REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PHILIPPINE NATIONAL BANK,
Petitioner,

-versus-

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

CTA Case No. 8268

Members:
UY, *Chairperson,* and
FABON-VICTORINO, *JJ.*

Promulgated:
DEC 10 2013 ; 1:36 p.m.

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DECISION

UY, *J.*:

This is a Petition for Review filed on April 13, 2011 by petitioner Philippine National Bank against respondent Commissioner of Internal Revenue, seeking the refund or issuance of a tax credit certificate in the amount of ₱ 209,333,247.65, allegedly representing petitioner's excess creditable withholding taxes (CWT) for taxable year 2008.

THE FACTS

Petitioner Philippine National Bank is a domestic corporation organized and existing under and by virtue of Philippine laws, with principal business address at the PNB Financial Center, President Diosdado Macapagal Blvd., Pasay City.[1]

Respondent is the duly appointed Commissioner of Internal Revenue, vested under the appropriate laws with authority to carry out all the functions, duties and responsibilities of the Bureau of Internal Revenue (BIR), including, *inter alia*, the power to decide, approve, and grant refund claims or tax credit of internal revenue

[1] Par. 1, Summary of Admitted Facts, Joint Stipulation of Facts and Issues (JSFI), Docket (Vol. V), p. 2769.

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taxes. She holds office at the BIR National Office Building, Agham Road, Diliman, Quezon City.[2]

Petitioner filed with the BIR, through the Electronic Filing and Payment System, its Annual Income Tax Return (ITR) for taxable year 2008 on April 30, 2009.[3] The first amendment thereto was filed on June 1, 2009;[4] while the second amendment, and final amendment were filed on January 10, 2011,[5] and March 25, 2011,[6] respectively.

Subsequently, petitioner filed two (2) letters requesting for the issuance of tax credit certificate of alleged excess CWT from petitioner's income from sales of acquired real properties, rental income, interest income, and commissions for taxable year 2008. The first letter was filed on January 14, 2011 on the basis of the said second Amended Annual ITR in the amount of ₱ 188,744,630.31;[7] while the second letter was filed on March 29, 2011 following the said final Amended Annual ITR in the amount of ₱ 209,333,247.65.[8]

In view of respondent's failure to act on petitioner's administrative claim, and considering that the two-year prescriptive period is about to expire, petitioner filed the instant Petition for Review before this Court on April 13, 2011.[9]

In her Answer[10] filed on May 24, 2011, respondent raises the following Special and Affirmative Defenses:

> "6. Petitioner's alleged claim for refund is subject to administrative routinary investigation/examination by the Bureau.
>
> 7. Petitioner failed to demonstrate that the tax subject of the case at bar was erroneously or illegally collected.

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[2] Par. 2, JSFI, Docket (Vol. V), pp. 2769 to 2770.
[3] Exhibit "A".
[4] Exhibit "B".
[5] Exhibit "C".
[6] Exhibit "D".
[7] Exhibit "H".
[8] Exhibit "I".
[9] Pars. 4 and 5, JSFI, Docket (Vol. V), p. 2771; Par. 8, Petition for Review, Docket, p. 5.
[10] Docket (Vol. V), pp. 2736 to 2742.

8. Petitioner must show that it has complied with the provisions of Sections 204(c) and 229 of the Tax Code on the prescriptive period for claiming tax refund/credit.

9. Taxes remitted to the BIR are presumed to have been made in the regular course of business and in accordance with the provisions of law.

10. Petitioner failed to substantiate its claim for refund/issuance of tax credit certificate in the amount of Two Hundred Nine Million Three Hundred Thirty Three Thousand Two Hundred Forty Seven Pesos and 65/100 (P209,333,247.65) representing alleged unutilized creditable withholding tax for the taxable year 2008.

