REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

THIRD DIVISION

AXIA POWER HOLDINGS PHILIPPINES CORPORATION, Petitioner,	C.T.A. CASE NO. 8249
	Members:
-versus-	BAUTISTA, *Chairperson*; FABON-VICTORINO, and RINGPIS LIBAN, JJ.
COMMISSIONER OF INTERNAL REVENUE, Respondent.	Promulgated: JUL 15 2015 12:44 p.m.

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DECISION

FABON-VICTORINO, J.:

This Petition for Review filed on March 31, 2011 by petitioner Axia Power Holdings Philippines Corporation (APHPC) prays for the refund or the issuance of a Tax Credit Certificate in the amount of Twenty-Four Million Six Hundred Three Thousand Nine Hundred Three Pesos (PhP24,603,903.00), allegedly representing its excess and unutilized creditable withholding tax (CWT) for calendar year (CY) 2008.

Petitioner is a domestic corporation, with principal office located at Unit 700-C, 20th Drive Corporate Center, 20th Drive Mckinley Business Park, Fort Bonifacio, Taguig City. It is the surviving entity after its merger with Marubeni Energy Services Corporation (MESC), Marubeni Pacific Energy Holdings Corporation (MPEHC) and Marubeni Pacific II Energy Holdings Corporation (MP2EHC).

On the other hand, respondent is the Commissioner of the Bureau of Internal Revenue (BIR), with authority, among others, to decide, approve and grant refunds or tax credits of overpaid and erroneously paid or collected internal revenue taxes, with office at the BIR National Office, Agham Road, Diliman, Quezon City.

On December 22, 2009, the respective Boards of Directors and stockholders of petitioner, MESC, MPEHC and MP2EHC, approved the merger of petitioner, MESC, MPEHC and MP2EHC, with petitioner as the surviving entity.

The Certificate of Filing of the Articles and Plan of Merger dated March 29, 2010 specifically states that the entire assets and liabilities of MESC, MPEHC, and MP2EHC will be transferred and absorbed by petitioner.

Prior to the merger or on April 14, 2009, MESC filed with the BIR its Annual Income Tax Return (ITR) for CY 2008[1], reporting a gross income of PhP21,739,472.00[2], representing its income subject to creditable withholding tax. However, it was not able to utilize its creditable withholding taxes in the total amount of PhP40,974,229.00[3], inclusive of the prior years' excess income taxes. MESC indicated in its Annual ITR for CY 2008 its intention to apply for a tax credit certificate covering the said amount.

On April 15, 2010, MESC filed with the BIR RDO No. 47-Makati City a written application for cancellation of Tax Identification No. (TIN) and issuance of tax clearance with a claim for refund or issuance of tax credit certificate of its unutilized creditable withholding taxes for CYs 2007 to 2009.[4]

On the same date, MESC filed a Petition for Review with the Court to claim for the refund/ tax credit of its excess creditable withholding tax for CY 2007 in the amount of PhP16,370,326.00, docketed as CTA Case No. 8092. On October 15, 2010, the said Petition for Review was amended

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[1] Exhibit "F".
[2] Exhibit "F-9"
[3] Exhibits "F-13" and "F-14",
[4] Exhibits "L" and "M".

to indicate petitioner as the party seeking the Court's intervention in lieu of MESC.

On March 31, 2011, pending respondent's action on petitioner's claim for refund/tax credit of its excess and unutilized CWT for CY 2008 and before the lapse of the two (2)-year prescriptive period under Section 229 of the National Internal Revenue Code (NIRC) of 1997, as amended, petitioner filed the instant Petition for Review for the remaining unutilized creditable withholding tax in the amount of PhP24,603,903.00 (PhP40,974,229.00 - PhP16,370,326.00).

In her Answer belatedly filed on May 26, 2011, respondent mainly contends that petitioner's administrative claim for refund is still subject to administrative routinary investigation/examination and raises the presumption that the taxes are paid and collected in accordance with law and implementing regulations, hence, not refundable. Besides, petitioner failed to comply with the requirements under Section 76 of the 1997 Tax Code, viz., to prove that the claimed amount was included as part of its gross income for CY 2008; that it remains unutilized; and that it was fully remitted to the BIR. Additionally, petitioner already exercised the option to carry-over the subject amount to the succeeding taxable quarters/years.

