REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

FIRST DIVISION

TULLET PREBON (PHILIPPINES) INC., *Petitioner,*	**CTA Case No. 9562**
-versus-	Members: **DEL ROSARIO**, *P.J., Chairperson, and,* **MANAHAN**, *JJ.*
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: JUN 17 2021 10:15am

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DECISION

MANAHAN, J.:

This is a Petition for Review filed by petitioner Tullet Prebon (Philippines) Inc. ordering respondent to refund or issue in favor of petitioner a tax credit certificate in the amount of ₱10,786,046.53, representing the excess and unutilized creditable withholding taxes (CWTs) for calendar year (CY) ended December 31, 2014.[1]

THE PARTIES

Petitioner is a domestic corporation, duly organized and existing under Philippine laws, with principal office at 25th Floor, Rufino Pacific Tower, 6784 Ayala Avenue, Makati City.[2]

Respondent is the duly appointed Commissioner of Internal Revenue (CIR) vested under the law with the

[1] Summary of the Case, Pre-Trial Order dated April 11, 2018, Docket – Vol. 1, p. 309.
[2] Par. 2, Stipulation of Facts, *Joint Stipulation of Facts and Issues* (JSFI), Docket – Vol. 1, p. 292.

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authority to carry out the functions, duties, and responsibilities of said office, including *inter alia*, the power to decide, approve and grant refunds and/or tax credits of overpaid and erroneously paid or collected internal revenue taxes.[3]

FACTS

On February 12, 2016, petitioner filed with the Bureau of Internal Revenue (BIR) an administrative written claim for refund dated January 27, 2016 and an Application for Tax Credits /Refunds (BIR Form No. 1914),[4] requesting for the issuance of a tax credit certificate in the amount of ₱10,786,046.53, allegedly representing excess CWTs for CY ended December 31, 2014.

Due to the inaction of respondent, petitioner filed the instant Petition for Review on March 31, 2017.[5] The case was initially raffled to the Court's Third Division.

Respondent filed his *Answer* to the Petition for Review on August 4, 2017.[6]

The Pre-Trial Conference was set and held on February 20, 2018.[7] Prior thereto, petitioner filed its Pre-Trial Brief on

[3] Par. 1, Stipulation of Facts, JSFI, Docket – Vol. 1, p. 292.
[4] Exhibits "P-7" and "P-7-a", Docket – Vol. 2, pp. 767 to 774.
[5] Docket – Vol. 1, pp. 10 to 17.
[6] Docket – Vol. 1, pp. 82 to 92; cf: *Motion to Declare Respondent in Default*, Docket – Vol. 1, pp. 64 to 68; Records Verification dated July 31, 2017 issued by the Judicial Records Division of this Court, Docket – Vol. 1, p. 71; *Motion to Admit Attached Answer*, Docket – Vol. 1, pp. 72 to 76; Resolution dated August 9, 2017, Docket – Vol. 1, pp. 94 to 95; Resolution dated August 18, 2017, Docket – Vol. 1 p. 97, *Motion for Extension of Time to File Comment*, Docket – Vol. 1, pp. 98 to 100; *Comment/Opposition (Respondent's Motion to Admit Attached Answer)*, Docket – Vol. 1, pp. 101 to 110; Resolution dated September 15, 2017, Docket – Vol. pp. 112 to 113; Resolution dated October 10, 2017, Docket – Vol. pp. 115 to 118; *Motion for Reconsideration (Re: Resolution dated October 10, 2017)*, Docket – Vol. pp. 121 to 129; *Comment/Opposition (RE: Petitioner's Motion for Reconsideration of the Resolution dated October 10, 2017)*, Docket – Vol. 1, pp. 134 to 138; Resolution dated December 15, 2017, Docket – Vol. 1, pp. 141 to 145.
[7] *Notice of Pre-Trial Conference* dated October 13, 2017, Docket – Vol. 1, pp. 119 to 120; Minutes of the hearing held on, and Order dated, February 20, 2018, Docket – Vol. 1, pp. 286 and 288, respectively.

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February 15, 2018;[8] while respondent filed his Pre-Trial Brief on February 19, 2018.[9]

Thereafter, the parties submitted, on March 14, 2018, their Joint Stipulation of Facts and Issues (JSFI).[10] The Court then issued the Pre-Trial Order on April 11, 2018.[11]

On May 25, 2018, respondent transmitted the BIR Records for the instant case.[12]

During trial, petitioner presented documentary and testimonial evidence. Petitioner offered the testimonies of the following individuals, namely: (1) Mr. Philip G. Arabia,[13] petitioner's Finance Manager; and (2) Ms. Katherine O. Constantino,[14] the Court-commissioned Independent Certified Public Accountant (ICPA).[15]

The Report of the ICPA was submitted on June 20, 2018.[16]

Petitioner filed its Formal Offer of Evidence on August 17, 2018.[17] Respondent submitted his Comment (Re: Petitioner's Formal Offer of Evidence) on August 22, 2018.[18]

Pursuant to the Order dated September 25, 2018,[19] this case was transferred to the Court's First Division.

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[8] Docket – Vol. 1, pp. 146 to 160.
[9] Docket – Vol. 1, pp. 277 to 280.
[10] Docket – Vol. 1, pp. 292 to 297.
[11] Docket – Vol. 1, pp. 309 to 314.
[12] Respondent's *Compliance* dated May 18, 2018, Docket – Vol. 1, pp. 353 to 355.
[13] Exhibit "P-12", Docket – Vol. 1, pp. 164 to 174; Minutes of the hearing held on, and Order dated, May 21, 2018, Docket – Vol. 1, pp. 349, and 351 to 352, respectively.
[14] Exhibit "P-13", Docket – Vol. 2, pp. 654 to 673; Minutes of the hearing held on, and Order dated, July 23, 2018, Docket – Vol. 2, pp. 674 to 675.
[15] *Oath of Commission* dated May 21, 2018, Docket – Vol. 1, p. 350; Minutes of the hearing held on, and Order dated, May 21, 2018, Docket – Vol. 1, pp. 349 and 351 to 352, respectively.
[16] Exhibit "P-15", Docket – Vol. 1, pp. 360 to 387.
[17] Docket – Vol. 2, pp. 684 to 699.
[18] Docket – Vol. 2, pp. 796 to 798.
[19] Docket – Vol. 2, p. 803.