11. In the case entitled *'Commissioner of Internal Revenue vs. Rosemarie Acosta'*[11], the Supreme Court had the occasion to say:

> 'xxx Noteworthy, the requirements under Section 230 (now Section 204) for refund claims are as follows:
>
> 1. A **written claim** for refund or tax credit must be filed by the taxpayer with the Commissioner;
>
> 2. The claim for refund must be a **categorical demand** for reimbursement;
>
> 3. The claim for refund or tax credit must be filed, or the suit or proceeding therefor must be commenced in court **within two (2) years from date of payment of the tax or penalty regardless of any supervening cause**.
>
> In our view, the law is clear. A claimant must first file a written claim for refund, **categorically demanding recovery of overpaid taxes** with the CIR, before resorting to an action in court. This obviously is intended, first, **to afford the CIR an opportunity to correct the action of subordinate officers**; and second, to notify the government that such taxes have been questioned, and the notice

[11] G.R. No. 154068, August 3, 2007.

should then be borne in mind in estimating the revenue available for expenditure xxx.' (Emphasis and underscoring supplied)

12. In order to be entitled to the refund being sought, petitioner must satisfactorily comply with the following requisites:

a.) That the claim for refund was filed within the two-year prescriptive period as provided under Section 204(c) in relation to Section 229 of the NIRC of 1997;

b.) That the fact of withholding is established by a copy of a statement duly issued by the payor (withholding agent) to the payee, showing the amount paid and the amount of tax withheld therefrom; and

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

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

14. Petitioner must prove that it has fully complied with the requirements of Revenue Memorandum Order No. 53-98, for purposes of submission of the supporting documents, otherwise, there would be no sufficient compliance with regard to the filing of an administrative claim for tax credit/refund which is a condition *sine qua non* prior to the filing of judicial claim;

15. Respondent humbly manifests that petitioner failed to indicate and prove that it opted a claim for refund of its alleged excess and unutilized creditable withholding tax for taxable year 2008.

Section 76 of the National Internal Revenue Code of 1997, as amended, provides:

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;
b. Carry over the excess credit; or
c. Be credited or refund the excess amount paid, as the case may be.

If 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.**' (Emphasis and underscoring supplied)

16. Petitioner alleged that it filed its initial administrative claim for refund with respondent amounting to P188,744,630.31 representing excess income tax payments for taxable year 2008 on January 11, 2011. However, on March 29, 2011, it allegedly filed an amended administrative claim for refund for the increased amount of P209,333,247.65. It bears stressing that exactly fifteen (15) days after the filing of the aforesaid alleged administrative claim, it filed before the Honorable Court its Petition for Review. Respondent therefore, was not accorded the fullest opportunity to act appropriately on the matter. It would be highly improbable to grant or deny the claim for refund in a matter of sixteen (16) days. In fact, petitioner was very much aware of the two (2) year prescriptive period embodied in Section 229 of the National Internal Revenue (NIRC) of 1997, as amended. As found in Paragraph 7 of its Petition for Review, Section 229 of the NIRC of 1997, as amended, was even made the basis for the filing of the administrative claim for

refund on its alleged excess creditable withholding tax. Mindful of Section 229, petitioner should have at least filed its application for tax refund earlier than March 29, 2011, for that matter, so that respondent will be given ample time to review and evaluate its application for tax refund.

17. In an action for refund, the burden of proof is on the taxpayer to establish its right to refund, and failure to sustain the burden is fatal to the claim for refund.

18. Claims for refund are construed strictly against the claimant for the same partake the nature of exemption from taxation.

19. Basic is the rule that tax refunds are regarded as tax exemptions that are in derogation of sovereign authority and are to be construed in strictissimi juris against the person or entity claiming the exemption *(Philippine Phosphate Fertilizer Corporation v. Commissioner of Internal Revenue, G.R. No. 141973, June 28, 2005)*. The law does not look with favor on tax exemptions and that he who would seek to be thus privileged must justify it by words too plain to be mistaken and too categorical to be misinterpreted (Sea-land Service Vs. Court of Appeals, 357 SCRA 444)."

