) 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*

---

[1] Pars. 1 and 3, Stipulated Facts, Pre-Trial Order, docket, pp. 92-93.

alia, the power to decide, approve, and grant 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.

On April 15, 2009, petitioner filed with the BIR its Annual Income Tax Return (ITR) for calendar year 2008, where petitioner reported a net loss of ₱655,794,182.41 and creditable tax withheld in the amount of ₱31,591,458.62.[2]

On May 7, 2009, petitioner filed its final Annual ITR through the Electronic Filing and Payment System (EFPS) for calendar year 2008 reporting a net loss of ₱655,794,182.41 and creditable taxes withheld in the amount of ₱31,819,116.25.[3]

On April 7, 2011, petitioner filed an administrative claim for the issuance of tax credit certificate with the BIR for its alleged unutilized CWT for 2008.[4]

Respondent failed to render a decision on petitioner's application for a tax credit certificate, prompting petitioner to file the instant Petition for Review before this Court on April 14, 2011.[5]

In her Answer[6] filed on June 13, 2011, respondent raised the following Special and Affirmative Defenses:

> "5. Taxes collected are presumed to be in accordance with laws and regulations.
>
> 6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau if 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.

---

[2] Exhibit "A".
[3] Exhibit "B".
[4] Exhibit "E".
[5] Par. 6, Stipulated Facts, Pre-Trial Order, docket, p. 93.
[6] Docket, pp. 53-58.

7. 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 and 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)**

8. 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)**

9. In claiming a refund, the claimant must first 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.

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

11. The amount of Thirty One Million, Eight Hundred Nineteen Thousand, One Hundred Sixteen and 25/100 allegedly incurred for the taxable year 2008 is not properly documented.

12. 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."

The Court issued a Notice of Pre-Trial Conference[7] on June 14, 2011, informing the parties that the case is set for pre-trial conference on July 7, 2011.

Petitioner submitted its Pre-Trial Brief[8] on July 1, 2011; while respondent submitted her Pre-Trial Brief[9] on July 4, 2011.

On July 22, 2011, the parties submitted their Joint Stipulation of Facts and Issues with Motion.[10] In its Resolution[11] dated August 16, 2011, the Court approved the Joint Stipulation of Facts and

---

[7] Docket, p. 60.
[8] Docket, pp. 61-70.
[9] Docket, pp. 71-74.
[10] Docket, pp. 80-83.
[11] Docket, pp. 88-90.

Issues, and resolved to try as a separate issue the issue proposed by respondent in the included Motion.

The Court issued a Pre-Trial Order[12] on August 17, 2011, terminating the pre-trial and setting the initial presentation of evidence for petitioner.

On October 24, 2011, petitioner filed a Motion for the Commissioning of an Independent Certified Public Accountant[13], praying that the Court would commission Mr. Edwin F. Ramos of Constantino Guadalquiver & Company as an Independent Certified Public Accountant (CPA) to conduct the actual examination and audit of petitioner's voluminous documents. During the November 10, 2011 hearing, this Court granted petitioner's motion and ordered the Independent CPA to submit his report within thirty (30) days or until December 10, 2011.

The Independent CPA submitted his Report[14] on December 12, 2011 and then his Final and Consolidated Independent CPA Report[15] on January 9, 2012.

On June 22, 2012, petitioner filed its Formal Offer of Documentary Exhibits[16], offering Exhibits "A" to "S-13", inclusive of sub-markings. Respondent filed her Comment (Re: Petitioner's Formal Offer of Evidence) on July 23, 2012, interposing no objection to the admission of petitioner's enumerated exhibits, subject to the condition that the same would be compared with the original documents pursuant to Section 4 of Rule 12 of the Revised Rules of the Court of Tax Appeals. In the Resolution[17] dated August 23, 2012, the Court admitted petitioner's exhibits, except for Exhibits "G-2", "G-3", "G-4", "G-5", "G-6", "O-5.1" to "O-5.3", "O-24.32" to "O-24.51", "O-23.113", "O-35.69", "R-4", "S-3", and "S-4".

