REPUBLIC OF THE PHILIPPINES
Court of Tax Appeals
QUEZON CITY

SPECIAL FIRST DIVISION

UNITED COCONUT PLANTERS BANK,
Petitioner,

- versus –

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA CASE NO. 8274

Members:

Uy, *Chairperson, and*
Fabon-Victorino, *JJ.*

Promulgated:

MAY 31 2013 12:00 p.m.

x - x

D E C I S I O N

UY, J.:

This Petition for Review was filed by petitioner, United Coconut Planters Bank against respondent, Commissioner of Internal revenue on April 15, 2011 seeking for the issuance of tax credit certificate in the amount of Sixty-Five Million Thirty-Three Thousand Nine Hundred Seventy-Two Pesos (₱65,033,972.00), allegedly representing its unutilized creditable withholding taxes (CWT) for taxable year 2008.

THE FACTS

Petitioner is a domestic corporation duly organized and existing under the laws of the Philippines, with principal office at UCPB Building, Makati Avenue, Makati City. Petitioner was formed, among others, to operate under an expanded commercial banking authority; and by virtue thereof, to exercise the powers authorized for commercial banks, the powers of investment houses as provided in pertinent laws, and the authority to invest in the equity of allied and non-allied undertakings in accordance with applicable laws, rules and regulations[1]. It is also duly registered with the Bureau of Internal Revenue (BIR) as evidenced by its Certificate of Registration No. OCN8RC0000019221.[2]

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue, with authority, among others, to decide, approve and grant claims for refund or tax credit of internal revenue taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.

Petitioner filed its Annual Income Tax Return for taxable year 2008[3] on April 17, 2009. Subsequently, petitioner filed its amended[4] and 2nd amended Annual Income Tax Return[5] for the same year on June 17, 2009 and September 14, 2009, respectively.

On April 13, 2011, through a letter[6] dated April 13, 2011, petitioner filed with the BIR Large Taxpayer Regular Audit Division II an administrative claim[7] for the issuance of tax credit certificate for its purported unutilized creditable withholding taxes for 2008 in the total amount of ₱65,033,972.00[8].

On April 15, 2011, petitioner filed the instant Petition for Review with the Court of Tax Appeals.[9]

Respondent filed her Answer[10] on May 26, 2011, raising the following special and affirmative defenses:

> "4. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau of Internal Revenue (BIR).
>
> 5. Petitioner must prove that the alleged erroneously paid taxes were indeed paid and received by respondent.

[1] Par. 1, Joint Stipulation of Facts and Issues (JSFI), docket, p. 126.
[2] Exhibit "B", docket, p. 278.
[3] Exhibit "C", docket, p. 279.
[4] Exhibit "D", docket, p. 285.
[5] Exhibit "E", docket, p. 292.
[6] Exhibit "A", docket, pp. 273-276.
[7] Exhibit "A-3", docket, p. 277.
[8] Par. 3, JSFI, docket, p. 127.
[9] Par. 4, JSFI, docket, p. 127.
[10] Docket, pp. 90-94.

6. Petitioner must prove that the administrative and judicial claims were filed within the period prescribed by law.

7. In claims for a refund, a claimant must first file a written claim for refund, categorically demanding recovery of overpaid taxes with the CIR, before resorting to an action in court, first, to afford the CIR an opportunity to correct the action of subordinate officers; and second, to notify the government that such taxes have been questioned, and notice should then be borne in mind in estimating the revenue available for expenditure. (Bermejo vs. Collector, 87 Phil 96 cited in CIR vs. Rosemarie Acosta, GR No. 154068, August 3, 2007)

8. The case of Ang Tibay vs. Court of Industrial Relations GR No. L-46496, states the primary rights which must be respected even in an administrative proceeding:

> 1) **The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.** In the language of Chief Hughes, in *Morgan v. U.S.*, 304 U.S. 1, 58 S. Ct. 773, 999, 82 Law. ed. 1129, 'the liberty and property of the citizen shall be protected by the rudimentary requirements of fair play.
>
> (2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal *must consider* the evidence presented. (Chief Justice Hughes in Morgan v. U.S. 298 U.S. 468, 56 S. Ct. 906, 80 law. ed. 1288.) In the language of this court in *Edwards vs. McCoy*, 22 Phil. 598, 'the right to adduce evidence, without the corresponding duty on the part of the board to consider it, is vain. Such right is conspicuously futile if the person or persons

to whom the evidence is presented can thrust it aside without notice or consideration.'

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support it is a nullity, a place when directly attached.' (Edwards vs. McCoy, *supra*.) This principle emanates from the more fundamental is contrary to the vesting of unlimited power anywhere. Law is both a grant and a limitation upon power.