After the pre-trial conference held on June 17, 2011, both parties' counsel submitted their Joint Stipulation of Facts and Issues[12] on July 7, 2011 and subsequently, a Supplemental Joint Stipulation of Facts and Issues on July 22, 2011,[13] which the Court approved in the Resolution dated July 27, 2011.[14] On the basis thereof, the Court issued a Pre-Trial Order on September 16, 2011.[15]

During trial, petitioner presented oral and documentary evidence and filed its Formal Offer of Evidence on August 6, 2012,[16] offering Exhibits "A" to "BBB-5-1", inclusive of sub-markings.[17] Respondent filed her Comment (On Petitioner's Formal Offer of

[12] Docket (Vol. V), pp. 2769 to 2773.
[13] Docket (Vol. V), pp. 2780 to 2787.
[14] Docket (Vol. V), p. 2789.
[15] Docket (Vol. V), pp. 3290 to 3295.
[16] Docket (Vol. VI), pp. 3482 to 3511.
[17]

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Evidence) on September 11, 2012,[18] interposing no objection to the admission of petitioner's enumerated exhibits, but only as to the manner they were identified in open court and subject to the condition that the same would be compared with the original documents pursuant to Section 4 of Rule 12 of the Revised Rules of the Court of Tax Appeals.

With the admission of petitioner's documentary exhibits, petitioner was deemed to have rested its case.

During the supposed initial presentation of respondent's evidence on January 31, 2013, respondent's counsel manifested that the case has no report of investigation and that respondent would not be presenting evidence.[19] Thus, in the Resolution dated January 31, 2013,[20] the Court granted respondent a period of thirty (30) days within which to file her Memorandum, and a period of twenty days (20) upon receipt of the Resolution for petitioner to file its Memorandum.

On March 22, 2013,[21] this case was submitted for decision, after petitioner filed its Memorandum on March 18, 2013,[22] and respondent filed her Memorandum on March 19, 2013.[23]

Hence, this Decision.

THE ISSUES

As stipulated by the parties, these are the submitted issues[24] for this Court's resolution:

> *"WHETHER OR NOT PETITIONER IS ENTITLED TO THE ISSUANCE OF TCC IN THE AMOUNT OF P209,333,247.65, REPRESENTING EXCESS CREDITABLE WITHHOLDING TAXES FOR THE TAXABLE YEAR 2008.*

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[18] Docket (Vol. VI), pp. 3518 to 3519.
[19] Minutes of the hearing held on January 31, 2013, Docket (Vol. VI), p. 3575.
[20] Docket (Vol. VI), p. 3577
[21] Resolution dated March 22, 2013, Docket (Vol. VI), p. 3640.
[22] Docket (Vol. VI), pp. 3583 to 3610.
[23] Docket (Vol. VI), pp. 3618 to 3635.
[24] Issues to be Resolved, JSFI, Docket (Vol. V), pp. 2771 to 2772.

WHETHER OR NOT PETITIONER COMPLIED WITH THE REQUIREMENTS IN FILING AN ADMINISTRATIVE CLAIM FOR REFUND.

WHETHER OR NOT THE INCOME PAYMENTS FROM THE EXCESS CREDITABLE WITHHOLDING TAXES BEING CLAIMED WERE WITHHELD AND DECLARED BY PETITIONER IN ITS INCOME TAX RETURNS AS PART OF ITS GROSS INCOME.

WHETHER OR NOT THE FACT OF WITHHOLDING WAS ESTABLISHED FOR TAXABLE YEAR 2008."

The foregoing issues can be summarized into one general issue, to wit:

"Whether or not petitioner is entitled to the refund or issuance of tax credit certificate of alleged excess creditable withholding taxes for taxable year 2008 in the amount of ₱ 209,333,247.65."

Petitioner's arguments

Petitioner argues that it complied with all the requisites for a claim of refund or issuance of tax credit certificate for excess creditable withholding taxes. According to petitioner, both its administrative claim filed on January 14, 2011 and amended on March 29, 2011; and judicial claim filed on April 13, 2011, fall squarely within the two-year reglementary period.

Moreover, petitioner avers that it is shown on its income tax return that the income payment received was declared as part of the gross income; and that the fact of withholding is established by a copy of a statement duly issued by the payor to the petitioner showing the amount paid and the amount of tax withheld therefrom.

Finally, petitioner asserts that in its Annual Income Tax Return for 2008, it signified its option to be issued a tax credit certificate and that it did not apply nor carry over its unutilized creditable withholding taxes to subsequent taxable years.

Respondent's counter-arguments

Respondent counters that it is incumbent upon petitioner to prove that it is entitled to the refund sought because a claim for refund is not *ipso facto* granted upon filing of the claim. Respondent points out that petitioner failed to substantiate its administrative claim for refund, and that the filing of the instant Petition for Review before this Court deprived respondent of the opportunity to fully exercise her function to decide the claims for refund, correct, modify or affirm the findings of her subordinates.