Respondent further argues that the ruling in the case of *Bank of the Philippine Island vs. Commissioner of Internal Revenue*[5], is not applicable to the instant case since petitioner being the surviving corporation may still utilize the alleged excess creditable withholding taxes for CY 2008 to the succeeding taxable quarters or years, as a consequence of merger. Even assuming that petitioner is entitled to a tax refund, it must still show compliance with *Section 204, in relation to Section 230 (now 229) of the Tax Code,* for failure to do so is fatal to its claim for refund. Finally, respondent invokes the principle that claims for refund are construed strictly against the claimant for it is deemed an exemption from taxation.

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[5] G.R. No. 144653, August 28, 2011.

On August 12, 2011, petitioner filed a Reply.[6] It counter-argued that it was able to fully substantiate by documentary evidence its claim for the refund of its excess creditable withholding tax for the CY 2008 in the amount of PhP24,603,903.00. Annexed to both its administrative and judicial claims were the following documents, to wit: certificates of creditable tax withheld at source for the years 2007 to 2009; annual ITRs of MESC for CYs 2007 to 2009; audited financial statements for CYs 2007 to 2009. In any event, the issues raised by respondent are evidentiary in nature best threshed out during the trial on the merits.

Further, its tabular presentation on page 3 of its Petition for Review shows that the amount of PhP24,603,903.00 was included as part of its gross income for CY 2008. The same table reveals its total sales/revenues/receipts of PhP105,311,085.00, all covered by certificates of creditable tax withheld at source attached to its Annual ITR and Independent Auditor's Report (Financial Statement for the Year 2008).

Contrary to respondent's claim, it did not exercise its option to carry over to the succeeding taxable quarters/years the amount subject of its claim as it is clearly evident from its Annual ITR for 2008 that it ticked the box "to be issued a tax credit certificate". Further, the fact of full remittance of the amount subject of its claim to the BIR and its compliance with the requirements under Section 76 of the 1997 Tax Code are best left to the appreciation of the Court after a full blown trial of the case. Nevertheless, an exhaustive examination of the documents submitted shows compliance with the substantiation requirements of the law.

Finally, petitioner reiterates that the doctrine laid down in the *Bank of the Philippine Islands vs. Commissioner of Internal Revenue*, is applicable to the instant case considering that MESC is deemed a dissolved corporation in view of its merger with petitioner. Despite MESC's merger with petitioner, the action taken is proper since MESC exercised its option to claim for the issuance of a tax credit certificate for the year 2008 for its excess creditable withholding tax.

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[6] Docket, pp. 204-207.

After the filing of their respective Pre-Trial Briefs, the parties submitted their Joint Stipulation of Facts and Issues on September 29, 2011.[7]

To prove its case, petitioner presented its Senior Accountant Ivy P. Acosta, who testified by way of a Judicial Affidavit.[8]

She declared that since August 2000 or prior to the cited merger, she has been MESC's Senior Accountant handling the preparation and filing of its accounting and financial reports, books of accounts and records. MESC provided operations and maintenance services to power generating companies, covered with an Operations and Maintenance (O&M) Agreement.

On June 2009, MESC ceased operation in view of the merger with petitioner as the surviving corporation. MESC was dissolved with its entire assets and liabilities transferred and absorbed by petitioner.[9] On June 19, 2009, she became petitioner's Senior Accountant.

Sometime in June 2000, MESC took over the O&M Agreement between Oxbow Power Services, Inc. and Mindanao I Geothermal Power Plant (M1GP) and Mindanao II Geothermal Power Plant (M2GP). In return, M1GP and M2GP paid MESC the actual labor cost of the plant staff and other personnel as well as other expenses MESC incurred, which the latter considered as domestic purchases and categorized as payment for payroll costs in its invoices.