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In the Resolution dated November 23, 2018,[20] the Court admitted petitioner's Exhibits, except for Exhibits "P-2391" and "P-2657" to "P-2662", for failure to present the originals for comparison.

Petitioner then filed, on December 20, 2018, an Omnibus Motion (I) For Partial Reconsideration (Re: Resolution dated November 23, 2018); and (II) To Set Commissioner's Hearing.[21] Respondent failed to file his comment on the said Omnibus Motion.[22] In the Resolution dated May 21, 2019,[23] the Court granted petitioner's Omnibus Motion, and admitted Exhibits "P-2391", "P-2657", "P-2659", and "P-2661", as part of petitioner's evidence.

At the scheduled hearing on July 23, 2019, for the initial presentation of respondent's evidence, counsel for respondent manifested that she will no longer present any evidence for respondent.[24] Counsel for petitioner, however, manifested that she intends to present additional evidence in this case. Finding no merit in said manifestation of petitioner and considering the vehement objection of respondent's counsel, the Court denied the motion/manifestation.[25]

Undaunted, petitioner filed, on August 7, 2019, its Omnibus Motion (I) For Reconsideration (Re: Resolution made on July 23, 2019); (II) For Leave of Court to Present Additional Evidence; and (III) To Defer Submission of Memoranda,[26] praying that the Court: (1) reconsider the Order given in open court on July 23, 2019, denying petitioner's motion for leave of court to present additional evidence; (2) issue a Resolution allowing petitioner to present additional evidence and to recall its witness, Ms. Constantino; and (3) defer the filing of the parties' memoranda pending the resolution of this Omnibus Motion and the presentation of additional evidence.

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[20] Docket – Vol. 2, pp. 805 to 806.
[21] Docket – Vol. 2, pp. 807 to 812.
[22] Records Verification dated February 28, 2019 issued by the Judicial Records Division of this Court, Docket – Vol. 2, p. 822.
[23] Docket – Vol. 2, pp. 844 to 845.
[24] Minutes of the hearing held on, and Order dated, July 23, 2019, Docket – Vol. 2, pp. 846 to 848.
[25] *Id.*
[26] Docket – Vol. 2, pp. 850 to 857.

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Respondent submitted his *Memorandum* on August 20, 2019.[27]

On August 22, 2019, petitioner filed a Manifestation (With Motion to Resolve Omnibus Motion dated August 6, 2019),[28] praying for this Court (1) to issue a Resolution on petitioner's Omnibus Motion dated August 6, 2019, and (2) to allow the deferment of the submission of petitioner's Memorandum until the Court has resolved petitioner's Omnibus Motion dated August 6, 2019 or until petitioner has completed the presentation of its additional evidence. In the Resolution dated August 22, 2019,[29] the Court granted petitioner's Motion to Defer Submission of Memoranda and deferred the submission of the parties' memoranda until further orders. Thereafter, respondent filed on September 9, 2019 his Opposition (Re: Motion for Reconsideration of the Resolution dated 23 July 2019 and for Leave of Court to Present Additional Evidence).[30] In the Resolution dated December 20, 2019,[31] the Court denied petitioner's Omnibus Motion for lack of merit.

Subsequently, petitioner filed its Memorandum on June 30, 2020.[32]

The case was submitted for decision on July 16, 2020.[33]

ISSUES

We quote the sole issue set forth by the parties for the Court's resolution as follows.:

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[27] Docket – Vol. 2, pp. 858 to 868.
[28] Docket – Vol. 2, pp. 870 to 872.
[29] Docket – Vol. 2, pp. 875 to 876.
[30] Docket – Vol. 2, pp. 880 to 888.
[31] Docket – Vol. 2, pp. 895 to 899.
[32] Docket – Vol. 2, pp. 913 to 935; cf: *Motion for Extension of Time to File Memorandum*, Docket – Vol. 2, pp. 900 to 902; Resolution dated February 10, 2020, Docket – Vol. 2, p. 905; *Motion for Extension of Time to File Memorandum*, Docket – Vol. 2, pp. 906 to 908; Resolution dated June 5, 2020, Docket – Vol. 2, pp. 911 to 912.
[33] Resolution dated July 16, 2020, Docket – Vol. 2, p. 937.

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> "WHETHER OR NOT PETITIONER IS ENTITLED TO ITS CLAIM FOR REFUND OF EXCESS AND UNUTILIZED CWT FOR CY 2014 IN THE AMOUNT OF PHP10,786,047.00."[34]

Petitioner's arguments:

Petitioner primarily submits that it filed its administrative and judicial claims for refund of excess and unutilized CWTs for CY 2014 within the two (2)-year prescriptive period provided in Sections 204(C) and 229 of the 1997 National Internal Revenue Code (NIRC). Petitioner then avers that it fulfilled and complied with all the requirements essential for entitlement to the refund of excess and unutilized CWTs based on the relevant provisions of law and jurisprudence. Petitioner maintains that the amount of ₱10,786,047.00 being claimed as refund is duly substantiated by documentary evidence and that the evidence clearly shows that the income upon which the CWTs being claimed for refund were withheld was reported as part of the revenues declared in its Annual Income Tax Return (ITR). Lastly, petitioner avers that it did not exercise the option to carry over its excess and unutilized CWTs for CY 2015 to the succeeding taxable periods.

Respondent's counter-arguments:

Respondent argues that in order to be entitled to a refund or issuance of a tax credit certificate (TCC) of excess CWT, petitioner must prove compliance with Revenue Memorandum Order (RMO) No. 53-98 (Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which comprise a Complete Tax Docket) and Revenue Regulations (RR) No. 2-2006 (Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns with Claimed Tax Credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) whose income received have been subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments)

[34] Stipulated Issue for Resolution, JSFI, Docket – Vol. 1, p. 293.

to give support to the validity of its claim for unutilized creditable withholding tax for Calendar Years 2014.