Likewise, respondent contends that petitioner's claim for tax refund or issuance of tax credit should not be granted because the alleged Certificates of Creditable Taxes Withheld were not properly identified.

Lastly, respondent stresses that tax refunds are construed strictly against the claimant for the same partake of the nature of exemption from taxation, and as such, they are looked upon with disfavor.

THE COURT'S RULING

In claiming excess unutilized creditable withholding taxes, as prayed for in the instant Petition for Review, the specific requirements for the refund thereof, or the issuance of tax credit certificate therefor, are provided under Section 76 of the National Internal Revenue Code of 1997, as amended.

Taxpayer's options under Section 76 of the Tax Code in case of excess income payment.

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

> "SEC. 76. *Final Adjustment Return.* - Every corporation liable to tax under Section 27 shall file a final adjustment return covering the total taxable income for the preceding calendar or fiscal year. If the sum of the quarterly tax payments made during the said taxable year

is not equal to the total tax due on the entire taxable income of that year, the corporation shall either:

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

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

In interpreting the foregoing provision, the Supreme Court, in *Systra Philippines, Inc. vs. Commissioner of Internal Revenue*,[25] held as follows:

"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.

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.

This is known as the irrevocability rule and is

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

> embodied in the last sentence of Section 76 of the Tax Code. The phrase 'such option shall be considered irrevocable for that taxable period' means that the option to carry over the excess tax credits of a particular taxable year can no longer be revoked.
>
> The rule prevents a taxpayer from claiming twice the excess quarterly taxes paid: (1) as automatic credit against taxes for the taxable quarters of the succeeding years for which no tax credit certificate has been issued and (2) as a tax credit either for which a tax credit certificate will be issued or which will be claimed for cash refund."

In this case, petitioner manually filed with the BIR its Annual ITR for taxable year 2008 on April 15, 2009,[26] and electronically filed the same with the BIR on April 30, 2009.[27] Subsequently, it amended the said return on June 1, 2009,[28] on January 10, 2011,[29] and lastly, on March 25, 2011.[30] Below are the significant information reflected on the said returns:

	Exhibit V	**Exhibit A**	**Exhibit B**	**Exhibit C**	**Exhibit D**
Date Filed with the BIR	**15-Apr-09**	**30-Apr-09**	**1-Jun-09**	**10-Jan-11**	**25-Mar-11**
Sales/Revenues /Receipts/Fees	₱ 5,217,287,868.00	₱ 5,217,287,868.00	₱ 5,217,287,868.00	₱ 5,217,287,868.00	₱ 5,217,287,868.00
Less: Cost of Sales/Services	5,985,198,541.00	5,985,198,541.00	5,985,198,541.00	5,985,198,541.00	5,985,198,541.00
Gross Income from Operation	₱ (767,910,673.00)	₱ (767,910,673.00)	₱ (767,910,673.00)	₱ (767,910,673.00)	₱ (767,910,673.00)
Add: Non-Operating & Other Income	4,449,302,517.00	4,449,302,517.00	4,449,302,517.00	4,449,302,517.00	4,449,302,517.00
Total Gross Income	₱ 3,681,391,844.00	₱ 3,681,391,844.00	₱ 3,681,391,844.00	₱ 3,681,391,844.00	₱ 3,681,391,844.00
Less: Deductions	4,293,749,899.00	4,293,749,899.00	4,293,749,899.00	4,293,749,899.00	4,293,749,899.00
Taxable Income	₱ (612,358,055.00)	₱ (612,358,055.00)	₱ (612,358,055.00)	₱ (612,358,055.00)	₱ (612,358,055.00)
Minimum Corporate Income Tax	₱ 60,898,451.00	₱ 60,898,451.06	₱ 60,898,451.06	₱ 60,898,451.06	₱ 60,898,451.06
Less: Tax Credits/ Payments					

[26] Exhibit "V".
[27] Exhibit "A".
[28] Exhibit "B".
[29] Exhibit "C".
[30] Exhibit "D".