(4) **Not only must there be some evidence to support a finding or conclusion** (City of Manila vs. Agustin, G.R. No. 45844, promulgated November 29, 1937, XXXVI O. G. 1335), **but the evidence must be 'substantial.'** (Washington, Virginia and Maryland Coach Co. v. national labor Relations Board, 301 U.S. 142, 147, 57 S. Ct. 648, 650, 81 Law, ed. 965.) It means such relevant evidence as a reasonable mind accept as adequate to support a conclusion.' (Appalachian Electric Power v. National Labor Relations Board, 4 Cir., 93 F. 2d 985, 989; National Labor Relations Board v. Thompson Products, 6 Cir., 97 F. 2d 13, 15; Ballston-Stillwater Knitting Co. v. National Labor Relations Board, 2 Cir., 98 F. 2d 758, 760.) ... The statute provides that 'the rules of evidence prevailing in courts of law and equity shall not be controlling.' The obvious purpose of this and similar provisions is to free administrative boards from the compulsion of technical rules so that the mere admission of matter which would be deemed incompetent in judicial proceedings would not invalidate the administrative order. (Interstate Commerce Commission v. Baird, 194 U.S. 25, 44, 24 S. Ct. 563, 568, 48 Law. ed. 860; Interstate Commerce Commission v. Louisville and Nashville R. Co., 227 U.S. 88, 93 33 S. Ct.

185, 187, 57, Law ed. 431; United States v. Abilene and Southern Ry. Co. S. Ct. 220, 225, 74 Law. ed. 624.) But this assurance of a desirable flexibility in administrative procedure does not go far as to justify orders without a basis in evidence having rational probative force. Mere uncorroborated hearsay or rumor does not constitute substantial evidence. (Consolidated Edison Co. v. National Labor Relations Board, 59 S. Ct. 206, 83 Law. ed. No. 4, Adv. Op., p. 131)'

(5) **The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.** (Interstate Commerce Commission vs. L. & N. R. Co., 227 U.S. 88, 33 S. Ct. 185, 57 Law, ed. 431.) **Only by confining the administrative tribunal to the evidence disclosed to the parties, can the latter be protected in their right to know and meet the case against them.** It should not, however, detract from their duty actively to see that the law is enforced, and for that purpose, to use the authorized legal methods of securing evidence and informing itself of facts material and relevant to the controversy. Boards of inquiry may be appointed for the purpose of investigating and determining the facts in any given case, but their report and decision are only advisory. (Section 9, Commonwealth Act No. 103.) The Court of Industrial Relations may refer any industrial or agricultural dispute or any matter under its consideration or advisement to a local board of inquiry, a provincial fiscal, a justice of the peace or any public official in any part of the Philippines for investigation, report and recommendation, and may delegate to such board or public official such powers and functions as the said Court of Industrial Relations may deem necessary, but such delegation shall not affect the exercise of the

> Court itself of any of its powers. (Section 10, *ibid.*)
>
> (6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. It may be that the volume of work is such that it is literally Relations personally to decide all controversies coming before them. In the United States the difficulty is solved with the enactment of statutory authority authorizing examiners or other subordinates to render final decision, with the right to appeal to board or commission, but in our case there is no such statutory authority.
>
> (7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decision rendered. The performance of this duty is inseparable from the authority conferred upon it. (Emphasis supplied)

Petitioner is mandated to present evidence to support its administrative claim and such evidence will be used as basis for the decision of the quasi-judicial body. If there is lack of evidence, then the decision will probably be contrary to petitioner. Only the evidence presented will be reviewed by the quasi-judicial body. An administrative claim is meant to expedite the proceedings where all the relevant evidence is presented. Petitioner, however, instead chose not to submit any evidence to support its claim.

9. Furthermore, in an action for refund the burden of proof is on the taxpayer to establish its right to refund and failure to sustain the burden is fatal to the claim for refund/credit. This is so because exemptions from

taxation are highly disfavored in law and he who claims exemption must be able to justify his claim by the clearest grant of organic or statutory law. An exemption from the common burden cannot be permitted to exist upon vague implications. **(Asiatic Petroleum Co. vs Llanes, 49 Phil. 466 cited in Collector of Internal Revenue v Manila Jockey Club, Inc., 98 Phil. 670).**"

During the pre-trial held on July 1, 2011[11], the Court granted the parties' joint motion for a period of fifteen (15) days from said date to file a Joint Stipulation of Facts and Issues. Thereafter, the parties filed their Joint Stipulation of Facts and Issues[12], and Supplemental Joint Stipulation of Facts and Issues[13] on July 28, 2011 and August 8, 2011, respectively. In the Resolution[14] dated August 17, 2011, the Court approved the same and pre-trial was terminated.

