REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SECOND DIVISION

AEON CREDIT SERVICE (PHILIPPINES), INC.,
Petitioner,

CTA CASE NO. 9770

Members:

- versus -

CASTAÑEDA, JR., *Chairperson, and*
BACORRO-VILLENA, *JJ.*

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Promulgated:
JUL 15 2020
9:50 a.m.

x- x

DECISION

BACORRO-VILLENA, J.:

At bar is a Petition for Review[1] filed by Aeon Credit Service (Philippines), Inc. (**petitioner/Aeon**) pursuant to Rule 8, Section 3(a)[2] of the Revised Rules of the Court of Tax Appeals (**RRCTA**). It seeks the

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1 Filed on 19 February 2018, Division Docket, pp. 10-21.

2 **SEC. 3.** *Who may appeal; period to file petition.* – (a) A party adversely affected by a decision, ruling or the inaction of the Commissioner of Internal Revenue on disputed assessments or claims for refund of internal revenue taxes, or by a decision or ruling of the Commissioner of Customs, the Secretary of Finance, the Secretary of Trade and Industry, the Secretary of Agriculture, or a Regional Trial Court in the exercise of its original jurisdiction may appeal to the Court by petition for review filed within thirty days after receipt of a copy of such decision or ruling, or expiration of the period fixed by law for the Commissioner of Internal Revenue to act on the disputed assessments. In case of inaction of the Commissioner of Internal [R]evenue on claims for refund of internal revenue taxes erroneously or illegally collected, the taxpayer must file a petition for review within the two-year period prescribed by law from payment or collection of the taxes.

refund of petitioner's alleged overpaid percentage taxes; that is, gross receipts tax (**GRT**) for the calendar year (**CY**) 2016 in the amount of THREE MILLION NINE HUNDRED EIGHTY-TWO THOUSAND SEVEN HUNDRED EIGHTY PESOS AND FIFTY-EIGHT CENTAVOS (**₱3,982,780.58**).

PARTIES

Petitioner Aeon Credit Service (Philippines), Inc. is a domestic corporation, duly organized and existing under and by virtue of the laws of the Republic of the Philippines. It has its principal office at 3rd Floor, Hanston Square, 17 San Miguel Avenue, Ortigas Center, Pasig City.

On the other hand, respondent is the duly appointed Commissioner of the Bureau of Internal Revenue (**BIR**) vested with the authority to carry out the functions and duties of said office, among which, is to decide and grant claims of tax refund and execute an implement tax laws, rules and regulations.

FACTS OF THE CASE

Petitioner is engaged in the business of extending loans to its customers *via* its Aeon Installment Plan (**AIP**) which allows customers to purchase products from Aeon's Partner Merchants (PC) on credit, and without need for collateral. The maturity period of loans under the AIP has a maturity date of less than five (5) years as shown in a copy of Aeon's AIP form.[3] As a company engaged in such enterprise, petitioner principally derives income from interest on loans, processing fees, collection charges, penalties and other loan-related fees.

Relative to its business, petitioner has been paying a monthly percentage tax on its gross receipts. In CY 2016, it filed twelve (12) Monthly Percentage Tax Returns[4] and paid the GRT due thereon on the following dates:

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3 Exhibit "P-1", Division Docket, Volume II, pp. 673-674.
4 Exhibits "P-5" to "P-5-k", id., pp. 732-743.

Month	Due Date	Date of Filing
January 2016	25 February 2016	19 February 2016
February 2016	25 March 2016	18 March 2016
March 2016	25 April 2016	20 April 2016
April 2016	25 May 2016	20 May 2016
May 2016	25 June 2016	21 June 2016
June 2016	25 July 2016	20 July 2016
July 2016	25 August 2016	18 August 2016
August 2016	25 September 2016	20 September 2016
September 2016	25 October 2016	18 October 2016
October 2016	25 November 2016	16 November 2016
November 2016	25 December 2016	19 December 2016
December 2016	25 January 2017	18 January 2017

All of petitioner's payments were in aggregate amount of Twenty-One Million Four Hundred Forty-Seven Thousand Five Hundred Thirty-Nine Pesos and Eighty-Nine Centavos (₱21,447,539.89). However, it believed that it made an overpayment in the total amount of Three Million Nine Hundred Eighty-Two Thousand Seven Hundred Eighty Pesos and Fifty-Eight Centavos (₱3,982,780.58). According to petitioner, the overpayment was a result of erroneous understanding of the concept of "gross receipts". Thus, petitioner claimed that it had previously included in its gross receipts for CY 2015 accrued income in the form of interests and processing fees that had not been received in the same year; these amounts were likewise included again in the computation of its gross receipts for CY 2016 wherein said income had actually been paid thereby, resulting in GRT payments on these same amounts for two (2) consecutive years. In addition, it again included similar earned and unrealized income in its gross receipts for CY 2016.

Petitioner's computation of its supposed overpayments shown in its Audited Financial Statement[5] (**AFS**) are as follows:

INCOME COMPONENTS PER 2016 AFS		
Interest Received in CY 2016		286,032,994.00
Processing Fees Received in CY 2016		48,789,046.00
Other Income (Penalty and other Charges)		25,124,844.00
TOTAL INCOME FOR 2016		**359,946,884.00**
LESS: a. Income earned and subjected to percentage tax by Petitioner in 2015		

[5] Exhibit "P-2", id., pp. 675-729.

but collected in 2016	7,998,966.66	
b. Receivables from Petitioner's third-party collection agencies/authorized payment centers ("PC") which were earned and subjected to percentage tax in CY 2015 but which were actually collected/received in CY 2016	2,052,731.18	10,051,697.84
TOTAL GROSS RECEIPTS (Income actually and constructively received)		**349,895,186.16**
TOTAL INCOME REPORTED PER PERCENTAGE TAX RETURN FOR CY 2016 (Reported on accrual basis)		**429,550,797.85**
DIFFERENCE		**79,655,611.69**
Percentage Tax Actually Paid		21,477,539.89
Correct Percentage Tax (i.e., based on gross receipts of Php 349,895,186.16		17,494,759.31
OVERPAID PERCENTAGE TAX		3,982,780.58

On 07 February 2018, petitioner filed with the BIR Revenue District Office (**RDO**) No. 43-A – Pasig City an administrative claim for a tax refund or tax credit certificate (**TCC**)[6] for the alleged erroneously paid amount of percentage tax. On 19 February 2018, petitioner also filed the present judicial claim before this Court. The case was raffled eventually to the Court's First Division.