For CY 2008, MESC filed its Quarterly[10] and Annual Income Tax Return[11], together with supporting documents such as: Certificates of Creditable Tax Withheld At Source issued by clients of MESC[12], the Independent Auditor's Report issued by Sycip, Gorres, Velayo & Co. (SGV) with attached Scheduled of Taxes and Licenses for the year

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[7] Docket, pp. 230-234.
[8] Exhibits "I" to "I-1".
[9] Section 1.4.2 of the Terms of Merger, Plan of Merger.
[10] Exhibits "B", "C" and "D".
[11] Exhibit "F"
[12] Exhibits "B-1", "B-3", "B-5", "C-1", "C-3", "D-1", "D-3", "D-5", "D-7", "F-1", "F-3", "F-5", "F-7".

ended December 31, 2008, List of attachments to Annual ITR for the year ended December 31, 2008 and Independent Auditor's Report[13].

For CY 2008, MESC's total creditable tax withheld at source for CY 2008 is PhP15,797,109.00, as reflected in lines 30C[14] and 30D[15] of its 2008 Annual ITR. However, MESC used a portion of its total tax credits in the amount of PhP3,109,332.00 to offset its income tax liability of PhP3,109,332.00[16] for CY 2008.

The witness explained that the subject of the instant claim is the excess creditable withholding tax for CY 2008 amounting only to PhP24,603,903.00 although the total excess creditable tax of MESC as reflected in its ITR for CY 2008 amounts to a total of PhP40,974,229.00[17]. The difference of PhP16,370,326.00 covers MESC's excess creditable withholding tax for CY 2007[18], which is subject of a separate Petition for Review docketed as CTA Case No. 8092.

MESC signified its intention to claim for refund or tax credit by placing an "X" on the box denominated "To be issued a Tax Credit Certificate" located at the lower portion of its Annual ITR for CY 2008.[19] Likewise, in the Line 30A[20] of MESC 2009 Annual ITR[21], no amount was shown in the box for prior years' excess credit carry-forward.

On April 15, 2010, MESC filed two (2) administrative claims with the BIR RDO No. 47 - Makati City, specifically, 1) an Application for cancellation of TIN and issuance of Tax Clearance Certificate with a claim for refund of excess input Value-Added Tax and Creditable Withholding Tax[22] and 2) an Application for Tax Credits/Refunds for the period covered January 1, 2007 to December 31, 2009 with a claim for

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[13] Exhibits "E" to "E-2".
[14] Exhibit "F-17".
[15] Exhibit "F-18".
[16] Exhibit "F-12".
[17] Exhibit "F-14".
[18] Exhibit "K:.
[19] Exhibit "F-15".
[20] Exhibit "H-12"
[21] Exhibit "H".
[22] Exhibits "L" to "L-2".

refund of excess creditable withholding tax in the amount of PhP52,080,309.00[23]. On March 31, 2011, MESC filed before the Court the instant case for refund or tax credit of its excess creditable withholding tax for CY 2008 in the amount of PhP24,603,903.00.

On June 17, 2010, MESC received a Letter of Authority (LOA) No. 00005126 dated May 24, 2010, issued by the BIR for the examination of its books of account and other accounting records for all internal revenue taxes for the period of January 1 to December 31, 2008.[24] This was followed by another LOA No. 00005130 dated May 24, 2010 received on June 18, 2010, this time, for the period January 1 to December 31, 2009.[25]

In compliance, MESC submitted the documents required with a transmittal letter dated August 26, 2010 to Revenue Officers (ROs) Myrabel C. Dela Cruz and Ferdinand J. Palisoc of BIR RDO No. 47 – East Makati.[26] Another set of documents was submitted with transmittal letter dated September 2, 2010 to RO Alwino R. Daga and GS Reyanaldo G. Causapin of BIR RDO No. 47 Makati City.[27]

The witness admitted that she did not prepare petitioner's Operation and Finance Agreement. Neither did she prepare nor was she a signatory to petitioner's Quarterly ITR for 2007 and 2008, the Certification of Creditable Tax Withheld at Source, and Annual ITRs for 2008 and 2009. She is likewise not aware if a certification stating that the amount subject of the present claim was remitted to the BIR had been issued or secured by MESC.