During trial, only petitioner presented its witnesses, namely: Jennifer Anne C. Cabral and Court-commissioned Independent Certified Public Accountant (CPA) Emmanuel Y. Mendoza, as well as its documentary evidence. During the hearing held on August 16, 2012[15], respondent's counsel manifested that she will no longer present any evidence. However, petitioner's counsel manifested that he filed a Motion for Reconsideration with Tender of Excluded Evidence on August 3, 2012. Thus, respondent's counsel was given a period of fifteen (15) days to file Comment thereto. And receipt of the Court's resolution of said incident, both parties were directed to file their respective Memorandum.[16]

In the Resolution dated September 26, 2012[17], the Court granted petitioner's Motion for Reconsideration with Tender of Excluded Evidence and the denied Exhibits "P-1278, R-57a, R-58b, R-59b and R-60a" were made part of the records of this case.

On December 19, 2012, this case was submitted for decision, considering the respective Memorandum filed by respondent and petitioner on November 5, 2012 and December 12, 2012.

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[11] Docket, p. 120
[12] Docket, pp. 126 to 133.
[13] Docket, pp. 139 to 142.
[14] Docket, p. 144.
[15] Minutes of the hearing held on August 16, 2012, Docket, p. 366
[16] Resolution dated August 23, 2012, Docket, p. 368
[17] Docket, pp. 383-385

THE ISSUES

As stipulated by the parties, the following issues[18] are submitted for this Court's consideration:

> "a. Whether or not petitioner is entitled to its claim for refund or tax credit of its unutilized creditable withholding taxes for the calendar year 2008;
>
> b. Whether or not petitioner has unutilized creditable withholding tax in the amount of Php65,033,972.00 as of December 31, 2008, which is a proper subject of a claim for refund/issuance of a tax credit certificate pursuant to Section 76 of the 1997 Tax Code;
>
> c. Whether or not petitioner's unutilized creditable withholding taxes for calendar year 2008 in the amount of Php65,033,972.00 are duly substantiated by documentary evidence;
>
> d. Whether or not the income upon which the subject unutilized creditable withholding taxes were withheld were declared as part of petitioner's gross revenue in its Annual Income Tax Return for calendar year 2008; and
>
> e. Whether or not petitioner's unutilized creditable withholding taxes for calendar year 2008 were carried over and claimed as 'prior year's excess tax credits' during the succeeding taxable year.
>
> f. Whether or not petitioner exhausted administrative remedy before filing the instant Petition."

We summarize the foregoing issues into three (3) main issues, namely:

> 1. Whether or not petitioner exhausted administrative remedy before filing the instant Petition;

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[18] JSFI, docket, p. 131.

2. Whether or not petitioner's unutilized creditable withholding taxes for taxable year 2008 were carried over and claimed as "prior year's excess tax credits" during the succeeding taxable year; and

3. Whether or not petitioner is entitled to issuance of tax credit certificate for its alleged unutilized creditable withholding taxes for taxable year 2008.

Petitioner's arguments

Petitioner argues that it has complied with all the requirements for a claim for refund or issuance of tax credit certificate for excess income tax payments arising from creditable withholding taxes.

Petitioner also contends that the filing of its administrative claim for refund and the filing of its judicial claim are well within the two (2)-year prescriptive period.

Moreover, petitioner insists that it manifested its option to be issued a tax credit certificate; and such manifestation was indicated in its original and amended Annual Income Tax Returns[19] for the year 2008. And because of that clear intention, petitioner did not carry over the creditable taxes withheld in 2008 to the succeeding periods.

Respondent's counter-arguments

Respondent points out that the Petition for Review was filed prematurely in violation of the doctrine of exhaustion of administrative remedies. Respondent further argues that it is true that petitioner filed an administrative claim for refund, but the same is considered merely *pro forma* as it failed to submit all documentary evidence to prove its entitlement thereto. Thus, petitioner failed to substantiate its administrative claim for refund.

Further, respondent counter-argues that it is incumbent upon petitioner to prove that it is entitled to the refund or issuance of tax credit certificate sought because a claim for refund is not *ipso facto*

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[19] Exhibits "C", "D", and "E".

granted upon filing of the claim. Respondent likewise asserts that the burden of proof is on the taxpayer to establish its right to refund, and petitioner failed to discharge that burden.

THE COURT'S RULING

Section 204 of the National Internal Revenue Code (NIRC) of 1997, as amended, states:

> "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."