PROCEEDING BEFORE THE FIRST DIVISION

On 07 March 2018, the Court, issued Summons[7] to respondent; ordering the latter to file his Answer to the petition within fifteen (15) days from receipt thereof. Respondent, after being granted an extension of time to file it[8], filed his Answer[9] and debunked petitioner's claims. Mainly, he assailed the Court's jurisdiction over the case for petitioner's failure to exhaust administrative remedies.

Thereafter, both petitioner and respondent submitted their Pre-Trial Briefs.[10] On 02 August 2018, the First Division ordered[11] the parties

[6] Exhibit "P-9", id., pp. 758-765.
[7] Id., Volume I, p. 132.
[8] Order dated 02 April 2018, id., p. 136.
[9] Filed on 23 May 2018, id., pp. 143-145.
[10] On 02 July 2018 and 01 August 2018, respectively.
[11] See Order, Division Docket, Volume I, pp. 410-411.

to file their Joint Stipulation of Facts and Issues (**JSFI**) which they filed later on.[12] Therein, the parties submitted to the Court's determination the following issues: (1) the jurisdiction of the Court over the petition; and, (2) petitioner's entitlement to a tax refund or TCC.[13]

On 13 September 2018, petitioner filed a Motion to Commission an Independent Certified Public Accountant (**ICPA**).[14] Before the First Division could act on the motion, by virtue of Administrative Circular No. 02-2018[15], the case was transferred to the Court's Second Division.[16]

PROCEEDINGS BEFORE THE SECOND DIVISION

On 18 October 2018, pre-trial[17] proceeded and in the subsequent hearings, absent any objection on petitioner's Motion to Commission an ICPA, Rose Marie S. Nacpil (**Nacpil**) took her oath as the court-appointed ICPA.[18]

When trial ensued, petitioner presented its Senior Manager of Finance and Accounting, Glen Yves Berdan (**Berdan**); the court-appointed ICPA (Nacpil); and, Mhay M. Agana (**Agana**), its Manager of Operations Monitoring.

On the witness stand, Berdan identified various documents and testified how petitioner's overpayment was discovered. According to Berdan, in the computation of its percentage taxes, petitioner included in its gross receipts for CY 2016 income on accrual basis and income earned on interest and other receivables in CY 2016 (which were previously included in its gross receipts and subject to GRT in CY 2015). He agreed with petitioner's claim of a total overpayment in the amount of ₱3,982,780.58.[19]

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12 Filed on 22 August 2018, id., pp. 413-421.
13 Id., p. 410.
14 Id., pp. 434-438.
15 Reorganizing the Three Divisions of the Court.
16 The parties were notified in an Order dated 25 September 2018, Division Docket, Volume II, p. 446.
17 See Order, id, pp. 462-468.
18 See Order dated 22 November 2018, id., p. 470.
19 Exhibit "P-15", id., Volume I, pp. 149-171.

Nacpil, on the other hand, attested to the veracity of petitioner's documentary evidence and its reported accrued interest income. She pointed out that, in her initial report[20] and supplemental report[21], petitioner had included in its gross income for CY 2015 the amount of Seven Million Nine Hundred Ninety-Eight Thousand Nine Hundred Sixty-Six Pesos and Sixty-Six Centavos (₱7,998,966.66), representing income earned but collected only in CY 2016. An additional amount of Two Million Fifty-Two Thousand Seven Hundred Thirty-One Pesos and Eighteen Centavos (₱2,052,731.18) was for receivables from PCs which were collected only in CY 2016 and had already been the subject of GRT in CY 2015.

Lastly, Agana testified to the features of petitioner's hire purchase (**HP**) system and the veracity of the information found therein.

After the conclusion of petitioner's testimonial evidence, it filed its Formal Offer of Evidence (**FOE**)[22] that included Exhibits "P-1"[23], "P-2"[24], "P-3"[25], "P-4"[26], "P-5" to "P-5-k"[27], "P-6" to "P-6-k"[28], "P-7"[29], "P-8"[30], "P-9"[31], "P-9-a"[32], "P-9-b"[33], "P-9-c"[34], "P-9-d"[35], "P-9-e"[36], "P-9-f"[37], "P-10"[38], "P-10-a"[39], "P-11"[40], "P-12"[41], "P-13"[42], "P-14"[43], "P-15"[44],

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20 Exhibit "P-18", id., Volume II, pp. 501-514.
21 Exhibit "P-18-C" id., pp. 555-568.
22 Id., pp. 649-672.
23 AEON Installment Plan ("**AIP**") Application Form, captioned as "INSTALLMENT PLAN APPLICATION & AGREEMENT", with its attached Terms & Conditions ("**T&C**").
24 Petitioner's Audited Financial Statements ("**AFS**") for calendar year ("**CY**") ended 31 December 2016, issued by Navarro Amper & Co..
25 Schedule/Breakdown of loans extended to Petitioner's customers under the AIP for CY 2016.
26 Breakdown of the cash income and accrual components of Petitioner's total income, as reported in Petitioner's AFS for CY 2016.
27 Petitioner's twelve (12) Monthly Percentage Tax Returns (BIR Form 2551M) for January to December 2016, filed through the BIR Electronic Filing and Payment System ("**eFPS**").
28 BIR eFPS Payment Details covering Petitioner's Monthly Percentage Tax Returns (BIR Form No. 2551M) for January to December 2016.
29 Petitioner's breakdown/computation of its income earned and subjected to percentage tax in 2015 but collected in 2016, in the total amount of Php7,998,966.66.
30 Breakdown of the total amount of Petitioner's receivables from amortized payment centers ("**PCs**"), which were earned and subjected to percentage tax in 2015, but were actually collected/received by Petitioner in 2016, in the total amount of Php2,052,731.18.
31 Petitioner's administrative claim for refund/tax credit of its overpaid percentage taxes for CY 2016, prepared by Follosco Morallos & Herce Law Office ("**FMH Law**") and captioned as "Administrative Claim for Refund/Issuance of Tax Credit Certificate", dated 01 February 2018 and stamped as received by BIR RDO No. 43 – Pasig City on 07 February 2018.
32 Signature of Rafael P. Follosco of FMH Law on Page 7 of the administrative claim.
33 Signature of Cielito May T. Velasquez-Zarco of FMH Law on Page 7 of the administrative claim.
34 Signature of Gelina Rose E. Recio of FMH Law on Page 7 of the administrative claim.
35 Signature of Ruth Chrissa G. Magat of FMH Law on Page 7 of the administrative claim.
36 Signature of Mr. Takayuki Araki of FMH Law on Page 7 of the administrative claim.
37 Signature of Mr. Glenn Yves Berdan of FMH Law on Page 7 of the administrative claim.

