20-000380-0058

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

CTA CASE NO. 10394

PROVINCIAL GOVERNMENT OF BOHOL, represented by the Provincial Governor and the Provincial Treasurer,
Petitioner,

- versus -

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

NOTICE OF DECISION

To:

OFFICE OF THE SOLICITOR GENERAL
134 Amorsolo Street, Legazpi Village
Makati City

ATTY. MICHAEL KEVIN P. BAYONA
Bureau of Internal Revenue
Room 703, Litigation Division, BIR National Office Building
Sen. Miriam P. Defensor-Santiago Avenue
Diliman, Quezon City

ATTY. HANDEL T. LAGUNAY
Office of the Provincial Legal Officer
2nd Floor, New Bohol Provincial Capitol
New Capitol Site, Cogon District
Tagbilaran City, 6300 Bohol

GREETINGS:

You are hereby notified by these presents that on **March 26, 2024,** a Decision was rendered in the above-entitled case, copy of which is attached hereto.

Quezon City, Philippines, **March 27, 2024.**

Atty. Margarette Y. Guzman
Executive Clerk of Court III

REPUBLIC OF THE PHILIPPINES
COURT OF TAX APPEALS
QUEZON CITY

SPECIAL FIRST DIVISION

PROVINCIAL GOVERNMENT OF BOHOL, represented by the Provincial Governor and the Provincial Treasurer, *Petitioner,*	**CTA Case No. 10394**
	Members:
	DEL ROSARIO, *P.J., Chairperson,* **MANAHAN,** *and* **REYES-FAJARDO,** *JJ.*
-versus-	
COMMISSIONER OF INTERNAL REVENUE, *Respondent.*	Promulgated: MAR 26 2024 1:20PM

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DECISION

MANAHAN, *J.:*

Before this Court is a *Petition for Review* filed by petitioner Provincial Government of Bohol, represented by its Provincial Governor and Provincial Treasurer, against respondent Commissioner of Internal Revenue, praying that judgment be rendered:

(1) declaring petitioner entitled to the issuance of a tax credit certificate in the amount of ₱2,447,669.39, allegedly representing excess taxes erroneously paid by petitioner, and illegally and wrongfully collected by respondent, for the period September 2018; and,

(2) ordering respondent to grant petitioner tax credit in the said amount of ₱2,447,669.39.[1]

[1] Docket, CTA Case No. 10394, Vol. I, Prayer, *Petition for Review*, pp. 8 to 27.

THE PARTIES

Petitioner Provincial Government of Bohol is a local government unit with office address at Bohol Provincial Capitol Building located in Gov. Lino I. Chatto Drive, Brgy. Cogon, Tagbilaran City, Bohol.[2] It is represented by Provincial Governor Arthur C. Yap and Provincial Treasurer Eustaquio A. Socorin.[3]

Respondent, on the other hand, is the duly appointed Commissioner of Internal Revenue, who is tasked to assess and collect all national internal revenue taxes, fees and charges, and enforce all forfeitures, penalties, and fines connected therewith. Respondent holds office at the Bureau of Internal Revenue (BIR) National Office Building located at Agham Road, Diliman, Quezon City.[4]

THE FACTS

On February 1, 2019, petitioner, through its Provincial Treasurer, Mr. Eustaquio A. Socorin, filed the letter dated January 28, 2019, addressed to Revenue District Officer, Mr. Aldo B. Osmeña,[5] requesting the refund of its alleged over-remittance of withheld creditable income tax, value-added tax (VAT) and other percentage taxes for the month of September 2018. The remittance made on October 9, 2018, amounted to ₱2,447,669.39, computed by petitioner as follows:

	Correct Amount	Amount Remitted	Difference
General Fund – 1601E			
1%	250,562.00	946.09	249,615.91
2%	218,433.65	749,046.38	(530,612.73)
Sub-total	**468,995.65**	**749,992.47**	**(280,996.82)**
General Fund – 1600			
2%	1,269.06	1,362.97	(93.91)
3%	54,505.48	173,632.77	(119,127.29)
5%	1,310,704.35	2,986,574.34	(1,675,869.99)
5%	493,523.18	865,104.56	(371,581.38)
Sub-total	**1,860,002.07**	**4,026,674.64**	**(2,166,672.57)**
Total	**2,328,997.72**	**4,776,667.11**	**(2,447,669.39)**

[2] Docket, Vol. I, Par. 1, *Petition for Review*, p. 8.
[3] *Id.*, Vol. II, Exhibit "P-1", pp. 580 to 581.
[4] *Id.*, Vol. I, Par. 1, *Petition for Review*, vis-à-vis par. 1, *Answer*, pp. 8 and 128, respectively.
[5] *Id.*, Vol. II, Exhibit "P-2", p. 582.