In relation thereto, Section 229 of the NIRC of 1997, as amended, provides:

> "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 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."

Based on the foregoing legal provisions, the Commissioner of Internal Revenue has the Authority to Compromise, Abate and Refund or Credit Taxes under Section 204 of the NIRC of 1997, subject to the condition set forth under Section 229 of the same NIRC of 1997, that the administrative and the judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within the period of two (2) years from the date of payment of the tax.

A perusal of the records of this case show that petitioner filed its Annual Income Tax Return for taxable year 2008 on April 17, 2009. Thus, petitioner had two (2) years from said date, or until April 17, 2011, to file its administrative and judicial claims. Counting from April 17, 2009, the administrative claim filed by petitioner on April 13, 2011, and its subsequent appeal by way of a Petition for Review filed before this Court on April 15, 2011, both fell within the two-year prescriptive period allowed by law.

Respondent's allegation that the instant petition was prematurely filed in violation of the doctrine of exhaustion of administrative remedies is bereft of merit.

Petitioner filed its administrative claim for refund on April 13, 2011; consequently, it had only four days to file its judicial claim pursuant to Section 229 of the NIRC of 1997, as amended. Petitioner filed the judicial claim on April 15, 2011 in order not to be barred by the two-year prescriptive period which would lapse on April 17, 2011. Thus, this Petition for Review was timely filed in accordance with legal requirements.

Respondent further alleges that petitioner failed to submit all documentary evidence for the latter's claim for refund. Records disclose that petitioner filed its letter dated April 13, 2011[20] requesting the issuance of tax credit certificate, with attached supporting documents. As a rule, the examiner cannot demand what type of supporting documents should be submitted; otherwise, the taxpayer will be at the mercy of the examiner, who may require the production of documents that the taxpayer cannot submit. Clearly, petitioner sufficiently filed its administrative claim together with its supporting documents.

Having considered petitioner's claim to have been timely filed, We now look at petitioner's further compliance with other legal requirements.

Section 76 of the NIRC of 1997 provides as follows:

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

[20] Exhibit "A", docket, pp. 273-276.

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 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.

On April 17, 2009, petitioner electronically filed its Annual Income Tax Return for taxable year 2008.[21] Subsequently, it amended the said return on June 17, 2009[22] and on September 14, 2009[23]. Below are the significant information reflected on the returns:

	Exhibit "C"	**Exhibit "D"**	**Exhibit "E"**
Date Filed with the BIR	**04/17/09**	**06/17/09**	**09/14/09**
Sales/Revenues/Receipts/Fees	₱ 2,445,981,172.56	₱ 2,445,981,173.00	₱ 2,445,981,173.00
Less: Cost of Sales/Services	2,732,658,474.04	3,200,643,461.00	3,200,643,461.00
Gross Income from Operation	(286,677,301.48)	(754,662,288.00)	(754,662,288.00)
Add: Non-Operating & Other Income	970,108,244.41	928,317,181.00	928,317,181.00
Total Gross Income	683,430,942.93	173,654,893.00	173,654,893.00
Less: Deductions	2,873,377,946.95	2,885,291,876.00	2,885,291,876.00
Taxable Income	(2,189,947,004.02)	(2,711,636,983.00)	(2,711,636,983.00)
Minimum Corporate Income Tax (MCIT)	6,843,324.58	3,473,097.86	3,473,097.86
Less: Tax Credits/Payments			
Prior Year's Excess Credits	107,420,121.79	107,420,122.00	107,420,122.00
Tax Payments for the First Three Quarters	-	-	-
Creditable Tax Withheld for the First 3Q	**25,763,508.83**	**25,763,509.00**	**25,763,509.00**
Creditable Tax Withheld for the Fourth Q	**36,277,130.15**	**36,748,454.00**	**39,270,463.00**
Total Tax Credits/Payments	169,460,760.77	169,932,085.00	172,454,094.00
Tax Payable/(Overpayment)	₱ (162,617,436.19)	₱ (166,458,987.14)	₱ (168,980,996.14)

Records indicate that petitioner marked the box "To be issued a Tax Credit Certificate" on its original and amended Annual Income Tax Returns[24] for taxable year 2008.

A perusal of petitioner's amended Annual Income Tax Return for taxable year 2008[25] shows that petitioner had total tax credits of

[21] Exhibit "C", docket, p. 279.
[22] Exhibit "D", docket, p. 285.
[23] Exhibit "E", Docket, p. 292.
[24] Exhibits "C", "D", and "E", docket, pp. 280, 286, and 293.