"P-15-a",[45] "P-16"[46], "P-16-a"[47], "P-17"[48], "P-17-a"[49], "P-17-b"[50], "P-17-c"[51], "P-18"[52], "P-18-a"[53], "P-18-b"[54], "P-18-c"[55], "P-18-d"[56], "P-18-e"[57] and "P-19" to "P-267", inclusive of sub-markings[58]. Later, the Court resolved to admit petitioner's evidence except Exhibits "P-242p", "P-242q", "P-244t", "P-246r", "P-246v" and "P-246ab" for not being found in the records while, Exhibits "P-209i", "P-209j", "P-210", "P-210-a", "P-210-b", "P-210c", "P-210d", "P-230", "P-243", "P-244", "P-246n", "P-246o", "P-246p", "P-250v", "P-250w", "P-250x", "P-250z", "P-250aa", "P-250ab" and "P-250ac" since they failed to correspond with the documents actually marked.[59]

Still later, respondent manifested that he will not present witnesses hence the Court directed the parties to file their respective memoranda. Notwithstanding this directive, only petitioner submitted its memorandum.[60] The Court therefore resolved to submit the case for decision.[61]

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38 Petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914), stamped as received by BIR RDO No. 43 – Pasig City on 07 February 2018.

39 Signature of Mr. Takayuki Araki on the lower left-hand portion of Petitioner's Application for Tax Credits/Refunds (BIR Form No. 1914).

40 Petitioners Certificate of Filing of Amended Articles of Incorporation with attached Articles of Incorporation, duly issued by the Securities and Exchange Commission on 18 December 2017.

41 Petitioner's BIR Certificate of Registration (BIR Form No. 2303) dated 25 March 2013.

42 Memorandum from SEC Corporation Finance Department addressed to the Commission En Banc, with the subject "*AEON CREDIT SERVICE (PHILIPPINES) INC. Re: Application for a Certificate of Authority to operate as a Financing Company*", dated 13 February 2013.

43 Certificate of Authority No. 1055, issued by the SEC Corporation Finance Department on 14 February 2013, authorizing Petitioner to operate as a Financing Company.

44 Judicial Affidavit of Mr. Glen Yves Berdan dated 28 June 2018.

45 Signature of Mr. Glenn Yves Berdan on his Judicial Affidavit dated 28 June 2018.

46 Supplemental Judicial Affidavit of Glen Yves Berdan dated 27 July 2018.

47 Signature of Mr. Glenn Yves Berdan on his Supplemental Judicial Affidavit dated 27 July 2018.

48 Judicial Affidavit of the Court-commissioned Independent Certified Public Accountant ("**ICPA**"), Ms. Rose Marie S. Nacpil, dated 26 February 2019.

49 Signature of the ICPA on her Judicial Affidavit dated 26 February 2019.

50 Supplemental Judicial Affidavit of the ICPA, Ms. Rose Marie S. Nacpil, dated 26 March 2019.

51 Signature of the ICPA on her Supplemental Judicial Affidavit dated 26 March 2019.

52 Amended ICPA Report filed on 13 February 2019.

53 Signature of the ICPA on her Amended ICPA Report filed on 13 February 2019.

54 Portable USB device containing schedules and various, voluminous documents pre-marked as Exhibits "**P-19**" to "**P-201**" (inclusive of sub-markings), in support of the Amended ICPA Report.

55 Supplemental ICPA Report filed on 19 March 2019.

56 Signature of the ICPA on her Amended ICPA Report filed on 19 March 2019.

57 Portable USB device containing schedules and various, voluminous documents pre-marked as Exhibits "**P-202**" to "**P-267**" (inclusive of sub-markings), in support of the Amended ICPA Report.

58 Various voluminous documents examined and pre-marked by the ICPA and submitted in support of the Amended ICPA Report and Supplemental ICPA Report.

59 Resolution dated 23 July 2019, Division Docket, supra, Volume III, pp. 873-878.

60 Filed on 30 August 2019, id., pp. 879-907.

61 See Order dated on 18 September 2019, id., p. 948.

ISSUES

As shown in the parties' JSFI, the issues submitted to the Court for resolution are as follows:

I.
WHETHER THE HONORABLE COURT HAS JURISDICTION TO ENTERTAIN THE INSTANT PETITION.

II.
WHETHER PETITIONER IS ENTITLED TO THE REFUND OF THE AMOUNT REPRESENTING ITS OVERPAID PERCENTAGE TAXES FOR CY ENDING ON 31 DECEMBER 2016.

ARGUMENTS

As earlier mentioned, petitioner claimed that it is entitled to a tax refund or TCC in the amount of ₱3,982,780.58, representing GRT paid mistakenly on accrued but unrealized income in CY 2015. The same amounts allegedly were again included in its taxed gross receipts for CY 2016 (together with other accrued income in the form of processing fees and interest on loans not actually or constructively received in the same year).

Petitioner argued further that, as a non-bank financial institution, it is subject to 5% percentage tax on its gross receipts; including those derived from instruments with maturity periods of five (5) years or less (under Section 122[62] of the NIRC of 1997, as amended by Republic Act (**RA**) 9238 and BIR Revenue Regulation (**RR**) 09-04).[63] It likewise contended that, under Revenue Memorandum Circulars (**RMC**) 51-02[64], GRT shall only apply to "income actually or

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[62] **SEC. 122.** *Tax on Other Non-Bank Finance Intermediaries.* – There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from interest, commissions, and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule[.]

[63] Implementing Certain Provisions of Republic Act No. 9238, Re-Imposing the Gross Receipts Tax on Banks and Non-Bank Financial Intermediaries Performing Quasi-Banking Functions and Other Non-Bank Financial Intermediaries Beginning January 1, 2004.

[64] "Clarifies the imposition of the Gross Receipts Tax on items of gross income subject to final withholding tax as well as the tax base thereof" issued on 15 November 2002.

constructively received during a taxable period"; thus, the error in its computation of gross receipts.