RULING OF THE COURT

We find the instant Petition for Review partly meritorious.

Relevant laws, jurisprudence and BIR Revenue Regulations (RR) have established the following requirements in order for a taxpayer to be entitled to a refund or an issuance of tax credit certificate for unutilized excess CWT, to wit:

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

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

3. The income upon which the taxes were withheld must be included in the return of the recipient.[35]

Thus, it behooves petitioner to establish the foregoing requisites.

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

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

"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." (Emphasis supplied)

"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." (Emphases supplied)

The above-stated provisions mandate that the administrative and judicial remedies of filing a claim for refund of erroneously or excessively paid tax must be done within two (2) years from the date of payment of the tax.

While the law provides that the two-year period is counted from the date of payment of the tax, jurisprudence, however, clarified that the two-year prescriptive period to claim a refund actually commences to run, at the earliest on

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the date of the filing of the adjusted final return[36] because this is where the figures of the gross receipts and deductions have been audited and adjusted, reflective of the results of the operations of a business enterprise.[37] Thus, it is only when the Adjustment Return covering the whole year is filed that the taxpayer would know whether a tax is still due or a refund can be claimed based on the adjusted and audited figures.[38]

The present claim pertains to CY 2014 for which petitioner filed its Annual ITR on April 14, 2015.[39] Counted from this date, petitioner had until April 14, 2017 within which to file a claim for refund of its excess CWTs both in the administrative and judicial levels. Thus, petitioner timely filed with the BIR its administrative claim for refund on February 12, 2016,[40] and its judicial claim for refund through the instant Petition for Review on March 31, 2017,[41] thus, fulfilling the first requisite.

Relative to this issue, we do not subscribe to respondent's contention that petitioner violated the doctrine of exhaustion of administrative remedies; and that the taxpayer must pursue the administrative remedy until its appropriate conclusion before seeking judicial intervention.

In *CBK Power Company Limited vs. Commissioner of Internal Revenue, etseq.,*[42] the Supreme Court held:

> "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**

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[36] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019, citing *ACCRA Investments Corp. v. Court of Appeals*, 281 Phil. 1060, 1068-1069 (1991).

[37] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, supra; *Commissioner of Internal Revenue v. TMX Sales, Inc.*, 282 Phil. 199, 207 (1992).

[38] *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*, G.R. No. 231581, April 10, 2019 *Commissioner of Internal Revenue v. TMX Sales, Inc.*, supra.

[39] Exhibit "P-3", Docket – Vol. 2, pp. 710 to 717.

[40] Exhibits "P-7" and "P-7-a", Docket – Vol. 2, pp. 767 to 773 and 774, respectively.

[41] Docket – Vol. 1, pp. 10 to 17.

[42] G.R. Nos. 193383-84, and 193407-08, January 14, 2015.

> **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.** xxx
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> xxx while it may be argued that, for the remittance filed 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*[43] (*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** xxx." (Emphases supplied)

On the basis of the foregoing doctrinal pronouncements, petitioner did not violate the doctrine of exhaustion of administrative remedies when, after filing its administrative claim before the BIR, it filed the instant Petition for Review, within the two-year prescriptive period under Sections 204(C) and 229 of the 1997 NIRC, as amended, and without waiting for respondent's action on the said administrative claim.

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

> "Sec. 2.58.3. *Claim for tax credit or refund. —*

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[43] 92 Phil. 945 (1953).

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(B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**." *(Emphasis supplied)*

To prove the fact of withholding of the claimed CWTs in the amount of ₱10,786,046.53, petitioner presented its Schedule of Creditable Withholding Tax[44] and the related Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307)[45] for CY 2014. Upon examination of these documents, Ms. Constantino, the Court-commissioned ICPA, summarized her findings as follows:[46]

			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")	
Summary of Findings		**Annex Reference**	**CWT Amount**	**Income Payment Amount**	**CWT Amount**
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱6,054,211.30	₱62,784,694.09	₱6,054,211.30
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	Annex 2-b	1,568,497.07	19,554,853.15	1,430,952.92
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	2,095,830.16	28,331,714.61	2,493,880.69
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign	Annex 2-d	347,680.58	3,476,805.72	347,680.58

[44] Exhibit "P-17".
[45] Exhibit "P-46" to "P-449".
[46] Exhibit "P-15", pp. 12 to 13.

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			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")	
Summary of Findings		**Annex Reference**	**CWT Amount**	**Income Payment Amount**	**CWT Amount**
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign and EWT amount per certificate is lower than the schedule	Annex 2-e	432,724.74	2,716,641.15	271,664.12
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature and EWT amount per certificate is higher than the schedule	Annex 2-f	75,470.59	2,031,659.82	203,165.98
7	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's address and EWT amount per certificate is higher than the schedule	Annex 2-g	58,323.40	585,659.32	58,565.93
8	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's address and EWT amount per certificate is lower than the schedule	Annex 2-h	115,220.97	1,143,493.51	114,349.35
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN	Annex 2-i	1,073.14	10,731.40	1,073.14
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different Petitioner's name and without Petitioner's address	Annex 2-j	967.26	48,363.00	967.26
11	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without signature	Annex 2-k	6,224.01	311,200.57	6,224.01
12	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without year indicated on the certificate	Annex 2-l	6,595.20	329,760.00	6,595.20
13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) dated not within the period of claim	Annex 2-m	22,012.11	226,517.36	22,012.11

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			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")	
Summary of Findings		Annex Reference	CWT Amount	Income Payment Amount	CWT Amount
14	CWT without available supporting documents at the time of verification	Annex 2-n	1,216.00	-	-
TOTAL			**₱10,786,046.53**	**₱121,552,093.70**	**₱11,011,342.59**

Only the above claims which are classified under numbers 1 to 6 and summarized under Annexes 2-a to 2-f of the ICPA Report are properly supported with BIR Forms No. 2307. However, it is noted that there were instances wherein the CWT per certificate exceeded those reflected per schedule/ITR or vice-versa. Inasmuch as the basis of the instant claim for refund is the amount reflected in the Annual ITR as filed, we shall consider only the lesser of the two (2) amounts. Thus, petitioner complied with the second requisite but only to the extent of ₱10,275,809.67, broken down as follows:

Particulars	Annex Reference	Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Valid CWT
		CWT Amount	Income Payment Amount	CWT Amount	
1. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱6,054,211.30	₱62,784,694.09	₱6,054,211.30	₱6,054,211.30
2. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	Annex 2-b	1,568,497.07	19,554,853.15	1,430,952.92	1,430,952.92
3. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	2,095,830.16	28,331,714.61	2,493,880.69	2,095,830.16

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Particulars	Annex Reference	Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Valid CWT
		CWT Amount	Income Payment Amount	CWT Amount	
4. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign	Annex 2-d	347,680.58	3,476,805.72	347,680.58	347,680.58
5. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign and EWT amount per certificate is lower than the schedule	Annex 2-e	432,724.74	2,716,641.15	271,664.12	271,664.12
6. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature and EWT amount per certificate is higher than the schedule	Annex 2-f	75,470.59	2,031,659.82	203,165.98	75,470.59
Total		**₱10,574,414.44**	**₱118,896,368.54**	**₱10,801,555.59**	**₱10,275,809.67**

This brings us to the determination of the above-stated third requisite, which is whether or not the income upon which the subject taxes were withheld was included and reported by petitioner in its Annual ITR.

The certificates show that the claimed CWTs were withheld on income payments amounting to ₱121,552,093.70, representing gross commissions or service fees of customs, insurance, stock, real estate, immigration, and commercial brokers.

On the other hand, petitioner's Audited Financial Statements (AFS) for CY 2014[47] disclosed that the principal activity of petitioner is to operate as a broker between

[47] Exhibit "P-3-a", Note 15, Docket – Vol. 2, p. 751.

market participants in foreign exchange, deposits and fixed income securities, among others. Brokerage fees-net derived from such activity in 2014 amounted to ₱130,220,141.00.[48] This is the same amount reflected as "Net Sales/Revenues/Receipts/Fees" from Sales of Services[49] in petitioner's Annual ITR for CY 2014.

As ascertained by the ICPA, petitioner's revenue account subjected to withholding tax at the rates of 2%, 10%, or 15% was lodged under "Account 60005 – Gross Brokerage Name Give Up" which shows a total amount of ₱130,220,140.56[50] per petitioner's general ledger.

To verify that the ₱121,552,093.70 income payments per certificates indeed formed part of petitioner's declared income per Annual ITR, the ICPA traced in the revenue general ledger[51] of "Account 60005 – Gross Brokerage Name Give Up" the related income amount of the claimed CWT based on petitioner's Schedule of Creditable Withholding Taxes,[52] billing invoices,[53] and official receipts,[54] for CY 2014. The ICPA's detailed analysis is presented as follows:[55]

			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Per 2014 Gross Brokerage Account General Ledger (Exhibit "P-23")		CY 2013
Summary of Findings		Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱6,054,211.30	₱62,784,694.09	₱6,054,211.30	(₱58,823,416.30)	₱5,694,109.88	₱360,101.42
2	CWT duly supported by original Certificate	Annex 2-b	1,568,497.07	19,554,853.15	1,430,952.92	(19,221,589.29)	1,333,074.99	97,877.93

[48] Exhibit "P-3-a", Statements of Comprehensive Income for the year ended December 31, 2014 and Note 15, Docket – Vol. 2, pp. 722 and 751, respectively.
[49] Exhibit "P-3", Schedule 1, Docket – Vol. 2, p. 712.
[50] Exhibit "P-23", pp. 36 and 53; *₱170,500,718.69 less ₱40,280,578.13.*
[51] Exhibit "P-23".
[52] Exhibit "P-17".
[53] Exhibits "P-1151" to "P-1956".
[54] Exhibits "P-450" to "P-1150".
[55] Exhibit "P-15", pp. 12 to 13.

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			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Per 2014 Gross Brokerage Account General Ledger (Exhibit "P-23")		CY 2013
	Summary of Findings	**Annex Reference**	**CWT Amount**	**Income Payment Amount**	**CWT Amount**	**Revenue Amount**	**Corresponding CWT amount**	**Corresponding CWT amount**
	of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule							
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	2,095,830.16	28,331,714.61	2,493,880.69	(24,222,868.30)	2,021,788.05	74,042.11
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign	Annex 2-d	347,680.58	3,476,805.72	347,680.58	(3,021,445.67)	324,887.45	22,793.13
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign and EWT amount per certificate is lower than the schedule	Annex 2-e	432,724.74	2,716,641.15	271,664.12	(3,603,809.76)	265,269.14	6,394.98
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form	Annex 2-f	75,470.59	2,031,659.82	203,165.98	(1,083,362.27)	75,470.59	-

			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Per 2014 Gross Brokerage Account General Ledger (Exhibit "P-23")		CY 2013
Summary of Findings		Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
	2307) with rubber stamp signature and EWT amount per certificate is higher than the schedule							
7	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's address and EWT amount per certificate is higher than the schedule	Annex 2-g	58,323.40	585,659.32	58,565.93	(472,949.34)	47,294.93	11,028.47
8	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without Petitioner's address and EWT amount per certificate is lower than the schedule	Annex 2-h	115,220.97	1,143,493.51	114,349.35	(1,150,537.49)	114,349.35	-
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incorrect Petitioner's TIN	Annex 2-i	1,073.14	10,731.40	1,073.14	(8,067.58)	806.74	266.40
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different Petitioner's name and without	Annex 2-j	967.26	48,363.00	967.26	(48,362.80)	967.26	-

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			Per Schedule of Creditable Withholding Tax for CY 2014 (Exhibit "P-17")	Per creditable withholding tax certificates (Exhibits "P-46" to "P-449")		Per 2014 Gross Brokerage Account General Ledger (Exhibit "P-23")		CY 2013
	Summary of Findings	Annex Reference	CWT Amount	Income Payment Amount	CWT Amount	Revenue Amount	Corresponding CWT amount	Corresponding CWT amount
	Petitioner's address							
11	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without signature	Annex 2-k	6,224.01	311,200.57	6,224.01	(311,200.36)	6,224.01	-
12	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without year indicated on the certificate	Annex 2-l	6,595.20	329,760.00	6,595.20	(329,760.00)	6,595.20	-
13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) dated not within the period of claim	Annex 2-m	22,012.11	226,517.36	22,012.11	-	-	22,012.11
14	CWT without available supporting documents at the time of verification	Annex 2-n	1,216.00	-	-	(28,800.00)	1,216.00	-
TOTAL			₱10,786,046.53	₱121,552,093.70	₱11,011,342.59	(₱112,326,169.16)	₱9,892,053.58[56]	₱594,516.55

This Court is unable to verify the CWTs traced to CY 2013 Gross Brokerage Account General Ledger by the ICPA as petitioner failed to present the same, and thus, shall perforce be denied.