	Exhibit V	Exhibit A	Exhibit B	Exhibit C	Exhibit D
Prior Year's Excess Credits	₱ 85,571,293.00	₱ 85,571,293.00	₱ 85,571,293.00	₱ 85,571,293.00	₱ 85,571,293.00
Tax Payments for the First 3Q					
CWT for the First 3Q	**51,543,962.00**	**51,543,962.00**	**51,543,962.00**	**51,543,961.86**	**51,543,961.86**
CWT for the Fourth Q	**44,469,940.00**	**44,469,940.00**	**68,391,572.00**	**137,200,668.45**	**157,789,285.79**
Total Tax Credits/Payments	₱ 181,585,195.00	₱ 181,585,195.00	₱ 205,506,827.00	₱ 274,315,923.31	₱ 294,904,540.65
Tax Payable/ (Overpayment)	**₱ (120,686,744.00)**	**₱ (120,686,743.94)**	**₱ (144,608,375.94)**	**₱ (213,417,472.25)**	**₱ (234,006,089.59)**

In all of the said ITRs for taxable year 2008, petitioner marked the box "To be issued a Tax Credit Certificate".[31]

As can be gleaned from petitioner's final amended ITR for 2008, petitioner had total tax credits of ₱ 294,904,540.65,[32] which consisted of its prior year's excess credits in the amount of ₱ 85,571,293.00[33] and creditable taxes withheld during the first three quarters of year 2008 amounting to ₱ 51,543,961.86,[34] plus the creditable taxes withheld for the fourth quarter of 2008 amounting to ₱ 157,789,285.79.[35]

Accordingly, petitioner's income tax due in 2008 amounting to ₱ 60,898,451.06 was paid using a portion of its prior year's excess credits of ₱ 85,571,293.00; thus, leaving the portion of the prior year's excess credits in the amount of ₱ 24,672,841.94 and creditable taxes withheld during the year 2008 in the amount of ₱ 209,333,247.65, totaling to ₱ 234,006,089.59[36] unutilized as of December 31, 2008, as shown below:

Prior Year's Excess Credits	₱ 85,571,293.00
Less: Tax Due (MCIT)	60,898,451.06
Balance of Prior Year's Excess Credits	₱ 24,672,841.94
Add: Creditable Taxes Withheld – 2009	209,333,247.65
Excess CWT as of December 31, 2009	**₱ 234,006,089.59**

[31] Exhibits "V", "A-1", "B-1", "C-1", and "D-1".
[32] Exhibit "D", line 28G.
[33] Exhibit "D", line 28A.
[34] Exhibit "D", line 28C.
[35] Exhibit "D", line 28D.
[36] Exhibit "D", line 31.

Since only the prior year's excess credit in the amount of ₱ 24,672,841.94 was carried over to the subsequent quarters of the following taxable year (2009),[37] the excess CWT in 2008 in the amount of ₱ 209,333,247.65 may be claimed as refund by petitioner pursuant to Section 76 of the NIRC of 1997, subject to the conditions for the grant thereof.

Conditions for the grant of a claim for refund of excess creditable withholding tax.

The Supreme Court ruled, in a number of cases[38], that there are three (3) conditions for the grant of a claim for refund of creditable withholding income tax, to wit: 1) the claim is filed with the Commissioner of Internal Revenue within the two-year period from the date of payment of the tax;[39] 2) it is shown on the return of the recipient that the income payment received was declared as part of the gross income;[40] and, 3) the fact of withholding is established 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 therefrom.

The *first* condition is pursuant to Sections 204(C) and 229 of the NIRC of 1997, *viz*:

> "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

[37] Indicated as ₱ 24,672,842.00 in Line 31A, Exhibits "R", "S", and "T". Line 28A, Exhibit "F"; Line 30A, Exhibit "G"; Reflected in Line 28B, Exhibit "E".

[38] *Banco Filipino Savings and Mortgage Bank vs. Court of Appeals, et al.*, G.R. No. 155682, March 27, 2007; *Commissioner of Internal Revenue vs. Perf Realty Corporation*, G.R. No. 163345, July 4, 2008, and *Commissioner of Internal Revenue vs. Far East Bank & Trust Co. (Now Bank of the Philippine Islands)*, G.R. No. 173854, March 15, 2010.