Although respondent failed to file his memorandum, he earlier countered (in his Answer to petitioner's complaint) the absence of jurisdiction on the part of this Court after petitioner allegedly failed to exhaust administrative remedies. Assuming that this Court has jurisdiction, tax laws must be construed strictly against petitioner for its failure to exhaust administrative remedies. He maintained that its administrative claim before the BIR has yet to be acted upon.

RULING OF THE COURT

The petition is partly meritorious.

Once again, this Court is called to determine the propriety of a tax refund. Expectedly, respondent CIR urges the Court to strictly interpret laws against herein petitioner taxpayer. Respondent invokes the principle laid down by the Supreme Court in *Philippine Geothermal Inc. v. Commissioner of Internal Revenue*[65] which states that, "...[t]ax refunds are in the nature of tax exemptions, and are to be construed *strictissimi juris* against the entity claiming the same". With this in view and before disposing of the other issue/s presented for the Court's determination, we deem it best to differentiate between the two kinds of tax refunds.

In *Commissioner of Internal Revenue v. Mirant Pagbilao Corporation*[66], the Supreme Court discussed the difference in treatment between tax refunds which are in the nature of exemptions and tax refunds resulting from illegally collected or erroneously paid taxes in the following wise:

65 G.R. No. 154028, 29 July 2005.

66 G.R. No. 172129, 12 September 2008; See also: *Atlas Consolidated Mining and Development Corporation v. Commissioner of Internal Revenue*, G.R. No. 159490, 18 February 2008; *Commissioner of Internal Revenue v. Solidbank Corp.*, G.R. No. 148191, 25 November 2003; *Commissioner of Internal Revenue v. Fireman's Fund Insurance Co.*, No. L-30644, 09 March 1987; and, *Commissioner of Internal Revenue v. Fortune Tobacco Corporation*, G.R. Nos. 167274-75, 21 July 2008; Emphasis and underscoring supplied.

> ...
>
> ... Verily, a claim for tax refund may be based on a statute granting tax exemption, or, as *Commissioner of Internal Revenue v. Fortune Tobacco Corporation* would have it, the result of legislative grace. In such case, the claim is to be construed *strictissimi juris* against the taxpayer, meaning that the claim cannot be made to rest on vague inference. Where the rule of strict interpretation against the taxpayer is applicable as the claim for refund partakes of the nature of an exemption, the claimant must show that he clearly falls under the exempting statute. On the other hand, a tax refund may be, as usually it is, predicated on tax refund provisions allowing a refund of erroneous or excess payment of tax. **<u>The return of what was erroneously paid is founded on the principle of *solutio indebiti*</u>**, a basic postulate that no one should unjustly enrich himself at the expense of another. The caveat against unjust enrichment covers the government. And as decisional law teaches, a claim for tax refund proper, as here, **<u>necessitates only the preponderance-of-evidence threshold like in any ordinary civil case</u>**.
>
> ...

Petitioner's claim is based on the alleged erroneously paid GRT hence, the case falls within the second classification of tax refunds. As such, respondent should not expect the Court to burden petitioner with clear and convincing proof of its supposed entitlement to the refund. In cases of this nature, the Supreme Court itself had declared in the afore-cited case that mere preponderance of evidence shall suffice. With that said, the Court shall now proceed in its discussion of the present petition's merits.

THIS COURT HAS JURISDICTION OVER THE CASE

Respondent insists repeatedly that this Court is bereft of jurisdiction over petitioner's claim for refund since it allegedly failed to exhaust administrative remedies before filing the present petition. He contends that he has yet to decide on petitioner's claim for refund that was filed on 07 February 2018 and in the absence of his decision, there was nothing to elevate to the CTA.

We do not agree.

Sections 204 and 229 of the NIRC of 1997, as amended, provide for the refund of **erroneously or illegally** collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund.[67] Thusly:

> ...
>
> **SEC. 204.** *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* – The Commissioner may –
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> ...
>
> (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.[68]
>
> ...

While, Section 229 of the 1997 NIRC, 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 written claim therefor, refund or credit any tax,

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67 *CBK Power Company Limited v. Commissioner of Internal Revenue*, 750 Phil. 748 (2015).
68 Emphasis supplied.

> where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid.[69]
>
> ...

From the foregoing, it is crystal clear that, in cases of recovery of erroneously paid or illegally collected tax, *both* the claim for refund and the filing of the suit should be made before the expiration of two (2) years from the *date of payment* regardless of any supervening cause that may arise after payment. We cannot give any other interpretation to said statute as it is already unequivocal and unambiguous.

Moreover, unlike in a refund filed under Section 112(D)[70] of the NIRC of 1997, as amended, where the provision strictly provides for 120+30 day periods (that is, giving the Commissioner 120 days within which to decide before a taxpayer is given a period of 30 days within which to appeal with this Court); nothing in Sections 204 and 229 of the NIRC of 1997, as amended, would indicate that the BIR must first act upon the taxpayer's administrative claim before the taxpayer can file its judicial claim or that the taxpayer is barred from going to court if not notified of the BIR's decision.

In *CBK Power Company Limited v. Commissioner of Internal Revenue*[71] (**CBK Power**), the Supreme Court ruled that CBK Power complied with the two (2) years prescriptive period requirement under Sections 204 and 229 of the NIRC of 1997, as amended, for filing of its administrative and judicial claims for refund or tax credit, when it filed both claims five (5) days apart, to wit:

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69 Emphasis supplied.

70 **Sec. 112**. *Refunds or Tax Credits of Input Tax.* —
(A) . . .
. . .
(C) *Period within which Refund or Tax Credit of Input Taxes shall be Made.* – In proper cases, the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents in support of the application filed in accordance with Subsection (A) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty day-period, appeal the decision or the unacted claim with the Court of Tax Appeals. (Emphasis supplied)

71 Supra at note 67.

...

The Commissioner laments that he was deprived of the opportunity to act on the administrative claim for refund of excess final withholding taxes covering taxable year 2003 which CBK Power filed on March 4, 2005, a Friday, then the following Wednesday, March 9, 2005, the latter hastily elevated the case on petition for review before the CTA. He argues that the failure on the part of CBK Power to give him a reasonable time to act on said claim is violative of the doctrines of exhaustion of administrative remedies and of primary jurisdiction.