Correspondingly, petitioner was able to prove that the income payments of ₱109,976,491.59, with corresponding

56 With ₱0.01 difference.

CWTs of ₱9,714,600.10, formed part of the income declared in its Annual ITR for CY 2014, as shown below:[57]

Summary of Findings		Annex Reference	Per 2014 Gross Brokerage Account General Ledger (Exhibit "P-23")	
			Revenue Amount	Corresponding CWT amount
1	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 2-a	₱58,823,416.30	₱5,694,109.88
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is lower than the schedule	Annex 2-b	19,221,589.29	1,333,074.99
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) where EWT amount per certificate is higher than the schedule	Annex 2-c	24,222,868.30	2,021,788.05
4	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign	Annex 2-d	3,021,445.67	324,887.45
5	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature but with countersign and EWT amount per certificate is lower than the schedule	Annex 2-e	3,603,809.76	265,269.14
6	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with rubber stamp signature and EWT amount per certificate is higher than the schedule	Annex 2-f	1,083,362.27	75,470.59
	Total		**₱109,976,491.59**	**₱9,714,600.10**

[57] *Only the claims which are classified under numbers 1 to 6 and summarized under Annexes 2-a to 2-f of the ICPA Report.*

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In sum, petitioner complied with the three (3) requisites for refund of excess CWTs for CY 2014, but only up to the extent of ₱9,714,600.10.

Respondent contends, however, that the proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund of excess CWTs.

We disagree with respondent's contention.

In *Commissioner of Internal Revenue vs. Philippine National Bank*,[58] the Supreme Court ruled as follows:

> "Petitioner's posture that respondent is required to establish actual remittance to the Bureau of Internal Revenue deserves scant consideration. **Proof of actual remittance is not a condition to claim for a refund of unutilized tax credits. Under Sections 57 and 58 of the 1997 National Internal Revenue Code, as amended, it is the payor-withholding agent, and not the payee-refund claimant such as respondent, who is vested with responsibility of withholding and remitting income taxes**.
>
> This court's ruling in *Commissioner of Internal Revenue v. Asian Transmission Corporation*,[59] citing the Court of Tax Appeals' explanation, is instructive:
>
> **. . . proof of actual remittance by the respondent is not needed in order to prove withholding and remittance of taxes to petitioner**. Section 2.58.3(B) of Revenue Regulations No. 2-98 clearly provides that proof of remittance is the responsibility of the withholding agent and not of the taxpayer-refund claimant. It should be borne in mind by the petitioner that payors of withholding taxes are by themselves constituted as withholding agents of the BIR. The taxes they withhold are held in trust for the government. **In the event that the withholding agents commit fraud against the government by not remitting the taxes so withheld, such act should not prejudice herein respondent who has been duly withheld taxes by the withholding agents acting under government authority. Moreover, pursuant to Section 57 and 58 of the NIRC of 1997, as amended, the withholding of income tax and the remittance thereof to the BIR is the responsibility**

[58] G.R. No. 180290, September 29, 2014.
[59] G.R. No. 179617, January 19, 2011.

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> **of the payor and not the payee. Therefore, respondent . . . has no control over the remittance of the taxes withheld from its income by the withholding agent or payor who is the agent of the petitioner**. The Certificates of Creditable Tax Withheld at Source issued by the withholding agents of the government are *prima facie* proof of actual payment by herein respondent-payee to the government itself through said agents." (Emphases supplied)

Based on the foregoing jurisprudential pronouncement, proof of actual remittance of the taxes withheld to the BIR is not an indispensable requirement in claims for refund of this nature.

Respondent also argues that petitioner must prove compliance with Revenue Memorandum Order (RMO) No. 53-98 and RR No. 2-2006 to give support to the validity of its claim for unutilized CWT. He contends that petitioner miserably failed to substantiate its administrative claim for refund because it failed to submit the complete requirements presribed under RMO No. 53-98. According to respondent, failure on the part of the taxpayer to submit relevant documents in the administrative level, such as in the instant case, makes the administrative claim for tax refund or credit *pro-forma* and shall be construed as if no administrative claim was filed at all.

Respondent's position lacks merit.

A cursory reading of RMO No. 53-98[60] and RR No. 2-2006[61] shows that nowhere is it stated that the non-submission of the documents enumerated therein would *ipso facto* result in the denial of the claim for tax refund or credit. In fact, RR No. 2-2006 merely imposes a penalty of a fine for non-submission of the information or

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[60] Subject : Checklist of Documents to be Submitted by a Taxpayer upon Audit of his Tax Liabilities as well as of the Mandatory Reporting Requirements to be Prepared by a Revenue Officer, all of which Comprise a Complete Tax Docket.

[61] Subject : Mandatory Attachments of the Summary Alphalist of Withholding Agents of Income Payments Subjected to Tax Withheld at Source (SAWT) to Tax Returns With Claimed Tax Credits due to Creditable Tax Withheld at Source and of the Monthly Alphalist of Payees (MAP) Whose Income Received Have Been Subjected to Withholding Tax to the Withholding Tax Remittance Return Filed by the Withholding Agent/Payor of Income Payments.

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statements required therein, but not the outright denial of any claim for tax refund or credit.