₱172,454,094.00, which consisted of the prior year's excess credits in the amount of ₱107,420,122.00 and creditable taxes withheld during the year 2008 in the amount of ₱65,033,972.00[26]. Petitioner's Minimum Corporate Income Tax (MCIT) in the amount of ₱3,473,097.86 was paid using a portion of its prior year's excess credits of ₱107,420,122.00 leaving the prior year's excess credits in the amount of ₱103,947,024.14 and creditable taxes withheld during the year 2008 in the amount of ₱65,033,972.00 or a total of ₱168,980,996.14 unutilized as of December 31, 2008, as shown below:

Minimum Corporate Income Tax (MCIT)	₱ 3,473,097.86
Less: Prior Year's Excess Credits	107,420,122.00
Balance of Prior Year's Excess Credits	103,947,024.14
Add: Creditable Taxes Withheld – 2008	65,033,972.00
Excess Creditable Taxes Withheld as of December 31, 2008	**₱ 168,980,996.14**

Considering that only the prior year's excess credits of ₱103,947,024.00 were carried over to the subsequent quarters[27]/year 2009[28], the excess creditable taxes withheld in 2008 in the amount of ₱65,033,972.00 may be the subject of a claim for refund pursuant to Section 76 of the NIRC of 1997.

However, in order to be entitled to a refund or issuance of tax credit certificate for excess/unutilized creditable withholding tax, petitioner must satisfy the following requirements:

1. 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, as amended;

2. 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

3. That the income upon which the taxes were withheld was included in the return of the recipient.[29]

[25] Exhibit "E", docket, pp. 292-297.
[26] ₱25,763,509.00 plus ₱39,270,463.00.
[27] Line 31A in the amount of ₱103,947,023.95, Exhibits "K", "L", and "M", docket, pp. 308-313.
[28] Line 28A, Exhibits "I" and "J", docket, pp. 304-307.
[29] 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.

Anent the first requisite, petitioner has sufficiently complied with the two-year prescriptive period as discussed earlier.

In compliance with the second requisite, petitioner presented Certificates of Creditable Tax Withheld at Source[30] (BIR Form No. 2307) issued to it by various withholding agents for the year 2008, which were examined by the Court-commissioned Independent CPA, Mendoza Querido & Co., through its Partner, Mr. Emmanuel Y. Mendoza. In his report dated December 15, 2011[31], Mr. Mendoza summarized his findings as follows:

Particulars	Annex	A. CWT on Income Payments Subjected to 6% EWT	B. CWT on Income Payments Subjected to 2% EWT	C. CWT on Income Payments Subjected to 5% EWT	D. CWT on Income Payments Subjected to 1% and 15% EWT	Total
1. Supported by BIR Form 2307 with no exceptions noted	A-1, A-2, A-3, A-4, and A-5	₱ 54,783,688.28	₱ 9,481,123.93	₱ 423,027.45	₱ 239,512.56	**₱64,927,352.22**
2. Supported by BIR Form 2307 but covering periods outside the taxable year of claim	A-6 and A-7	-	221.23	12,497.00	-	**12,718.23**
3. Supported by photocopied BIR Form 2307	A-8	1,325.58	-	-	-	**1,325.58**
4. Supported by BIR Form 2307 covering to (2) different taxable periods	A-9 and A-10	-	4,287.51	-	88,289.89	**92,577.40**
Total		**₱54,785,013.86**	**₱9,485,632.67**	**₱435,524.45**	**₱327,802.45**	**₱65,033,973.43**

Upon careful examination of the Independent CPA report and the certificates presented, this Court finds that the creditable withholding tax in the amount of ₱106,621.21[32] should be disallowed for the reasons stated therein. In addition, the CWT of ₱64,927,352.22 that was found by the Independent CPA to be without exceptions includes an overclaimed CWT in the amount of ₱3,595.66, which should also be disallowed, to wit:

Overclaimed creditable withholding taxes				
Annex	**Exhibit**	**Payor**	**Income**	**CWT**
A-2	P-521	Moldex Realty Inc		
		per claim	₱ 394,888.34	₱ 7,897.77
		per actual certificate	(215,105.56)	(4,302.11)
Total			**₱ 179,782.78**	**₱ 3,595.66**

[30] Exhibits "P-1" to "P-1281".
[31] No. 2, Exhibit "XX", p. 3.
[32] Sum of nos. 2 to 4 of Independent CPA's findings (₱12,718.23 + ₱1,325.58 + ₱92,577.40).