In her Supplemental Judicial Affidavit[28], petitioner's lone witness explained that the difference of PhP11,916,127.41 between the excess creditable withholding tax for CY 2008 and the amount subject of the instant case pertains to the combined excess creditable tax for CYs 2004 and 2005 amounting to PhP6,839,081.50 and

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[23] Exhibit "M".
[24] Exhibit "O".
[25] Exhibit "P".
[26] Exhibits "Q" to "Q-2".
[27] Exhibits "R' to "R-2".
[28] Docket, pp. 557-577.

PhP5,077,045.91, as reflected in the Certificates of Creditable Tax Withheld at Source for the years 2004 and 2005[29],respectively, which were claimed together with the excess creditable tax for CY 2008.

Further, she explained that the original copies of said Certificates could no longer be located despite diligent efforts. Allegedly, in 2006, petitioner transferred to its new office in Taguig, and their voluminous documents accumulated throughout the years might have been mixed up with the voluminous documents of MESC, M1GP and M2GP which were stored in their office after the merger in 2010. In any event, she was able to keep photocopies of said Certificates as it has been her practice to photocopy important documents for reference and safety reasons.

But insofar as the original certificates of creditable tax withheld at source, photocopies of which were marked as Exhibits P-1 to P-16, she believes that their originals still exist in their office, therefore, not yet considered lost or destroyed.

On August 8, 2013, or after petitioner rested[30], it filed through registered mail a Motion to Defer the Submission of Petitioner's Memorandum and Motion to Reopen the Case for the Purpose of Identifying and Marking Certain Documents Testified to by Ms. Ivy P. Acosta in her Judicial Affidavit[31], which the Court granted.[32] After the additional evidence were admitted[33], the case was considered submitted for decision.[34]

THE ISSUES

The parties raise a number of issues[35] as follows:

1. Whether or not for the CY ended December 31, 2008 MESC's Sale of Services

[29] Exhibits "P-1" to "P-16-A".
[30] Docket, pp. 435-436.
[31] Docket, pp.504-510.
[32] Docket, pp. 550-551.
[33] Docket, pp. 642-643.
[34] Resolution, docket, p. 741
[35] Issues, Joint Stipulation of Facts and Issues, docket, pp. 231-232.

amounting to P105,311,085.00 pertains to management fees earned from operations and maintenance services to its customers;

2. Whether or not the amount of P15,797,109.00 was withheld from MESC's sale of services (management fees paid to MESC by its customers) for the CY ended December 31, 2008;

3. Whether or not for the CY ended December 31, 2008, MESC's income tax liability is in the amount of P3,109,332.00;

4. Whether or not the income payments from which taxes were withheld were included as part of MESC's gross income for CY ended December 31, 2008;

5. Whether or not MESC's has an excess and unutilized creditable income taxes withheld for CY ended December 31, 2008;

6. Whether or not MESC has carried-over to the succeeding taxable quarters or years the claimed excess and unutilized creditable income taxes withheld for CY ended December 31, 2008 and applied the same in payment of its income tax liability, if any, for the succeeding taxable quarters or years;

7. Whether or not the amount of P24,603,903.00 being claimed by petitioner as excess and unutilized creditable income taxes of MESC withheld for CY ended December 31, 2008 were remitted in full to the BIR;

8. Whether or not MESC complied with the requirements prescribed under Section 76 of the 1997 Tax Code, as amended, in relation to Sections 204 and 229 of the same code;

9. Whether or not MESC's claim for refund of excess and unutilized creditable income taxes withheld for taxable year ended December 31, 2008, in the amount of P24,603,903.00 were duly substantiated by

proper documentary evidence, such as invoices, official receipts, certificate of withholding tax at source, certificate of remittances and other required tax returns;

10. Whether or not petitioner is entitled to the claim for refund or issuance of tax credit certificate for MESC in the amount of P24,603,862.85 representing MESC's unutilized creditable withholding taxes for CY ended December 31, 2008;

which may be simplified into **whether petitioner is entitled to a refund or issuance of tax credit certificate in the amount of PhP24,603,903.00, representing MESC's alleged unutilized creditable withholding taxes for CY 2008**.