Petitioner then sent follow up letters dated June 11, 2019 and February 10, 2020,[6] to inquire on the status of its request for refund of over-remittance of withholding taxes.

On September 22, 2020, petitioner filed another letter dated September 21, 2020,[7] accompanied by a duly accomplished *Application for Tax Credits/Refunds* (BIR Form No. 1914) in the amount of ₱2,447,669.39, for the period September 1, 2018 to September 30, 2018.[8] In the said letter, petitioner explained further the factual and legal basis of its claim for tax credit of its over-remittance of taxes withheld, which consist of expanded withholding taxes (EWT), VAT, and other percentage taxes.

Petitioner then posted the present *Petition for Review* with this Court on October 8, 2020 which was received on November 6, 2020.[9]

Within the extended time granted by the Court,[10] respondent posted his *Answer* on February 8, 2021,[11] interposing the following main special and affirmative defenses:

1. Petitioner is not entitled to tax credit of the alleged erroneously paid creditable withholding taxes (CWT) and VAT and other percentage taxes for the month of September 2018 in the amount of ₱2,447,669.39;

2. Petitioner's failure to allege that the purported withheld taxes were remitted to the BIR is fatal to its claim. It is unquestionably not entitled to any refund; and,

3. Petitioner failed to submit all relevant documents to substantiate its administrative claim for refund.

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[6] *Id.*, Vol. II, Exhibits "P-3" and "P-4", pp. 583 to 584.
[7] Docket, Vol. II, Exhibit "P-5", pp. 586 to 589.
[8] *Id.*, Vol. II, Exhibit "P-6", p. 590.
[9] *Id.*, Vol. I, pp. 8 to 25.
[10] *Id.*, Vol. I, Respondent's *Motion for Extension of Time to File Answer*, pp. 121 to 124; Resolution dated January 28, 2021, Docket – Vol. I, p. 127.
[11] *Id.*, Vol. I, pp. 128 to 135.

In the Notice of Pre-Trial Conference dated February 23, 2021 issued by the Court,[12] the Pre-Trial Conference was set on April 22, 2021.

The *Pre-Trial Brief for the Petitioner* was posted on April 19, 2021;[13] while *Respondent's Pre-Trial Brief* was filed through electronic mail on August 20, 2021.[14]

On April 19, 2021, petitioner also posted its *Omnibus Motion 1. To Postpone 2. To Conduct Hearing via Video Conferencing,*[15] due to the physical closure of Courts from March 25, 2021 to April 30, 2021, pursuant to the Supreme Court (SC) Administrative Circular No. 22-2021 dated April 14, 2021.[16] In the Resolution dated June 10, 2021,[17] the Court granted the said *Omnibus Motion*, and the Pre-Trial Conference was reset to August 24, 2021. However, the same was further reset to,[18] and held on, November 11, 2021.[19]

Respondent transmitted the *BIR Records* for this case on October 26, 2021.[20]

Thereafter, under SC Memorandum Order No. 10-2022 dated January 12, 2022,[21] all courts in certain areas of the country, including the National Capital Region, were declared physically closed from January 13, 2022 to January 31, 2022.

Since the parties failed to submit their *Joint Stipulation of Facts and Issues* as of February 24, 2022,[22] the Court decreed, in its Resolution dated March 14, 2022,[23] that the parties' right to file the same is deemed waived, and that the Pre-Trial is terminated. The Pre-Trial Order dated May 11, 2022 was then issued.[24]

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[12] *Id.*, Vol. I, pp. 137 to 137-b.
[13] Docket, Vol. I, pp. 182 to 193.
[14] *Id.*, Vol. I, pp. 199 to 203.
[15] *Id.*, Vol. I, pp. 174 to 179.
[16] RE: PHYSICAL CLOSURE OF COURTS IN ENHANCED COMMUNITY QUARANTINE AND MODIFIED ENHANCED COMMUNITY QUARANTINE AREAS.
[17] *Id.*, Vol. I, pp. 197 to 198.
[18] *Id.*, Vol. I, Notice of Resetting dated September 21, 2021, p. 205.
[19] *Id.*, Vol. I, Order dated November 11, 2021, pp. 226 to 226-b.
[20] *Id.*, Vol. I, Respondent's *Compliance* dated October 15, 2021, pp. 214 to 216.
[21] RE: RISING CASES OF COVID 19 INFECTION / PHYSICAL CLOSURE OF COURTS IN SELECT AREAS.
[22] *Id.*, Vol. I, Records Verification Report dated February 24, 2022 issued by this Court's Judicial Records Division, p. 237.
[23] *Id.*, Vol. I, pp. 255 to 256.
[24] *Id.*, Vol. I, pp. 284 to 292.