Therefore, out of the total claimed CWT of ₱65,033,972.00[33], petitioner was able to substantiate by proper withholding tax certificates only the creditable withholding taxes in the amount of ₱64,923,755.13 for taxable year 2008, computed as follows:

Total Creditable Withholding Taxes Claim	₱ 65,033,972.00
Less: Disallowances	
Per ICPA Report	106,621.21
Per this Court's further verification	3,595.66
Valid Creditable Withholding Taxes	**₱64,923,755.13**

This brings us to the third requirement that the income upon which the subject taxes were withheld was included and reported by petitioner in its taxable year 2008 Annual Income Tax Return.

To account for the income related to the claimed CWT, the Independent CPA presented two separate reports dated December 15, 2011[34] and March 8, 2012[35]. In his supplemental report dated March 8, 2012, the Court-commissioned Independent CPA summarized his findings as follows:[36]

Particulars	Valid Claim	Not Valid Claim	Total Amount of Claim
I. CWTs on income payments subjected to 6% pertaining to sales of real and other properties acquired (ROPA)			
A. CWTs supported by appropriate documents, with income reported in taxable year 2008	₱ 19,064,719.51	₱ -	₱ 19,064,719.51
B. CWTs supported by appropriate documents with income reported in taxable years 2004, 2005, 2006, 2007, 2009, and 2010	30,386,529.19	1,877,847.00	32,264,376.19
C. CWTs supported by inappropriate documents with booking of income not verified whether reported or not in taxable year 2008	-	3,455,918.16	3,455,918.16
Subtotal	***₱49,451,248.70***	***₱5,333,765.16***	***₱ 54,785,013.86***
II. CWTs on income payments subjected to 2% pertaining to interest income collected from loans and fees from trade services			
A. CWTs supported by appropriate documents, with income reported in taxable year 2008	₱ 6,360,391.85	₱ 3,042,801.50	₱ 9,403,193.35

[33] There is a difference of ₱1.43 per the schedule provided by Independent CPA.
[34] Exhibit "XX".
[35] Exhibit "ZZ".
[36] Exhibit "ZZ", pp. 1-2.

B. CWTs supported by inappropriate documents with booking of income not verified whether reported or not in taxable year 2008	-	82,439.32	82,439.32
Subtotal	***₱ 6,360,391.85***	***₱3,125,240.82***	***₱ 9,485,632.67***
III. CWTs on income payments subjected to 5% pertaining to rental income			
A. CWTs supported by appropriate documents, with income reported in taxable year 2008	₱ 250,420.22	₱ 146,668.93	₱ 397,089.15
B. CWTs supported by appropriate documents with income reported in taxable year 2009	-	38,435.30	38,435.30
Subtotal	***₱ 250,420.22***	***₱ 185,104.23***	***₱ 435,524.45***
IV. CWTs on income payments subjected to 1% and 15% pertaining to outsourcing and professional fees			
A. CWTs supported by appropriate documents, with income reported in taxable year 2008	₱ 202,451.18	₱ 125,351.27	₱ 327,802.45
Subtotal	***₱ 202,451.18***	***₱ 125,351.27***	***₱ 327,802.45***
Total	**₱56,264,511.95**	**₱8,769,461.48**	**₱ 65,033,973.43**

The Independent CPA summarized his findings based on the following:

A. CWT on Income Payments Subjected to 6%

The CWT on income payments subjected to six percent (6%) pertains to sales of real and other properties acquired (ROPA). ROPA includes real and other properties, other than those used for banking purposes or held in the investment portfolio, acquired by the bank judicially or extra-judicially in settlement of loans.[37]

Petitioner defers the booking of certain losses and these are amortized over a period of ten years as approved by the BSP in accordance with petitioner's rehabilitation. The amount of losses that was deferred in 2008 amounted to ₱125,358,911.72.[38]

Per Independent CPA's findings, out of the ₱54,785,013.86 total CWT from sale of ROPA of petitioner in 2008, the CWT of ₱19,064,719.51[39] the related loss of which in the amount of ₱205,140,150.43 was verified to have been included in petitioner's General Ledger (GL), ₱111,889,630.16 of which was declared in petitioner's 2008 Annual Income Tax Return, while the remaining

[37] No. 3, A.1, Exhibit "XX", p. 4.
[38] Exhibits "XX", p. 9.
[39] No. 1.A under Valid Claim, Exhibit "ZZ", p. 1.

₱3,400,912.75 and ₱96,585,083.02 were charged as unrealized gain and deferred losses, respectively.[40]

On the other hand, the income/loss related to the CWT of ₱30,386,529.19 (₱32,264,376.19 less ₱1,877,847.00) was allegedly recorded in petitioner's GL in taxable years other than 2008. While the income/loss related to the ₱5,333,765.16 (₱3,455,918.16 plus ₱1,877,847.00) CWT cannot be traced in petitioner's GL in any taxable years.