[39] Jose C. Vitug and Ernesto D. Acosta, Tax Law and Jurisprudence, 329 (2006), citing *Gibb v. Collector,* 107 Phil. 230 (1960).

[40] *Calamba Steel Center, Inc. v. Commissioner on Internal Revenue*, G.R. No. 151857, April 28, 2005, 457 SCRA 482.

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." *(Emphasis supplied)*

And the *second* and *third* conditions are anchored on Section 2.58.3(B) of Revenue Regulations No. 2-98[41], which states:

"*Sec. 2.58.3. Claim for Tax Credit or Refund*

xxx xxx xxx

[41] SUBJECT: Implementing Republic Act No. 8424, *"An Act Amending The National Internal Revenue Code, as Amended"* Relative to the Withholding on Income Subject to the Expanded Withholding Tax and Final Withholding Tax, Withholding on Income Tax on Compensation, Withholding of Creditable Value-Added Tax ad Other Percentage Taxes.

(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)*

Anent the *first* condition, the Supreme Court has likewise ruled that, at the earliest, the two-year prescriptive period for claiming a refund commences to run on the date of the filing of the final adjustment return,[42] and that such period consisted of twenty-four (24) months from such date.[43]

In the case at bench, records show that petitioner manually filed its Annual ITR for taxable year 2008 on April 15, 2009.[44] Counting two years from said date, petitioner had until April 15, 2011 within which to file its claim for refund or issuance of a tax credit certificate, both administratively and judicially. Evidently, petitioner's administrative claim filed on January 14, 2011[45] and the amendment thereto, which was filed on March 29, 2011,[46] as well as the judicial claim filed via Petition for Review on April 13, 2011, were all made within the two-year prescriptive period provided by law. Such being the case, petitioner has complied with the said first condition.

As regards the *second* and *third* conditions, petitioner presented Certificates of Creditable Tax Withheld at Source[47] duly issued to it by various withholding agents for taxable year 2008 and Input Sheets/Accounting Tickets/Loan Transaction Sheets/Business Loan Display/Deeds of Absolute/Conditional Sale[48]; which were examined by the Court-commissioned Independent CPA. In her Amended and Consolidated Report dated May 3, 2012, the Independent CPA stated the following findings:[49]

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[42] *ACCRA Investments Corp. vs. Court of Appeals, et al.*, G.R. No. 96322, December 20, 1991.
[43] *Commissioner of Internal Revenue vs. Primetown Property Group, Inc.*, G.R. No. 162155, August 28, 2007.
[44] Exhibit "V".
[45] Exhibit "H".
[46] Exhibit "I".
[47] Exhibits "FF-1" to "FF-2647"
[48] Exhibits "FF-1a" to "FF-2645a"
[49] Exhibit "AAA", pp. 14-15