For its part, CBK Power maintains that it would be prejudicial to wait for the Commissioner's ruling before it files its judicial claim since it only has 2 years from the payment of the tax within which to file both its administrative and judicial claims.

The Court rules for CBK Power.

Sections 204 and 229 of the NIRC pertain to the refund of erroneously or illegally collected taxes. Section 204 applies to administrative claims for refund, while Section 229 to judicial claims for refund. In both instances, the taxpayer's claim must be filed within two (2) years from the date of payment of the tax or penalty. However, Section 229 of the NIRC further states the condition that a judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner...

...

Indubitably, CBK Power's administrative and judicial claims for refund of its excess final withholding taxes covering taxable year 2003 were filed within the two-year prescriptive period, as shown by the table below:

WHEN FINAL INCOME TAXES WERE WITHHELD	WHEN REMITTANCE RETURN FILED	LAST DAY OF THE 2-YEAR PRESCRIPTIVE PERIOD	WHEN ADMINISTRATIVE CLAIM WAS FILED	WHEN PETITION FOR REVIEW WAS FILED
February 2003	03/10/03	03/10/05	March 4, 2005	03/09/05
May 2003	06/10/03	06/10/05	March 4, 2005	03/09/05

With respect to the remittance filed on March 10, 2003, the Court agrees with the ratiocination of the CTA *En Banc in* debunking the alleged failure to exhaust administrative remedies. Had CBK Power awaited the action of the Commissioner on its claim for refund prior to taking court action knowing fully well that the prescriptive period was about to end, it would have lost not only its right to seek judicial recourse but its right to recover the final withholding

taxes it erroneously paid to the government thereby suffering irreparable damage.

Also, while it may be argued that, for the remittance filed on June 10, 2003 that was to prescribe on June 10, 2005, CBK Power could have waited for, at the most, three (3) months from the filing of the administrative claim on March 4, 2005 until the last day of the two-year prescriptive period ending June 10, 2005, that is, if only to give the BIR at the administrative level an opportunity to act on said claim, the Court cannot, **on that basis alone, deny a legitimate claim that was, for all intents and purposes, timely filed in accordance with Section 229 of the NIRC. There was no violation of Section 229 since the law, as worded, only requires that an administrative claim be priorly filed.**

In the foregoing instances, attention must be drawn to the Court's ruling in *P.J. Kiener Co., Ltd. v. David* (*Kiener*), wherein it was held that in no wise does the law, i.e., Section 306 of the old Tax Code (now, Section 229 of the NIRC), **imply that the Collector of Internal Revenue first act upon the taxpayer's claim, and that the taxpayer shall not go to court before he is notified of the Collector's action. In *Kiener*, the Court went on to say that the claim with the Collector of Internal Revenue was intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow, *viz.*:**

> The controversy centers on the construction of the aforementioned section of the Tax Code which reads:
>
> > **SEC. 306.** ***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 excessive or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Collector of Internal Revenue; 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 begun after the expiration of two years from the date of payment of the tax or penalty.
> >
> > The preceding provisions seem at first blush conflicting. It will be noticed that, whereas the first sentence requires a claim to

> be filed with the Collector of Internal Revenue before any suit is commenced, the last makes imperative the bringing of such suit within two years from the date of collection. But the conflict is only apparent and the two provisions easily yield to reconciliation, which it is the office of statutory construction to effectuate, where possible, to give effect to the entire enactment.

> To this end, and bearing in mind that the Legislature is presumed to have understood the language it used and to have acted with full idea of what it wanted to accomplish, it is fair and reasonable to say without doing violence to the context or either of the two provisions, that by the first is meant simply that the Collector of Internal Revenue shall be given an opportunity to consider his mistake, if mistake has been committed, before he is sued, but not, as the appellant contends that pending consideration of the claim, the period of two years provided in the last clause shall be deemed interrupted. **Nowhere and in no wise does the law imply that the Collector of Internal Revenue must act upon the claim, or that the taxpayer shall not go to court before he is notified of the Collector's action. x x x. We understand the filing of the claim with the Collector of Internal Revenue to be intended primarily as a notice of warning that unless the tax or penalty alleged to have been collected erroneously or illegally is refunded, court action will follow** x x x.[72]

> ...

Applying the doctrine in the case of *CBK Power*, this Court held in *ABB, Inc. v. Commissioner of Internal Revenue*[73] that a taxpayer cannot be faulted for filing its judicial claim for refund under Section 229 of the NIRC of 1997, as amended, <u>without waiting</u> for the BIR to act on its administrative claim under Section 204 of the NIRC of 1997, as amended, as follows:

> ...

> Lastly, respondent claims that she was deprived of the opportunity to study petitioner's claim for refund. The Court does not agree. In the consolidated cases of *CBK Power Company Limited vs. Commissioner of Internal Revenue ("CIR")* and *CIR vs. CBK Power Company Limited*, the Supreme Court held that pursuant to *Sections 204 and 229 of the 1997 NIRC*, as amended, the taxpayer's claim for refund must be filed within two (2) years from the date of payment of the tax or penalty. *Section 229* further imposes the condition that a

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[72] Emphasis supplied and in the original text.

[73] CTA Case Nos. 8563, 8594 & 8674, Decision dated 11 May 2016 and Resolution dated 08 August 2016. The CTA *En Banc* affirmed in its Decision dated 13 March 2018 (CTA EB Case No. 1501).

judicial claim for refund may not be maintained until a claim for refund or credit has been duly filed with the Commissioner.

Petitioner cannot be faulted for filing its judicial claim for refund without waiting for respondent to act on its administrative claim. The law is clear, 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, and 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.

In other words, what the law requires is that the administrative claim for refund must be filed before a judicial claim for refund and both must be filed within two (2) years from date of payment.[74]

...