The Independent CPA noted that the net loss from assets sold/exchanged reported in the Bank's books[41] for taxable year 2008 amounted to ₱191,117,028.56. The said amount includes net loss of ₱111,889,630.16 arising from the sale of ROPA that was related and subjected to CWT amounting to ₱19,064,519.51. The net loss during the year of ₱191,117,028.56 was reported in the amended Annual Income Tax Return for taxable year 2008 as included in the total amount of ₱271,050,416.00.[42]

B. CWT on Income Payments Subjected to 2%

The CWT on income payments subjected to two percent (2%) pertains to interest income collected from loans and fees from trade services. Interest income is recognized as they are earned.[43]

As found by the Independent CPA, the interest income collected from petitioner's loans and fees from trade services in 2008 related to the claimed 2% CWT of ₱9,485,632.67 amounts to ₱466,037,142.74, detailed as follows:[44]

			Related Income Booked as			
Findings	**Annex**	**Amount of CWT**	**Part of Interest Income and Fees from Trade Services in Bank's GL**	**Charges Against Accrued Interest Receivable in Bank's GL**	**Unearned Interest Income in Bank's GL**	**Total**
Related income payments recorded in taxable year 2008 are equal to the amount reported (as tax base) in BIR Form 2307	A-40	₱6,363,092.25	₱106,020,239.42	₱203,413,614.50	₱8,721,145.97	**₱318,154,999.89**

[40] Exhibits "ZZ", pp. 3-4.
[41] Trial Balance and Income Tax Mapping, Exhibits "TT" and "UU".
[42] Exhibit "XX", pp. 8-9.
[43] B.1, Exhibit "XX", p. 9.
[44] Exhibit "XX", p. 11.

Related income payments recorded in taxable year 2008 are lower compared to the amount reported (as tax base) in BIR Form 2307	A-41	1,373,254.45	37,203,792.84	21,634,401.21	-	**58,838,194.05**
Related income payments recorded in taxable year 2008 are higher compared to the amount reported (as tax base) in BIR Form 2307	A-42	1,666,846.65	44,465,361.36	44,568,587.44	10,000.00	**89,043,948.80**
Related income payments not reported in Bank's books	A-43	82,439.32	-	-	-	-
Total		**₱9,485,632.67**	**₱187,689,393.62**	**₱269,616,603.15**	**₱8,731,145.97**	**₱466,037,142.74**

The Independent CPA noted that he was not able to verify the related income pertaining to the ₱82,439.32 CWT because of the absence of the supporting General Ledgers, which will allow him to verify whether the said related income was reported as part of petitioner's income.[45]

The total interest income and other income of petitioner for taxable year 2008 amounted to ₱4,150,424,176.52 and ₱805,037,999.41, respectively. As verified, out of the total income payments booked as part of interest income and fees from trade services, charges against accrued interest receivables, and unearned interest receivable that were subjected to CWT amounting to ₱466,037,142.74, ₱187,689,393.62 was reported as part of interest income and fees from trade services (under Interest Income and Other Income accounts) in petitioner's books and trial balance for taxable year 2008[46] and amended Annual Income Tax Return for taxable year 2008.[47]

C. CWT on Income Payments Subjected to 5%

The CWT on income payments subjected to five percent (5%) refers to rental income.[48] The total amount of rental income that was subjected to CWT amounted to ₱8,710,483.89[49]; while the CWT withheld on the said income amounted to ₱435,524.45.

The related income for the CWT amounting to ₱38,435.30 was reported in taxable year 2009; hence do not represent petitioner's valid claim.[50]

[45] II, Exhibit "ZZ", p.11.
[46] Exhibit "TT".
[47] B.5, Exhibit "XX", p. 11.
[48] C.1, Exhibit "XX", p. 12.
[49] Tax base reported per BIR Form No. 2307, Exhibit "XX", p. 13.
[50] III.B, Exhibit "ZZ", p.12.

The total other income of petitioner for taxable year 2008 amounted to ₱805,037,999.41. The Independent CPA verified that the total related income that was subjected to CWT amounting to ₱7,981,370.58 was reported as rental income (under Other Income account) in the Bank's GL and trial balance for taxable year 2008 and amended Annual Income Tax Return for taxable year 2008.[51]

D. CWT on Income Payments Subjected to 1% and 15%

The CWT on income payments subjected to one percent (1%) and fifteen percent (15%) pertains to income arising from outsourcing and professional fees. As per BIR Form No. 2307, the total amount of income arising from outsourcing and professional fees that was subjected to CWT amounted to ₱2,670,683.03. The same was reported in petitioner's GL in the amount of ₱2,984,562.53 (under Other Income account) and included in the 2008 Annual Income Tax Return of petitioner.