In the meantime, *Petitioner's Supplemental Pre-Trial Brief with Motion for Remarking of Documentary Exhibits* was posted on March 3, 2022.[25] In the Resolution dated March 14, 2022,[26] the Court granted the said *Motion*, and set the Commissioner's Hearing on March 31, 2022. However, petitioner later moved for the cancellation of the same, stating that it had already marked all the exhibits it intends to present.[27]

As trial ensued, petitioner presented its testimonial and documentary evidence. It offered the testimony of Mr. Eustaquio A. Socorin,[28] petitioner's Provincial Treasurer.

At the hearing held on April 7, 2022,[29] the manifestation of respondent's counsel that he would no longer present any evidence was noted; and petitioner was granted a period of fifteen (15) days or until April 22, 2022 to file its Formal Offer of Evidence (FOE). However, per Judicial Records Division of this Court, petitioner failed to file an FOE as of June 13, 2022.[30]

In the *Manifestation with Attached Formal Offer of Documentary Exhibits for the Petitioner* filed via electronic mail on June 30, 2022,[31] petitioner clarified that it has already filed its FOE on April 21, 2022, and that respondent has been furnished a copy of the FOE on even date; that upon investigation, the postmaster erroneously delivered the same to the BIR as shown by the stamp received dated May 11, 2022, so that it requested respondent's counsel to forward the Court's copy of the FOE. The *Formal Offer of Documentary Exhibits for the Petitioner* was then posted on July 6, 2022.[32] Respondent filed his *Comment (Re Petitioner's Formal Offer of Evidence)* on May 10, 2022.[33]

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[25] *Id.*, Vol. I, pp. 261 to 263.
[26] Docket, Vol. I, pp. 255 to 256.
[27] *Id.*, Vol. I, Vol. I, Petitioner's *Manifestation*, pp. 258 to 259.
[28] *Id.*, Vol. I, Exhibits "P-28" and "P-29", pp. 28 to 38, and 269 to 272, respectively; Docket, Vol. I, Minutes of the hearing held on, and Order dated, April 7, 2022, pp. 274-a to 274-g.
[29] Minutes of the hearing held on, and Order dated, April 7, 2022, pp. 274-d and 274-f, respectively.
[30] *Id.*, Vol. II, p. 293.
[31] *Id.*, Vol. I, pp. 296 to 298.
[32] *Id.*, Vol. I, pp. 319 to 331.
[33] *Id.*, Vol. I, pp. 279 to 281.

In the Resolution dated August 26, 2022,[34] the Court admitted petitioner's exhibits, *except* for the following:

1. Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-14", "P-15", "P-16", "P-17", "P-18", "P-22", "P-23", "P-24", "P-25", and "P-26", for failure to submit the duly marked exhibits; and

2. Exhibits "P-13", "P-19", "P-20", and "P-21", for failure to submit the duly marked exhibits and to present the originals for comparison.

In the same Resolution, considering respondent counsel's previous manifestation that he will no longer present any evidence in this case, the Court gave the parties thirty (30) days within which to file their respective memorandum.[35]

However, on September 29, 2022, petitioner posted its *Motion for Leave to File and Submit Formally Offered Exhibits Through Motion for Partial Reconsideration* with attached *Urgent Motion for Partial Reconsideration (With Prayer to Admit Documentary Exhibits)*,[36] submitting therein the duly marked documents of the denied exhibits. Respondent failed to file his comment thereon.[37]

In the Resolution dated February 3, 2023,[38] the Court resolved petitioner's *Motions*, and admitted Exhibits "P-1", "P-2", "P-3", "P-4", "P-5", "P-6", "P-7", "P-8", "P-9", "P-10", "P-11", "P-12", "P-14", "P-15", "P-16", "P-17", "P-18" , "P-19", "P-20", "P-21", "P-22", "P-23", "P-24", "P-25" and "P-26"; but Exhibit "P-13" was still *denied* for failure to submit the duly marked exhibit, and for failure to present the original for comparison.