Petitioner then filed a Motion for Reconsideration (Re: Resolution dated 23 August 2012)[18] on September 7, 2012, asking this Court to admit the denied exhibits. In the November 13, 2012

[12] Docket, pp. 92-96.
[13] Docket, pp. 133-135.
[14] Exhibit "O".
[15] Exhibit "P".
[16] Docket, pp. 231-243.
[17] Docket, pp. 361-364.
[18] Docket, pp. 365-372.

Resolution[19], this Court reconsidered its earlier Resolution and admitted the previously denied exhibits save for Exhibit "O-35.69" for petitioner's failure to submit the original copy for comparison.

During the May 8, 2013 hearing for respondent's presentation of evidence, respondent's counsels manifested that they are submitting the case for decision since the case has no report of investigation. The Court granted both parties a period of thirty (30) days within which to file their Memoranda.

The case was submitted for decision on July 10, 2013, after petitioner filed its Memorandum[20] on June 5, 2013 and respondent filed her Memorandum[21] on June 14, 2013.[22]

The issues[23] submitted by the parties for this Court's resolution are as follows:

> "1. Whether or not the claim for the issuance of a tax credit certificate for the calendar year 2008 was filed within the two-year prescriptive period prescribed under Section 204(C), in relation to Section 229 of the NIRC of 1997, as amended.
>
> 2. Whether or not petitioner has an unutilized creditable withholding tax in the amount of ₱31,819,116.25 for the calendar year 2008.
>
> 3. Whether or not the alleged income from which the subject creditable taxes allegedly withheld were included as part of the gross income in petitioner's annual income tax return for the calendar year 2008.
>
> 4. Whether or not the alleged unutilized creditable withholding tax for the calendar year 2008 in the amount of ₱31,819,116.25 was carried-over and applied by petitioner against its tax liabilities in the succeeding taxable year.

---

[19] Docket, pp. 387-388.
[20] Docket, pp. 399-412.
[21] Motion for Leave to File and Admit Attached Memorandum, Docket, pp. 413-430.
[22] Docket, p. 438.
[23] Stipulated Issues, Pre-Trial Order, docket, p. 93.

5. Whether or not petitioner is entitled to a refund or issuance of a tax credit certificate in the total amount of ₱31,819,116.25."

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.[24]

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 -

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

[24] Section 2.58, Revenue Regulations No. 2-98, as amended; *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.

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.

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 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.[25] It is only when the Final Adjustment Return covering the whole year is filed that the taxpayer would know

[25] *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.

whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[26]

The present claim covers calendar year 2008 for which petitioner originally filed its Annual Income Tax Return on April 15, 2009.[27] Counting from this date, the administrative claim filed by petitioner on April 7, 2011[28] and the Petition for Review filed on April 14, 2011 fell within the two-year prescriptive period. Clearly, the first requirement has been satisfied.

Anent petitioner's compliance with the second requisite, the Court of Tax Appeals *En Banc* in the case of *Mermac, Inc. vs. Commissioner of Internal Revenue*[29] ruled that claims for refund involving 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.* –
>
> 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)

---

[26] *Commissioner of Internal Revenue vs. TMX Sales, Inc. and the Court of Tax Appeals*, G.R. No. 83736, January 15, 1992.
[27] Exhibit "A".
[28] Exhibit "E".
[29] CTA EB No. 699, July 27, 2011.