In *Pilipinas Total Gas, Inc. vs. Commissioner of Internal Revenue,*[62] the Supreme Court, citing *Commissioner of Internal Revenue vs. Team Sual Corporation (Formerly Mirant Sual Corporation),*[63] pointed out that there is nothing under RMO No. 53-98 that requires the submission of complete documents for a grant of a refund or credit, to wit:

> "As can be gleaned from the above, RMO No. 53-98 is addressed to internal revenue officers and employees, for purposes of equity and uniformity, to guide them as to what documents they may require taxpayers to present **upon audit of their tax liabilities. Nothing stated in the issuance would show that it was intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund of excess unutilized excess VAT**. As expounded in *Commissioner of Internal Revenue v. Team Sual Corporation* (formerly Mirant Sual Corporation):
>
> > The CIR's reliance on RMO 53-98 is misplaced. There is nothing in Section 112 of the NIRC, RR 3-88 or RMO 53-98 itself that requires submission of the complete documents enumerated in RMO 53-98 for a grant of a refund or credit of input VAT. The subject of RMO 53-98 states that it is a 'Checklist of Documents to be Submitted by a Taxpayer upon **Audit** of his Tax Liabilities x x x.' In this case, TSC was applying for a grant of refund or credit of its input tax. There was no allegation of an audit being conducted by the CIR. Even assuming that RMO 53-98 applies, it specifically states that some documents are required to be submitted by the taxpayer 'if applicable.'
> >
> > Moreover, if TSC indeed failed to submit the complete documents in support of its application, the CIR could have informed TSC of its failure, consistent with Revenue Memorandum Circular No. (RMC) 42-03. However, the

[62] G.R. No. 207112, December 8, 2015.
[63] G.R. No. 205055, July 18, 2014.

> CIR did not inform TSC of the document it failed to submit, even up to the present petition. The CIR likewise raised the issue of TSC's alleged failure to submit the complete documents only in its motion for reconsideration of the CTA Special First Division's 4 March 2010 Decision. Accordingly, we affirm the CTA EB's finding that TSC filed its administrative claim on 21 December 2005, and submitted the complete documents in support of its application for refund or credit of its input tax at the same time.
>
> [Emphasis included. Underlining Ours.]

As explained earlier and underlined in *Team Sual* above, taxpayers cannot simply be faulted for failing to submit the complete documents enumerated in RMO No. 53-98, absent notice from a revenue officer or employee that other documents are required. Granting that the BIR found that the documents submitted by Total Gas were inadequate, it should have notified the latter of the inadequacy by sending it a request to produce the necessary documents in order to make a just and expeditious resolution of the claim.

Indeed, a taxpayer's failure with the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund of excess unutilized excess VAT. This holds especially true when the application for tax credit or refund of excess unutilized excess VAT has arrived at the judicial level. After all, in the judicial level or when the case is elevated to the Court, the Rules of Court governs. Simply put, the question of whether the evidence submitted by a party is sufficient to warrant the granting of its prayer lies within the sound discretion and judgment of the Court." (Emphasis supplied)

While the above case involves a claim for tax refund or credit of unutilized VAT, We find that the principle enunciated therein is also applicable in a claim for tax refund or issuance of tax credit certificate of unutilized CWTs.

As held in the *Pilipinas Total Gas* case, RMO No. 53-98 is merely a guide to revenue officers as to what documents they may require taxpayers to present upon audit of their tax liabilities and is never intended to be a benchmark in determining whether the documents submitted by a taxpayer are actually complete to support a claim for tax credit or refund. Moreover, the Supreme Court categorically ruled that the failure of the taxpayer to submit the requirements listed under RMO No. 53-98 is not fatal to its claim for tax credit or refund.

In any case, even when this Court ought to disregard the said ruling in the *Pilipinas Total Gas* case, and petitioner was indeed *not* able to submit the required documents at the administrative level, the same is of no moment. In *Commissioner of Internal Revenue vs. Univation Motor Philippines, Inc.*,[64] the Supreme Court ruled as follows:

> "Cases filed in the CTA are litigated *de novo* as such, respondent 'should prove every minute aspect of its case by presenting, formally offering and submitting x x x to the Court of Tax Appeals all evidence x x x required for the successful prosecution of its administrative claim. Consequently, **the CTA may give credence to all evidence presented by respondent, including those that may not have been submitted to the CIR as the case is being essentially decided in the first instance.**" (Emphasis supplied)

Since this case is being essentially decided in the first instance, this Court may give credence to all evidence presented by petitioner, including those that may not have been submitted at the administrative level. As a corollary, this Court cannot give credence to the said argument of respondent regarding petitioner's failure to submit the supposed required documents at the administrative level.

The Court shall now proceed to determine whether the aforesaid CWTs of ₱9,714,600.10 are unutilized and may be the proper subject of a claim for refund or issuance of a tax credit certificate, pursuant to Section 76 of the NIRC of 1997, which reads:

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

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[64] G.R. No. 231581, April 10, 2019.

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(A) Pay the balance of tax still due; or
(B) Carry-over the excess credit; or
(C) Be credited or refunded with the excess amount paid, as the case may be.

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of a tax credit certificate shall be allowed therefor."

Based on the foregoing provision, in case of overpayment of income taxes, a taxable corporation has two options: (1) it may file a claim for refund, either in the form of cash or tax credit certificate, or (2) it may carry over the same to the succeeding taxable quarters/years until it is fully utilized. However, once the carry-over option is taken, actually or constructively, it becomes irrevocable for that taxable period.[65] The phrase "for that taxable period" refers to the taxable year when the excess income tax, subject of the option, was acquired by the taxpayer.[66]

In exercising its option, the corporation must signify in its Annual Corporate Adjustment Return (by marking the option box provided in the BIR form) its intention, either to carry over the excess credit or to claim a refund. To ease the administration of tax collection, these remedies are in the alternative and the choice of one precludes the other.[67]

A perusal of petitioner's Annual ITR for CY 2014[68] shows that petitioner had income tax credits in the total amount of ₱37,987,815.00, consisting of the: (i) prior year's