The *Memorandum for Petitioner* was posted on October 13, 2022;[39] while respondent filed a *Manifestation* on October

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[34] *Id.*, Vol. II, pp. 552 to 553.
[35] Docket, Vol. II, Resolution dated August 26, 2022, pp. 552 to 553.
[36] *Id.*, Vol. II, pp. 568 to 579.
[37] *Id.*, Vol. II, Records Verification Report dated November 28, 2022 issued by the Judicial Records Division of this Court, p. 678.
[38] *Id.*, Vol. II, pp. 684 to 687.
[39] *Id.*, Vol. II, pp. 657 to 668.

6, 2022 and March 15, 2023,[40] stating that he is adopting the arguments in his *Answer* as his *Memorandum*.

The present case was submitted for decision on April 4, 2023.[41]

ISSUES

The issue to be resolved is as follows:

> "Whether petitioner is entitled to claim a tax credit for the alleged erroneously paid creditable withholding taxes, value-added tax, and percentage taxes for the month of September 2018 in the amount of Php2,447,669.39."[42]

Petitioner's Arguments

Petitioner argues that since the excessively remitted amount of ₱2,447,669.39 was paid to the BIR on October 9, 2018, petitioner made a timely claim with respondent through his duly authorized representatives when it sent letters dated January 28, 2019, June 11, 2019, February 10, 2020, and September 21, 2020; that due to the inaction of respondent and his duly authorized representatives, petitioner was prompted to file a judicial claim for tax credit with this Court, pursuant to Section 229 of the 1997 National Internal Revenue Code (NIRC), as amended; that what is involved in this case is merely the inadvertence of petitioner in entering the amounts in the tax base section of the online returns for its remittances which led to erroneous inputs and computations, and ultimately, an excessive remittance in the aggregate amount of ₱2,447,669.39; and that this was due to those instances when technical problems in the internet caused glitches when the remittance returns were being filled-up online.

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[40] *Id.*, Vol. II, pp. 688 to 690.
[41] *Id.*, Vol. II, Minute Resolution dated April 4, 2023, p. 692.
[42] Docket, Vol. I, Pre-Trial Order dated May 11, 2022, p. 287.

Respondent's Arguments

Respondent contends that petitioner is not entitled to tax credit of the alleged erroneously paid CWT and VAT and other percentage taxes for September 2018 in the amount of ₱2,447,669.39; that proof of actual remittance of the taxes withheld to the BIR is indispensable in a claim for refund or tax credit of CWT, VAT, and other percentage taxes; that petitioner should have presented evidence to prove actual remittance of the same alleged taxes to the BIR since the burden of proving remittance of taxes rests on its shoulder; that petitioner's failure to allege that the purported withheld taxes were remitted to the BIR is fatal to its claim; and that failure of petitioner to submit relevant documents deprived respondent of the opportunity and time to study petitioner's claim for refund and to fully exercise its function.

RULING OF THE COURT

Jurisdiction on the instant petition and timeliness of the filing of both the administrative and judicial claims for refund.

This Court shall determine first whether it has jurisdiction on the instant petition and the timeliness of the claim. Sections 7(a) and 11 of Republic Act (RA) No. 1125[43], as amended by RA No. 9282[44], provides as follows:

> "SEC. 7. ***Jurisdiction.* – The CTA shall exercise**:
>
> **(a) Exclusive appellate jurisdiction to review by appeal, as herein provided**:
>
> xxx xxx xxx
>
> 2. **Inaction by the Commissioner of Internal Revenue in cases** involving disputed assessments, **refunds of internal revenue taxes**, fees or other charges, penalties in relations thereto, or other matters arising under

[43] AN ACT CREATING THE COURT OF TAX APPEALS.

[44] AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OR REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND FOR OTHER PURPOSES.

> the National Internal Revenue Code or other laws administered by the Bureau of Internal Revenue, where the National Internal Revenue Code provides a specific period of action, **in which case the inaction shall be deemed a denial**; ..." *(Emphasis supplied)*

Based on the foregoing provision, this Court has exclusive appellate jurisdiction, *inter alia,* to take cognizance of inaction by the respondent involving claim for refund of any internal revenue taxes.

Relative thereto, the prescriptive periods for the filing of claim for refund of erroneously paid or illegally collected taxes, are covered by Sections 204(C) and 229 of the 1997 NIRC, as amended. Section 204 applies to administrative claims, while Section 229 to judicial claims,[45] *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 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)*
>
> xxx xxx xxx
>
> 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.