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.*:

Sec. 2.58. RETURNS AND PAYMENT OF TAXES WITHHELD AT SOURCE. -

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, 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." *(Emphasis supplied)*

Per the Independent CPA Report, petitioner's total claim amounting to ₱31,819,116.25 is summarized as follows:[30]

	Findings	Annex Reference	Supporting BIR Returns	Amount of CWT
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	₱ 6,925,647.58
2	Creditable withholding tax payment supported by original BIR Return stamped "received" by the bank and photocopy of bank validated slip as evidence of tax remittance	Annex A1-2	1606	611,520.00
3	Creditable withholding tax payment supported by original BIR Return stamped "received" by the bank with erasure in the name and TIN of the company but with countersignature	Annex A1-3	1606	479,040.00
4	Creditable withholding tax payment supported by original BIR Return stamped "received" by the bank with erasure in the amount of taxable base but with countersignature and the amount could be validated through re-computation	Annex A1-4	1606	1,470,000.00
5	Creditable withholding tax payment supported by original BIR form 1706 without date indicated therein but with stamped "received" by the bank on January 10, 2008.	Annex A1-5	1706	900,000.00
6	Creditable withholding tax payment supported by original BIR Form 1706 with stamped "received" by the bank and photocopy of bank validated slip as evidence of tax remittance	Annex A1-6	1706	84,000.00
	Sub-total			**10,470,207.58**
	Lease Income			
1	Creditable withholding tax payment supported by original BIR Form 2307	Annex A2-1	2307	12,406,326.25
2	Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A2-2	2307	6,224.72
	Sub-Total			**12,412,550.97**
	Interest Income on Commercial and Trade Loans			
1	Creditable withholding tax payment supported by original BIR Form 2307	Annex A3-1	2307	3,162,347.16
2	Creditable withholding tax payment supported by original BIR Form 2307 without the Company's TIN indicated therein	Annex A3-2	2307	364,761.92
3	Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature and the amount could be validated through re-computation	Annex A3-3	2307	1,715.98
4	Creditable withholding tax payment supported by original BIR Form 2307 with erasure in the Company's TIN but with countersignature	Annex A3-4	2307	16,318.18
	Sub-Total			**3,545,143.24**
	Reimbursements			
1	Creditable withholding tax payments supported by original BIR Form 2307	Annex A4-1	2307	48,349.23
2	Creditable withholding tax payments supported by original BIR Form 2307 without Company's TIN indicated therein	Annex A4-2	2307	101,614.49
	Sub-Total			**149,963.72**
	Commission Income			

[30] Exhibit "P", pp. 3-6.

1	Creditable withholding tax payment supported by original BIR Form 2307	Annex A5-1	2307	125,000.00
	TOTAL			**₱ 26,702,865.51**
B.	**Other Findings**			
	Sale of Property			
1	Creditable withholding tax payments supported by original BIR Returns stamped "received" by the bank but the tax base was not indicated therein	Annex A1-7	1606	117,684.00
2	Creditable withholding tax payments supported by photocopy of BIR return stamped "received" by the bank	Annex A1-8	1606	1,808,355.60
3	Creditable withholding tax payment supported by original BIR return stamped "received" by the bank but without date indicated therein.	Annex A1-9	1606	189,892.50
4	Creditable withholding tax payment supported by original BIR return stamped "received" by the bank but dated outside the period of claim.	Annex A1-10	1606	69,825.00
5	Underclaimed creditable withholding tax payments	Annex A1-11	1606	(77,542.60)
6	Supporting documents not available for verification	Annex A1-12	-	999,150.00
	Sub-Total			**₱ 3,107,364.50**
	Lease Income			
1	Creditable withholding tax payment supported by original BIR Form 2307 but with different company TIN indicated therein	Annex A2-3	2307	764,575.04
2	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim and with different Company's TIN	Annex A2-4	2307	84,750.22
3	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A2-5	2307	385,585.89
4	Creditable withholding tax payment supported by photocopy of BIR Form 2307	Annex A2-6	2307	385,396.00
5	Creditable withholding tax payments supported by BIR Form 1601-E	Annex A2-7	1601	6,700.00
6	Underclaimed creditable withholding tax payments	Annex A2-8	-	(256.19)
7	Supporting documents not available for verification	Annex A2-9	-	14,921.93
	Sub-Total			**1,641,672.89**
	Interest Income on Commercial Loans			
1	Creditable withholding tax payment supported by original BIR Form 2307 but with erasure in the amount and without Company's TIN	Annex A3-5	2307	24,996.58
2	Creditable withholding tax payment supported by original BIR Form 2307 but with erasure on the Company's TIN	Annex A3-6	2307	9,952.09
3	Creditable withholding tax payment supported by original BIR Form 2307 but with different company TIN indicated therein.	Annex A3-7	2307	84,050.91
4	Creditable withholding tax payment supported by original BIR Form 2307 but not dated within the period of claim	Annex A3-8	2307	34,216.48
5	Creditable withholding tax payment supported by photocopy of BIR Form 2307	Annex A3-9	2307	157,287.66
6	Creditable withholding tax payments supported by original BIR Form 1601-E	Annex A3-10	1601	7,427.04
7	Supporting documents not available for verification	Annex A3-11	-	1,853.45
	Sub-Total			**319,784.21**
	Reimbursement			
1	Creditable withholding tax payment supported by original BIR Form 2307 but with different Company's TIN indicated therein	Annex A4-3	2307	46,167.89
2	Creditable withholding tax payments supported by original BIR Form 2307 but not dated within the period of claim	Annex A4-4	2307	1,261.25
	Sub-Total			**47,429.14**
	TOTAL - Other Findings			**₱ 5,116,250.74**
	GRAND TOTAL			**₱31,819,116.25**