THE COURT'S RULING

Section 76 of the National Internal Revenue Code (NIRC) of 1997, provides:

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

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

In case the corporation is entitled to a tax credit or refund of the excess estimated quarterly income taxes paid, the excess amount shown on its final adjustment return may be carried over and credited against the estimated quarterly income tax liabilities for the taxable quarters of the succeeding

> taxable years. Once the option to carry-over and apply the excess quarterly income tax against income tax due for the taxable quarters of the succeeding taxable years has been made, such option shall be considered irrevocable for that taxable period and no application for cash refund or issuance of tax credit certificate shall be allowed therefor."

Interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[36] held that a corporation entitled to a tax credit or refund of the excess estimated quarterly income taxes paid has two options: (1) to carry over the excess credit or (2) to apply for the issuance of a tax credit certificate or to claim a cash refund. If the option to carry over the excess credit is exercised, the same shall be irrevocable for that taxable period.

The Supreme Court further ruled that 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 facilitate tax collection, these remedies are in the alternative and the choice of one precludes the other.

In fine, a corporate taxpayer is not legally allowed a change of heart once it has chosen an option from the two alternative remedies for the choice of one precludes the other.

This is evident in the Annual Income Tax Return (BIR/Form 1702) under line 31, which states, thus:

> "If overpayment, mark one box only: (once the choice is made, the same is irrevocable)"

[36] G.R. No. 176290, September 21, 2007.

An examination of MESC's Annual ITR[37] for CY 2008 shows that it had an income tax liability of PhP3,109,332.00, which was applied against its total tax credits composed of CWT for the four quarters of the CY 2008 in the amount of PhP15,797,109.00[38] and excess CWT from the prior taxable years in the amount of ₱28,286,452.00, leaving the amount of PhP40,974,229.00 CWT unutilized as of December 31, 2008, computed as follows:

Sales/Revenues/Receipts/Fees	₱ 105,311,085.00
Less: Cost of Sales/Services	85,756,984.00
Gross Income from Operation	₱ 19,554,101.00
Add: Non-Operating & Taxable Other Income	2,185,371.00
Total Gross Income	₱ 21,739,472.00
Less: Deductions	12,855,668.00
Taxable Income	₱ 8,883,804.00
Tax Rate	35%
Income Tax Due	₱ 3,109,332.00
Less: Tax Credits	
Prior Year's Excess Tax Credits	₱ 28,286,452.00
Creditable Tax Withheld for the First Three Quarters	10,947,110.00
Creditable Tax Withheld for the Fourth Quarter	4,849,999.00
Total Tax Credits	₱ 44,083,561.00
Tax Overpayment	**₱40,974,229.00**

The total overpayment as of CY 2008 in the amount of PhP40,974,229.00 is broken down as follows:[39]

Tax overpayment Line 29 of 2007 AITR	₱16,370,326.00	
Prior Years Excess Tax Credits other than MCIT, Line 30A of 2008 AITR	28,286,452.00	
Difference to be accounted for/ reconciled	₱11,916,126.00	
RECONCILIATION:		
Tax Overpayment Line 29 of 2007 AITR:		
From CY 2006	₱ 5,872,335.52	
From CY 2007	10,497,989.00	₱ 16,370,324.52
2004 (to be issued a tcc per ITR)	₱ 6,839,081.50	
2005 (to be issued a tcc per ITR)	5,077,045.91	11,916,127.41
Prior Years Excess Tax Credits other than MCIT, Line 30A of 2008 AITR		₱ 28,286,451.93
Add: 2008 tax overpayment (net of Lines 29, 30C and 30D of 2008 AITR)		12,687,735.44

[37] Exhibit "F".
[38] The sum of ₱10,947,110.00 and ₱4,849,999.00.
[39] Exhibit "G", docket, p. 384.