From the foregoing principles, petitioner's administrative and judicial claims for refund of its excess GRT covering taxable year 2016 were timely filed, as shown by the table below:

Month	Date of Payment	Amount of Income	Amount of Payment	2-Year Prescriptive Period	Date of Admin. Claim[75]	Date of Judicial Claim
January[76]	2/19/2016	21,308,421.29	1,065,421.06	2/19/2018	2/7/2018	2/19/2018
February[77]	3/18/2016	21,788,579.86	1,089,428.99	3/18/2018		
March[78]	4/20/2016	22,616,802.19	1,130,840.11	4/20/2018		
April[79]	5/20/2016	23,815,493.60	1,190,774.68	5/20/2018		
May[80]	6/21/2016	27,499,439.57	1,374,971.98	6/21/2018		
June[81]	7/20/2016	32,430,808.00	1,621,540.40	7/20/2018		
July[82]	8/18/2016	37,273,925.56	1,863,696.28	8/18/2018		
August[83]	9/20/2016	41,913,421.51	2,095,671.08	9/20/2018		
September[84]	10/18/2016	46,932,926.12	2,346,646.31	10/18/2018		
October[85]	11/16/2016	53,090,115.09	2,654,505.75	11/16/2018		

74 Emphasis supplied and italics in the original.
75 Exhibits "P-9" and "P-10".
76 Exhibits "P-5" and "P-6".
77 Exhibits "P-5-a" and "P-6-a".
78 Exhibits "P-5-b" and "P-6-b".
79 Exhibits "P-5-c" and "P-6-c".
80 Exhibits "P-5-d" and "P-6-d".
81 Exhibits "P-5-e" and "P-6-e".
82 Exhibits "P-5-f" and "P-6-f".
83 Exhibits "P-5-g" and "P-6-g".
84 Exhibits "P-5-h" and "P-6-h".
85 Exhibits "P-5-i" and "P-6-i".

November[86]	12/19/2016	59,135,322.20	2,956,766.11	12/19/2018		
December[87]	01/18/2017	41,745,542.86	2,087,277.14	1/18/2019		
TOTAL		429,550,797.85	21,477,539.89			

Should petitioner await the final action of the Commissioner on its claim for refund or tax credit certificate, prior to taking a court action, knowing fully well that the prescriptive period for the January 2016 return is about to end; petitioner, not only loses its right to seek judicial recourse, but it will likewise suffer irreparable damage as it will lose the right to recover the refund being claimed.[88]

Moreover, as regards the claim for refund on the February to December 2016 tax returns, this Court cannot deny a legitimate claim, considering that the claim was timely and properly filed in accordance with Section 229 of the NIRC of 1997, as amended.

PETITIONER IS PARTIALLY ENTITLED TO A REFUND OF OVERPAID GROSS RECEIPT TAX.

The Court shall now proceed to determine whether petitioner is entitled to a tax refund in the amount of ₱3,982,780.58, allegedly representing its overpaid GRT for the CY ended 31 December 2016.

It is well-settled that the following requirements must be complied with in order to prove a claim for refund of taxes erroneously paid or illegally collected under Sections 204 and 229 of the NIRC of 1997, as amended:

> ...
>
> (1) That the taxpayer should **file a written claim for refund or tax credit with the BIR Commissioner within two (2) years from the date of payment of the tax or penalty,** non-compliance with which the latter is precluded from exercising his authority thereon;[89]

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86 Exhibits "P-5-j" and "P-6-j".
87 Exhibits "P-5-k" and "P-6-k".
88 See *Commissioner of Internal Revenue v. Univation Motor Philippines, Inc.*, G.R. No. 231581, 10 April 2019.
89 *Commissioner of Internal Revenue v. Victorias Milling Co., Inc., et al.*, G.R. No. L-24108, 03 January 1968.

(2) That, **if denied or not acted upon within said period, the petition for refund be filed with the CTA within 30 days from receipt of the denial AND within said two (2)-year period from the date of payment of the tax or penalty regardless of any supervening cause**, otherwise, the claim for refund shall have prescribed;[90]

(3) The claim for refund must be a **categorical demand for reimbursement**;[91] and,

(4) There must be proof of payment of the erroneously or illegally collected taxes.[92]

...

As previously stated, petitioner had complied faithfully with the first, second and third requisites by filing the "Administrative Claim for Refund/Issuance of Tax Credit Certificate"[93] with respondent on 07 February 2018, accompanied with the "Application for Tax Credits/Refunds (BIR Form No. 1914)"[94] and its subsequent judicial claim for refund with the Court on 19 February 2018, which was filed within the reglementary period of two (2) years from the final payment of GRT (that is, 18 January 2017).

As to the fourth and last requisite, petitioner sufficiently had proved that it paid the total amount of GRT for the CY 2016 in the amount of ₱21,477,539.89 pertaining to petitioner's declared income of ₱429,550,797.85; through its e-filed Monthly Percentage Tax Returns (BIR Form No. 2551-M)[95] and the corresponding eFPS Payment Details.[96] However, in order to fully satisfy the fourth requisite, petitioner needs to likewise prove that there was an erroneous or illegal payment. Petitioner argues that it overpaid GRT for the CY 2016 because it erroneously computed its monthly percentage tax for CY 2016 on the basis of its revenue from its financing activities – **(i)** interest income and **(ii)** processing fee components which were reported on accrual basis.[97]

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90 *Gibbs v. Commissioner of Internal Revenue*, 107 Phil. 232 (1960).
91 *Bermeho v. The Collector of Internal Revenue*, 87 Phil. 96 (1950).
92 *Aguilar v. Commissioner of Internal Revenue*, CA-G.R. SP-16432, 30 March 1990.
93 Exhibit "P-9".
94 Exhibit "P-10".
95 Exhibits "P-5" to "P-5-k".
96 Exhibits "P-6" to "P-6-k".
97 Petitioner's Memorandum, Division Docket, Volume III, p. 884.

To begin, the Court has to nuance the definition of gross receipts to determine what it is exactly. It is undisputed that petitioner is subject to GRT under Section 122[98] of the Tax Code, as amended, as it is classified as a non-bank financial intermediary not engaged in quasi-banking functions as evidenced by the Certificate of Authority issued by the Securities and Exchange Commission.[99]

In *China Banking Corporation v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue,*[100] the Supreme Court held:

> ...
> As commonly understood, the term "gross receipts" **means the entire receipts without any deduction**. Deducting any amount from the gross receipts changes the result, and the meaning, to net receipts. Any deduction from gross receipts is inconsistent with a law that mandates a tax on gross receipts, unless the law itself makes an exception. As explained by the Supreme Court of Pennsylvania in *Commonwealth of Pennsylvania v. Koppers Company, Inc.,* —
>
> Highly refined and technical tax concepts have been developed by the accountant and legal technician primarily because of the impact of federal income tax legislation. However, this in no way should affect or control the normal usage of words in the construction of our statutes; and we see nothing that would require us not to include the proceeds here in question in the gross receipts allocation unless statutorily such inclusion is prohibited. **Under the ordinary basic methods of handling accounts,**

---

98 **SEC. 122.** *Tax on Other Non-Bank Finance Intermediaries.* – There shall be collected a tax of five percent (5%) on the gross receipts derived by other non-bank financial intermediaries doing business in the Philippines, from interest, commissions, and discounts from lending activities, as well as income from financial leasing, shall be taxed on the basis of remaining maturities of the instruments from which such receipts are derived, in accordance with the following schedule:

Maturity period is five (5) years or less	5%
Maturity period is more than five (5) years	1%

Provided, however, That in case the maturity period is shortened thru pretermination, then the maturity period shall be reckoned to end as of the date of pretermination for purposes of classifying the transaction and the correct rate shall be applied accordingly.