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[45] Refer to *CBK Power Company Limited vs. Commissioner of Internal Revenue,* G.R. Nos. 193383-84, January 14, 2015.

> 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)*

Based on the afore-quoted provisions, to be entitled to a refund or credit of erroneously or illegally collected taxes, the following requisites must be satisfied:

1. The administrative and judicial claims for refund or credit have been filed within two (2) years from the date of payment of tax, or penalty, regardless of any supervening cause that may arise after payment; and

2. The tax has been erroneously or illegally collected, or the penalty has been collected without authority, and/or any sum has been excessively or in any manner wrongfully collected.

Section 229 of the 1997 NIRC, as amended, states that judicial claims for refund must be filed within two (2) years from the date of payment of the tax or penalty, providing further that the same may not be maintained until a claim for refund or credit has been duly filed with the respondent.[46]

As applied to the present case, petitioner remitted the following taxes to the BIR on October 9, 2018:

(1)₱749,992.47 – consisting of CWT (expanded);[47] and

(2)₱3,934,697.73 – consisting of final withholding VAT and other percentage taxes.[48]

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[46] *Commissioner of Internal Revenue vs. Goodyear Philippines, Inc.*, G.R. No. 216130, August 3, 2016.
[47] Docket, Vol. II, Exhibits "P-14", "P-15", "P-16", "P-17", and "P-18", pp. 607 to 611.
[48] *Id.*, Vol. II, Exhibits "P-23", "P-24", "P-25", and "P-26", pp. 652 to 655.

Counting two (2) years from the date of remittance of the subject taxes, petitioner had until October 9, 2020 within which to file a claim for refund or credit of its alleged overpayment or excess remittance of taxes in both administrative and judicial levels. Petitioner's administrative claim, through the letter dated January 28, 2019, was filed on February 1, 2019[49] and its judicial claim, through the instant *Petition for Review*, was posted on October 8, 2020,[50] thus, it is clear that both claims were timely made. Petitioner having complied with the *first* requisite, this Court therefore has acquired jurisdiction to take cognizance of the present case.

Petitioner has failed to show that the amount of ₱2,447,669.39 was erroneously or illegally remitted or collected.

Anent the *second* requisite, petitioner claims that it regularly withholds and remits to the BIR creditable income taxes (expanded), VAT and other percentage taxes withheld pertaining to payments made to its suppliers of goods and services.[51]

Petitioner avers that upon careful review of their records, there were discrepancies between the amount of petitioner's remitted withholding taxes to the BIR and the actual amount of withholding taxes with respect to creditable income taxes withheld (expanded) and VAT and other percentage taxes withheld under the General Fund for the month of September 2018. Petitioner alleges that the amount of remittances were higher than what was withheld based on the record and recomputation.[52]

According to petitioner, the discrepancies were inadvertently due to instances when the internet connection caused some glitches in entering the amounts in filling up the BIR online returns for the payment and/or remittance of withholding taxes.[53]

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[49] *Id.*, Vol. II, Exhibit "P-2", p. 582.
[50] *Id.*, Vol. I, pp. 8 to 25.
[51] Docket, Vol. II, Statement of Facts, *Memorandum for Petitioner*, p. 659.
[52] *Id.*, Vol. I, Par. 16, The Material Facts and Antecedent Proceedings, *Petition for Review*, pp.11 to 12.
[53] *Id.*, Vol. I, Par. 17, The Material Facts and Antecedent Proceedings, *Petition for Review*, p.12.

Petitioner offered in evidence the following documents as proof of the above withheld and remitted taxes to respondent:

1. *Quarterly Remittance Return of Creditable Income Taxes Withheld* (BIR Form No. 1601-EQ) for the 3rd quarter of 2018 with eFPS Filing Reference No. 401800027191149 dated October 9, 2018,[54] eFPS Payment Form amounting to ₱749,992.47,[55] BIR system-generated eFPS Payment Details confirming the successful payment of the same,[56] and screenshot from Land Bank of the Philippines website[57];

2. *Monthly Remittance Return of Value-Added Tax and Other Percentage Taxes Withheld* (BIR Form No. 1600) for the month of September 2018 with eFPS Filing Reference No. 171800027191781 dated October 9, 2018,[58] eFPS Payment Form amounting to ₱3,934,697.73,[59] BIR system generated eFPS Payment Details confirming the successful payment of the said amount,[60] and BIR eFPS Home-eFiling and Payment System screenshot;[61] and

3. Certification from Land Bank of the Philippines-Tagbilaran branch dated August 24, 2021,[62] signed by its branch head, Mr. Dexter Ray C. Ruiz, confirming petitioner's tax payments of ₱749,992.47 and ₱3,934,697.73 on October 9, 2018.