Tax Overpayment Line 31 of 2008 AITR		**₱40,974,187.37**

Petitioner's lone witness Ivy P. Acosta explained that the difference between the amount of carry-over in the 2008 Annual ITR and the amount claimed as tax credit certificate covering CY 2007 pertains to the unutilized tax credits from CY 2004 and CY 2005, to wit:

> "**097Q.** You mentioned that the excess creditable withholding tax for the CY Ended December 31 2007 is in the amount of ₱16,370,284.37. However, a perusal of the Annual ITR for 2008 (Exhibit 'F') would show that the excess creditable withholding tax indicated for the prior year is in the amount of ₱28,286,452.00, how do you account for the difference of ₱11,916,127.41 (₱28,286,452.00 less ₱16,370,284.37)?
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> ***A:*** ***The difference of ₱11,916,127.41 between the excess creditable tax for the CY ended December 31, 2008 and the amount claimed in the Petition for Review (CTA Case 8249) pertains to the excess creditable tax for the CY ended December 31, 2004 and December 31, 2005, amounting to ₱6,839,081.50 and ₱5,077,045.91, respectively, that were claimed together with the excess creditable tax for the CY ended 2008.***"[40]

In other words, the amount claimed for refund/tax credit certificate in this case is the sum of the CY 2008 tax overpayment (net of Lines 29, 30C and 30D of Annual ITR for CY 2008) and the portion of Prior Years Excess Tax Credits other than MCIT[41] relating to the unutilized CWT for CY 2004 and CY 2005, computed as follows:

[40] Exhibit "I", Q & A No. 097, docket, p. 396.
[41] Minimum Corporate Income Tax.

Creditable taxes withheld for the first three quarters of CY 2008	₱10,947,110.00	
Creditable taxes withheld for the fourth quarter of CY 2008	4,849,999.00	
Total tax credits for CY 2008 per AITR	₱15,797,109.00	
Less: Income tax due, CY 2008	3,109,332.00	
Excess tax credits for CY 2008		₱ 12,687,777.00
Add: Excess tax credits for CYs 2004 and 2005 included in the ₱28,286,452.00 Prior Year's Excess Tax Credits other than MCIT reflected per CY 2008 AITR		
Excess tax credits for CY 2004	₱ 6,839,081.00	
Excess tax credits for CY 2005	5,077,046.00	11,916,127.00
Total excess and unutilized income tax credits subject of refund/TCC claim		**₱24,603,904.00**[42]

As may be gleaned from above, petitioner included the amount of PhP11,916,127.00 representing excess tax credits from CY 2004 and CY 2005 in the line item for "Prior Year's Excess Tax Credits" in its Annual ITR for CY 2008 and simultaneously, in the subject amount for refund/tax credit certificate for CY 2008. Considering that petitioner merely succeeded to the rights of MESC who previously chose to carry-over the amount of PhP11,916,127.00 in its Annual ITR for CY 2008, the Court is constrained to deny petitioner's claim for refund insofar as the amount of PhP11,916,127.00, pursuant to the irrevocability rule under Section 76 of the NIRC of 1997, as amended, and the ruling in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue.*

However, with respect to petitioner's claim pertaining to MESC's excess tax credits for CY 2008 in the amount of PhP12,687,777.00, the same may be the proper subject of a claim for tax credit certificate as it is evident in MESC's 2008 Annual ITR that it intended to refund its 2008 excess creditable withholding tax having placed a tick mark on the box next to the words "To be issued a Tax Credit Certificate" and no amount was shown in the box next to Line 30A for prior years excess credits other than MCIT in MESC's 2009 Annual ITR.

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[42] The difference in the amount claimed for refund and the amount as per computation is due to rounding off.

In addition to the exercise of option, petitioner must satisfy the following requisites:

1) The administrative claim for refund must be filed within the two-year period from the date of payment of the tax;

2) The fact of withholding, by a copy of a statement duly issued by the payor to the payee showing the amount paid and the amount of the tax withheld; and

3) The income received was declared in the return as part of the gross income. [43]

Relevant to the first requisite is Sections 204(C) and 229 of the NIRC of 1997, as amended, which provide as follows:

> "SEC. 204. *Authority of the Commissioner to Compromise, Abate and Refund or Credit Taxes.* - The Commissioner may -
>
> xxx xxx xxx
>
> (C) Credit or refund taxes erroneously or illegally received or penalties imposed without authority, refund the value of internal revenue stamps when they are returned in good condition by the purchaser, and, in his discretion, redeem or change unused stamps that have been rendered unfit for use and refund their value upon 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."