Je

Based on the above 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 has satisfied the second requirement in the amount of ₱16,302,740.46, 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	₱ 12,406,326.25
	Annex A2-6	385,396.00
2. Interest Income on Commercial and Trade Loans	Annex A3-1	3,162,347.16
	Annex A3-3	1,715.98
	Annex A3-4	16,318.18
	Annex A3-9	157,287.66
3. Reimbursements	Annex A4-1	48,349.23
4. Commission Income	Annex A5-1	125,000.00
TOTAL		**₱16,302,740.46**

The income payments upon which the creditable withholding taxes of ₱16,302,740.46 were withheld amount to ₱426,506,677.90, detailed as follows:

	Findings	Annex Reference	Income Payments	Amount of CWT
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	₱133,851,398.57	₱ 6,672,167.86
2	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy lease contract and accounting ticket and traced to GL	B2-2	36,499,844.03	1,824,992.16
3	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy lease contract and accounting ticket and traced to GL	B2-3	25,484,511.69	1,274,225.60
	Sub-Total		**195,835,754.29**	**9,771,385.62**
	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 promissory note (PN), original instruction sheet and original official receipt (OR), and traced to GL	B3-1	7,396,090.39	147,921.83
2	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN and original instruction sheet, and traced to GL	B3-2	8,123,829.20	162,476.58
3	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original OR, and traced to GL	B3-3	2,602,347.22	52,046.94
4	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN and photocopy of instruction sheet, and traced to GL	B3-4	166,534.25	3,330.69
5	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original OR and traced to GL	B3-5	828,210.24	16,564.17