Provided, finally, That the generally accepted accounting principles as may be prescribed by the Securities and Exchange Commission for other non-bank financial intermediaries shall likewise be the basis for the calculation of gross receipts.

Nothing in this Code shall preclude the Commissioner from imposing the same tax herein provided on persons performing similar financing activities.

99 Exhibit "P-14".

100 G.R. No. 146749, 10 June 2003; Emphasis in the original text and supplied.

the term gross receipts, in the absence of any statutory definition of the term, must be taken to include the whole total gross receipts without any deductions. x x x.

Likewise, in *Laclede Gas Co. v. City of St. Louis*, the Supreme Court of Missouri held:

The word 'gross' appearing in the term 'gross receipts,' as used in the ordinance, must have been and was there used as the direct antithesis of the word 'net.' **In its usual and ordinary meaning 'gross receipts' of a business is the whole and entire amount of the receipts without deduction.** x x x On the contrary 'net receipts' usually are the receipts which remain after deductions are made from the gross amount thereof of the expenses and cost of doing business, including fixed charges and depreciation. Gross receipts become net receipts after certain proper deductions are made from the gross. And in the use of the words 'gross receipts,' the instant ordinance, of course, precluded plaintiff from first deducting its costs and expenses of doing business, etc., in arriving at the higher base figure upon which it must pay the 5% tax under this ordinance."

...

Moreover, for value-added tax (**VAT**) purposes, which is also a kind of business tax, the Tax Code defines "gross receipts" as follows:

...

Section 108. *Value-Added Tax on Sale of Services and Use or Lease of Properties. –*

(A) *Rate and Base of Tax.* – There shall be levied, assessed and collected, a value-added tax equivalent to ten percent (10%) [now 12% per RMC. 7-2006 (Jan. 31, 2006) effective February 1, 2006)] of gross receipts derived from the sale or exchange of services, including the use or lease of properties; *Provided*, That the President, upon the recommendation of the Secretary of Finance, shall, effective January 1, 2006, raise the rate of value-added tax to twelve percent (12%), after any of the following conditions has been satisfied:

...

The term '**gross receipts**' means the **total amount of money or its equivalent representing** the contract price, compensation, service fee, rental or royalty, including the amount charged for materials supplied with the services and deposits and advanced payments **actually or constructively received** during the

> taxable quarter for the services performed or to be performed for another person, excluding value-added tax.[101]
>
> ...

The BIR further clarified in RMC 51-02[102] that the tax base to be used in imposing GRT under Sections 121 and 122 of the Tax Code, as amended, to wit:

> ...
> The gross receipts tax shall be based on the amount of income **actually or constructively received during a taxable period**, which is equivalent to the economic benefit derived from the income payment...[103]
>
> ...

The Supreme Court differentiated the concepts of constructive receipt, actual receipt and accrual in case of *Commissioner of Internal Revenue v. Solidbank Corporation,*[104] to wit:

> ...
> By analogy, we apply to the receipt of income the rules on *actual* and *constructive* possession provided in Articles 531 and 532 of our Civil Code.
>
> Under Article 531:
>
> "Possession is acquired by the **material occupation of a thing or the exercise of a right**, or by the fact that it is subject to the action of our will, or **by the proper acts and legal formalities established for acquiring such right.**"
>
> Article 532 states:
>
> **"Possession may be acquired by the same person who is to enjoy it, by his legal representative, by his agent, or by any person without any power whatever**; but in the last case, the possession shall not be considered as acquired until the person in whose name the act of possession was executed has ratified the same, without prejudice

101 Emphasis supplied.
102 Supra at note 64.
103 Emphasis supplied.
104 G.R. No. 148191, 25 November 2003.

to the juridical consequences of *negotiorum gestio* in a proper case."

The last means of acquiring possession under Article 531 refers to juridical acts -- the acquisition of possession by sufficient title – to which the law gives the force of acts of possession. Respondent argues that only items of income *actually* received should be included in its gross receipts. It claims that since the amount had already been withheld at source, it did not have *actual* receipt thereof.

We clarify. Article 531 of the Civil Code clearly provides that the acquisition of the right of possession is through the proper acts and legal formalities established therefor. The withholding process is one such act. There may not be *actual* receipt of the income withheld; however, as provided for in Article 532, **possession by any person without any power whatsoever shall be considered as acquired when ratified by the person in whose name the act of possession is executed.**

...

Accrual should not be confused with the concept of *constructive* possession or receipt as earlier discussed. Petitioner correctly points out that **income that is merely *accrued* -- earned, but not yet received -- does not form part of the taxable gross receipts; income that has been received, albeit *constructively*, does.**[105]

...

Based on the foregoing, physical receipt may either be actual or constructive.[106] In contrast, accrual pertains to income already earned but not yet received, neither physically nor constructively.[107]

Applying these principles to the instant case, the tax base for GRT purposes should be the <u>income actually or constructively received by petitioner</u>. Considering that the amount of income subjected to GRT for the CY 2016 was on accrual basis, petitioner erroneously computed its GRT for the concerned taxable year.

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105 Citation omitted, emphasis supplied; italics in the original text.

106 *China Banking Corporation v. Court of Appeals, Court of Tax Appeals, and Commissioner of Internal Revenue*, supra at note 100.