From the foregoing, petitioner claims over-remittance in the aggregate amount of ₱2,447,669.39, broken down as follows:[63]

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[54] *Id.*, Vol. II, Exhibits "P-14" and "P-18", pp. 607 and 611, respectively.
[55] *Id.*, Vol. II, Exhibit "P-15", p. 608.
[56] Docket, Vol. II, Exhibit "P-16", p. 609.
[57] *Id.*, Vol. II, Exhibit "P-17", p. 610.
[58] *Id.*, Vol. II, Exhibits "P-22" and "P-26", pp. 651 and 655, respectively.
[59] *Id.*, Vol. II, Exhibit "P-23", p. 652.
[60] *Id.*, Vol. II, Exhibit "P-24", p. 653.
[61] *Id.*, Vol. II, Exhibit "P-25", p. 654.
[62] *Id.*, Vol. I, p. 273.
[63] *Id.*, Vol. II, Exhibit "P-5", p. 588.

Creditable Income Taxes (expanded) withheld	₱ 280,996.82
VAT and other percentage taxes withheld	2,166,672.57
Total over-remittance for September 2018	**₱ 2,447,669.39**

As will be discussed momentarily, however, petitioner has failed to show that the said amount was erroneously or illegally remitted or collected.

Alleged erroneous payment of creditable withholding tax amounting to ₱280,996.82 was not duly substantiated.

Petitioner explains that there was an excess remittance of creditable expanded income taxes withheld because of the difference in the *"Total Amount Still Due"* per BIR Form No. 1601-EQ vis-à-vis the *"Total Amount Still Due"* per re-computation in BIR Form 1601E – Schedule I for the month of September 2018, computed as follows:[64]

Total Amount Still Due (Item 30 per 1601-EQ filed) – Amount Remitted	₱ 749,992.47
Less: Total Amount Still Due (Per re-computation)	468,995.65
Amount of excess remittance	**₱ 280,996.82**

In support of its position, petitioner's witness testified that the total taxes withheld on business under the General Fund for the month of September 2018 per BIR Form 1601E is ₱468,995.65, however, what was remitted to the BIR for the month of September 2018 was ₱749,992.47 based on the filed Form 1601-EQ under Line Item 30 – TOTAL AMOUNT STILL DUE.[65]

Moreover, petitioner presented its alpha-list of payees for July 2018,[66] August 2018[67] and September 2018. However, the Alphalist of payees for September 2018 cannot be considered in the determination of this case, as the same was denied admission by the Court in the Resolution dated August 26, 2022,[68] for failure of petitioner to submit the duly marked exhibit and to present the original for comparison. Such denial

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[64] Docket, Vol. II, Pars. 24 and 27, *Memorandum for Petitioner*, pp. 661 to 662.
[65] *Id.*, Vol. I, Q/A No. 8, *Judicial Affidavit of Eustaquio A. Socorin, CPA*, p. 30
[66] *Id.*, Vol. II, Exhibit "P-19", pp. 612 to 625.
[67] *Id.*, Vol. II, Exhibit "P-20", pp. 626 to 638.
[68] *Id.*, Vol. II, pp. 552 to 553.

was affirmed in the Resolution dated February 3, 2023.[69] Noteworthy is that evidence which has not been admitted cannot be validly considered by the courts in arriving at their judgments.[70]

Since petitioner's supporting document was not admitted in evidence by the Court, the same cannot be given evidentiary value. With the denial of the Alphalist for September 2018 to support its explanation, petitioner's assertion remains self-serving and uncorroborated even if supported by testimonial evidence through the Judicial Affidavit[71] and Supplemental Judicial Affidavit[72] of Mr. Eustaquio A. Socorin which were admitted as evidence.

Apparently, this Court has no point of reference in ascertaining or validating the veracity of petitioner's claim of excess remittance of creditable expanded income taxes withheld. Consequently, this Court is constrained to deny petitioner's claim for refund or tax credit in the amount of ₱280,996.82.

Alleged erroneous payment of VAT and other percentage taxes withheld in the amount of ₱2,166,672.57 was likewise unsubstantiated.