	FINDINGS	Exhibit Reference	Income Payments	CWT
1	CWTs supported with original BIR Form 2307 dated 2008 and with related revenues traced to the CY 2008 general ledger using as reference the name of the withholding agent, amount of income/loss and date of entry reflected in the original input sheet/accounting tickets, branch name and branch code, account code and account title (e.g., PLASE, Income from Assets Acquired, bank Commissions, Service Charges, Fees/Commissions-Others). For transactions pertaining to sales of real properties, these are further supported with original Deeds of Absolute Sale executed in 2008	BBB-1-1	₱ 1,496,383,238.52	₱ 29,942,266.53
		BBB-2-1	10,046,365.30	200,927.30
		BBB-2-2	10,690,258.13	892,702.68
		BBB-3-1	112,050,836.41	5,566,229.80
		BBB-4-1	2,558,966,902.60	149,199,659.67
		BBB-5-1	3,973,988.56	993,497.12
2	CWTs supported with original BIR Form 2307 dated 2008 with supporting documents and traced to GL/input sheet. *The GL/input sheet amount is higher because it includes Gross Receipts Tax and Value-Added tax.*	BBB-4-2	25,330,742.00	1,519,844.52
3	CWTs supported with original BIR Form 2307 dated 2008 and related revenues traced to UPASE reversals to PLASE done in 2006 which were not claimed in prior years.	BBB-4-3	86,842,412.00	5,218,986.72
4	CWTs supported with original BIR Form 2307 dated 2008 without supporting documents	BBB-2-3	269,469.00	5,389.38
		BBB-2-4	803,736.00	80,373.60
		BBB-2-5	234,955.48	11,747.78
		BBB-4-4	32,399,900.00	2,075,250.00
5	CWTs supported with original BIR Form 2307 dated 2008 which were claimed twice	BBB-4-5	14,041,000.00	842,460.00
6	CWTs supported with original BIR Form 2307 dated 2008 with supporting documents but cannot be traceable to GL extract	BBB-3-2	747,129.10	32,078.28
		BBB-4-6	16,227,800.00	973,668.00
7	CWTs supported with original BIR Form 2307 dated 2008 with supporting documents and traced to GL/input sheet but amount in G/L input sheet is higher	BBB-1-2	62,769,799.65	1,255,395.99
		BBB-2-6	7,151,801.50	143,036.03
8	CWTs supported with original BIR Form 2307 dated 2008 with supporting documents but with income reported after 2008 which were not claimed in 2009 and 2010	BBB-3-3	423,604.00	21,180.20
		BBB-4-7	148,999,041.00	8,987,637.61
9	CWTs supported with original BIR Form 2307 not dated within 2008 which were not claimed in other years.	GG-4-1	500,000.00	25,000.00
		BBB-4-8	14,438,400.00	866,304.00
10	CWTs without original BIR Form 2307	GG-2		36,058.80
11	CWTs supported with original BIR Form 2307 dated 2008 without input sheet	BBB-1-3	51,041.86	1,020.84
		BBB-3-4	105,000.00	5,250.00
12	CWTs supported with original BIR Form 2307 dated 2008 pertaining to GRT	GG-3	14,728,526.22	441,855.80
13	Difference		17,047,239.24	(4,573.00)
	TOTAL CLAIM		**₱ 4,635,223,186.57**	**₱ 209,333,247.65**

Based on the foregoing, the amount of ₱ 5,391,883.48, as detailed below, shall be disallowed outright for petitioner's failure to meet the second and third requisites:

	FINDINGS		Income Payments Per BIR Form 2307	CWT
1	CWTs supported with original BIR Form 2307 dated 2008 without supporting documents	BBB-2-3	₱ 269,469.00	₱ 5,389.38
		BBB-2-4	803,736.00	80,373.60
		BBB-2-5	234,955.48	11,747.78
		BBB-4-4	32,399,900.00	2,075,250.00
2	CWTs supported with original BIR Form 2307 dated 2008 which were claimed twice	BBB-4-5	14,041,000.00	842,460.00
3	CWTs supported with original BIR Form 2307 dated 2008 with supporting documents but cannot be traceable to GL extract	BBB-3-2	747,129.10	32,078.28
		BBB-4-6	16,227,800.00	973,668.00
4	CWTs supported with original BIR Form 2307 not dated within 2008 which were not claimed in other years.	GGG-4-1	500,000.00	25,000.00
		BBB-4-8	14,438,400.00	866,304.00
5	CWTs without original BIR Form 2307	GG-2		36,058.80
6	CWTs supported with original BIR Form 2307 dated 2008 without input sheet	BBB-1-3	51,041.86	1,020.84
		BBB-3-4	105,000.00	5,250.00
7	CWTs supported with original BIR Form 2307 dated 2008 pertaining to GRT	GG-3	14,728,526.22	441,855.80
8	Difference		17,047,239.24	(4,573.00)
	TOTAL DISALLOWANCES		**₱ 111,594,196.90**	**₱ 5,391,883.48**

Consequently, out of the total claimed creditable withholding taxes of ₱ 209,333,247.65, only the amount of ₱ 203,941,364.17 (₱ 209,333,247.65 less ₱ 5,391,883.48) appears to be a valid claim.