107 Id.

Per independent verification of the voluminous reports, official receipts, bank statements, schedules, and documents submitted by petitioner to substantiate its actual gross receipts for the taxable year, the Court finds the revised actual gross receipts as follows:

Exhibit No.	Description	Amount
P-39 - 185 ax and P-27 - 38	Interest Received that were corroborated by official receipts and daily cash collection reports	286,033,268.95
P-18	Processing Fees Collected in 2016 Processing Fees[108] 53,740,814 Processing Fee Receivable as of 12/31/2015[109] 58,323 Total 53,799,137 Less: Processing Fee Receivable as of 12/31/2016[110] (5,010,091) **Processing Fees Collected in 2016** **48,789,046**	48,789,046.00
P-2	Penalty and other charges (Note 17)	25,124,844.00
P-2	Others (Note 17)	492,234.00
TOTAL		360,439,392.95

In calculating petitioner's gross receipts, the Court included the income under the entry 'Others' as disclosed under Note 17 of petitioner's AFS[111]. This is because petitioner did not adduce any evidence to prove its nature and such is *not* an income from petitioner's lending activities. As provided under Section 122 of the NIRC of 1997[112], as amended, all other items treated as gross income from lending activities shall be subject to GRT.

Moreover, the Court disallowed petitioner's claimed deduction from its gross receipts for CY 2016 in the amount of ₱10,051,697.84. According to petitioner, the said amount had already been subjected to GRT in CY 2015, as follows:

---

108 Exhibit "P-2", supra at note 5, p. 709.
109 Id., p. 704.
110 Id.
111 Id., p. 710.
112 Supra at note 98.

Description	Amount
Income earned in 2015 but collected in 2016	7,998,966.66
Receivables from petitioner's third-party collection agencies/authorized payment center (PC) which were earned in CY 2015 but which were actually collected in CY 2016	2,052,731.18
TOTAL	**10,051,697.84**

To convince the Court, petitioner provided its 2015 Monthly Percentage Tax Return (BIR Form No. 2551M) with the corresponding eFPS Payment Details which could prove the total amount of GRT paid for CY 2015 in the amount of ₱8,458,519.79 as follows:

Month	Gross Receipts	Amount of Payment
January[113]	8,997,646.04	449,882.30
February[114]	9,703,118.12	485,155.91
March[115]	10,305,746.36	515,287.32
April[116]	11,109,060.93	555,453.05
May[117]	12,068,299.84	603,414.99
June[118]	13,207,471.45	660,373.57
July[119]	14,534,536.52	726,726.83
August[120]	15,486,413.49	774,320.67
September[121]	16,591,715.19	829,585.76
October[122]	17,761,967.77	888,098.39
November[123]	19,358,257.85	967,912.89
December[124]	20,046,162.16	1,002,308.11
TOTAL	**169,170,395.72**	**8,458,519.79**

Unfortunately, the amount of gross receipts in 2015 does not tally with petitioner's total accrued income for CY 2015 reflected in its 2015 Audited Financial Statements, to wit:

113 Exhibits "P-258" and "P-259".
114 Exhibits "P-258-a" and "P-259-a".
115 Exhibits "P-258-b" and "P-259-b".
116 Exhibits "P-258-c" and "P-259-c".
117 Exhibits "P-258-d" and "P-259-d".
118 Exhibits "P-258-e" and "P-259-e".
119 Exhibits "P-258-f" and "P-259-f".
120 Exhibits "P-258-g" and "P-259-g".
121 Exhibits "P-258-h" and "P-259-h".
122 Exhibits "P-258-i" and "P-259-i".
123 Exhibits "P-258-j" and "P-259-j".
124 Exhibits "P-258-k" and "P-259-k".

Description	Amount
Interest (Note 15)[125]	135,791,330.00
Processing fees (Note 15)[126]	20,658,537.00
Penalty and other charges (Note 17)[127]	12,815,694.00
TOTAL	**169,265,561.00**

Considering this difference between the amount of gross receipts subjected to GRT and the amount of gross receipts declared on accrual basis, the Court could not ascertain that the claimed deduction of ₱10,051,697.84 had already accrued in CY 2015 and that it was properly subjected to GRT in the same year.

In addition, it would appear that petitioner actually received the amount of ₱10,051,697.84 in 2016 thereby warranting its inclusion in ASCI's gross receipts for CY 2016. Hence, its inclusion becomes necessary for the purpose of determining the correct tax base to be subject of GRT for CY 2016.

Now, even assuming *arguendo* that the amount of ₱10,051,697.84 was already subjected to GRT in CY 2015, the instant case would still be an improper avenue to claim a refund thereof since, petitioner should have filed a separate claim for refund of the **erroneously paid 2015 GRT** made on the accrued ₱10,051,697.84.

In the instant case, in discharging its burden of proof, petitioner submitted voluminous reports, official receipts, bank statements, schedules and documents to prove its total actual gross receipts for the CY 2016 (which should be the basis in computing the GRT). Respondent, for his part, never disputed nor contested petitioner's testimonial and documentary evidence. In fact, he never presented any countervailing evidence at all. Nevertheless, even in the absence of opposition from respondent, petitioner's claim that the amount ₱10,051,697.84 should be deducted from its actual gross receipts remains unsubstantiated.

The disallowance of the ₱10,051,697.84 deduction having been sustained, petitioner should only be entitled to a refund in the reduced amount of ₱3,455,570.24 computed as follows:

125 Exhibit "P-213".
126 Id.
127 Id.

Description	Gross Receipts	GRT
Total Income Reported Per Monthly Percentage Returns for CY2016	429,550,797.85	21,477,539.89[128]
Total Gross Receipts for CY2016	360,439,392.95	18,021,969.65[129]
OVERPAID GROSS RECEIPTS TAX		**3,455,570.24**

WHEREFORE, in view of the foregoing, petitioner Aeon Credit Service (Philippines), Inc.'s Petition for Review filed on 19 February 2018 is **PARTIALLY GRANTED**. Accordingly, respondent Commissioner of Internal Revenue is **ORDERED TO REFUND** to petitioner the total amount of Three Million Four Hundred Fifty-Five Thousand Five Hundred Seventy Pesos and Twenty-Four Centavos (**₱3,455,570.24**), representing its overpayment of gross receipts tax (GRT) for the calendar year ending on 31 December 2016.

SO ORDERED.

JEAN MARIE A. BACORRO-VILLENA
Associate Justice

I CONCUR:

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

[128] Computation: ₱429,550,797.85 x 5% GRT = ₱21,477,539.89.
[129] Computation: ₱360,439,392.95 x 5% GRT = ₱18,021,969.65.

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
2nd Division Chairperson

CERTIFICATION

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