6	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN and original instruction sheet, and traced to GL	B3-6	2,114,953.06	42,299.06
7	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN, original instruction sheet and original OR, and traced to GL	B3-7	4,422,383.58	88,447.66
8	Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature and the amount could be validated through re-computation; the related income of which is supported by original PN and original instruction sheet, and traced to GL	B3-10	61,051.99	1,221.04
9	Creditable withholding tax payment supported by original BIR Form 2307 but with erasure on the Company's TIN but with countersignature; the related income of which is supported by original PN, original instruction sheet and original OR, and traced to GL	B3-11	815,908.85	16,318.18
10	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt, original instruction sheet or debit advice, and traced to GL	B3-12	589,230.43	11,784.60
11	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt, instruction sheet, and traced to GL	B3-13	3,890,549.66	77,811.01
12	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt and debit advice, and traced to GL	B3-14	2,940,223.99	58,804.46
13	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt and photocopy of instruction sheet, and traced to GL	B3-15	89,313.89	1,786.28
	Sub-Total		**34,040,626.75**	**680,812.50**
	TOTAL		**₱229,876,381.04**	**₱10,452,198.12**
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	B2-5	₱ 3,750,830.49	₱ 187,541.53
2	Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	B2-6	810,145.88	40,507.31
3	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	B2-7	46,350,880.30	2,317,544.01
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	107,487.53	5,374.38
5	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	B2-9	388,170.00	19,408.50
6	Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by photocopy lease contract and accounting ticket but partially traced to GL	B2-10	1,249,192.92	62,459.65
7	Creditable withholding tax payments supported by original BIR Form 2307; the related income of which is supported by photocopy of lease contract	B2-11	42,105.30	2,105.27
8	Creditable withholding tax payment supported by photocopies BIR Form 2307	A2-6	7,707,920.10	385,396.00
	Sub-Total		**60,406,732.52**	**3,020,336.65**
	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 PN, original instruction sheet and original OR, and partially traced to GL	B3-18	1,772,573.51	35,451.46
2	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN and original instruction sheet, but partially traced to GL	B3-19	2,879,368.84	57,587.38
3	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original instruction sheet and original OR, but partially traced to GL	B3-20	8,750,000.00	175,000.00
4	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	B3-21	1,440,324.48	28,806.49
5	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original OR, but partially traced to GL	B3-22	263,479.16	5,269.60
6	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN, original instruction sheet and original OR, but partially traced to GL	B3-23	2,050,075.37	41,001.51
7	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN, original instruction sheet and photocopy of OR, but partially traced to GL	B3-24	738,691.32	14,773.83
8	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN, original instruction sheet, but partially traced to GL	B3-25	617,500.00	12,350.00
9	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original trust receipt and instruction sheet but partially traced to GL	B3-26	5,972,759.41	119,455.21
10	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original trust receipt and debit advice, but partially traced to GL	B3-27	5,392,102.15	107,842.08
11	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original trust receipt and photocopy of instruction sheet but partially traced to GL	B3-28	731,505.95	14,630.13
12	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original trust receipt, instruction sheet or debit advice, but partially traced to GL	B3-29	2,446,510.65	48,930.21
13	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is partially supported by original trust receipt, photocopy of instruction sheet or debit advice, but partially traced to GL	B3-30	461,472.65	9,229.45
14	Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	B3-32	91,437,327.38	1,828,746.53
15	Creditable withholding tax payments supported by original BIR Form 2307 with erasure in the amount but with countersignature and the amount could be validated through re-computation; supporting documents of the related income are not available for verification	B3-36	24,746.85	494.94
16	Creditable withholding tax payment supported by photocopies BIR Form 2307	A3-9	7,864,382.03	157,287.66
	Sub-Total		**132,842,819.75**	**2,656,856.48**
	Reimbursement			
1	Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	A4-1	2,130,744.59	48,349.23
	Commission Income			
1	Creditable withholding tax payments supported by original BIR Form 2307; the supporting documents of the related income are not available for verification	A5-1	1,250,000.00	125,000.00

TOTAL - Other Findings	**₱196,630,296.86**	**₱ 5,850,542.36**
GRAND TOTAL	**₱426,506,677.90**	**₱16,302,740.46**

Based on the foregoing, the Court finds that only the income payments in the amount of ₱203,345,072.26 related to the creditable withholding taxes of ₱9,921,571.97 were clearly declared in petitioner's general ledger and Annual ITR for calendar year 2008, to wit:

	Findings	Annex Reference	Exhibit No. (GL)	Income Payments	Amount of CWT
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	O-18, O-19, O-20, O-21	₱133,851,398.57	₱ 6,672,167.86
2	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy lease contract and accounting ticket and traced to GL	B2-2	O-18, O-19, O-20, O-21	36,499,844.03	1,824,992.16
3	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy lease contract and accounting ticket and traced to GL	B2-3	O-19, O-20	25,484,511.69	1,274,225.60
	Sub-Total			**195,835,754.29**	**9,771,385.62**
	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 trust receipt, original instruction sheet or debit advice, and traced to GL	B3-12	O-37	589,230.43	11,784.60
2	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt, instruction sheet, and traced to GL	B3-13	O-37	3,890,549.66	77,811.01
3	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt and debit advice, and traced to GL	B3-14	O-37	2,940,223.99	58,804.46
4	Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original trust receipt and photocopy of instruction sheet, and traced to GL	B3-15	O-37	89,313.89	1,786.28
	Sub-Total			**7,509,317.97**	**150,186.35**
	TOTAL			**₱203,345,072.26**	**₱9,921,571.97**

Similarly, the income payments in the amount of ₱6,054,171.77 upon which the creditable withholding taxes in the amount of ₱121,083.45 were withheld were also verified to be included in the income reported in the general ledger and Annual ITR of petitioner for calendar year 2008, detailed hereafter: *gr*

Exhibit Ref (BIR Returns)	Exhibit GL	Received from	Income Payments	Amount of CWT
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 promisory note (PN), original instruction sheet and original official receipt (OR), and traced to GL *(Annex B3-1)*				
O-4.361	O-27	Gran Export Manufacturing Corp.	₱ 173,298.61	₱ 3,465.97
O-4.363	O-27	Gran Export Manufacturing Corp.	5,590.28	111.81
O-4.394	O-27	Tao Commodity Trader, Inc.	214,296.88	4,285.94
O-4.395	O-27	Tao Commodity Trader, Inc.	212,465.28	4,249.31
O-4.468	O-27	Tao Commodity Trader, Inc.	219,791.67	4,395.83
O-4.469	O-27	Tao Commodity Trader, Inc.	133,333.33	2,666.67
O-4.47	O-27	Tao Commodity Trader, Inc.	240,305.56	4,806.11
O-4.471	O-27	Tao Commodity Trader, Inc.	145,777.78	2,915.56
O-4.472	O-27	Tao Commodity Trader, Inc.	210,267.36	4,205.35
O-4.473	O-27	Tao Commodity Trader, Inc.	127,555.56	2,551.11
O-4.550	O-27	Tao Commodity Trader, Inc.	172,719.62	3,454.39
O-4.552	O-27	Tao Commodity Trader, Inc.	140,000.00	2,800.00
O-4.553	O-27	Tao Commodity Trader, Inc.	87,500.00	1,750.00
O-4.554	O-27	Tao Commodity Trader, Inc.	135,406.25	2,708.13
O-4.555	O-27	Tao Commodity Trader, Inc.	143,333.33	2,866.67
O-4.557	O-27	Tao Commodity Trader, Inc.	89,583.33	1,791.67
O-4.559	O-27	Tao Commodity Trader, Inc.	119,444.44	2,388.89
		Sub-total	***2,570,669.28***	***51,413.41***
2. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by original PN and original instruction sheet, and traced to GL *(Annex B3-2)*				
O-4.364	O-27	HBC Inc	35,416.50	708.33
O-4.499	O-27	Camaro Realty Corp	44,729.07	894.58
		Sub-total	**80,145.57**	**1,602.91**
3. Creditable withholding tax payment supported by original BIR Form 2307; related income of which is supported by original OR & traced to GL *(Annex B3-5)*				
O-4.288	O-27	Gran Export Manufacturing Corp.	144,903.69	2,898.07
O-4.43	O-27	Gran Export Manufacturing Corp.	198,333.33	3,966.67
O-4.431	O-27	Gran Export Manufacturing Corp.	230,222.22	4,604.44
O-4.556	O-27	Tao Commodity Trader, Inc.	62,708.33	1,254.17
		Sub-total	***636,167.57***	***12,723.35***
4. Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN and original instruction sheet, and traced to GL *(Annex B3-6)*				
O-4.298	O-27	Legaspi Oil Company Inc.	590,222.89	11,804.46
O-4.373	O-27	Legaspi Oil Company Inc.	474,212.38	9,484.25
O-4.445	O-27	Legaspi Oil Company Inc.	149,964.60	2,999.29
O-4.446	O-27	Legaspi Oil Company Inc.	83,912.56	1,678.25
		Sub-total	***1,298,312.43***	***25,966.25***
5 Creditable withholding tax payment supported by original BIR Form 2307; the related income of which is supported by photocopy of PN, original instruction sheet and original OR, and traced to GL *(Annex B3-7)*				
O-4.289	O-27	Gran Export Manufacturing Corp.	140,229.50	2,804.59
O-4.290	O-27	Gran Export Manufacturing Corp.	32,720.19	654.40