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[65] *Philam Asset Management, Inc., vs. Commissioner of Internal Revenue*, G.R. Nos. 156637/162004, December 14, 2005; *Systra Philippines, Inc., vs. Commissioner of Internal Revenue*, G.R. No. 176290, September 21, 2007.
[66] *Commissioner of Internal Revenue vs. Bank of the Philippine Islands*, G.R. No. 178490, July 7, 2009.
[67] *Philippine Bank of Communications vs. Commissioner of Internal Revenue, et al.*, G.R. No. 112024, January 28, 1999.
[68] Exhibit "P-3", Docket – Vol. 2, pp. 710 to 717.

excess tax credits in the amount of ₱27,201,768.00, and (ii) CWT accumulated during the four (4) quarters of CY 2014, in the aggregate amount of ₱10,786,047.00 (the sum of ₱7,751,213.00 and ₱3,034,834.00).[69]

Petitioner claims that its regular corporate income tax (RCIT) due for CY 2014 in the amount of ₱4,404,423.00[70] was paid using a portion of its prior year's excess credits of ₱27,201,768.00. This leaves the prior year's excess tax credits in the amount of ₱22,797,345.00, and creditable taxes withheld during the CY 2014 in the amount of ₱10,786,047.00, totaling ₱33,583,392.00, as unutilized as of December 31, 2014, as shown below:

Prior Year's Excess Credits other than MCIT	₱ 27,201,768.00
Less: Tax Due (RCIT)	4,404,423.00
Balance of Prior Year's Excess Credits	₱ 22,797,345.00
Add: Creditable Taxes Withheld – CY 2014	10,786,047.00
Excess Creditable Taxes Withheld as of December 31, 2014	**₱33,583,392.00**

Petitioner indicated in its Annual ITR for CY 2014 its option to be issued a tax credit certificate for its excess and unutilized CWTs for CY 2014.[71] Consequently, only the prior year's excess tax credits of ₱22,797,345.00 were carried over in petitioner's Quarterly ITRs[72] and Annual ITR[73] for CY 2015.

To prove the existence of its prior year's excess credits of ₱27,201,768.00, petitioner presented Certificates of Creditable Tax Withheld at Source (BIR Forms No. 2307) for the years 2011[74] and 2012[75], in the amounts of ₱17,558,549.78 and ₱17,995,739.89, respectively, which were accounted by the ICPA as follows:[76]

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[69] Exhibit "P-3", Schedule 7, Docket – Vol. 2, p. 715.
[70] Exhibit "P-3", Line 16, Docket – Vol. 2, p. 710.
[71] Exhibit "P-3", Line 21, Docket –Vol. 2, p. 710.
[72] Exhibits "P-8", "P-9", and "P-10", Line 31A, Docket – Vol. 2, pp. 775 to 780.
[73] Exhibit "P-11", Schedule 7, Line 1, Docket – Vol. 2, p. 792.
[74] Exhibits "P-2337" to "P-2710".
[75] Exhibits "P-1957" to "P-2336".
[76] Exhibit "P-15", Annexes 5 and 4, pp. 18 to 21.

	Summary of Findings For CY 2011	Annex Reference	Income Payment	CWT Amount
1	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 5-a	₱83,983,493.74	₱8,731,508.29
2	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) EWT amount per Certificate is lower than the amount in the schedule/income tax return	Annex 5-b	16,127,727.99	1,612,772.80
3	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) EWT amount per Certificate is higher than the amount in the schedule/income tax return	Annex 5-c	33,239,462.12	2,974,756.62
4	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but with different income payment	Annex 5-d	32,922.36	32,922.35
5	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name and ATC are different	Annex 5-e	181,288.50	3,625.77
6	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, EWT amount per Certificate is lower than the amount in the schedule/income tax return	Annex 5-f	826,081.50	16,521.63
7	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, EWT amount per Certificate is higher than the amount in the schedule/income tax return	Annex 5-g	11,355,370.50	163,568.96
8	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different and the Petitioner's TIN number is wrong or not indicated and with different ATC per certificate	Annex 5-h	236,800.00	23,680.00
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2011 and Petitioner's name is different	Annex 5-i	376,703.09	37,670.31
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2011, but the Petitioner's TIN number is wrong or not indicated	Annex 5-j	331,697.10	17,489.71
11	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but with different income payment and EWT amount per Certificate is lower than the amount in the schedule/income tax return	Annex 5-k	21,405.45	21,405.45
12	Creditable Withholding Tax (CWT) duly supported by photocopied Certificate of Creditable Tax Withheld at Source (BIR Form 2307)	Annex 5-l	4,208,977.00	420,897.72

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13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name and EWT amount per Certificate is lower than the schedule	Annex 5-m	388,878.20	38,887.82
14	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name and EWT amount per Certificate is higher than the schedule	Annex 5-n	250,235.70	25,018.68
15	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name	Annex 5-o	1,863,850.37	248,725.65
16	Over claim of EWT amount per income tax return vs. certificate for Annex 5-b, 5-f and 5-k			74,782.10
17	Creditable Withholding Tax (CWT) without available supporting documents at the time of verification	Annex 5-p		3,114,315.92
Total			**₱153,424,893.62**	**₱17,558,549.78**

Summary of Findings For CY 2012		**Annex Reference**	**Income Payment**	**CWT Amount**
1	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307).	Annex 4-a	₱98,672,311.13	₱10,072,251.48
2	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is lower than the amount in the schedule/income tax return. Amount indicated is the BIR Form 2307 amount.	Annex 4-b	33,836,508.46	2,321,783.32
3	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is higher than the amount in the schedule/income tax return. Amount indicated is the schedule amount.	Annex 4-c	25,985,218.68	1,867,551.19
4	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, Petitioner's TIN number is wrong or not indicated, and with different ATC per certificate.	Annex 4-d	118,623.79	11,862.36
5	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, the Petitioner's TIN number is wrong or not indicated, and without ATC per certificate.	Annex 4-e	679,320.90	67,932.13
6	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without date indicated or not dated within CY 2012, Petitioner's name is different, and EWT amount per Certificate is higher than amount in the schedule/income tax return. Amount indicated is the schedule amount.	Annex 4-f	475,149.13	47,512.39
7	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with no date indicated or not dated within CY 2012,	Annex 4-g	3,369,433.08	75,857.07