Petitioner likewise avers that it inadvertently made an erroneous payment and excessively remitted the amount of ₱2,166,672.57 with respect to VAT and other percentage taxes withheld pertaining to its General Fund for the month of September 2018.[73]

Moreover, petitioner claims that it paid and remitted the amount of ₱3,934,697.73 on October 9, 2018 as evidenced by eFPS Payment Form with filing reference no. 171800027191781[74], BIR eFPS payment confirmation[75], eFPS

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[69] *Id.*, Vol. II, pp. 684 to 687.
[70] *Dra. Leila A. Dela Llano vs. Rebecca Biong, doing business under the name and style of Pongkay Trading*, G.R. No. 182356, December 4, 2013.
[71] *Id.*, Vol. I, Exhibit "P28", pp. 28 to 38.
[72] Docket, Vol. I, Exhibit "P-29, pp. 269 to 272.
[73] *Id.*, Vol. II, Par. 8, *Memorandum for Petitioner*, pp. 662 to 663.
[74] *Id.*, Vol. II, Exhibit "P-23", p. 652.
[75] *Id.*, Vol. II, Exhibit "P-24", p. 653.

Filing Reference[76], and Certification issued by Landbank Tagbilaran Branch[77].

Petitioner contends that after careful review of their records and recomputation of the amount of VAT and other percentage taxes withheld, there was a difference amounting to ₱2,166,672.57[78] between the *Monthly Remittance Return of VAT and Other Percentage Tax Withheld* (BIR Form No. 1600)[79] that was filed and the BIR Form 1600 Schedule II for the month of September 2018 (Alphalist)[80], computed as follows:

Per BIR Form No. 1600[81] Filed					**Per Recomputation[82]**				**Difference in Tax Withheld[83] Over/(Under)**
Line Item No.	**ATC**	**Tax Base (In Pesos)**	**Tax Rate**	**Tax Withheld (In Pesos)**	**ATC**	**Tax Base (consolidated quarter) In Pesos**	**Tax Rate**	**Tax Withheld (In Pesos)**	
	WV010	₱17,302,091.20	5%	₱865,104.56	WV010	-	5%	-	₱865,104.56
	WV020	59,731,486.80	5%	2,986,574.34	WV020	₱36,084,550.60	5%	₱1,804,227.53	1,182,346.81
	WB040	68,148.50	2%	1,362.97	WB040	63,453.00	2%	1,269.06	93.91
	WB080	5,787,759.00	3%	173,632.77	WB080	1,816,849.33	3%	54,505.48	119,127.29
	Total Income Payment	₱82,889,485.50			Total Income Payment	₱37,964,852.93			
14	Total Tax Required to be Withheld and Remitted			4,026,674.64	Total Tax Required to be Withheld and Remitted			1,860,002.07	2,166,672.57
15	Less: Tax Remitted in Return Previously filed, if this is an Amended Return			-	Less: Tax Remitted in Return Previously filed, if this is an Amended Return			-	-
16	Tax Still Due			₱4,026,674.64	Tax Still Due			₱1,860,002.07	₱2,166,672.57
17	Add: Penalties			-	Add: Penalties			-	-
18	Total Amount Still Due			₱4,026,674.64	Total Amount Still Due			₱1,860,002.07	₱2,166,672.57

To support its claim, petitioner offered in evidence its (1) *Monthly Remittance Return of VAT and Other Percentage Taxes Withheld* (BIR Form No. 1600)[84], and (2) BIR Form No. 1600 Schedule II for the month of September 2018 (Alphalist)[85]

An examination of the BIR Form No. 1600 Schedule II for the month of September 2018 (Alphalist)[86] shows that the total withholding taxes amount to ₱3,744,021.68 of which the amount of ₱1,860,002.07 was under petitioner's General Fund, and the remaining ₱1,884,019.61 was under petitioner's

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76 *Id.*, Vol. II, Exhibit "P-26", p. 655.
77 *Id.*, Vol. I, Exhibit "P-27", p. 273.
78 *Id.*, Vol. I, Question & Answer Nos. 13 to 14 and 16 to 21, Exhibit "P-28", pp. 32 to 34.
79 *Id.*, Vol. II, Exhibit "P-22", p. 651.
80 *Id.*, Vol. II, Exhibit "P-21", pp. 639 to 650.
81 Docket, Vol. II, Exhibit "P-22", p. 651.
82 *Id.*, Vol. I, *Petition for Review*, p. 18.
83 *Id.*, Vol. I, *Petition for Review*, p. 18.
84 *Id.*, Vol. II, Exhibit "P-22", p. 651.
85 *Id.*, Vol. II, Exhibit "P-21", pp. 639 to 650.
86 *Id.*, Vol. II, Exhibit "P-21", pp. 639 to 650.