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[43] *Commissioner of Internal Revenue vs. Mirant (Philippines) Operations Corporation*, G.R. No. 171742, June 15, 2011 and *Mirant (Philippines) Operations Corporation (Formerly: Southern Energy Asia-Pacific Operations (Phils.), Inc.) vs. Commissioner of Internal Revenue*, G.R. No. 176165.

> "SEC. 229. *Recovery of Tax Erroneously or Illegally Collected.* – No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.
>
> **In any case, no such suit or proceeding shall be filed after the expiration of two (2) years from the date of payment of the tax or penalty regardless of any supervening cause that may arise after payment**: *Provided, however,* That the Commissioner may, even without claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid." (emphases supplied).

Pursuant to the above provisions, the two-year prescriptive period for claiming a refund commences to run from the date of filing of the Final Adjustment Return (FAR).[44] It is only when the FAR 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.[45]

In the instant case, petitioner claims for the excess CWT of MESC for CY 2008. MESC filed its Annual ITR for CY 2008 on April 14, 2009.[46] Petitioner has two years from the filing of the FAR within which to file a claim for refund of excess CWT, both in the administrative and judicial levels.

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[44] *ACCRA Investments Corporation vs. The Honorable Court of Appeals, et al.,* G.R. No. 96322, December 20, 1991.
[45] *Commissioner of Internal Revenue vs. TMX Sales, Inc., et al.,* G.R. No. 83736, January 15, 1992.
[46] Exhibits "F", "F-1" to "F-8", docket, pp. 376-383; Petitioner's Pre-Trial Brief, docket, p. 183; Par. 4, Admitted Facts, JSFI, docket, p. 231.

Counting from April 14, 2009, petitioner had until April 14, 2011, within which to file both its administrative and judicial claims. Hence, the administrative claim filed on April 15, 2010[47] and the Petition for Review filed on March 31, 2011[48], were both seasonably filed.

As for the second and third requisites, Section 2.58.3(B) of Revenue Regulations (RR) No. 02-98, as amended, states:

> "SECTION 2.58.3. Claim for Tax Credit or Refund. -
>
> xxx xxx xxx
>
> (B) Claims for tax credit or refund of any creditable income tax which was deducted and withheld on income payments shall be given due course **only when it is shown that the income payment has been declared as part of the gross income and the fact of withholding is established by a copy of the withholding tax statement duly issued by the payor to the payee showing the amount paid and the amount of tax withheld therefrom**. "(Emphasis supplied)

To prove the fact of withholding of the subject claim, petitioner submitted Certificates of Creditable Tax Withheld at Source (BIR Form No. 2307) duly issued by Mindanao I Geothermal Partnership, Mindanao II Geothermal Partnership and Team Energy Corporation to MESC for CY 2008, showing CWT in the total amount of PhP15,797,110.23, broken down as follows:

Exhibit	Period Covered	Payor	Income Payment	Tax Withheld
"B-1", "B-2"	07/01/08 to 09/30/08	Mindanao II Geothermal Partnership	₱ 7,606,856.57	₱ 1,141,028.49
"B-3", "B-4"	07/01/08 to 09/30/08	Mindanao I Geothermal Partnership	16,264,302.47	2,439,645.37
"B-5",	04/01/08 to	TEAM Energy	1,815.00	36.30

[47] Exhibits "L" and "M", docket, pp. 409-421.
[48] Petition for Review, docket, p. 1.