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	Summary of Findings For CY 2012	Annex Reference	Income Payment	CWT Amount
	Petitioner's name is different, EWT amount per Certificate is higher than amount in the schedule/income tax return, and without ATC per Certificate. Amount indicated is the schedule amount.			
8	Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different, EWT amount per Certificate is higher than amount in the schedule/income tax return, without ATC per Certificate. Amount indicated is the schedule Amount.	Annex 4-h	1,591,047.90	154,102.49
9	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) not dated within CY 2012 and Petitioner's name is different.	Annex 4-i	1,071,599.54	106,597.78
10	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) not dated within CY 2012, Petitioner's name is different, and without ATC per Certificate.	Annex 4-j	470,928.80	26,469.12
11	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) but the Petitioner's name is different and without ATC per Certificate.	Annex 4-k	1,321,578.27	132,158.97
12	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) without date indicated or not dated within CY 2012, with different income payment and with different ATC per Certificate.	Annex 4-l	39,227.48	39,314.54
13	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with different income payment and ATC per Certificate.	Annex 4-m	34,452.28	34,452.28
14	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with EWT amount per Certificate is higher than the schedule and with different ATC per Certificate. Amount indicated is the schedule amount.	Annex 4-n	2,937,592.17	23,601.20
15	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name and EWT amount per Certificate is lower than the schedule. Amount indicated is the amount per BIR Form 2307.	Annex 4-o	455,998.50	45,599.85
16	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name and EWT amount per Certificate is higher than the schedule. Amount indicated is the schedule amount.	Annex 4-p	230,313.30	22,588.51
17	CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307) with incomplete Petitioner's name.	Annex 4-q	60,391.90	6,039.21
18	Over claim of EWT amount per income tax return vs. certificate for Annex 4-b and Annex 4-o.			90,367.87

Summary of Findings For CY 2012		Annex Reference	Income Payment	CWT Amount
19	Creditable Withholding Tax (CWT) without available supporting documents at the time of verification.	Annex 4-r		2,849,698.13
Total			**₱171,349,695.31**	**₱17,995,739.89**

Based on the preceding tables, only the CWTs of ₱13,319,037.71 and ₱14,261,585.99 for CYs 2011 and 2012, respectively, totaling ₱27,580,623.70, were properly supported by BIR Forms No. 2307, to wit:

	CY 2011		CY 2012	
Particulars	**Income Payment**	**CWT amount**	**Income Payment**	**CWT amount**
1. Creditable Withholding Tax (CWT) duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307).	₱83,983,493.74	₱8,731,508.29	₱98,672,311.13	₱10,072,251.48
2. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is lower than the amount in the schedule/ITR. Amount indicated is the BIR Form 2307 amount.	16,127,727.99	1,612,772.80	33,836,508.46	2,321,783.32
3. CWT duly supported by original Certificate of Creditable Tax Withheld at Source (BIR Form 2307). EWT amount per Certificate is higher than the amount in the schedule/ITR. Amount indicated is the schedule amount.	33,239,462.12	2,974,756.62	25,985,218.68	1,867,551.19
Total properly substantiated	**₱133,350,683.85**	**₱13,319,037.71**	**₱158,494,038.27**	**₱14,261,585.99**

However, these CWTs do not represent petitioner's excess CWTs for CYs 2011, 2012, and 2013, considering that petitioner reflected in its Annual ITRs for the said years, income tax due in the respective amounts of ₱14,233,716.00[77], ₱12,400,630.50[78], and ₱7,676,632.00[79], or in the sum of ₱34,310,978.50. Deducting these total income tax liabilities of ₱34,310,978.50 from the CWTs of ₱27,580,623.70 results in an amount of ₱6,730,354.80 income tax still due as of the end of CY 2013, as shown below:

[77] Exhibit "P-29", page 2 of 3, Line 32.
[78] Exhibit "P-33", page 4 of 12, Line 32.
[79] Exhibit "P-37", page 2 of 12, Line 16.

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Income Tax Due for 2011	₱14,233,716.00	
Income Tax Due for 2012	12,400,630.50	
Income Tax Due for 2013	7,676,632.00	
Total Income Tax Due for 2011 to 2013		₱34,310,978.50
Less: *Total Valid CWTs for 2011 and 2012*		
Valid CWT for 2011	13,319,037.71	
Valid CWT for 2012	14,261,585.99	27,580,623.70
Income Tax Still Due		**₱6,730,354.80**

Considering that petitioner failed to prove that it had prior years excess credits, petitioner's properly substantiated CWTs for CY 2014 in the amount of ₱9,714,600.10, as stated earlier, should be applied to cover its income tax due for CY 2014 in the amount of ₱4,404,423.00, as shown below:

Valid CWTs for 2014	₱ 9,714,600.10
Less: Income Tax Due for CY 2014	4,404,423.00
Excess Valid CWTs for 2014	**₱5,310,177.10**

In view of the foregoing, petitioner sufficiently proved its entitlement to the issuance of a tax credit certificate of its excess CWTs for CY 2014, but only up to the extent of ₱5,310,177.10. Parenthetically, since petitioner opted to be issued a tax credit certificate for its excess and unutilized CWTs for CY 2014, as indicated on its Annual ITR for CY 2014,[80] it is not entitled to be refunded with the said amount.

WHEREFORE, in light of the foregoing considerations, the instant Petition for Review is **PARTIALLY GRANTED**. Accordingly, respondent is **ORDERED TO ISSUE A TAX CREDIT CERTIFICATE** in favor of petitioner, in the reduced amount of **₱5,310,177.10**, representing its excess and unutilized CWTs for CY 2014.

SO ORDERED.

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[80] Exhibit "P-3", Line 21, Docket –Vol. 2, p. 710.

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CATHERINE T. MANAHAN
Associate Justice

I CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

CERTIFICATION

Pursuant to Article VIII, Section 13 of the Constitution, 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