Petitioner's claim substantiated by CWT certificates and the related income payments/losses which were declared in the Annual Income Tax Return may be summarized as follows:

Properly supported with BIR Form 2307	**Income Payments/(Loss)**	**Taxes Withheld**
Income payments subjected to 6% CWT	₱ (111,889,630.16)	₱ 49,451,248.70
Income payments subjected to 2% CWT	105,885,219.47	6,360,391.85
Income payments subjected to 5% CWT	5,008,399.29	250,420.22
Income payments subjected to 1% & 15% CWT	1,349,674.55	202,451.18
TOTAL		**₱56,264,511.95**

As stated by petitioner and as verified by the Independent CPA, the income payments and losses related to the CWT of ₱56,264,511.95 formed part of the declared income/loss in the Annual Income Tax Return of 2008; nevertheless, the Court cannot ascertain its veracity.

It may be true that petitioner obtained a total income of ₱3,374,298,354.00[52] and net losses from assets sold amounting to ₱271,050,416.00[53], which were reported in its Annual Income Tax Return for 2008. But petitioner failed to prove that the income upon

[51] Exhibit "XX", p. 13.
[52] Exhibit "E", Revenues of ₱2,445,981,173.00 plus Other Income ₱928,317,181.00.
[53] Exhibit "E", Item 101 of Section D.

which the taxes withheld in the amount of ₱56,264,511.95, indeed, formed part of the said total income and net losses.

Although petitioner submitted before this Court documents like 2008 Consolidated Trial Balance[54]; 2008 Income Tax Mapping[55]; 2008[56], 2009[57] and 2010[58] Annual Income Tax Returns; 2008[59], 2009[60] and 2011[61] Quarterly Income Tax Returns; Schedules and General and Subsidiary Ledgers, Contract to Sell and/or Deed of Absolute Sale and Transaction Sheet Registers[62]; and a reconciliation between the amounts of revenue reported in the General Ledger and Trial Balance and the 2008 Annual Income Tax Return[63], it cannot, however, be determined and verified therefrom whether income payments subjected to CWT were already included therein. The questioned income payments cannot be traced with certainty from the GL provided by petitioner, more so, with the Annual Income Tax Return.

It must be emphasized that the Annual Income Tax Return merely provides summarized data without the supporting scheduler notes that will apprise the Court as to the detailed items included therein. Petitioner should have presented, among others, detailed General Ledger, reconciliation schedules or any other documents whereby the Court can trace the discrepancy and can determine with certainty that the income payments related to the claimed CWT formed part of its taxable gross income in its 2008 Annual Income Tax Return. Failure to present the foregoing documents is fatal to petitioner's claim.

Notwithstanding the report of the Independent CPA, the Court is not bound by his findings. The report submitted by the Independent CPA is but a tool or guide to aid the Court in the resolution of the case. The determination of the merit or the probative value of such report is still within the province of the Court.

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[54] Exhibit "TT".
[55] Exhibit "UU"
[56] Exhibits "C", "D", and "E".
[57] Exhibits "I" and "J".
[58] Exhibit "VV".
[59] Exhibits "F", "G", and "H".
[60] Exhibits "K", "L", and "M".
[61] Exhibits "WW-1" to "WW-3".
[62] Exhibits "Q-1" to "Q-64a", "R-1" to "R-62a", "S-1" to "S-17", "T", "U-1" to "U-3", "V", "W", "X", "Y-1" to "Y-14", "Z", "AA-1" to "AA-3", "BB-1" to "BB-3", "CC", "DD", "EE-1" to "EE-4", "FF", "GG-1" to "GG-3", "HH-1" to "HH-4", "II", "JJ-1" to "JJ-2", "KK", "LL", "MM-1" to "MM-2", "NN-1" to "NN-2", "OO", "PP", "QQ", "RR", and "SS.
[63] Exhibit "XX", page 11.

In addition, the Court is free to adapt or disregard, completely or partially, the findings of the Independent CPA. It can even make its own audit and evaluation of the documents pertinent to the case presented during the trial in order to intelligently resolve the conflict brought before it.[64]

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.[65] 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.[66]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** for lack of merit.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
Associate Justice

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[64] *First Lepanto Taisho Insurance Corporation vs.* Commissioner of Internal Revenue, CTA EB Case No. 563, March 1, 2011.
[65] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[66] *Commissioner of Internal Revenue vs. S.C. Johnson & Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

ATTESTATION

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

ERLINDA P. UY
Associate Justice
Chairperson

CERTIFICATION

Pursuant to 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