Trust Fund (T-Fund/TF), the pertinent portion of which is reproduced below:

SUMMARY

	1600
Gen. Fund	₱1,860,002.07
T-Fund 329(2)	1,120,405.30
T-Fund P.A. 323(13)	6,889.71
TF 323(19GOP)	469,835.89
TF 323(17)	286,888.71
Total	**₱3,744,021.68**

Petitioner arrived at the alleged excess payment of ₱2,166,672.57 by comparing the tax still due per BIR Form No. 1600 amounting to ₱4,026,674.64, and tax still due per its recomputation amounting to ₱1,860,002.07, as shown in the table above. Verily, petitioner's presentation of its recomputation simply pointed out how the alleged excess payment of withholding tax was computed.

Petitioner's explanation that the discrepancy was due to mere inadvertence in entering the amounts in the tax base section of the online returns for its remittances is self-serving, considering that it failed to present the source documents (*i.e.*, approved disbursement voucher, collection list, invoices or official receipts, or other adequate records) showing the purported correct tax base. The presentation of the source documents before this Court is important to determine whether or not there was indeed incorrect tax base that was entered into the returns when the same was filed online. Needless to say, the correct amount of tax base or income payment is the determinative factor in computing the correct withholding tax. The Alphalist alone, which is considered self-serving, without corroborating evidence, is not reflective of the correct amount of the income payment which could be the basis of the comparison.

Absent such source documents, this Court cannot preclude the possibility that petitioner may have understated the amount of income payment/tax base reflected in the Alphalist to arrive at a lower withholding tax due.

Consequently, the Court is not convinced by petitioner's mere assumptions or allegations that the correct total income payment is ₱37,964,852.93 and the corresponding withholding tax of ₱1,860,002.07[87] is indeed the total amount of withholding that should have been remitted under the petitioner's General Fund.

Moreover, although petitioner presented its BIR Form No. 1600 Schedule II for the month of September 2018 (Alphalist)[88], the Court cannot ascertain which among the income payments enumerated therein (*i.e.,* ATC WV020 amounting to ₱36,084,550.60, ATC WB040 amounting to ₱63,453.00, and ATC WB080 amounting to ₱1,816,849.33) pertains to the amount of tax remitted under the petitioner's General Fund or Trust Fund.

Thus, the Court cannot simply accept the recomputation made by the petitioner without its supporting source documents. Bare allegations, unsubstantiated by evidence, are not equivalent to proof; in short, mere allegations are not evidence.[89]

Basic is the rule in taxation that tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the taxpayer and liberally in favor of the government. Tax exemption can only be given effect when the grant is clear and categorical[90] inasmuch as taxation is the rule and exemption is the exception.[91] All doubts, therefore, must be resolved in favor of the taxing authority.[92] Accordingly, it is a claimant's burden to prove the factual basis of a claim for refund or tax credit.[93]

On the basis of the foregoing, petitioner's claim that there was an erroneous or excessive payment of VAT and other percentage tax withheld amounting to ₱2,166,672.52 is likewise unfounded.

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[87] Docket, Vol. I, *Petition for Review*, p. 18.

[88] *Id.*, Vol. II, Exhibit "P-21", pp. 639 to 650.

[89] *Ermelinda C. Manaloto, et al. vs. Ismael Veloso III*, G.R. No. 171365, October 6, 2010.

[90] *Cyanamid Philippines, Inc. vs. Court of Appeals, et al.*, G.R. No. 108067, January 20, 2000; *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, et al.*, G.R. Nos. 83583-84 September 30, 1991.

[91] *Cyanamide Philippines, Inc. vs. Court of Appeals, et al., supra*, citing *Commissioner of Internal Revenue vs. Mitsubishi Metal Corp.*, 181 SCRA 214, 223-224 (1990).

[92] *Commissioner of Internal Revenue vs. Rio Tuba Nickel Mining Corporation, et al.*, supra.

[93] *Eastern Telecommunications Philippines, Inc. vs. Commissioner of Internal Revenue*, G.R. No. 183531, March 25, 2015.

WHEREFORE, in light of the foregoing considerations, the present *Petition for Review* is **DENIED** for lack of merit.

SO ORDERED.

CATHERINE T. MANAHAN
Associate Justice

WE CONCUR:

ROMAN G. DEL ROSARIO
Presiding Justice

MARIAN IVY F. REYES-FAJARDO
Associate 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