However, although the Independent CPA ascertained that the income from which the CWT of ₱ 203,941,364.17 were withheld was included as part of the total revenue reported in the Audited Financial Statements and Annual ITR for CY 2008, the Court could not verify the same because petitioner did not submit a breakdown or detailed schedules of its revenue with corresponding creditable withholding taxes as reported in its Audited Financial Statements and Annual ITR for the year 2008. The reconciliation of income per ITR against the income per BIR Form No. 2307[50] provided by petitioner is not entirely supported by detailed schedules and relevant documents to prove its allegations. Suffice it to say that this Court could not give much credence to the self-serving reconciliation of income accounts provided by petitioner for it can be contrived easily especially if this is not supported by substantial evidence establishing the fact of its existence. Consequently, this Court cannot verify whether the income payments related to the claimed CWT indeed formed part of the income reflected in its 2008 Annual ITR.

Furthermore, still with regard to petitioner's compliance with the *second* condition for the grant of a claim for refund of creditable withholding income tax, even granting that the pertinent supporting

[50] Exhibit "AAA", p. 10

documents were submitted, an examination of petitioner's Annual ITR for 2008 (the original and all amendments thereto)[51] fails to convince Us that the subject income payments, which were supposedly subjected to withholding tax, were indeed declared as part of petitioner's gross income.

Undisputedly, in the said Annual ITR, petitioner declared the amount of ₱ 5,217,287,868.00 as *Sales/Revenues/Receipts/Fees"*, and a *"Non-Operating & Taxable Other Income"* in the total amount of ₱ 4,449,302,517.00. However, under Schedule 1 (or the *"Schedule of Sales/Revenues/ Receipts/Fees"*) and Schedule 4 (or the *"Schedule of Non-Operating & Taxable Other Income*), both of Section A of the same Annual ITR, there is no entry or amount whatsoever in the respective *"Creditable Tax Withheld"* column. Based on such information, it can be inferred that no portion of the reported *"Sales/ Revenues/ Receipts /Fees"* and *"Non-Operating & Taxable Other Income"* was ever subjected to creditable withholding tax. In other words, the absence of any entry in the reflected *"Creditable Tax Withheld"* column is to the effect, or at the very least, may be taken to mean, that no part of the gross income reported was ever subjected to creditable withholding tax.

Considering that the aforesaid *second* condition is to the effect that there must be a showing **on the return** of petitioner that the income payment subjected to withholding tax was declared as part of the gross income, it is logical that the first and foremost document to be closely examined and scrutinized is the Annual ITR of petitioner for 2008, particularly the information indicated therein. Thus, such examination and scrutiny must not only be confined to a particular entry or item in the said return, but must be made in its entirety.

In fine, it must be emphasized that as cases filed before this Court are litigated *de novo*, party-litigants should prove **every minute aspect** of their cases.[52]

Thus, petitioner clearly failed to prove compliance with the *second* condition for the grant of a claim for refund of creditable withholding income tax.

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[51] Exhibits "V", and "A" to "D".
[52] *Dizon vs. Court of Tax Appeals, et al.,* G.R. No. 140944, April 30, 2008; *Atlas Consolidated Mining and Development Corporation vs. Commissioner of Internal Revenue,* G.R. No. 145526, March 16, 2007; and *Commissioner of Internal Revenue vs. Manila Mining Corporation,* G.R. No. 153204, August 31, 2005.

It must be stressed that a claimant has the burden of proof to establish the factual basis of his or her claim for tax credit or refund.[53] Tax refunds are in the nature of tax exemptions. As such, they are regarded as in derogation of sovereign authority and to be construed *strictissimi juris* against the person or entity claiming the refund.[54]

WHEREFORE, premises considered, the instant Petition for Review is hereby **DENIED** due to insufficiency of evidence.

SO ORDERED.

ERLINDA P. UY
Associate Justice

I CONCUR:

ESPERANZA R. FABON-VICTORINO
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.

ERLINDA P. UY
Chairperson
Associate Justice

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[53] *Citibank, N.A. vs. Court of Appeals and Commissioner of Internal Revenue*, G.R. No. 107434, October 10, 1997.
[54] *Commissioner of Internal Revenue vs. S.C. Johnson and Son, Inc., et al.*, G.R. No. 127105, June 25, 1999.

CERTIFICATION

Pursuant to Section 13 of Article VIII of the Constitution, and the Division Chairperson's Attestation, it is hereby certified that the conclusions in the above Decision were reached in consultation before the case was assigned to the writer of the opinion of the Court's Special First Division.

ROMAN G. DEL ROSARIO
Presiding Justice