"B-6"	06/30/08	Corporation		
"C-1", "C-2"	04/01/08 to 06/30/08	Mindanao II Geothermal Partnership	7,605,132.43	1,140,769.86
"C-3", "C-4"	04/01/08 to 06/30/08	Mindanao I Geothermal Partnership	13,878,568.93	2,081,785.34
"D-1", "D-2"	01/01/08 to 03/31/08	TEAM Energy Corporation	16,561.00	331.22
"D-3", "D-4"	01/01/08 to 03/31/08	Mindanao I Geothermal Partnership	17,064,104.54	2,559,465.67
"D-5", "D-6"	01/01/08 to 03/31/08	Mindanao II Geothermal Partnership	10,559,787.41	1,583,968.11
"D-7", "D-8"	01/01/08 to 03/31/08	TEAM Energy Corporation	4,002.00	80.04
"F-1", "F-2"	10/01/08 to 12/31/08	Mindanao I Geothermal Partnership	17,000,592.20	2,550,088.82
"F-3", "F-4"	10/01/08 to 12/31/08	Mindanao II Geothermal Partnership	11,176,602.30	1,676,490.35
"F-5", "F-6"	10/01/08 to 12/31/08	Mindanao I Geothermal Partnership	2,947,317.53	442,097.63
"F-7", "F-8"	10/01/08 to 12/31/08	Mindanao II Geothermal Partnership	1,208,820.21	181,323.03
		TOTAL	**₱105,334,462.55**	**₱15,797,110.23**

An examination of the CWT certificates reveals that all are faithful reproductions of the originals and are dated within the period of claim, *i.e.*, CY 2008, and reflect the income payment and the tax withheld therefrom properly addressed to petitioner. Hence, petitioner complied with the second requisite.

As regards the third condition requiring that it be shown on the return of the recipient that the income payment received was declared as part of the gross income, a perusal of the certificates submitted also show that the amount of PhP15,797,110.23 was withheld from the management and technical consultancy fees received by MESC during the year 2008, with the exception of the income payments from Team Energy Corporation in the sum of PhP22,378.00, from which two percent (2%) CWT equivalent to PhP447.56 was withheld.

Per petitioner's sole witness, these payments represent reimbursements to MESC by Team Energy Corporation for the expenses paid on its behalf and MESC did not declare said reimbursements as part of its gross income. However, the record is bereft of any evidence supporting the foregoing declaration. The Court must therefore disallow this claim for CWT in the amount of PhP447.56.

Moreover, based on the CWT certificates excluding those alleged reimbursements not considered income, the taxable revenues earned by MESC for CY 2008 amounted to PhP105,312,086,00. Comparing this with the amount reflected in MESC's Annual ITR for CY 2008 as "Sales/Revenues/Receipts/Fees"[49] in the amount of PhP105,311,085.00, the Court finds a minimal discrepancy of PhP1,000.00, the nature of which petitioner failed to explain. However, it appears that this was due to an inconsistency in the income payment reported in the CWT certificate[50] and the CWT withheld therefrom, computed as follows:

Income Payment reflected per CWT certificate (Exhibit "D-3")	₱17,064,104.54
Tax Withheld reflected per CWT certificate (Exhibit "D-4")	2,559,465.67
Should-be income payment when CWT is grossed-up (₱2,559,465.67/15%)	17,063,104.47
Difference in income payments	**₱ 1,000.07**

Evidently, petitioner as well satisfied the third requisite for entitlement for refund/tax credit, albeit in the reduced amount of PhP12,687,328.44, computed as follows:

Unutilized Excess CWT claimed	₱24,603,903.00
Less: Disallowances	
Excess CWT for CYs 2004 and 2005	11,916,127.00
CWT for CY 2008 allegedly pertaining to reimbursements to MESC for expenses paid in behalf of Team Energy Corporation	447.56
Valid CWT for issuance of TCC	**₱12,687,328.44**

[49] Exhibit "F", docket, p. 376.
[50] Exhibit "D-3", docket, p. 341.

WHEREFORE, the instant Petition for Review filed by petitioner Axia Power Holdings Philippines Corporation on March 31, 2011, is hereby **PARTIALLY GRANTED**. Accordingly, respondent is hereby **DIRECTED TO REFUND** in favor of petitioner the amount of PhP12,687,328.44, representing Marubeni Energy Services Corporation's unutilized excess CWT for CY 2008.

SO ORDERED.

ESPERANZA R. FABON-VICTORINO
Associate Justice

We Concur:

LOVELL R. BAUTISTA
Associate Justice

MA. BELEN M. RINGPIS-LIBAN
Associate Justice

ATTESTATION

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

LOVELL R. BAUTISTA
Associate Justice
Chairperson

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division's 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