O-4.299	O-27	Legaspi Oil Company Inc.	571,183.44	11,423.67
O-4.300	O-27	Legaspi Oil Company Inc.	171,355.03	3,427.10
O-4.302	O-27	Legaspi Oil Company Inc.	331,948.66	6,638.97
		Sub-total	***1,247,436.82***	***24,948.73***
6. Creditable withholding tax payment supported by original BIR Form 2307 but with erasure on the Company's TIN but with countersignature; the related income of which is supported by original PN, original instruction sheet and original OR, and traced to GL *(Annex B3-11)*				
O-4.122	O-27	Tao Commodity Trader, Inc.	221,440.10	4,428.80
		Sub-total	***221,440.10***	***4,428.80***
		TOTAL	**₱6,054,171.77**	**₱ 121,083.45**

Petitioner was able to establish that the income payments of ₱209,399,244.03 (₱203,345,072.26 plus ₱6,054,171.77) with a corresponding CWT of ₱10,042,655.42 (₱9,921,571.97 plus ₱121,083.45) formed part of the gross income declared by petitioner in its Annual ITR for calendar year 2008; thus, in compliance with the third requisite.

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 ₱10,042,655.42 out of the total claimed CWT of ₱31,819,116.25.

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. Je

> 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.[31]

Records reveal that in its amended Income Tax Return for calendar year 2008[32], petitioner reflected a net loss of ₱655,794,182.41[33] and income tax overpayment of ₱72,730,652.77[34], which petitioner marked as "To be Issued a Tax Credit Certificate"[35]. The income tax overpayment of ₱72,730,652.77 consists of the following:

Prior Year's Excess Credits	₱ 40,911,536.52
Creditable Tax Withheld during the year	31,819,116.25
TOTAL	**₱72,730,652.77**

---

[31] *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.
[32] Exhibit "B".
[33] Exhibit "B", Line 21B.
[34] Exhibit "B", Line 29.
[35] Exhibit "B", Line 31.

Petitioner was unable to utilize all the tax credits of ₱72,730,652.77 because it had no income tax liability due to losses incurred in its operations.

In petitioner's 2009 Quarterly Income Tax Returns for the first[36] and second[37] quarters, only the amount ₱40,911,536.52 was reflected as "Prior Year's Excess Credits"; while on the third[38] quarter of 2009 as well as in its 2009 amended Annual Income Tax Return[39], the amount of ₱40,811,031.83 was reflected as "Prior Year's Excess Credits". This amount was arrived at by deducting the second quarter MCIT for the year 2009 amounting to ₱100,504.69 from "Prior Year's Excess Credits" of ₱40,911,536.52. Evidently, the claimed CWT amounting to ₱31,819,116.25 for the year 2008 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 ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner in the amount of ₱10,042,655.42, representing petitioner's unutilized and excess creditable withholding taxes for calendar year 2008.

SO ORDERED.

JUANITO C. CASTAÑEDA, JR.
Associate Justice

WE CONCUR:

CAESAR A. CASANOVA
Associate Justice

AMELIA R. COTANGCO-MANALASTAS
Associate Justice

---

[36] Exhibit "O-30.1".
[37] Exhibit "O-30.2".
[38] Exhibit "O-30.3".
[39] Exhibit "D".

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

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.

ROMAN G. DEL ROSARIO
Presiding Justice